Federal Court  Cour fédérale

Date: 20170918

Docket: T-865-16

Citation: 2017 FC 836

Toronto, Ontario, September 18, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

DAVID EDWARD FAIRFIELD

Applicant

and

PAROLE BOARD OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant is an offender serving an indeterminate sentence of imprisonment (following his designation as a dangerous offender) who seeks judicial review of the denial of his application for parole.

[2] For the reasons set out below, I have concluded that the present application should be dismissed.

[3] At the outset, I wish to warn readers of this decision that it contains graphic descriptions of the applicant's crimes and other acts of a sexual nature.

II. Backgrounds Facts

A. *Criminal History*

[4] The applicant's designation as a dangerous offender, and consequent indefinite imprisonment, followed his conviction on four counts of attempted sexual assault. This is referred to as the index offence. It involved two separate attempts by the applicant in September 1989 to lure young girls into his vehicle. A police search of the applicant's vehicle at the time found handcuffs, a knife, rope, a camera, paper towels, a ground sheet, pills in a container labelled "penis-enlarger", a pair of girl's panties and a teddy bear carrying a beach ball. A subsequent search of the applicant's home found:

- A photo album containing pictures of young girls that appeared to have been taken in a public place;
- Nightgowns that would fit young girls;
- Clippings of newspaper advertisements requesting babysitters for young girls;
- A pornographic book about a girl's first sexual experience;
- Documents the applicant had written, including:
    - One detailing a plan to abduct two young girls called "A True Story";

- Another entitled “Plans for the Future” containing stories of sexually assaulting little girls, a list of 65 schools in various towns, complete with the number of students and teachers in each school, the location of police detachments in the areas, a list of local motels, and a description of disguises and vehicles for use to commit these crimes;
- Another entitled “The Best Years of My Life, The First Trip” was a detailed story of abducting and murdering young girls that included the use of handcuffs, a knife and a camera.

[5] The following table provides information concerning the applicant’s criminal history prior to the index offence:

Date	**Offence**	**Sentence**
November 7, 1960	Common Assault	Suspended sentence, nine months’ probation
July 29, 1963	Indecent Assault on Female	Suspended sentence, 18 months’ probation
October 26, 1964	Common Assault	Three months definite, 18 months indefinite
January 6, 1965	Breach of Recognizance	Two years definite, two years indefinite
March 18, 1969	Indecent Assault on Female, Possession of a Weapon, and Common Assault	10.5 years
August 6, 1980	Possession of a Weapon	Seven years and six months

[6] According to a psychological/psychiatric assessment report dated July 20, 2015, that was referred to in the Parole Board of Canada’s decision, the applicant has acknowledged sexually assaulting or attempting to sexually assault 17 girls between the ages of 5 and 13 beginning when

he was 17 years old and ending with his indefinite incarceration in 1989 (when he was 50 years old). With one exception, the girls were victimized only once. The exception was a 7-year-old neighbour of the applicant who was sexually assaulted about 12 times when he was 17 years old.

[7] The applicant has also acknowledged having:

- Stolen young girls' garments, from clothes lines or by entering back doors of houses, for masturbatory purposes;
- Made obscene phone calls to young girls after obtaining phone numbers from babysitting advertisements;
- Offered rides to victims;
- Forced or dragged victims into his car, sometimes at knife point or using an imitation gun;
- Undressed or molested some of his victims;
- Masturbated in front of victims;
- Had his victims masturbate him;
- Choked one victim;
- Used a knife to force victims to comply with his wishes;
- Threatened to kill one victim if she continued screaming while he dragged her to his car.

B. *Details of the Applicant*

[8] Including the almost 28 years since being incarcerated indefinitely for his index offence, the applicant has spent almost 50 years of his life behind bars. He is now 78 years old and in

poor health. He uses a wheelchair and suffers from a litany of ailments. He claims he has not fantasized about young girls for many years and is no longer interested in them.

[9] He is a citizen of the United Kingdom. Though he has lived in Canada since 1950, he never became a citizen of Canada. Because of his conviction for an offence punishable with a maximum term of imprisonment of ten years, he has been subject to a Deportation Order since 1999. Therefore, if the applicant is granted parole, he is to be released into the custody of Canadian Border Services Agency (CBSA) for removal to the UK. The applicant accepts this. In fact, he has expressed a wish to return to his home country, as well as a concern that he will die in prison first.

