Federal Court  Cour fédérale

**Date: 20110728**

**Docket: T-2108-10**

**Citation: 2011 FC 953**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, July 28, 2011**

**PRESENT: The Honourable Madam Justice Bédard**

**BETWEEN:**

**ALBERT GAUDREAU**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Parole Board of Canada (the Board) dated November 22, 2010, imposing special conditions on the applicant.

I. Background

[2] On March 26, 2003, the respondent was convicted of sexual assault (paragraph 271(1)(*a*) of the *Criminal Code*, R.S.C. 1985, c. C-46) of two severely disabled women for whom he was responsible as a personal care attendant. On December 11, 2003, the Court of Québec, Criminal Division (the Court), sentenced him to 24 months' detention, followed by three years' probation, taking into account the fact that he had already spent 23 months in pre-sentence custody. The Court also found that the applicant was a long-term offender under paragraph 753(5)(*a*) and section 753.1 of the *Criminal Code* and ordered that he be subject to long-term supervision for the maximum period of 10 years in accordance with subsection 753.1(3) and section 753.2 of the *Criminal Code* and the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (the Act).

[3] Since the applicant's long-term supervision period began, the Board has imposed a number of special conditions on him. The first special conditions were imposed on him in a decision made by the Board on October 20, 2005. Since then, the Board has made a number of decisions varying or renewing the special conditions or imposing new ones. The applicant's supervision was also suspended on a few occasions because the applicant failed to comply with certain special conditions.

[4] The decision at issue in this application for judicial review was made on November 22, 2010. In that decision, which was further to a suspension of the long-term supervision, the Board cancelled the suspension and imposed two new special conditions on the applicant, as follows:

a. provide his supervisor with a weekly report of his income and expenditures for a period of six months; and
b. inform his supervisor of all of his movements in accordance with the conditions she establishes beforehand.

[5] The applicant is challenging those two conditions. He is also challenging two other conditions imposed on him in earlier decisions. The first condition prohibits the respondent from being within 50 metres of places usually frequented by minors, such as parks, school playgrounds, public pools and arcades, except during social activities organized by the Correctional Service of Canada (CSC) and in the company of a volunteer or an employee. That condition was imposed on October 20, 2005. The second condition provides that the applicant is forbidden to possess a cellphone, pager or any other portable telecommunication device. That condition was imposed on him on April 20, 2010. No application for judicial review was filed in respect of the decisions of October 20, 2005, and April 20, 2010.

## II. Issues

[6] The following issues are raised in this application for judicial review:

A. *As part of these proceedings, can the respondent challenge the special conditions imposed on him in decisions predating the decision of November 22, 2010?*

B. *Did the Board impose on the applicant special conditions of indeterminate duration, and, if so, was it under the obligation to set a specific duration for each of the conditions?*

C. *Are the conditions imposed by the Board unreasonable?*

D. *Did the Board fail to give reasons for its decisions imposing the special conditions?*

III. Standard of review

[7] The first issue is a question of mixed fact and law which will be assessed on the reasonableness standard. The second issue pertains to a question involving the Board's interpretation of its home statute. Relying on the principles set out by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] and *Smith v Alliance Pipeline Ltd.*, 2011 SCC 7 at paragraph 28, [2011] 1 SCR 160, I am of the opinion that this issue must be decided on the reasonableness standard as well (see also *Ross v Canada (Attorney General)*, 2011 FC 829 at paragraph 12 (available on CanLII) [*Ross*] and *Miller v Canada (Attorney General)*, 2010 FC 317 at paragraph 38, 366 F.T.R. 92 [*Miller*]).

