Federal Court Cour fédérale

Date: 20181128

Docket: T-712-18

Citation: 2018 FC 1190

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, November 28, 2018

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

RENFORD FARRIER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] Renford Farrier seeks judicial review of the decision handed down by the Appeal Division of the Parole Board of Canada (the Appeal Division) dated March 20, 2018. The Appeal Division dismissed Mr. Farrier's appeal and upheld the decision of the Parole Board of Canada (the Board) denying him pre-release day parole or parole.

[2] Central to this case is the Board's failure to record the hearing held before it. As part of the relief, Mr. Farrier is asking the Court to set aside the Appeal Division's decision, set aside the Board's decision and order a new hearing before the latter.

[3] For the reasons that follow, the Court dismisses the application for judicial review.

II. BACKGROUND

[4] Since 1992, Mr. Farrier has been serving a life sentence.

[5] On December 6, 2017, the Board refused to grant him day parole or full parole.

[6] At the hearing, the Board received new information that had not been disclosed to Mr. Farrier at least 15 days before the hearing, as required by subsection 141(1) of the *Corrections and Conditional Release Act*, SC 1992, c. 20 [the Act]. As part of this new information, the Parole Officer informed the Board that an October 2017 incident, initially referred to as an overdose, may not have been one.

[7] In addition to the aforementioned testimony of the Parole Officer, the Board also received at least the testimony of Mr. Farrier's assistant and that of the Manager, Assessment and Interventions.

[8] In its decision, the Board did not disclose the identity of the assistant, but noted that he had presented a detailed release plan in which resources and volunteers would be present to

support Mr. Farrier in his social reintegration (page 5 of the Board’s Decision). The Board also noted that the Manager, Assessment and Interventions, strongly argued in favour of Mr. Farrier’s release, essentially on the basis that Mr. Farrier would no longer benefit from his incarceration. The Board finally noted that Mr. Farrier’s Case Management Team (CMT) believes instead that he should not be granted parole.

[9] On December 8, 2017, Mr. Farrier asked the Board to send him the recording of the hearing. However, on January 8, 2018, the Board replied apologetically for not being able to respond to Mr. Farrier’s request, since the hearing had not been recorded due to technical problems with the recorder.

[10] On January 31, 2018, Mr. Farrier brought the Board’s decision on appeal to the Appeal Division and, as a claim for relief, asked the Board to order a new hearing. Mr. Farrier then filed written submissions but did not attach any affidavits.

[11] At the Appeal Division, Mr. Farrier only raised the issue of the Board’s failure to record the hearing held before it. He submitted that the Board (1) contravened paragraph 10 of section 11.1 of the *Decision-Making Policy Manual for Board Members* [the Policy Manual], which requires the Board to proceed with the audio recording of all hearings; (2) erred in law by contravening subsection 140(13) of the Act, which obliges the Board to allow victims to listen to the audio recording of hearings; and (3) failed to respect the principles of fundamental justice by not making the recording of the hearing available.

[12] In relation to the non-respect of the principles of fundamental justice, Mr. Farrier submitted to the Appeal Division that (a) it was impossible for the Appeal Division to exercise its jurisdiction without the audio recording or to adjudicate with respect to the procedural guarantee provided for in section 141 of the Act, to the effect that the applicant must receive any information at least 15 days before the hearing; (b) the very short summary in the Board's decision of the new information shared orally by the CMT at the beginning of the hearing did not allow the Appeal Division to take notice of it fairly; (c) the written documents were not available at the hearing and were not part of the record, so the Appeal Division should not take notice of them; and (d) the summary of the relevant information provided by the assistant at the hearing did not provide an understanding of exactly what support or resources were available as part of Mr. Farrier's social reintegration (written submissions to the Appeal Division dated January 31, 2018, page 24 of the Applicant's Record).

