Federal Court  Cour fédérale

Date: 20210728

Docket: T-1197-20

Citation: 2021 FC 779

Ottawa, Ontario, July 28, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

RONALD BALDOVI

Applicant

And

ATTORNEY GENERAL OF CANADA (PAROLE BOARD OF CANADA AND CORRECTIONAL SERVICE OF CANADA)

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a Parole Board of Canada Appeal Division Decision [the "Appeal Board Decision"], dated September 8, 2020, which confirmed the decision of the Parole Board of Canada [the "Board Decision"], dated July 10, 2020, finding that the Applicant did not meet the criteria for parole by exception in any part of section 121 of the

Corrections and Conditional Release Act, SC 1992, c 20 [the "*Act*"] and took no action on his application for parole by exception [the "Parole by Exception Application"].

II. Background

[2] The Applicant, Ronald Baldovi, is a federal inmate, serving an eight-year sentence at Matsqui Institution, a federal correctional facility.

[3] On March 19, 2021, the Applicant became eligible for day parole. He will further be eligible for full parole as of September 19, 2021. His statutory release date is May 20, 2024.

A. *Parole by Exception Application*

[4] The Applicant was sent a notice at the beginning of the pandemic from Correctional Service of Canada [CSC] Health Services indicating that he was at a high risk of complications if he were to contract COVID-19 due to his underlying medical condition - hypertension.

[5] The Applicant, through his counsel at the time, applied to the Parole Board of Canada [the "Board"] for parole by exception, pursuant to section 121 of the *Act* in a letter dated May 7, 2020.

[6] The Applicant alleges he was concerned for his safety at the Matsqui Institution due to the risk of complications that could arise from a COVID-19 infection in light of his hypertension. Counsel for the Applicant at the time submitted to the Board that the Applicant "suffers from a

serious heart condition in the form of uncontrolled hypertension placing him in a known high-risk group for potentially life-threatening complications if exposed to… COVID-19". She argued that the prison population is at a heightened risk of infection and that, at the time of the request, outbreaks had occurred at provincial and federal facilities across Canada.

B. *The Legislative Framework*

[7] Section 121 of the *Act* permits offenders to apply for parole in exceptional cases before they are otherwise eligible for parole. An offender must fall into one of the four categories listed in subsections 121(1)(a) to (d):

Exceptional cases	**Cas exceptionnels**
121 (1) Subject to section 102 — and despite sections 119 to 120.3 of this Act, sections 746.1 and 761 of the Criminal Code, subsection 226.1(2) of the National Defence Act and subsection 15(2) of the Crimes Against Humanity and War Crimes Act and any order made under section 743.6 of the Criminal Code or section 226.2 of the National Defence Act — parole may be granted at any time to an offender	**121 (1)** Sous réserve de l'article 102 mais par dérogation aux articles 119 à 120.3 de la présente loi, aux articles 746.1 et 761 du Code criminel, au paragraphe 226.1(2) de la Loi sur la défense nationale et au paragraphe 15(2) de la Loi sur les crimes contre l'humanité et les crimes de guerre, et même si le temps d'épreuve a été fixé par le tribunal en application de l'article 743.6 du Code criminel ou de l'article 226.2 de la Loi sur la défense nationale, le délinquant peut bénéficier de la libération conditionnelle dans les cas suivants :
(a) who is terminally ill;	**a)** il est malade en phase terminale;
(b) whose physical or mental health is likely to suffer serious damage if the offender continues to be held in confinement;	**b)** sa santé physique ou mentale risque d'être gravement compromise si la détention se poursuit;
(c) for whom continued confinement would constitute an excessive hardship that was not reasonably foreseeable at the time the offender was sentenced; or	**c)** l'incarcération constitue pour lui une contrainte excessive difficilement prévisible au moment de sa condamnation;
(d) who is the subject of an order of surrender under the Extradition Act and who is to be detained until surrendered.	**d)** il fait l'objet d'un arrêté d'extradition pris aux termes de la Loi sur l'extradition et est incarcéré jusqu'à son extradition.