[8] The third issue concerns the exercise of the Board's discretion and is also subject to the reasonableness standard (*Hurdle v Canada (Attorney General)*, 2011 FC 599 at paragraph 11 (available on CanLII) [*Hurdle*]; *Deacon v Canada (Attorney General)*, 2005 FC 1489 at paragraph 67, [2006] 2 FCR 736 and *Miller* at paragraph 42). Imposing conditions is the heartland of the Board's jurisdiction. That function falls within the expertise and broad discretion

of the Board, and the Court must show deference towards the conditions that the Board deemed it necessary to impose. In *Normandin v Canada (Attorney General)*, 2004 FC 1404 at paragraphs 19 and 20, [2005] 2 FCR 373, (affirmed in *Normandin v Canada (Attorney General)*, 2005 FCA 345, [2006] FCR 112) [*Normandin*], Justice Danièle Tremblay-Lamer explained Parliament's intention as follows:

> **19** The main purpose of the Act is contained in section 100 of the Act. It is to contribute to the maintenance of a just, peaceful and safe society by allowing the NPB to impose the conditions necessary to protect society and facilitate the reintegration of the offender into the community. The NPB's function is guided by the principles set out in section 101 of the Act. There is no doubt that Parliament intended the NPB to use its expertise in taking the appropriate decisions to protect society while facilitating the reintegration of the offender into the community. The Court must treat this type of expertise with the greatest restraint.

[9] The role of the Court when reviewing a decision on the reasonableness standard was defined by the Supreme Court of Canada in *Dunsmuir*, at paragraph 47:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[10] The fourth issue raises a breach of procedural fairness and will be assessed on the correctness standard (*Hurdle*, at paragraph 10; *Cyr v Canada (Attorney General)*, 2010 FC 94 at

paragraph 18 (available on CanLII); *Tozzi v Canada (Attorney General)*, 2007 FC 825 at paragraph 34 (available on CanLII) and *Miller*, at paragraph 39).

IV. Statutory framework

[11] To properly grasp the respective arguments of the parties, it is important to set out the legislative framework governing the long-term supervision regime. The regime applying to persons declared long-term offenders is set out in the Act. Section 99 of the Act provides that a person who is required to be supervised by a long-term supervision order is deemed to be an offender for the purposes of various provisions, including section 100, which applies with such modifications as the circumstances require. Section 100 sets out the purpose and principles underlying the conditional release regime and, therefore, the long-term supervision regime. This section reads as follows:

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| **100.** The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens. | **100.** La mise en liberté sous condition vise à contribuer au maintien d'une société juste, paisible et sûre en favorisant, par la prise de décisions appropriées quant au moment et aux conditions de leur mise en liberté, la réadaptation et la réinsertion sociale des délinquants en tant que citoyens respectueux des lois. |

[12] Section 101 of the Act sets out the principles that must guide the Board as it carries out its mandate. Paragraph (*a*) of this section provides that "the protection of society be the paramount consideration in the determination of any case". In addition, paragraph (*d*) provides

that “parole boards make the least restrictive determination consistent with the protection of society”.

[13] The Board’s powers to impose special conditions on offenders required to be supervised by a long-term supervision order are set out at section 134.1 of the Act, which reads as follows:

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|---|---|
| **CONDITIONS FOR LONG-TERM SUPERVISION** | **CONDITIONS DE LA SURVEILLANCE DE LONGUE DURÉE** |
| Conditions for long-term supervision | Conditions |
| **134.1** (1) Subject to subsection (4), every offender who is required to be supervised by a long-term supervision order is subject to the conditions prescribed by subsection 161(1) of the Corrections and Conditional Release Regulations, with such modifications as the circumstances require. | **134.1** (1) Sous réserve du paragraphe (4), les conditions prévues par le paragraphe 161(1) du *Règlement sur le système correctionnel et la mise en liberté sous condition* s’appliquent, avec les adaptations nécessaires, au délinquant surveillé aux termes d’une ordonnance de surveillance de longue durée. |
| Conditions set by Board | Conditions imposées par la Commission |
| (2) The Board may establish conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender. | (2) La Commission peut imposer au délinquant les conditions de surveillance qu’elle juge raisonnables et nécessaires pour protéger la société et favoriser la réinsertion sociale du délinquant. |
| Duration of conditions | Période de validité |
| | (3) Les conditions imposées |