[13] On March 20, 2018, the Appeal Division dismissed Mr. Farrier's appeal. In a short decision, the Appeal Division concluded that the allegations raised by Mr. Farrier were unfounded because (1) the Board is not required to record its hearings, as confirmed by the Federal Court decision in *Giroux v Canada (National Parole Board)*, [1994] FCJ No. 1750 [*Giroux*], and the "record of proceedings" that the Board must maintain pursuant to subsection 143(1) of the Act is constituted rather by the decision and reasons of the Board and does not include recordings of hearings; and (2) the new information shared at the beginning of the hearing was not determinative in the Board's analysis, which noted that this new information needed to be confirmed since the test results were not yet available.

III. POSITION OF THE PARTIES

A. *Position of Mr. Farrier*

[14] In support of this application for judicial review, Mr. Farrier filed an affidavit signed on May 9, 2018, in which he states, among other things, that (1) the Board's decision does not constitute a complete and accurate record of the hearing held before it; (2) the name, position and oral representations of his assistant are completely absent from the Board's decision, whereas the assistant had presented important information on the possibility of Mr. Farrier volunteering and working at his mosque; (3) the information about his situation in October 2017 is incomplete and inaccurate since Mr. Farrier did not overdose; (4) the finding that the CMT did not recommend parole is incorrect, since the Parole Officer explained why a recommendation remains on file, but also why she recommended day parole, information which is absent from the decision; and (5) the Board's decision is incomplete and unfair compared to what was said at the hearing.

[15] In his written representations to the Court, Mr. Farrier submits that the standard of correctness applies to questions of law and procedural fairness and that the standard of reasonableness applies to questions of fact and to questions of mixed fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9).

[16] Next, Mr. Farrier argues that the Appeal Division (1) erred in law in concluding that the Act did not require the audio recording of hearings before the Board; (2) erred in law in concluding that the absence of an audio recording of the hearings was not a ground of appeal under the Act; and (3) erred in concluding that the absence of an audio recording of the hearing did not violate the principles of fundamental justice in this case.

[17] In relation to the first argument, Mr. Farrier submits that the Appeal Division erred in law by relying on subsection 143(1) of the Act and on the *Giroux* decision to conclude that the audio recording of Board hearings is not a legal requirement. In fact, Mr. Farrier first contends that his situation differs from that in *Giroux*, where the Board did not hold a hearing and completed a review of the materials on file, so that it was appropriate not to have a recording (*Giroux* at para 17).

[18] Mr. Farrier further acknowledges that the Federal Court in *Giroux* also determined secondarily that the audio recording of hearings is not legally required, but submits that the subsequent adoption of subsections 140(13) and 140.2(1) of the Act renders the interpretation of *Giroux* unreasonable. Subsection 140(13) provides that a victim who is not present at the hearing has the right to hear the audio recording of the hearing, and subsection 140.2(1) provides that if the transcription of the audio recording is carried out, the transcript must be provided free of charge.

[19] With respect to the second argument, Mr. Farrier argues that the Appeal Division should have allowed his appeal as the Board breached or failed to apply its own policy, which is one of the grounds for appeal under paragraph 147(1)(c) of the Act. Indeed, paragraph 10 of section 11.1 of the Policy Manual states that "The Board will make an audio recording of all hearings", which the Board did not do. He adds that without recordings of the Board's hearing, the Appeal Division was unable to verify whether the procedural safeguards had been respected.

[20] With respect to the third argument, Mr. Farrier argues that the absence of an audio recording of the hearing violates the principles of fundamental justice given that neither the

Appeal Division nor the Federal Court is able to assess the reasonableness of the Board's decision (*Canadian Union of Public Employees, Local 301 v Montreal (City)*, [1997] 1 SCR 793 [*CUPE, Local 301*]; *Razm v Canada (Minister of Citizenship and Immigration)*, IMM-3796-98; *Makarov v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 55).

[21] Mr. Farrier concluded that the Court should waive the costs of the parties or limit them to $500.

B. *Position of the respondent*

[22] The respondent submits that the presumed standard of review is reasonableness and that the standard applicable to questions of law and procedural fairness is one of correctness. In addition, with respect to parole, the Court should not intervene unless there is clear and unequivocal evidence that the decision is entirely unfair (*Korn v Canada (Attorney General)*, 2014 FC 590 at para 14; *Sychuk v Canada (Attorney General)*, 2009 FC 105).