[10] In November 2013 the applicant made a request under the *International Transfer of Offenders Act*, SC 2004, c 21, for transfer to England. Such a transfer would require the consent of Canada, of the UK and of the applicant. It appears that Canada and the UK have recently consented to the requested transfer. It remains only for the applicant to consent. Though it appears that the applicant now has a path to obtaining his stated goal of returning to his home country before he dies, the parties are agreed that the present application is not moot. It appears that the circumstances of the applicant's return to the UK would be quite different if he were deported as a parolee as opposed to being transferred under *International Transfer of Offenders Act*.

C. *Applicant's Institutional Behaviour*

[11] It appears that the applicant has behaved well in prison. He obeys the rules, is respectful toward others and is not engaged in any criminal or gang activity. He is also not suspected of any substance abuse.

[12] In 2001 he completed a high intensity group therapy program as part of which he wrote a comprehensive crime cycle and relapse prevention plan. He did well in the program. However, having completed that program once, he could not repeat it, and was limited thereafter to maintenance programs. He participated in such programs until 2009, after which he refused further participation. He also refused to be interviewed about his refusal to participate. He claims that, after serving 20 years of his indefinite sentence and being denied parole several times, he lost faith that further participation would be fruitful.

[13] The applicant has participated in numerous Escorted Temporary Absences from prison without incident, and has developed a pro-social support network.

III. Impugned Decisions

[14] The applicant seeks judicial review of a May 2, 2016 decision of the Appeal Division of the Parole Board of Canada which affirmed an October 21, 2015 decision of the Parole Board denying the applicant's application for parole. Hereinafter, these two tribunals will be referred to the Appeal Division and the PBC, respectively.

[15] The Appeal Division had the power to reverse, cancel or vary the decision of the PBC: s. 147(4)(d) of the *Corrections and Conditional Release Act*, SC 1992, c 20. In this sense, the Appeal Division has the power associated with an appeal. However, the grounds of appeal listed in s. 147(1) are essentially those associated with judicial review: *Cartier v Canada (Attorney General)*, 2002 FCA 384 at para 6 [*Cartier*]. Where, as here, the Appeal Division has affirmed the PBC's decision, the judge on judicial review of the Appeal Division's decision is actually required ultimately to ensure that the PBC's decision is lawful: *Cartier* at para 10. Accordingly, it is necessary to look at both decisions.

[16] The criteria for granting parole are set out in section 102 of the *Corrections and Conditional Release Act*:

102 The Board or a provincial parole board may grant parole to an offender if, in its opinion,	**102** La Commission et les commissions provinciales peuvent autoriser la libération conditionnelle si elles sont d'avis qu'une récidive du délinquant avant l'expiration légale de la peine qu'il purge ne présentera pas un risque inacceptable pour la société et que cette libération contribuera à la protection de celle-ci en favorisant sa réinsertion sociale en tant que citoyen respectueux des lois.
(a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and	
(b) the release of the offender will contribute to the protection of society by facilitating the reintegration of	

> the offender into society as a law-abiding citizen.

A. *The PBC's Decision*

[17] The PBC began its decision by summarizing its task as well as some pertinent details of the applicant's history.

[18] The PBC also made reference to certain information and reports that were considered in reaching its decision. In addition to some of the facts discussed above, these included:

- The increasing violence of the applicant's offences over time;
- His offences were well thought-out in advance of actually committing them;
- Contributing risk factors identified by Correctional Service Canada (CSC) as requiring a high level of intervention, such as personal/emotional orientation and community functioning;
- Reports that the applicant has not displayed insight into his offences or crime cycle, and continues to minimize his offences, including stating that he "never hurt anybody" (apparently based on the fact that he never penetrated any of his victims);
- Because of his refusal to participate in further treatment programs, he is not considered engaged in his Correction Plan and his reintegration potential has been rated as low;
- Psychological assessments that have diagnosed the applicant as being sexually deviant, and showing traits of men who tend to reoffend sexually at a high rate, giving rise to a high risk to reoffend sexually despite his age and limited mobility, and necessitating significant coordination, information sharing and strict supervision if released;

- The applicant has not provided a release plan to address his need for strict supervision if released, and his relapse prevention plans are superficial;

[19] After summarizing and balancing the positive and negative aspects of the applicant's case, the PBC concluded that the latter outweigh the former, and the risk that the applicant will reoffend remains undue. The PBC denied parole on that basis.