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| (3) A condition imposed under subsection (2) is valid for the period that the Board specifies. | par la Commission en vertu du paragraphe (2) sont valables pendant la période qu'elle fixe. |
| Relief from conditions | Dispense ou modification des conditions |
| (4) The Board may, in accordance with the regulations, at any time during the long-term supervision of an offender,<br><br>(*a*) in respect of conditions referred to in subsection (1), relieve the offender from compliance with any such condition or vary the application to the offender of any such condition; or<br><br>(*b*) in respect of conditions imposed under subsection (2), remove or vary any such condition. | (4) La Commission peut, conformément aux règlements, soustraire le délinquant, au cours de la période de surveillance, à l'application de l'une ou l'autre des conditions visées au paragraphe (1), ou modifier ou annuler l'une de celles visées au paragraphe (2). |

**[14]** Subsection 161(1) of the *Corrections and Conditional Release Regulations*, SOR/92-620, sets out a certain number of general conditions to which the offender is subject.

## V. Analysis

A. *As part of these proceedings, can the respondent challenge the special conditions imposed on him in decisions predating the decision of November 22, 2010?*

[15] The applicant submits that, as part of these proceedings, he can challenge the conditions imposed on him in decisions made previously by the Board, that is, the condition concerning the prohibition from being within a 50-metre perimeter of parks and other public places, and the condition forbidding him to possess a cellphone, pager or other telecommunication device.

[16] The applicant submits that the decision of November 22, 2010, tacitly renewed the conditions imposed in the previous decisions and that, as a result, those conditions may be disputed because every special condition may be challenged each time the Board makes a new decision. The applicant is relying on *Hurdle* in support of his position. The following passages from *Hurdle* are relevant:

> **32** It has been well established judicially that a condition that has been renewed in a new decision rendered by the Board may be subject to judicial review. In *Normandin v Canada (Attorney General)* 2005 FC 1605, the judicial review heard by Justice De Montigny involved a decision in which the condition at issue had been established in an earlier decision of the Board. This condition was being renewed for the third time:
>
> > [1] This application for judicial review seeks to set aside a decision by the National Parole Board (the "Board") dated November 8, 2004 renewing for the third time a 90-day residency requirement, as part of a community supervision order issued under section 753.1 of the *Criminal Code*.
>
> . . .
>
> **36** A condition <u>that has been renewed</u> in a new Board decision may be open to judicial review. That is the case here.
> [Emphasis added]

[17] The respondent, for his part, submits that both conditions at issue were imposed in decisions made on October 20, 2005, and April 21, 2010, in respect of which no application for

judicial review was filed in time and that, as a result, the applicant is barred from challenging those conditions by means of an application for judicial review of the decision dated November 22, 2010, which does not address those conditions at all.

[18] I am of the opinion that this application for judicial review cannot be used to challenge the special conditions imposed on the applicant in decisions made by the Board before the decision of November 22, 2010. First, the Board did not expressly renew the conditions at issue in its November 22, 2010, decision. This circumstance is sufficient to distinguish this case from *Normandin* and *Hurdle*. In *Normandin*, it was a matter of a residency condition that had clearly been renewed in the decision under judicial review. It was the same in *Hurdle*, where the Board, in its decision, expressly reiterated and maintained the conditions imposed in previous decisions, including the impugned condition pertaining to the applicant's obligation to inform his employer in that case. As shown by the following paragraph, Justice André Scott clearly stated that the Board had renewed the conditions imposed previously and added new conditions:

> **6** On September 8, 2008, the Board extended his residency condition by 180 days and extended all of the other conditions without mentioning a specific duration. On September 14, 2009, the Board extended all of the conditions that had been imposed on the applicant since the beginning of his long-term supervision. It also added the following three new conditions: . . .

[19] The situation in the case at bar is very different. The Board's decision in no way deals with the condition under which the applicant is forbidden to go within 50 metres of parks and other public places frequented by minors, which was imposed on October 20, 2005, or the condition under which he is prohibited to possess a cellphone, pager or any other portable telecommunication device, which was imposed on April 20, 2010.