[23] The respondent goes on to state the applicable law and, in the arguments, replies that (1) the absence of a recording does not violate procedural fairness; and (2) the new information presented at the hearing before the Board was not determinative.

[24] In connection with the first argument, the respondent states that the absence of a recording does not violate procedural fairness since the Board is not legally obliged to provide a recording of the hearing and that, at any event, the absence of a recording did not cause prejudice to the applicant.

[25] According to the respondent, the Board has no legal obligation to provide a recording of the hearing because: (a) section 143 of the Act only requires the Board to keep a “record of proceedings”, which is not a recording; (b) the Supreme Court of Canada determined that in the absence of a legal obligation to do so, the absence of a transcript does not violate the rules of natural justice if the record allows the courts to decide appropriately on the application (*CUPE, Local 301)*; (c) the *Giroux* decision says the same thing; (d) if the legislator had intended to provide for the recording of Board hearings, it would have expressly provided for this, such as for disciplinary hearings, in section 33 of the *Corrections and Conditional Release Regulations*; and (e) the Policy Manual does not have the force of law.

[26] In addition, the respondent submits that the absence of a recording does not prejudicially affect the applicant. The Federal Court has recognized that, despite the existence of rules requiring the recording of hearings, for a decision of the Board to be dismissed because of an incomplete recording, the plaintiff must show prejudice (*Desjardins v Canada (National Parole Board)*, [1989] FCJ No. 910, *Miller v Canada (Solicitor General)*, 1999 CanLII 7943 (FC)). Thus, although non-compliance with the Policy Manual is a ground for appeal under the *Commissioner’s Directive 712-3: Parole Board of Canada Reviews*, the absence of prejudice towards the applicant prevents him from relying on this ground. In addition, the Policy Manual provides that the Appeal Division assesses the content of the recording only “where applicable”, which means that the recordings are not always available.

[27] In relation to the second argument, the respondent submits that the new information to which the applicant referred in order to justify the need for the recording is irrelevant. First, the applicant can attest himself whether or not he waived the 15-day period. Then, in its decision, the

Board took note of the new information presented at the hearing, such as the doctor's overdose testimony and the assistant's release plan. Finally, despite the fact that the Board did not take into account the opinion of the Manager issued during the hearing, this opinion is not entirely favourable to the plaintiff.

IV. ANALYSIS

A. *Standard of review*

[28] This Court is guided by the reasonableness standard of review relating to the questions of mixed fact and law of the Appeal Division decision (*Cartier v Canada (Attorney General)*, 2002 FCA 384 at para 9 [*Cartier*]).

[29] With respect to procedural fairness, the Federal Court of Appeal recently addressed how to approach the issue in *Canadian Pacific Railway Ltd. v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*]. According to this decision, the Court does not apply a standard of review to a question of procedural fairness: it must consider rather whether the process followed was fair and just, paying attention to the nature of the rights at stake and the consequences for affected individuals (*Canadian Pacific* at para 54).

B. *The Recording of Board Hearings*

(1) The law does not require the Board to record its hearings

[30] The applicant did not convince the Court that the enactment of subsections 140(13) and 140.2(1) of the Act had the effect of amending the existing law (*Giroux*, *Amable v Canada*

(Attorney General), 1998 CarswellNat 5066 [*Amable*]) and of creating, for the Board, a statutory obligation to record its hearings. Thus, the Appeal Division did not err in concluding that the Board is not required to record its hearings.

[31] The Court, along with the Board and the Appeal Division, is guided by the text of the Act, the case law and the text of the Policy Manual, although the Policy Manual does not have the force of law. The current Act in 1992 replaced the *Corrections and Conditional Release Act,* RSC 1985, c P-2, for which the *Corrections and Conditional Release Regulations,* SOR/78-428, provided, in section 16.2, for the recording of the hearing before the Board. This obligation has not been included in the Act or its regulations.

[32] Part II of the Act deals with conditional release, detention and long-term supervision. In particular, section 140 of the Act deals with hearings before the Board and section 147 with the right of appeal to the Appeal Division. These provisions are fully reproduced in the schedule.