B. *The Appeal Division's Decision*

[20] Based on its limited power, the Appeal Division indicated that it could intervene only where it found that the PBC's decision was unfounded and unsupported by the information that was available at the time; it does not have the jurisdiction to substitute its discretion for that of the PBC unless the PBC's decision was unreasonable or unfounded.

[21] The Appeal Division summarized the analysis in the PBC's decision and the applicant's arguments, and concluded that there were no grounds for it to intervene.

[22] Among its comments, the Appeal Division stated that the concern for "an undue risk to society" and the effort to "contribute to the protection of society" in s. 102 of the *Corrections and Conditional Release Act* refer to <u>any</u> society rather than just Canadian society. It concluded that the PBC was therefore correct to consider society in the UK where the applicant would be released.

[23] The Appeal Division also confirmed that the PBC had accurately summarized the applicant's criminal history and progress in addressing his risk factors. The Appeal Division found that the PBC's conclusion that the applicant's sentence was being tailored to meet his needs was reasonable.

[24] The Appeal Division summarized the key conclusions of the relevant Psychological Risk Assessment, and noted CSC's assessment of the applicant's reintegration potential, motivation and level of accountability as low.

[25] The Appeal Division also found no merit in the specific points raised in the applicant's submission.

IV. Issues in Dispute

[26] The applicant argues, on various grounds, that the Appeal Division's decision, based as it was on the findings of the PBC, was reviewable. The following arguments are addressed in the analysis below:

- Erroneous conclusion that the applicant minimizes his offences and the harm caused thereby;
- Improper reliance on reports virtually copied from earlier reports;
- Improper focus on fictional stories of a sexual nature authored by the applicant long ago;
- Improper reliance on alleged acts for which the applicant was not convicted rather than his criminal record;

- Acting unfairly and beyond its jurisdiction in thwarting the applicant's request and the CBSA's efforts to return to him to the UK;
- Failure to contact authorities in the UK to make adequate arrangements for a deported parolee;
- Erroneous conclusion that the applicant could/would still lure young girls for sexual purposes;
- Improper reliance on the applicant's refusal to participate in Sex Offender Maintenance Program;
- Erroneous conclusion that the applicant still has unaddressed needs;
- Improper use of the present perfect tense to suggest that the applicant's acts in the long past continue to the present.

[27] The applicant also argues that his continued incarceration violates ss. 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*], as well as s. 2 of the *Canadian Bill of Rights*, SC 1960, c 44.

V. Analysis

A. *Standard of Review*

[28] For the most part, the errors alleged by the applicant are to be reviewed on a standard of reasonableness. This is certainly true of arguments by the applicant concerning the weight given to various issues and evidence related thereto. Though the applicant did not argue the point, I

recognize that his argument that the PBC acted outside its jurisdiction or failed to perform its duty may be subject to review on a standard of correctness.

B. *Minimization of Offences*

[29] The PBC appears to have relied on statements by the applicant that he never penetrated any of his victims as a basis for concluding that he minimized his offences. The PBC may also have reached this conclusion based in part on the applicant's assertion that his index offence concerned mere attempted (not actual) sexual assaults.

[30] The applicant asserts that he was simply stating facts when he noted these things. The applicant argues that it was therefore improper for the PBC to characterize his statements as minimization of his offences.

[31] I cannot agree. A person's statements of mere facts during a discussion of their offences and the harm those offences have caused may, in context, reveal that the person does not recognize the seriousness of their offences. In the applicant's case, his further statement that he "never hurt anybody" suggests just that. His repeated references to not having penetrated his victims and having merely attempted sexual assault in his index offence also suggest that he considers these facts to somehow excuse or lessen the severity of his offences. No other reason for the applicant having repeated these statements has been suggested.

[32] The applicant seems to wish to emphasize that the harm he caused his victims was largely mental, not physical. I have two reactions to this. Firstly, since the applicant has acknowledged

that he forced or dragged some of his victims, that he molested them, had them masturbate him, and choked one victim, it is difficult to understand any suggestion that harm to his victims was not physical. I can only think that the applicant's concept of physical harm required some sort of permanent injury. I disagree. My second reaction to the idea that harm to the applicant's victims was mainly mental is to note that mental harm, even though it is not visible, can be much more painful and enduring for the victim than any physical harm.