[20] However, the applicant submits that the decision of November 22, 2010, implicitly renewed those conditions. I do not agree; I find the applicant's argument contradictory. The applicant submits that the Board imposed conditions of indeterminate duration (I will return to this argument in the next section). He cannot claim that a condition was imposed for an indeterminate period and, in the same breath, argue that each decision by the Board renewed the conditions imposed previously. The essence of a renewal or reinstatement is to extend or re-impose a condition that has expired. That is the case, for example, upon expiry of a residence requirement imposed for a period shorter than the duration of the long-term order. In order for such a condition to continue to apply, it must be renewed or reinstated. If, in a given decision, a condition is imposed for an indeterminate period, it need not be renewed or reinstated in each subsequent decision.

[21] Therefore, nothing in the Act imposes an obligation on the Board to renew or reinstate conditions imposed in previous decisions each time it makes a decision on the conditions for an offender's long-term supervision. Under subsection 131.1(4) of the Act, the Board has the power to, "in respect of conditions referred to in subsection (1), relieve the offender from compliance with any such condition or vary the application to the offender of any such condition; or . . . in respect of conditions imposed under subsection (2), remove or vary any such condition". The Board may make such a decision if it is justified by a change in circumstances. In the absence of circumstances warranting the variance or removal of a condition, the Board is under no obligation to systematically renew the conditions still in effect when it makes another decision concerning a person subject to a long-term supervision order.

[22] When the Board made its decision on November 22, 2010, the conditions regarding the prohibition on being within 50 metres of parks and the prohibition on possessing a cellphone, pager or other telecommunication device that had been set out in previous decisions were still in effect and did not need to be renewed. Moreover, they were not renewed.

[23] I therefore reject the applicant's arguments. I am of the opinion that this application for judicial review can only contemplate the conditions expressly imposed in the Board's decision of November 22, 2010.

B. *Did the Board impose on the applicant special conditions of indeterminate duration, and, if so, was it under the obligation to set a specific duration for each of the conditions?*

[24] The condition relating to the obligation to provide a weekly report of his income and expenditures is in effect for six months. The Board added, [TRANSLATION] "A report must be sent to the Board, with a recommendation as to whether this condition should or should not be maintained". The other condition, the one pertaining to the obligation to inform the supervisor of all of his movements, is not given a specific time limit. However, the Board's decision is written on a standardized form comprising various sections. The title of the form is "NPB Post-Release Decision Sheet". The conditions imposed are set out in a section provided for that purpose. The wording of this section is as follows:

> **SPECIAL CONDITION(S) IMPOSED AND PERIOD OF TIME FOR WHICH THEY ARE VALID:** (Apply until the end of the release unless a fixed period of time is specified)

[25] The applicant submits that this note in the decision template is insufficient to infer that the Board imposed a specified period on a condition for which no time limit is otherwise stated. He submits that this standardized statement is meaningless because is appears on all decision forms, even when the Board imposes no conditions. As an example, he refers to the decision of June 21, 2010, in which no conditions were imposed and the same text appears. He therefore submits that a condition having no specified period is a condition imposed for an indeterminate period.

[26] The applicant further contends that the Board cannot impose conditions for an indeterminate period. In his opinion, subsection 134.1(3) of the Act gives the Board the obligation to specify a period for each condition it imposes. He submits that the language is clear and that this interpretation is compatible with the Board's obligation to impose the least restrictive conditions possible.

[27] The respondent, however, submits that when no time limit is set for a condition, the condition applies until the end of the long-term supervision period, subject to variances by the Board by means of its power under subsection 134.1(4) of the Act, if a change of circumstances occurs. Conditions are therefore always imposed for a specified period. The respondent adds that the decision expressly states that a condition which is not otherwise subject to a time limit applies for the full period of supervision.