[33] Subsection 143(1) of the current Act requires the Board to maintain “a record of proceedings”, which, as decided by the Federal Court in *Giroux*, consists of the decision and the reasons and does not include the recording of the hearing. The Federal Court specifically noted that the Board was under no obligation to record the hearing (*Giroux* at paragraph 19) and that even though the Board adopted the prudent practice of recording its hearings, the absence of a transcript does not contravene the law or the principles of natural justice. This position was confirmed in *Amable* at paragraph 2.

[34] Mr. Farrier argued that subsections 140(13) and 140.2(1) of the Act, adopted after the *Giroux* decision, now render the interpretation unreasonable. Subsection 140(13) provides that a victim who is not present at the hearing has the right to hear the audio recording of the hearing, and subsection 140.2(1) provides that if the transcript of the audio recording is carried out, it must be provided free of charge.

[35] The Court has not been convinced that the adoption of these two paragraphs modified the applicable law to impose on the Board the statutory obligation to record its hearings under penalty of having its decision set aside. Section 143, which provides for the obligation imposed on the Board to keep a record of proceedings, has not been modified and the actual text of the two sections to which the applicant refers does not support a finding that an obligation to record for the benefit of the applicant has been created.

[36] Finally, the Court notes that paragraph 10 of section 11.1 of the Policy Manual states that "The Board will make an audio recording of all hearings". However, the Policy Manual does not have the force of law (*Collins v Canada (Attorney General)*, 2014 FC 439 at para 39; *Latimer v Canada (Attorney General)*, 2010 FC 806 at para 48) and the parties were unable to confirm whether it existed at the time of the *Giroux* decision.

(2) The Appeal Division did not violate the principles of fundamental justice

[37] The finding on the first point, however, does not resolve this litigation, since it would still be possible for the Appeal Division to overturn a decision by the Board for failure to record the hearing.

[38] Indeed, the Supreme Court stated that "[i]n the absence of a statutory right to a recording, courts must determine whether the record before it allows it to properly dispose of the application for appeal or review. If so, the absence of a transcript will not violate the rules of natural justice" (*CUPE Local 301* at para 81).

[39] On the other hand, case law also teaches that even when recording is mandatory, failure to do so does not necessarily entail the annulment of the decision. Indeed, the Supreme Court tells us that "[e]ven in cases where the statute creates a right to a recording of the hearing, courts have found that the applicant must show a 'serious possibility' of an error on the record or an error regarding which the lack of recording deprived the applicant of his or her grounds of review: *Cameron v National Parole Board*, [1993] B.C.J. No. 1630 (S.C.), which follows *Desjardins v National Parole Board* (1989), 29 F.T.R. 38. " (*CUPE, Local 301* at para 77).

[40] However, it must be noted that Mr. Farrier did not, before the Appeal Division, show that the latter could not rule on his file or that the absence of a recording prevented him from presenting his grounds of review.

[41] Before the Appeal Division, Mr. Farrier limited his submissions to the question of whether or not the Board had a legal duty to record his hearings and only made terse allegations relating to the possibility that the Board had ignored or reported incomplete or inaccurate information received during its hearing. Those allegations are contained in paragraph 17 of his written submissions before the Appeal Division and are not supported by any evidence.

[42] Before this Court, Mr. Farrier submitted an affidavit and asserted that the Board's decision did not constitute an accurate and complete record of the hearing, stating which conclusions were incorrect, and alleging, in particular, that (1) the name, position and submissions of his assistant, particularly those concerning volunteer and employment opportunities at his mosque's Café, are completely absent; (2) the summary of new information regarding Mr. Farrier's condition in October 2017 is incomplete and inaccurate; he did not overdose; (3) the Parole Officer explained the reasons for which she disagrees with the overdose theory and this information is missing from the decision; (4) the allegation that the CMT believes that no parole should be granted is incorrect; (5) the Parole Officer explained at the hearing why she was recommending release and this important information is missing from the decision; and (6) the reasons for the Board's decision are incomplete and unfair compared to what was said at the hearing.