[33] Another argument that was raised in the applicant's oral argument concerned the only one of his victims who was assaulted more than once. The applicant's counsel characterized the series of interactions between that girl (who was 7 years old at the time) and the applicant (who was 17 at the time) as an "affair" and an "ongoing relationship". I should note that the applicant's counsel appears to have been under the impression that this neighbour girl was 12 years old at the time of the assaults, not 7. Nevertheless. I cannot accept the characterization of a relationship between a 17 year old boy and a young girl, whether she is 7 or 12, as an affair. The word "affair" suggests an ongoing consensual romantic relationship. However, a young girl obviously does not have the capacity to give the required consent. I also reject counsel's suggestion that "romantic encounters do happen at that age", again regardless of whether the girl was 7 or 12.

[34] The applicant has not convinced me that it was unreasonable to conclude that he minimized elements of his offending.

C. *Reports Copied from Earlier Reports*

[35] The applicant complains that many portions of the PBC's report are essentially copied from earlier reports, presumably suggesting that the PBC did not properly consider the situation.

[36] In my view, it is understandable that the PBC's report would contain many passages that are similar to, or even the same as, passages found in previous PBC reports. Most of the underlying facts appear to be unchanged, including the applicant's index offence, his other criminal convictions, other acts he has acknowledged for which he was not convicted, and his unwillingness to participate in maintenance programs. To the extent that the relevant facts are unchanged, it is reasonable that the PBC's conclusion would likewise remain unchanged.

[37] Without any indication that the PBC failed to consider the relevant facts, or misunderstood them, or applied them unreasonably, I am not prepared to find that the PBC erred in reproducing portions of its report from previous reports. To find otherwise would force the PBC to find different words for each report to say essentially the same things. This would be a waste of effort.

D. *Fictional Stories*

[38] The applicant complains that the PBC makes too much of his stories, which are fictional and were written long ago.

[39] Firstly, I am not convinced that the PBC misunderstood the fictional nature of the applicant's stories or that they were written long ago. Also, it is for the PBC to decide on the weight that should be given to these stories. The fact that they are fictional and written long ago does not prevent the PBC from considering them. Moreover, the PBC mentions these stories only once in its decision. It does not appear that they were given undue weight.

[40] The applicant also argues that he has freedom of thought and of expression, that the writings in question were not criminal in any way, and that he should not be punished for writing such fantasy. The respondent counters that the applicant is not being punished for writing. This is not a matter of freedom of thought or of expression. Rather, the PBC included the applicant's writings as a relevant consideration in its decision-making. I agree. It was not unreasonable for the PBC to make reference to the applicant's disturbing writings.

E. *Acts Outside Criminal Record*

[41] The applicant argues that the PBC gives "altogether too much weight" to evidence of acts of a sexual nature committed by him but for which he was never convicted.

[42] As noted above with regard to the applicant's fictional stories, it is for the PBC to decide on the weight that should be given to the evidence. The acts in question were admitted to by the applicant. The fact that the applicant committed these acts is not in dispute.

[43] The applicant argues that it is unfair to have encouraged him, as part of his participation in therapy programs, to be open about his past acts, and then to hold those acts against him later. The applicant argues that he should be given credit for his frankness.

[44] In my view, the applicant's honesty and frankness with regard to his past acts is an issue that could reasonably be put to the PBC for its consideration. However, I am not prepared to conclude that it was unreasonable for the PBC, as part of its decision-making, to consider acts of a sexual nature committed by the applicant, even if he were not convicted of any offence in respect of such acts, and even if those acts were disclosed voluntarily by the applicant.

[45] The applicant argues that it was highly prejudicial to use the applicant's own statements against him. Given that the fact that the applicant committed these acts is not in dispute, I do not agree that the PBC's reliance on them was prejudicial to the applicant.

F. *Thwarting Deportation Efforts*

[46] The applicant argues that, for 17 years, the PBC has been thwarting efforts by him and by the Canadian Border Services Agency (CBSA) to have him deported to the UK by refusing to grant him parole. The applicant argues that, in so doing, the PBC has acted beyond its jurisdiction and refused to exercise its jurisdiction. In support of his position, the applicant quotes passages from the Appeal Division's decision referring to the CBSA and the applicant's request for an international transfer. These passages include the following: "The CBSA states that it had not been able to remove you from Canada under a deportation order because you were

being held indefinitely in custody as a danger to the public as declared by the Minister of Citizenship and Immigration."