[28] I am of the opinion that the applicant's arguments must fail. First, I am of the opinion that the Board did specify the period of the condition expressly: the special condition applies until the end of the supervision period. The title of the section of the form for setting out conditions clearly states that conditions apply until the end of the release unless a fixed period of time is specified. In my opinion, the fact that this text is included in the decision template changes absolutely nothing. The fact that this section of the form remains part of a decision that does not impose conditions, such as the decision of June 21, 2010, also changes nothing, and does not strip the text of its meaning. If no conditions are imposed, the section reserved for setting out conditions remains empty and of no import. If one or more conditions are imposed, the text is not ambiguous: the condition applies until the end of the release—in this case, the supervision period—unless some other period is specified.

[29] I would have arrived at the same conclusion, even in the absence of text similar to the text in this case. The supervision order itself is of specific duration, and my view is that any condition for which a specific period is not established is implicitly imposed for the full term of the order.

[30] Subsection 134.1(3) of the Act gives the Board the power to impose a condition for the period it deems appropriate, which may be of shorter duration than the supervision period. However, the Board has no obligation to impose a shorter period.

[31] It has been acknowledged in the case law that the Board has been given broad discretion under section 134.1 of the Act. In *Normandin*, the Federal Court of Appeal stated the following:

> **44** The authority given to the Board by subsection 134.1(2) is a broad and flexible discretionary authority and the discretion is exercised at three levels. First, the Board may or may not impose conditions for supervision of the long-term offender. Second, the Board is also given the authority to determine whether it is reasonable and necessary to do so in order to ensure the protection of the public and to facilitate the successful reintegration into society of the offender. Third, the Board establishes the duration of the supervision.
>
> . . .
>
> **52** Parliament did not want to introduce this limitation in the case of long-term offenders, who begin their period of extended supervision while the offender on statutory release is reaching the end of his sentence. The risk of recidivism is high for long-term offenders and the period of supervision is a lengthy one, so it is not unreasonable to think that Parliament intended to leave intact the extensive discretionary authority it has granted the Board in subsection 134.1(2) of the Act in order to allow it to meet the specific needs of long-term offenders (if they are to be successfully reintegrated into society) and of the community which is being made to assume the risk of the offender's release.

[32] I also agree with the following comments by my colleague Justice Scott, who, in *Hurdle*, also had to rule on the duration of long-term supervision conditions and the obligation for the Board to impose a specified duration:

> 18 It therefore appears from the legislation and case law that Parliament did not intend to impose a strict legal obligation on the Board to establish a duration for the conditions imposed, granting it a broad discretionary power in this respect. Contrary to the applicant's position, the fact that the Board did not explicitly set durations for the conditions imposed does not mean that no time limits apply. The conditions imposed are automatically lifted with the expiry of the supervision order. Contrary to the applicant's submissions, all of the conditions imposed are of a limited duration.

[33] Justice Scott also applied the same principles in respect of conditions imposed as part of a statutory release in *Ross*. I therefore conclude that the condition requiring the applicant to inform

his supervisor of all of his movements was imposed for a specified period, that is, until the end of the supervision period, and that subsection 134.1(3) of the Act does not impose an obligation on the Board to specify a shorter period for this condition or state differently the duration of the condition.

I will address issues C and D together.

C. *Are the conditions imposed by the Board unreasonable?*

D. *Did the Board fail to give reasons for its decisions imposing the special conditions?*

[34] First, considering my previous conclusions regarding the conditions that may be challenged in this application for judicial review, I will only examine the conditions imposed in the decision of November 22, 2010.

[35] As stated above, imposing conditions is part of the Board's specialized jurisdiction and broad discretion, as conferred by Parliament. The Court will not intervene unless the Board's assessment of the circumstances and the evidence is unreasonable. In this case, I am of the opinion that the conditions imposed by the Board were completely reasonable in light of the applicant's behaviour and the risk he may represent for society. I am also of the view that the Board amply justified and explained its reasons for deciding to impose the special conditions at issue and fulfilled its obligation under paragraph 101(*f*) of the Act to provide reasons for its decision.

[36] It is important to examine the reasonableness of the conditions imposed by taking into account the Board's dual mandate to protect society while facilitating the applicant's

reintegration into society. I am also bearing in mind that the conditions must be the least restrictive possible. Furthermore, it is essential to situate the conditions imposed by the Board within the context of the applicant's profile and behaviour since the beginning of his supervision period.