[8] If the offender fails to fall within one of the listed categories, the Board takes no action and the review is discontinued. If the offender is found to meet the threshold in section 121 of the *Act*, the Board will conduct a risk assessment under section 102 of the *Act*:

Criteria for granting parole

102 The Board or a provincial parole board may grant parole to an offender if, in its opinion,

(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.

Critères

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.

C. *The ATIP Requests*

[9] In the Parole by Exception Application, counsel for the Applicant at the time further referenced that an Access to Information and Privacy [ATIP] Request had been submitted on behalf of the Applicant, dated March 26, 2020:

> Details of the severity and uncontrolled nature of his condition which pre-date his arrival at the Matsqui Institution are presumptively contained in his inmate medical file. A formal request for Mr. Baldovi's inmate file pursuant to the *Privacy Act* was received in the office of the Access to Information & Privacy Division on March 26, 2020. On April 27, 2020, the Director requested an additional 30 days beyond the 30 days specified in the *Act*.

[10] The March 26, 2020 ATIP Request sought copies of 10 file banks, including: (1) Case Management; (2) Preventive Security Records; (3) Psychology File; (4) Offender Health Care Records, inclusive of diagnosis and current medications; (5) Offender Grievances; (6) Admission

and Discharge File; (7) Education and Training File; (8) Employment File; (9) Sentence Management File; and (10) Visits and Correspondence File.

[11] On July 7, 2020, counsel for the Applicant at the time confirmed receipt of the requested documents from the March 26, 2020 ATIP Request.

[12] The Applicant submitted a second ATIP Request, dated April 1, 2020, seeking his medical file information. The response to this second ATIP Request was delivered to the Applicant on December 22, 2020.

D. *The Board and Appeal Board Decisions*

[13] For the purpose of the Parole by Exception Application, CSC Health Services prepared a "Current health condition summary" [the "Health Summary"] regarding the Applicant, signed by the Chief of Health Services and a physician and dated May 13, 2020.

[14] The Health Summary indicated that the Applicant's medical history is only significant for hypertension. However, his hypertension is responding to medication and shows a trend of improvement since 2019:

> In summary, according to clinical indications your current health condition, hypertension does place you in the category of persons considered to be of increased vulnerability if you were to contact COVID-19.

[15] On June 29, 2020, a Parole Officer [the "Officer"] provided recommendations to the Board in an Assessment for Decision. The Officer's recommendation was to deny the Applicant's Parole by Exception Application. The Officer noted:

A. There are no cases of COVID-19 at the Matsqui Institution;

B. The Matsqui Institution has implemented COVID-19 prevention strategies to mitigate the chances of an outbreak;

C. In reviewing the Health Summary, the Applicant's medical history is only significant for hypertension and his hypertension is responding to medication and is improving; and

D. Since the beginning of the pandemic, it has become clearer that as the Applicant's hypertension is being controlled, the Applicant is not considered high risk at this time.

[16] The Officer found that the Applicant did not meet the criteria under subsection 121(1)(b) or (c) of the *Act* and the Officer's recommendation to the Board was to deny the Parole by Exception Application.

[17] The Officer stated erroneously in the Assessment for Decision that the Health Summary indicated that according to clinical indications, his current health condition of hypertension *does not* place him in the category of persons considered to be of increased vulnerability if he were to

contract COVID-19. However, this was corrected by way of the "Addendum to the Assessment for Decision", dated July 6, 2020 [the "Addendum"]. The Addendum noted the error and correctly referred to the information contained in the Health Summary, but found that there were no changes to the recommendations made by the Officer:

> Further consultation occurred with the Chief of Health Care to see how this impacts Mr. BALDOVI. She stated that having the condition makes him vulnerable, but as it is controlled it places him at no higher risk than someone who has no condition.

[18] Subsequently, the Board Decision dated July 10, 2020, found that the Applicant did not fall under any of the categories outlined in section 121 of the *Act*. The Board therefore took no further action on the Parole by Exception Application. As it relates to subsection 121(1)(b) of the *Act*, the Board found that the Applicant's health was not likely to suffer serious damage from confinement, the Applicant's hypertension is controlled and improving and the significant number of protective measures at Matsqui Institution appear to have worked as it remains free of COVID-19. As it relates to subsection 121(1)(c) of the *Act*, the Board found that the Applicant's health issues are being appropriately managed and have improved while incarcerated. The Applicant's health issues would make him more vulnerable to COVID-19 whether he was incarcerated or not.