[47] In my view, nothing in the above-quoted passage, or the rest of the passages cited by the applicant, supports the argument that the PBC appeared to want to thwart the applicant's deportation. In fact, from my reading of the PBC's decision as a whole, I understand the PBC to have given fair consideration to the applicant's wish to return to England, and to the requirements for granting that wish.

[48] I do not accept that the PBC acted outside its jurisdiction when it prevented the applicant's deportation by refusing to grant him parole. There is no doubt that the applicant has been subject to deportation since 1999. However, s. 50(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, makes it clear that a removal order against a foreign national sentenced to prison in Canada is stayed until the sentence is completed. It appears that this provision has been applied as intended.

[49] The applicant argues that the PBC improperly assumed that the UK does not have adequate checks on parolees. I disagree. I think the applicant was closer to the mark with an observation that the PBC does not want to lose control of the applicant. In my view, that is a reasonable concern for the PBC to have, given (i) the PBC's responsibility for the risk to society wherever it may be (not just in Canada – *Collins v Canada (Attorney General)*, 2012 FC 268 at para 39; *Scott v Canada (Attorney General)*, 2010 FC 496 at para 49), and (ii) the applicant's history of offending while on release from detention.

G. *Duty to Contact UK Authorities*

[50] The PBC's decision observed that the applicant had not provided a release plan to his case management team. The applicant argues that it was unreasonable to expect the applicant to come up with a release plan because (i) he is incarcerated, and (ii) his release would be in the UK. The applicant argues that the PBC had a duty to facilitate his building of a release plan by contacting authorities in the UK. The applicant urges that the PBC should at least have pressured the applicant's parole officer to do so.

[51] I disagree. The job of the PBC was to consider the applicant's parole application. A release plan is a document that might be provided to the PBC as part of a parole application, but I have seen nothing to indicate that it is the PBC's duty to work to build that plan.

[52] The applicant also argues that if the PBC has no duty to facilitate building a release plan in the UK, then it should follow that its concern for the protection of society does not extend to the UK. Again, I disagree. Firstly, as indicated above, the jurisprudence indicates that "society" is not limited to Canadian society. Secondly, I do not agree with the logic of tying the scope of the PBC's duty to the scope of its concern for the protection of society.

H. *Possibility that Applicant May Still Lure Young Girls*

[53] With regard to the applicant's physical capacity to commit further sexual offenses, the PBC's decision stated:

> At 76 years old you are considerably older than you were when you committed the index offence. You have experienced a series of more or less significant health issues since 2001 and are not as mobile or as healthy as you were when you began to serve your sentence.

[54] The applicant adds that he is confined to a wheelchair. However, the PBC concluded that the applicant remained a high risk to offend.

[55] The applicant argues that it is unreasonable to conclude that a wheelchair-bound man could commit sexual offenses of the kind the PBC is concerned about. Among other things, the applicant argues that the PBC employs a double standard in that it dismisses his health problems that are in the past, but dwells on his sexual acts that have not occurred for several decades.

[56] I do not accept this "double standard" argument. I see nothing unreasonable in considering whether past acts by the applicant (even long past acts) might happen again, and also not considering health problems that do not currently affect the applicant's ability to commit such acts.

[57] Despite the applicant's arguments, I am of the view that the PBC's conclusion that he remains a high risk to offend was reasonable. He may be older and less physically able than he was, but he remains able to lure children. He claims that he no longer has the urges that led him to commit the sexual acts that concerned the PBC, but the PBC considered those claims.

I. *Refusal to Participate in Maintenance Programs*

[58] The applicant argues that his refusal to participate in maintenance programs concerning his therapy should not be held against him. As discussed above, he explains that he participated actively in such programs until 2009 when, after serving 20 years of his indefinite sentence and being denied parole several times, he essentially gave up believing that his further participation would help him get parole.

[59] This is an explanation that may or may not have been given to the PBC in explaining his refusal to participate in maintenance programs. However, either way, I am not prepared to find that it was unreasonable for the PBC to conclude that, despite the applicant's explanation, his continued refusal was of concern.

J. *Applicant's Unaddressed Needs*

[60] The applicant notes that the PBC stated: "The most recent program you completed indicated that you still have a number of unaddressed needs." The applicant argues that the PBC failed to identify these unaddressed needs.

[61] I cannot agree. The PBC's decision cites several examples of the applicant's unaddressed needs, including the superficial nature of his plans to prevent his relapse.

K. *The Supreme Court of Canada's Decision in* Warden of Mountain Institution v Steele

[62] The applicant's memorandum of fact and law states, somewhat enigmatically: "The Parole Board of Canada decision is being challenged consistent with *Warden of Mountain Institution v. Steele*, [1990] 2 S.C.R. 1385 [(*Steele*)]." The applicant expanded little on this at the hearing.

[63] *Steele* clarified requirements for proper assessment of parole applications. As in the present case, it concerned a prisoner who was serving an indeterminate sentence. However, the differences between *Steele* and the present case are critical. In *Steele*, parole was denied despite, not because of, submissions that were received by the National Parole Board (as it was called then). That is not the case here. Also, the Supreme Court found that disciplinary breaches that swayed the Board were explicable and not sufficient to deny parole. In the present case, the PBC's decision was not based on disciplinary breaches.

[64] I am not convinced that, in the present case, the PBC failed to heed the instructions in *Steele*.

L. *Use of Present Perfect Tense*

[65] This argument was raised by the applicant during the hearing, but was not mentioned in his memorandum of fact and law. The applicant argues that the PBC's use of the present perfect tense in its decision improperly suggests that the applicant continues to commit the acts referred to.

[66] The only example of this that I have found in the PBC's decision is the following passage at page 4: "your predatory behaviour and deviant sexual attraction to female children is long standing and has spanned over 60 years of your life" (emphasis added). The applicant's counsel cited other examples, but these came from another document, and were not part of the PBC's impugned decision.

[67] The applicant argues that it is untrue that the applicant's criminal history has spanned 60 years of his life, since he has been in prison since 1989, and there is no indication of any criminal activity by him while incarcerated.

[68] While the applicant is factually correct, I am satisfied that the PBC did not misunderstand the fact that the applicant has not committed a sexual offense since he was incarcerated in 1989. In fact, the PBC noted his generally appropriate behaviour during that time. I am also satisfied that there was nothing unreasonable in the PBC's use of the present perfect tense.

M. Charter *and* Canadian Bill of Rights *Arguments*

[69] As indicated above, the applicant argues that his rights under ss. 7, 12 and 15 of the *Charter*, as well as s. 2 of the *Canadian Bill of Rights*, have been violated by the PBC's decision.

[70] The applicant notes that the PBC acknowledged during the hearing of his parole application that his was a challenging file, "and not least because you are both a dangerous offender and a deportation case." The PBC went on to state: "These things make it particularly

challenging for the board, because for all practical purposes, I think it's fair to say that some of the interventions that are open to other offenders, are effectively closed off to you."

[71] Unfortunately, the applicant's arguments on these issues are superficial. The applicant cites no jurisprudence and, beyond citing the PBC's comments in the preceding paragraph and the applicant's situation as a foreign national, the applicant does little more than quote the relevant provisions of the *Charter* and the *Canadian Bill of Rights*.

[72] Because the applicant has offered little in the way of reasoned argument, it is difficult to provide detailed reasons in response. I will say that I am not convinced that there has been any violation of the applicant's rights. The applicant remains in prison due to an indefinite sentence whose validity is not in issue. I have not found any aspect of the PBC's decision to be unreasonable.

[73] Because the applicant seems to place the most weight on an argument that he was treated differently from a Canadian citizen, I will make a comment regarding s. 15 of the *Charter* which guarantees equal benefit of the law without discrimination based on a number of grounds, including national origin. I am unable to agree that the complicating fact of the applicant's situation as a "deportation case" is sufficient to entitle him to parole. The PBC's concern for the protection of society must be considered a critically important consideration in deciding the applicant's parole application, even if his situation is complicated by his impending deportation. The challenges of the applicant's situation are not insurmountable.

[74] The applicant also notes that s. 2 of the *Canadian Bill of Rights* provides that "no law of Canada shall be construed or applied so as to … authorize or effect the arbitrary detention, imprisonment or exile of any person". The applicant argues that the PBC's decision subjects him to arbitrary exile from his home country. In my view, the applicant's difficulties in returning to the UK can only be characterized as arbitrary to the extent that some aspect of the PBC's decision can be characterized as unreasonable. As I have indicated, I have found no aspect of the PBC's decision to be unreasonable.

VI. Conclusion

[75] For the foregoing reasons, the present application should be dismissed with costs.

JUDGMENT in T-865-16

THIS COURT'S JUDGMENT is that the present application is dismissed with costs.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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