[43] This affidavit was not before the Appeal Division, which could not deal with these particular issues.

[44] Thus, based on the file submitted by the applicant to the Appeal Division, the Court cannot conclude that the latter erred in not setting aside the Board's decision.

C. *Costs*

[45] The applicant seeks to be exempted from costs, or to limit them to $500, citing the importance of the issues raised and the fact that he has been incarcerated since 1992. The

applicant seeks the awarding of costs and has filed a bill of costs, recording the costs of the judicial review at $2,299.98.

[46] The Court has full discretionary power to impose costs (Rule 400(1) of the *Federal Court Rules*, SOR/98-106 [the Rules]), and Rule 400(3) sets out the factors that the Court may consider in the exercise of that discretionary power.

[47] The Court has often been sensitive to the limited means of inmates (*St-Pierre v Canada (Attorney General)*, 2018 FC 1065 at paras 91–92, *Barkley v Canada*, 2018 FC 227 at para 31, *Johnson v Canada (Correctional Service))*, 2017 FC 370 at para 36). On the other hand, in other cases, the Court has been less lenient and has refused to waive costs on the basis of limited means, especially where the issue has already been decided by case law (*Boucher v Canada (Attorney General General)*, 2007 FC 893 at paras 38–40) or where the inmate makes numerous appeals (*Mapara v Canada*, 2014 FC 538 at para 44). In the past, the Court has consistently held inmates accountable for costs and has not awarded them special treatment, adjudicating primarily on the merits of the case (*Forrest v Canada (Attorney General)*, 2002 FCT 539 at para 52).

[48] In this case, the Court has no information on Mr. Farrier’s financial resources and will therefore award costs against him in the amount of $500.

ORDER

THIS COURT ORDERS that:

1. This application for judicial review is dismissed.

2. Costs of $500 are awarded to the respondent.

"Martine St-Louis"

Judge

Certified true translation
This 7th day of December, 2018.

Francie Gow, BCL, LLB

SCHEDULE

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

Mandatory hearings

140 (1) The Board shall conduct the review of the case of an offender by way of a hearing, conducted in whichever of the two official languages of Canada is requested by the offender, unless the offender waives the right to a hearing in writing or refuses to attend the hearing, in the following classes of cases:
(a) the first review for day parole pursuant to subsection 122(1), except in respect of an offender serving a sentence of less than two years;
(b) the first review for full parole under subsection 123(1) and subsequent reviews under subsection 123(5), (5.01) or (5.1);
(c) a review conducted under section 129 or subsection 130(1) or 131(1) or (1.1);
(d) a review following a cancellation of parole; and
(e) any review of a class specified in the regulations.

Audio recording

(13) Subject to any conditions specified by the Board, a victim, or a person referred to in subsection 142(3), who does not attend a hearing in respect of a review referred to in paragraph (1)(a) or (b) as an observer is entitled, after the hearing, on request, to listen to an audio recording of the hearing, other than portions of the hearing that the Board considers could reasonably be expected to jeopardize the safety of any person or to reveal a source of information obtained in confidence.

Transcript

140.2 (1) If a transcript of the hearing has been

***Loi sur le système correctionnel et la mise en liberté sous condition* (LC 1992, ch 20)**

Audiences obligatoires

140 (1) La Commission tient une audience, dans la langue officielle du Canada que choisit le délinquant, dans les cas suivants, sauf si le délinquant a renoncé par écrit à son droit à une audience ou refuse d’être présent :
a) le premier examen du cas qui suit la demande de semi-liberté présentée en vertu du paragraphe 122(1), sauf dans le cas d’une peine d’emprisonnement de moins de deux ans;
b) l’examen prévu au paragraphe 123(1) et chaque réexamen prévu en vertu des paragraphes 123(5), (5.01) et (5.1);
c) les examens ou réexamens prévus à l’article 129 et aux paragraphes 130(1) et 131(1) et (1.1);
d) les examens qui suivent l’annulation de la libération conditionnelle;
e) les autres examens prévus par règlement.