[37] Since the supervision period began, the applicant's cooperation has been minimal: he failed to comply with certain conditions imposed on him, his supervision order was suspended a few times and he received two sub-sentences. In short, his behaviour is far from exemplary, and he is making life difficult for the officers responsible for supervising him and following up on his case.

[38] The reasons for the decision are more than three pages long. The Board included a summary of how the applicant's behaviour has evolved since his supervision began. Here are a few relevant excerpts:

> [TRANSLATION]
>
> . . .
>
> Since you were first released, you have often violated conditions and committed breaches, leading, in 2007, to a first sub-sentence of 11 months for your non-compliance.
>
> At that time, you had again started up your former business of personal care attendant services. As well, women's underwear and suggestive photographs were found in your personal effects.
>
> Today, at 42 years of age, you have been serving, since January 20, 2010, your second sub-sentence of five months for failing to comply with your LTSO, which will expire in 2017.
>
> It should be noted that your LTSO has been suspended a number of times for various reasons, including possessing pornographic

> material, having driven your spouse's vehicle, having had unauthorized possession of a Blackberry and a cellphone, failing to comply with the instructions for gradual authorized contact with your spouse and, last, for having been unlawfully at large in October 2009.
>
> . . .
>
> According to your caseworkers, , you were largely uncooperative right from the start, as you were resistant to supervision and had little motivation to put the necessary effort into ensuring your release went smoothly. Many interventions were needed to get you to comply with the established rules. As a result of expenditures showing possible breaches of conditions, a disciplinary interview was held with you to clarify the use of your of time, your transparency and your income and expenditures.
>
> . . .
>
> The hearing made it clear to the Board that you have a great deal of difficulty complying with the requirements of your long-term supervision. Your behaviour is often at the limits of acceptability, and we believe that you deliberately choose to do as you please. Your cooperation with the caseworkers is practically nonexistent, and only when you have your back to the wall do you come up with explanations to justify your breaches.
>
> The Board is not at all satisfied with your attitude and behaviour. You are under a LTSO and will be so for another seven years, which means that, in fact, if your behaviour does not improve, you may have to reside in a halfway house until the end of your supervision. Your behaviour and attitude of resistance to supervision and the authorities make it impossible to work with you on the contributing factors to your criminality and sexual deviance. There is, therefore, still a high level of risk with regard to the protection of society. Your lack of cooperation and transparency means that your supervision team is constantly forced to apply to the Board for new special conditions to better manage the risks and your supervision.

[39] The Board also addressed the circumstances that led it to impose the conditions regarding the applicant's movements and the weekly expenditure and income reports. The Board related,

among other things, a number of incidents during which the applicant's supervisors were unable to determine his movements and the applicant did not provide them with the correct times. For example, the Board noted the following:

> [TRANSLATION]
> On September 22, 2010, you left the CCC in the morning, stating on your movement sheet that you were going to work and that you would return at 9 p.m. However, your curfew that night was at 8 p.m. In fact, depending on the night, the curfew was set at either 8 p.m. or 9 p.m. When you were not observed returning at the time set, the CCC commissioner tried to reach you at your workplace, but to no avail. Considering that you had failed to contact the CCC that evening and flouted your curfew, the officer on call issued a warrant of suspension that was enforced when you returned to the CCC. The arrest was carried out without difficulty.
>
> At the post-suspension interview, you stated having believed that your return time was at 9 p.m. You recounted that you finished work at or about 6 p.m., waited for the bus until approximately 6:30 p.m. and went to the Berri-UQAM metro station to have a coffee at a nearby restaurant. You stated that you stayed there until approximately 8:30 p.m. and then returned to the CCC at or about 8:45 p.m. You added that you did not understand the reasons for your suspension, alleging that you had simply been mistaken about the time of your curfew.
>
> When asked why you had not telephoned to inform your supervisors of your movements, as you were asked to do and as specified during numerous follow-ups, you replied that you had not thought to do so. You then stated that you had forgotten or simply had not called because you did not like speaking on the telephone. The Board is of the opinion that your explanations are totally devoid of credibility, and when you were asked to give a reason for your lack of cooperation, you asserted that the CSC's control over you is [TRANSLATION] "just to p . . . you off". You also stated that you would never trust your supervisors. In such circumstances, it is very difficult to supervise adequately your movements and use of time.
>
> Furthermore, when your personal effects were put away after your suspension, car keys and the negative of a photograph of a little girl were found. You submit that you do not know who this little girl is or why this negative was in your personal effects. You admitted that the keys were copies to your spouse's pickup truck,

whereas you were prohibited from having possession of it. In addition, although gas station transactions were found on your bank statement, you denied having been with your spouse on the evening of September 22, that is, outside the hours permitted for meetings with her.

Your case management team (CMT) notes that you have not yet begun the process of self-questioning. You have shown little cooperation since the beginning, not only of this supervision period, but since you were first released. Your team states that you have always had difficulty complying with special requirements and your special conditions, especially as regards your use of time and your finances.

Considering the foregoing, your CMT recommends, in spite of everything, that your suspension be cancelled and that two special conditions be added to the LTSO, that is, to inform your supervisor of all movements and to submit a weekly report of your income and expenditures and provide supporting documents. The team is of the opinion that those conditions are necessary to ensure healthy management of the risk you represent for society.

. . .

The Board, in the circumstances presented to it, nonetheless cancels your suspension and is of the opinion that it is necessary that, in the future, you inform your supervisor of all of your movements, in accordance with the conditions to be determined by him or her beforehand. This is an additional special condition that will facilitate better risk management and preclude there being any new victims, because, at this time, the Board notes that your CMT has difficulty staying informed of all of your movements.

The Board also imposes on you the condition of submitting a weekly report of your income and expenditures, which involves providing your supervisor with all required documents (bank statements, invoices, statements of account) upon request. This condition is in effect for six months, and may be renewed at the end of that period if your supervisor is not completely satisfied with the results. Your supervisors have difficulty ascertaining some of your expenditures and suspect that some of them may be related to the use of your spouse’s vehicle, which you are prohibited from driving. This measure was taken by the CSC after you again started up your home care company.

> It has become necessary to add those two conditions for better management of the risk you represent for society.

[40] The conditions imposed by the Board seem reasonable to me and are adequately supported by reasons. It appears to me that it is entirely appropriate for the applicant's supervisors to be able to track his movements, considering the nature of his offences and the fact that he is prohibited from being in various places. The monitoring of the applicant's expenditures and income is directly related to the supervision of his activities and movements. When the background of the applicant's behaviour is taken into account, it can be seen that he does not always inform his supervisors of his movements and is not always transparent in the explanations he provides. The evidence also shows that he is engaging in conduct that could place him at risk: among other things, he returned to his activities in a personal care company and seems to have ended up with the negative of a photograph of a little girl in his personal effects.

[41] In the circumstances, it was not unreasonable for the Board to impose conditions that would enable the applicant's supervisors to better determine whether his is respecting the conditions of his supervision period and to monitor his comings and goings and his expenditures in order to ensure that his movements are adequately tracked and that he does not adopt behaviour likely to present a risk for society. The applicant submits that the conditions imposed are excessive. With respect, I find that they are reasonable, taking into account his behaviour and the Board's mandate to protect society while facilitating his reintegration into society.

.

[42] There is therefore no basis for this Court to intervene.

**JUDGMENT**

THIS COURT'S JUDGMENT IS that the application for judicial review is dismissed with costs against the applicant.

"Marie-Josée Bédard"
Judge

Certified true translation
Sarah Burns

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | T-2108-10 |
| **STYLE OF CAUSE:** | ALBERT GAUDREAU v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | Montréal, Quebec |
| **DATE OF HEARING:** | July 19, 2011 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Bédard J. |
| **DATED:** | July 28, 2011 |

**APPEARANCES:**

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|---|---|
| Martin Latour | FOR THE APPLICANT |
| Tony Nasr | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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