[19] The Applicant appealed the Board Decision to the Parole Board of Canada Appeal Division [the "Appeal Board"]. The Appeal Board found that none of the grounds of appeal raised by the Applicant warrant intervention in the Board's decision.

[20] The Appeal Board Decision is the subject of this current judicial review application. The Applicant seeks:

A. An Order releasing the Applicant from custody pursuant to section 121 of the *Act*; or

B. In the alternative, an Order that CSC and the Parole Board provide disclosure of the Applicant's medical file to him and that a new parole hearing be ordered, and convened in an expeditious manner, within two weeks of this Court's decision; and

C. Costs.

E. *Disclosure to the Applicant*

[21] The record reveals that the following disclosure was made to the Applicant:

A. The Assessment for Decision and Health Summary was shared with the Applicant on June 30, 2020; and

B. The Addendum was delivered to the Applicant on July 7, 2020.

[22] Further, the Applicant received the following responses to his ATIP Requests:

A. The Applicant received the response to the March 26, 2020 ATIP Request on July 7, 2020; and

B. The Applicant received the response to the April 1, 2020 ATIP Request on December 22, 2020.

III. Decision Under Review

[23] The Appeal Board Decision affirmed the Board Decision. The Appeal Board clarified that neither the Board nor the Appeal Board had the jurisdiction to manage the Applicant's CSC file. The issue the Applicant raised was outside the jurisdiction of the Appeal Board when it submitted that his file was prepared inadequately by CSC and that CSC did not provide him with his medical information.

[24] The Appeal Board further found that CSC had disclosed the information it relied upon to the Applicant in making its recommendation to the Board, including the Health Summary, which was shared with the Applicant on June 30, 2020. The Board reasonably acted on the information before it, including the Health Summary.

IV. Issues

[25] The issues are:

A. Is the Application moot?

B. Was there a breach of the duty of procedural fairness in CSC's alleged failure to disclose the Applicant's medical file to him?

C. Was there a breach of section 7 of the *Charter*?

V. Standard of Review

[26] The Respondent asserts that the Federal Court of Appeal has affirmed that questions of procedural fairness are not decided on a standard of review, but are rather legal questions for the reviewing Court to answer. A reviewing Court must be satisfied that procedural fairness was met in a particular case (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55 [*Canadian Pacific Railway*]).

[27] The Federal Court of Appeal in *Canadian Pacific Railway*, while stating that the standard of correctness applies when determining whether the decision-maker complied with the duty of procedural fairness, addressed what "correctness" means in the context of procedural fairness (*Canadian Pacific Railway*, above at paras 34-35, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). Within this context, the Federal Court of Appeal clarified that "references to deference in the context of procedural fairness arise not in considering the standard of review, but in considering the fifth factor from Baker, informing the content of the duty of fairness" (*Canadian Pacific Railway* at para 45, *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817).

[28] It is against this backdrop that the Federal Court of Appeal further found:

> 54 A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does

> that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. I agree with Caldwell J.A.'s observation in *Eagle's Nest* (at para. 21) that, even though there is awkwardness in the use of the terminology, this reviewing exercise is "best reflected in the correctness standard" even though, strictly speaking, no standard of review is being applied.
>
> 55 Attempting to shoehorn the question of procedural fairness into a standard of review analysis is also, at the end of the day, an unprofitable exercise. Procedural review and substantive review serve different objectives in administrative law. While there is overlap, the former focuses on the nature of the rights involved and the consequences for affected parties, while the latter focuses on the relationship between the court and the administrative decision maker. Further, certain procedural matters do not lend themselves to a standard of review analysis at all, such as when bias is alleged. As *Suresh* demonstrates, the distinction between substantive and procedural review and the ability of a court to tailor remedies appropriate to each is a useful tool in the judicial toolbox, and, in my view, there are no compelling reasons why it should be jettisoned.

[29] Therefore, regardless of whether this Court adopts the language of using the correctness standard of review or that of applying no standard of review, it does not change the task before it in considering and applying the analysis concerning procedural fairness. The results will be the same in applying the analysis of procedural fairness.

VI. Analysis

A. *The Parties' Positions*

[30] The Applicant asserts that he failed to obtain his medical file from CSC, specifically that his request was refused or not received in time. This prevented him from making “full answer

and defence" with respect to his Parole by Exception Application, as the state of his health was a key issue. In this respect, the Board improperly applied the law in *May v Ferndale Institution*, 2005 SCC 82 at paragraph 92 [*May v Ferndale*], where "the duty of procedural fairness generally requires that the decision-maker discloses the information he or she relied upon". Further, CSC failed to comply with sections 27 and 141 of the *Act*.

[31] The Applicant has further questioned the constitutional applicability and effect of sections 7 and 24(1) of the *Canadian Charter of Rights and Freedoms* on sections 27 and 141 of the *Act* (*The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11* [the "*Charter*"]).

[32] The Respondent argues that this Application is moot as of March 19, 2021 as the Applicant became eligible for day parole and is no longer eligible for parole by exception. The Respondent further states that the Applicant's arguments are misplaced in taking issue with CSC's response to the request for his medical file under the *Access to Information Act*, RSC 1985, c A-1. This is not an issue that concerns whether the Appeal Board's decision was reasonable and procedurally fair. The information before the Board was disclosed to the Applicant. Nevertheless, the response to the ATIP Request was received before the underlying Board and Appeal Board decisions were made. The Appeal Board Decision was therefore reasonable and procedurally fair.

B. *Mootness*

[33] The Respondent submits that the Applicant's eligibility for parole by exception is moot as of March 19, 2021, as the Applicant became eligible for day parole and no longer qualifies to apply under section 121 of the *Act*. The remedies sought by the Applicant will no longer be available to him. There is therefore no "live controversy" with respect to the Applicant's eligibility for parole by exception. The *Borowski* factors allegedly all weigh against hearing this matter (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353 [*Borowski*]).

[34] The Applicant argues that while this Application is moot, this Court should exercise its discretion to nevertheless hear the Application because of the importance and urgency associated with inmates seeking their medical files and the often lengthy ATIP process.

[35] A Court need not consider a case that raises a merely hypothetical or abstract question, where a decision of the Court "will not have the effect of resolving some controversy which affects or may affect the rights of the parties" (*Borowski*, above at 353). This is a two-step inquiry (*Borowski* at 354, 358):

A. The first stage in the analysis requires a consideration of whether there remains a live controversy between the parties; and

B. The second stage is whether the circumstances warrant that the Court nonetheless exercise its discretion to hear the matter, having regard to: (1) the presence of an adversarial relationship; (2) the need to promote judicial economy; and (3) the need

> for the Court to show a measure of awareness of its proper role as the adjudicative branch of government (*Ruston v Canada (Attorney General)*, 2020 FC 1020 at paras 9-10).

[36] I find that the first stage of the framework is met in this case and the issue is moot. A decision of this Court will have no practical effect on the rights of the parties. The Applicant is no longer eligible for parole by exception under section 121 of the *Act*, having become eligible for day parole on March 19, 2021. He will further be eligible for full parole as of September 19, 2021.

[37] It was further open to the Applicant to reapply for parole by exception. There are no statutory time limits which must expire prior to re-application. It was open to the Applicant, prior to his parole eligibility dates, to re-apply for parole by exception subsequent to the receipt of his medical files.

[38] The remedies the Applicant seeks from this Court are also no longer available. The Applicant is no longer eligible for release under section 121 of the *Act* or for a parole by exception hearing in person. The Appeal Board Decision will not impede any future request for day parole.

[39] This is not an appropriate case for this Court to exercise its discretion otherwise. I agree with the Respondent that the discretionary factors weigh against hearing this issue in any event.

[40] Nevertheless, I will consider the other issues raised by the Applicant in the event I am wrong in this finding.

C. *Procedural Fairness: Disclosure of the Medical File*

[41] The Applicant's claim relates to what he describes as CSC's failure to comply with his request for his medical file, which denied him of an opportunity for "full answer and defence or even partial answer and defence" with regards to his medical condition, which was at the heart of his Parole by Exception Application. The Applicant argues that his medical needs are controlled by CSC. As stated at paragraph 25 of the Applicant's Memorandum of Fact and Law:

> … He is unable to arrange for a private independent consultation from a medical expert from the community. Having at least a copy of his medical records would permit him to provide said documents to a medical expert in hypertension (Internist)and seek an independent medical opinion on his vulnerability to the COVID-19 virus.

[42] His submissions appear to suggest that with his medical file and the steps the Applicant could take thereafter, he would be in a better position to demonstrate to the Board that his circumstances trigger the threshold requirements of section 121 of the *Act*. While I am sympathetic to the Applicant's position and his concerns related to his health in light of the COVID-19 pandemic, his allegations either fail to demonstrate that the Appeal Board rendered a decision in a procedurally unfair manner or they otherwise fall outside the authority of what this Court can decide and grant.

[43] I agree with the Applicant's recitation of the law, whether it be the principle espoused in *May v Ferndale*, or sections 27 or 141 of the *Act*. Although the principle must be viewed within

context, the Board is generally required to share the information it relied upon in making its decision with an applicant to meet its duty of procedural fairness (*May v Ferndale*, above at paras 90-92).

[44] Subsection 27(1) of the *Act* provides that:

Information to be given to offenders	**Communication de renseignements au délinquant**
27 (1) Where an offender is entitled by this Part or the regulations to make representations in relation to a decision to be taken by the Service about the offender, the person or body that is to take the decision shall, subject to subsection (3), give the offender, a reasonable period before the decision is to be taken, all the information to be considered in the taking of the decision or a summary of that information.	**27 (1)** Sous réserve du paragraphe (3), la personne ou l'organisme chargé de rendre, au nom du Service, une décision au sujet d'un délinquant doit, lorsque celui-ci a le droit en vertu de la présente partie ou des règlements de présenter des observations, lui communiquer, dans un délai raisonnable avant la prise de décision, tous les renseignements entrant en ligne de compte dans celle-ci, ou un sommaire de ceux-ci.

[45] Subsection 141(1) of the *Act* further provides that:

Disclosure to offender	**Délai de communication**
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.	**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.

[46] As noted by the Applicant, certain exceptions are made, for example, where disclosure would jeopardize the safety of any person, the security of a correctional institution or the conduct of any lawful investigation (the *Act*, ss 27(3), 141(4)).

[47] There is no evidence to suggest that the Board relied on the Applicant's entire medical file. The Board relied on the Health Summary, which was disclosed to the Applicant on June 30, 2020. The Addendum was further disclosed to the Applicant on July 7, 2020. The Board Decision is dated July 10, 2020. Both sections 27 and 141, as well as prior decisions of this Court provide that a summary of information is sufficient to satisfy the disclosure requirement and to accord with the duty of procedural fairness (*Demaria v Canada (Attorney General)*, 2017 FC 45 at para 42).

[48] While the disclosure of the information the Board relied on was made shortly before its decision, it was provided well in advance of the Appeal Board Decision. The Appeal Board did not err in finding:

> In your case, CSC disclosed to you the information it relied upon to make its recommendation to the Board. The A4D [Assessment for Decision] locked on June 29, 2020, disclosed, among other things, your health summary provided by the institution's Health Care Department. The A4D and the addendum 1 to the A4D locked on July 6, 2020, correcting an error in the A4D, were shared with you on June 30, 2020, and July 7, 2020 (Information Sharing Checklist Updates). The Health Care Summary signed by the Chief of Health Care and the Physician dated May 13, 2020, was shared with you on June 30, 2020.

[49] The Applicant failed to express any interest in making submissions upon receipt of the disclosure.

[50] To the extent the Applicant claims CSC "refused release of his medical file", and required him to obtain it through the ATIP process, there is no evidence that such a refusal occurred or of the circumstances thereof. Neither is it apparent from the facts here that the ATIP process was somehow the incorrect process to follow in this case, where the Applicant was seeking disclosure beyond what was relied on by the Board. Further, the record demonstrates that the Applicant made two ATIP requests, and he received responses to both.

[51] Other than the reference in the Parole by Exception Application to the March 26, 2020 ATIP Request, no indication was made to the Board that the Applicant had not received disclosure of his medical file or was relying on this information in making his case to the Board. The Applicant at no time indicated to the Board or CSC that he was awaiting the responses to the ATIP Requests in order to make more comprehensive submissions before the Board. As such, the Appeal Board did not err in finding:

> The issues you raise which are outside the jurisdiction of the Appeal Division and/or the Board have not been addressed, namely:
>
> > You submit that your file was prepared inadequately by Correctional Service of Canada (CSC) and CSC did not provide you your medical file. The Appeal Division nor the Board has jurisdiction to manage your CSC file; CSC is responsible for managing your file.

[52] The Applicant has failed to substantiate his allegations that he was denied disclosure relied on by the Board or that he was otherwise denied disclosure required to answer any allegation against him. The onus was on the Applicant to show he met the legislative threshold under section 121 of the *Act*. He was required to make his case to the Board and failed to do so. In this respect, the Appeal Board did not err in upholding the Board Decision.

[53] As well, some of the remedies sought by the Applicant on this judicial review – namely his release on parole by exception – are inappropriate for this Court to grant. Given that the Applicant did not meet the parole by exception eligibility criteria, a full review and assessment under section 102 of the *Act* was not conducted. The Applicant's proposed remedy in this respect asks this Court to determine a public safety issue on which the Board or Appeal Board has not made any determination.

[54] Further, the alternative remedy, seeking an Order in which a parole by exception hearing be held forthwith, has always been available to the Applicant prior to the day his day parole eligibility came into effect. The Applicant failed to request this remedy, which was available to him prior to March 19, 2021.

D. *Section 7 Charter Breach*

[55] On March 22, 2021, the Applicant filed a Notice of Constitutional Question, providing that:

> The Applicant intends to question the constitutional applicability and effect of section 7 and 24(1) of the *Charter of Rights and Freedoms ("Charter")* on section 27 and 141 of the *Corrections and Conditional Release Act*.

[56] This claim has not further been particularized by the Applicant and it is unclear how sections 27 and 141 of the *Act* engage the right to life, liberty or security of the person under section 7 of the *Charter*, nor how relief under section 24(1) of the *Charter* is triggered.

[57] These sections of the *Charter* are not relevant or in play on the facts of this matter.

[58] I note that the Applicant in his submissions rather relies on the application of sections 27 and 141 of the *Act* in making his arguments and does not take issue with these provisions.

VII. Conclusion

[59] This Application is dismissed with costs awarded to the Respondent. The Respondent is granted costs in this Application at Column III, Tariff B of the *Federal Courts Rules*, SOR/98-106 in the amount of $2,800.

VIII. Relevant Provisions

[60] Subsections 27(1), (3), 121 and 141 of the *Corrections and Conditional Release Act*, SC 1992, c 20 provide:

Information to be given to offenders	**Communication de renseignements au délinquant**
27 (1) Where an offender is entitled by this Part or the regulations to make representations in relation to a decision to be taken by the Service about the offender, the person or body that is to take the decision shall, subject to subsection (3), give the offender, a reasonable period before the decision is to be taken, all the information to be considered in the taking of the decision or a summary of that information.	**27 (1)** Sous réserve du paragraphe (3), la personne ou l'organisme chargé de rendre, au nom du Service, une décision au sujet d'un délinquant doit, lorsque celui-ci a le droit en vertu de la présente partie ou des règlements de présenter des observations, lui communiquer, dans un délai raisonnable avant la prise de décision, tous les renseignements entrant en ligne de compte dans celle-ci, ou un sommaire de ceux-ci.

…

Exceptions

(3) Except in relation to decisions on disciplinary offences, where the Commissioner has reasonable grounds to believe that disclosure of information under subsection (1) or (2) would jeopardize

(a) the safety of any person,

(b) the security of a penitentiary, or

(c) the conduct of any lawful investigation,

the Commissioner may authorize the withholding from the offender of as much information as is strictly necessary in order to protect the interest identified in paragraph (a), (b) or (c).

…

Exception

(3) Sauf dans le cas des infractions disciplinaires, le commissaire peut autoriser, dans la mesure jugée strictement nécessaire toutefois, le refus de communiquer des renseignements au délinquant s'il a des motifs raisonnables de croire que cette communication mettrait en danger la sécurité d'une personne ou du pénitencier ou compromettrait la tenue d'une enquête licite.

Exceptional cases

121 (1) Subject to section 102 — and despite sections 119 to 120.3 of this Act, sections 746.1 and 761 of the *Criminal Code*, subsection 226.1(2) of the *National Defence Act* and subsection 15(2) of the *Crimes Against Humanity and War Crimes Act* and any order made under section 743.6 of the *Criminal Code* or section 226.2 of the *National Defence Act* — parole may be granted at any time to an offender

(a) who is terminally ill;

Cas exceptionnels

121 (1) Sous réserve de l'article 102 mais par dérogation aux articles 119 à 120.3 de la présente loi, aux articles 746.1 et 761 du *Code criminel*, au paragraphe 226.1(2) de la *Loi sur la défense nationale* et au paragraphe 15(2) de la *Loi sur les crimes contre l'humanité et les crimes de guerre*, et même si le temps d'épreuve a été fixé par le tribunal en application de l'article 743.6 du *Code criminel* ou de l'article 226.2 de la *Loi sur la défense nationale*, le délinquant peut bénéficier de la libération conditionnelle dans les cas suivants :

a) il est malade en phase terminale;

(b) whose physical or mental health is likely to suffer serious damage if the offender continues to be held in confinement;

b) sa santé physique ou mentale risque d'être gravement compromise si la détention se poursuit;

(c) for whom continued confinement would constitute an excessive hardship that was not reasonably foreseeable at the time the offender was sentenced; or

c) l'incarcération constitue pour lui une contrainte excessive difficilement prévisible au moment de sa condamnation;

(d) who is the subject of an order of surrender under the Extradition Act and who is to be detained until surrendered.

d) il fait l'objet d'un arrêté d'extradition pris aux termes de la Loi sur l'extradition et est incarcéré jusqu'à son extradition.

Exceptions

(2) Paragraphs (1)(b) to (d) do not apply to an offender who is

(a) serving a life sentence imposed as a minimum punishment or commuted from a sentence of death; or

(b) serving, in a penitentiary, a sentence for an indeterminate period.

Exceptions

(2) Les alinéas (1)b) à d) ne s'appliquent pas aux délinquants qui purgent :

a) une peine d'emprisonnement à perpétuité infligée comme peine minimale;

b) une peine de mort commuée en emprisonnement à perpétuité;

c) une peine de détention dans un pénitencier pour une période indéterminée.

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 that the member or person determines.

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.

Exceptions

(4) Where the Board has reasonable grounds to believe

(a) that any information should not be disclosed on the grounds of public interest, or

Exceptions

(4) La Commission peut, dans la mesure jugée strictement nécessaire toutefois, refuser la communication de renseignements au délinquant si elle a des motifs raisonnables de croire que cette communication irait à l'encontre de l'intérêt public, mettrait en danger la sécurité d'une personne ou du

(b) that its disclosure would jeopardize

(i) the safety of any person,

(ii) the security of a correctional institution, or

(iii) the conduct of any lawful investigation,

the Board may withhold from the offender as much information as is strictly necessary in order to protect the interest identified in paragraph (a) or (b).

pénitencier ou compromettrait la tenue d’une enquête licite.

JUDGMENT in T-1197-20

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed; and

2. Costs are awarded to the Respondent in the amount of $2,800, inclusive of taxes and interest.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1197-20
STYLE OF CAUSE:	RONALD BALDOVI v ATTORNEY GENERAL OF CANADA (PAROLE BOARD OF CANADA AND CORRECTIONAL SERVICE OF CANADA)
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JULY 21, 2021
JUDGMENT AND REASONS:	MANSON J.
DATED:	JULY 28, 2021

APPEARANCES:

Donna Turko Zoe Zwanenburg	FOR THE APPLICANT
Tasneem Karbani	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT