Date: 20070424

Docket: T-82-06

Citation: 2007 FC 432

Ottawa, Ontario, the 24th day of April 2007

Present: The Honourable Mr. Justice Beaudry

BETWEEN:

GILLES PIMPARÉ

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, of a decision of the National Parole Board, Appeal Division (the Board). In this decision dated December 15, 2005, the Board dismissed the applicant's appeal and upheld the decision dated July 12, 2005, of the National Parole Board (NPB) denying the applicant full parole and day parole.

I. Issue

[2] Does the Board's decision infringe one of the rules of procedural fairness and give rise to a reasonable apprehension of bias, since one of the three NPB members had previously testified for the Crown at the applicant's trial in 1984?

[3] For the reasons that follow, the answer to this question is in the negative. Accordingly, this application for judicial review will be dismissed.

II. Facts

[4] The applicant, an inmate of La Macaza Institution, is serving a life sentence with eligibility for parole after 25 years for a double murder committed on July 4, 1979. He was sentenced on October 17, 1984, following a trial by judge and jury.

[5] The applicant was the subject of a hearing before the NPB after 25 years in incarceration. The three-person panel rendered the negative decision for the NPB.

[6] After the hearing, the applicant realized that one of these three persons, Member Roussel, had testified for the Crown at the applicant's trial on September 6, 1984 (applicant's affidavit, Exhibit GP-4).

[7] The applicant submits that, at the time of the criminal trial, Member Roussel was the director of the Parthenais Detention Centre, where the applicant was incarcerated, and that it was

Member Roussel who had authorized the temporary absence of his co-accused so that he could be questioned by investigators.

[8] The dismissal of the applicant's appeal by the Board is the subject of this application for judicial review.

III. Challenged decision

[9] In upholding the NPB decision, the Board concluded that there was no prejudice to the applicant, given the 21-year interval between these two events. The Board wrote the following on this point:

> [TRANSLATION]
> After a period of 21 years, the Appeal Division does not believe that the fact that the former director of the Parthenais Detention Centre, where you were detained at the time of the trial, testified for the Crown could render the hearing "illegal" simply because this former director took part in your hearing as a member. In the past, we have in a few rare set aside hearings where, for example, one of the members had recently participated in administrative decisions concerning an inmate while that member was acting as manager of a penal institution. This is not the case here, and after listening to the hearing, we are of the opinion that you have had the benefit of a "full answer and defence" contrary to what is alleged in the grounds of appeal.

[10] After reading the record and listening to the recording of the NPB hearing, the Board wrote the following:

> [TRANSLATION]
> Finally, we analyzed the Board's decision on the basis of the information on the record and the evidence submitted at the hearing. Following its analysis, the Appeal Division concludes that the decision under appeal is well founded. It is thorough, well written and supported by reasons. We are of the opinion that it is fair and reasonable and supported by relevant, credible and convincing

evidence. Moreover, we are of the opinion that your rights were respected and that the hearing was held in accordance with the principles of fundamental justice, such that you and your counsel had every opportunity to present your case.

IV. Relevant statutory provisions

[11] The applicant submits that this application concerns paragraph 11(*d*) of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the Charter), which reads as follows:

Proceedings in criminal and penal matters	**Affaires criminelles et pénales**
11. Any person charged with an offence has the right	**11.** Tout inculpé a le droit :
. . .	[. . .]
(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;	*d)* d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;
. . .	[. . .]

[12] The mandates of the NPB and the Board are laid down by the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, the following excerpts of which are relevant:

Principles guiding parole boards	**Principes**
101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are	101. La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes qui suivent :
. . .	[. . .]
(f) that offenders be provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.	*f)* de manière à assurer l'équité et la clarté du processus, les autorités doivent donner aux délinquants les motifs des décisions, ainsi que tous autres renseignements pertinents, et la possibilité de les faire réviser.

V. Analysis

Standard of review

[13] Because this is a question of procedural fairness, it is not necessary to conduct a pragmatic and functional analysis (*Dr Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226). Case law has established that the Court must intervene if this principle has been infringed (*Ha v. Canada (Minister of Citizenship and Immigration*, [2004] 3 F.C.R. 195 (F.C.A.); *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235).

[14] First of all, the Court agrees with the respondent that paragraph 11(*d*) of the Charter does not apply here. The applicant was not considered to be an accused before the NPB (*Giroux v. Canada (National Parole Board)*, [1994] F.C.J. No. 1750 (F.C.T.D.) at paragraph 20). In fact, at the hearing, the applicant's counsel agreed that paragraph 11(*d*) of the Charter did not apply.

[15] Next, the applicant relies on Exhibit GP-4 (transcript of Mr. Roussel's testimony at the trial in 1984) to show that Mr. Roussel should have disqualified himself at the NPB hearing.

[16] However, following an analysis of this transcript, the Court notes that Mr. Roussel's testimony had nothing to do with the offences with which the applicant and the co-accused, Mr. Guérin, were charged. In fact, Mr. Roussel's testimony concerned the signature of a form allowing an inmate's temporary absence with police escort. The form in question concerned the co-accused, Mr. Guérin.

[17] If the Court had any documents, stenographic notes or other evidence to the effect that Mr. Roussel had been a Crown witness at the applicant's trial, it would have no hesitation in rendering a decision favourable to the applicant. However, that is not the case. The Court does not have any evidence to the effect that Mr. Roussel's testimony caused any prejudice to the applicant. Mr. Roussel gave testimony on a technical matter, and this has nothing to do with the NPB hearing.

[18] In addition, it must be noted that 21 years have elapsed between the testimony and the NPB hearing.

[19] The test to be applied here is whether a reasonable person may believe that there is a real danger of bias or whether there could be a reasonable apprehension of bias (*Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369). The Court is of the opinion that Mr. Roussel was not in a conflict of interest by being a member of the panel which rendered the negative decision for the NPB. The ground relied on by the applicant is not a serious one. There is nothing to warrant the Court's intervention here.

[20] The case law submitted by the respondent at paragraphs 27 to 32 of his memorandum, as well as the judgment in *Canadian Television Cable Assoc. v. American College Sports Collective of Canada, Inc.* [1991] 3 F.C. 626 (F.C.A.), in support of his arguments are highly relevant. Reasonable apprehension of bias must be established on the basis of serious and convincing evidence.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. Exercising its discretion, the Court assesses the costs to be paid by the applicant to the respondent at $300.

"Michel Beaudry"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**T-82-06**
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