Enregistrement sonore

(13) La victime ou la personne visée au paragraphe 142(3) qui n’est pas présente à l’audience relative à l’examen visé aux alinéas (1)a) ou b) à titre d’observateur a le droit, sur demande et sous réserve des conditions imposées par la Commission, une fois l’audience terminée, d’écouter l’enregistrement sonore de celle-ci, à l’exception de toute partie de l’enregistrement qui, de l’avis de la Commission, risquerait vraisemblablement de mettre en danger la sécurité d’une personne ou de permettre de remonter à une source de renseignements obtenus de façon confidentielle.

Transcription

140.2 (1) Si une transcription de l’audience a

made, the Board shall, on written request and free of charge, provide a copy to the offender and a copy to the victim or a member of the victim's family. However, the copy provided to the victim or member of the victim's family shall not include any portion of the transcript of a part of the hearing that, under subsection 140(5), was or would have been continued in the absence of observers or of a particular observer.

été effectuée, la Commission en fournit gratuitement, sur demande écrite, une copie au délinquant, à la victime ou à un membre de sa famille. Toutefois, la copie fournie à la victime ou à un membre de sa famille exclut les passages portant sur toute partie de l'audience poursuivie ou qui aurait été poursuivie en l'absence de tout observateur en vertu du paragraphe 140(5).

Disclosure to offender

141 (1) At least fifteen days before the day set for the review of the case of an offender, the Board shall provide or cause to be provided to the offender, in writing, in whichever of the two official languages of Canada is requested by the offender, the information that is to be considered in the review of the case or a summary of that information.

Délai de communication

141 (1) Au moins quinze jours avant la date fixée pour l'examen de son cas, la Commission fait parvenir au délinquant, dans la langue officielle de son choix, les documents contenant l'information pertinente, ou un résumé de celle-ci.

Idem

(2) Where information referred to in subsection (1) comes into the possession of the Board after the time prescribed in that subsection, that information or a summary of it shall be provided to the offender as soon as is practicable thereafter.

Idem

(2) La Commission fait parvenir le plus rapidement possible au délinquant l'information visée au paragraphe (1) qu'elle obtient dans les quinze jours qui précèdent l'examen, ou un résumé de celle-ci.

Waiver and postponement

(3) An offender may waive the right to be provided with the information or summary or to have it provided within the period referred to in subsection (1). If they waive the latter right and they receive information so late that it is not possible for them to prepare for the review, they are entitled to a postponement and a member of the Board or a person designated by name or position by the Chairperson of the Board shall, at the offender's request, postpone the review for the period that the member or person determines. If the Board receives information so late that it is not possible for it to prepare for the review, a member of the Board or a person designated by name or position by the Chairperson of the Board may postpone the review for any reasonable period

Renonciation et report de l'examen

(3) Le délinquant peut renoncer à son droit à l'information ou à un résumé de celle-ci ou renoncer au délai de transmission; toutefois, le délinquant qui a renoncé au délai a le droit de demander le report de l'examen à une date ultérieure, que fixe un membre de la Commission ou la personne que le président désigne nommément ou par indication de son poste, s'il reçoit des renseignements à un moment tellement proche de la date de l'examen qu'il lui serait impossible de s'y préparer; le membre ou la personne ainsi désignée peut aussi décider de reporter l'examen lorsque des renseignements sont communiqués à la Commission en pareil cas.

that the member or person determines.

Records of proceedings

143 (1) Where the Board conducts a review of the case of an offender by way of a hearing, it shall maintain a record of the proceedings for the period prescribed by the regulations.

Decisions to be recorded and communicated

(2) Where the Board renders a decision with respect to an offender following a review of the offender's case, it shall

(a) record the decision and the reasons for the decision, and maintain a copy of the decision and reasons for the period prescribed by the regulations; and

(b) provide the offender with a copy of the decision and the reasons for the decision, in whichever of the two official languages of Canada is requested by the offender, within the period prescribed by the regulations.

Right of appeal

147 (1) An offender may appeal a decision of the Board to the Appeal Division on the ground that the Board, in making its decision,

(a) failed to observe a principle of fundamental justice;

(b) made an error of law;

(c) breached or failed to apply a policy adopted pursuant to subsection 151(2);

(d) based its decision on erroneous or incomplete information; or

(e) acted without jurisdiction or beyond its jurisdiction, or failed to exercise its jurisdiction.

Decision on appeal

(4) The Appeal Division, on the completion of a review of a decision appealed from, may

(a) affirm the decision;

(b) affirm the decision but order a further review of the case by the Board on a date

Procédures

143 (1) La Commission tient un dossier des procédures dont elle est saisie et le conserve pendant la période que fixent les règlements dans les cas où elle procède à l'examen du cas d'un délinquant par voie d'audience.

Communication des décisions

(2) Après avoir pris une décision à la suite de l'examen du cas, la Commission :

a) rend sa décision par écrit et inscrit ses motifs au dossier; elle conserve une copie de la décision motivée pendant la période que fixent les règlements;

b) remet au délinquant, avant l'expiration du délai réglementaire, une copie de la décision motivée dans la langue officielle du Canada que choisit le délinquant.

Droit d'appel

147 (1) Le délinquant visé par une décision de la Commission peut interjeter appel auprès de la Section d'appel pour l'un ou plusieurs des motifs suivants :

a) la Commission a violé un principe de justice fondamentale;

b) elle a commis une erreur de droit en rendant sa décision;

c) elle a contrevenu aux directives établies aux termes du paragraphe 151(2) ou ne les a pas appliquées;

d) elle a fondé sa décision sur des renseignements erronés ou incomplets;

e) elle a agi sans compétence, outrepassé celle-ci ou omis de l'exercer.

Décision

(4) Au terme de la révision, la Section d'appel peut rendre l'une des décisions suivantes :

a) confirmer la décision visée par l'appel;

b) confirmer la décision visée par l'appel, mais ordonner un réexamen du cas avant la date

earlier than the date otherwise provided for the next review;
(c) order a new review of the case by the Board and order the continuation of the decision pending the review; or
(d) reverse, cancel or vary the decision.

normalement prévue pour le prochain examen;

c) ordonner un réexamen du cas et ordonner que la décision reste en vigueur malgré la tenue du nouvel examen;
d) infirmer ou modifier la décision visée par l'appel.

Conditions of immediate release

(5) The Appeal Division shall not render a decision under subsection (4) that results in the immediate release of an offender from imprisonment unless it is satisfied that:
(a) the decision appealed from cannot reasonably be supported in law, under the applicable policies of the Board, or on the basis of the information available to the Board in its review of the case; and
(b) a delay in releasing the offender from imprisonment would be unfair.

Mise en liberté immédiate

(5) Si sa décision entraîne la libération immédiate du délinquant, la Section d'appel doit être convaincue, à la fois, que :

a) la décision visée par l'appel ne pouvait raisonnablement être fondée en droit, en vertu d'une politique de la Commission ou sur les renseignements dont celle-ci disposait au moment de l'examen du cas;
b) le retard apporté à la libération du délinquant serait inéquitable.

Decision-Making Policy Manual for Board Members

11.1 Hearings

Audio Recordings of Hearings

10. The Board will make an audio recording of all hearings to provide an account of what occurred at each hearing and to allow for reviews to ensure that procedural safeguards were met.

Manuel des politiques décisionnelles à l'intention des commissaires

11.1 Audiences

Enregistrements sonores des audiences

10. La Commission procède à l'enregistrement sonore de toutes les audiences pour fournir un compte rendu de ce qui s'est passé à chacune d'elles et de permettre des examens visant à vérifier si les garanties procédurales ont été respectées.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-712-18
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PLACE OF HEARING:	MONTRÉAL, QUEBEC
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JUDGMENT AND REASONS:	ST-LOUIS J.
DATED:	NOVEMBER 28, 2018

APPEARANCES:

Rita Magloé Francis	FOR THE APPLICANT
Jessica Pizzoli	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Surprenant Magloé Barristers & Solicitors Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT