Federal Court  Cour fédérale

**Date: 20120504**

**Docket: T-976-11**

**Citation: 2012 FC 522**

**Ottawa, Ontario, May 4, 2012**

**PRESENT: The Honourable Mr. Justice Martineau**

**BETWEEN:**

**PATRICK JEAN-BAPTISTE**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant challenges the legality of the Correctional Service of Canada's [CSC] referral for detention review to the National Parole Board [Board] in accordance with subparagraph 129(2)(*a*)(*i*) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA], arguing, essentially, that there was not sufficient evidentiary foundation to make the referral in the first place. Accordingly, the Board did not have jurisdiction to review the detention and to order, following the review, that the applicant may not be released before the expiration of his sentence.

[2] On the other hand, the respondent submits that the only decision the Court can legally review is that of the Appeal Division of the Board [Appeal Division] which upheld the decision of the Panel Division of the Board [Panel]. The respondent argues that CSC's referral decision was based on the evidence and there was a rational basis for making the referral to the Board who had exclusive jurisdiction to review the detention and to determine whether there was a likelihood that the applicant would commit an offence causing serious harm to another person if he was released prior to the expiration of his sentence.

[3] For the reasons that follow, the Court finds no reason to intervene in this matter and concludes that the decision of the Appeal Division, upholding the Panel's decision, falls well within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

[4] To begin, a review of the relevant legislative provisions is in order.

**LEGAL FRAMEWORK**

[5] Section 127 of the CCRA sets out the conditions under which an offender is entitled to statutory release before having served his or her sentence in full:

| | |
|---|---|
| 127. (1) Subject to any provision of this Act, an offender sentenced, committed or transferred to penitentiary is entitled to be released on the date determined in accordance with this section and to remain at large until the expiration of the sentence according to law. | 127. (1) Sous réserve des autres dispositions de la présente loi, l'individu condamné ou transféré au pénitencier a le droit d'être mis en liberté à la date fixée conformément au présent article et de le demeurer jusqu'à l'expiration légale de sa peine. |

| | |
|---|---|
| [...] | [...] |
| (3) Subject to this section, the statutory release date of an offender sentenced on or after November 1, 1992 to imprisonment for one or more offences is the day on which the offender completes two thirds of the sentence. | (3) La date de libération d'office d'un individu condamné à une peine d'emprisonnement le 1er novembre 1992 ou par la suite est, sous réserve des autres dispositions du présent article, celle où il a purgé les deux tiers de sa peine. |

[Emphasis added]

[6] Indeed, pursuant to subsection 129(1) of the CCRA, CSC can refer certain offenders' cases to the Board. Notably, pursuant to subparagraph 129(2)(*a*)(*i*) of the CCRA, CSC can refer an offender's case to the Board if the following conditions are satisfied:

| | |
|---|---|
| (2) After the review of the case of an offender pursuant to subsection (1), and not later than six months before the statutory release date, the Service shall refer the case to the Board together with all the information that, in its opinion, is relevant to it, where the Service is of the opinion | (2) Au plus tard six mois avant la date prévue pour la libération d'office, le Service défère le cas à la Commission — et lui transmet tous les renseignements en sa possession et qui, à son avis, sont pertinents — s'il estime que : |
| (*a*) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule I, that | *a*) dans le cas où l'infraction commise relève de l'annexe I : |
| (i) the commission of the offence caused the death of or serious harm to another person and there are reasonable grounds to believe that the offender is likely to commit an offence causing death or | (i) soit elle a causé la mort ou un dommage grave à une autre personne et il existe des motifs raisonnables de croire que le délinquant commettra, avant l'expiration légale de sa peine, une telle infraction, |

> serious harm to another person before the expiration of the offender's sentence according to law, or
>
> [Emphasis added]

[7] Section 99 of the CCRA defines "serious harm" as follows:

> "serious harm" means severe physical injury or severe psychological damage;
>
> « dommage grave » Dommage corporel ou moral grave.

[8] For its part, the Commissioner's Directive 705-8 [CD 705-8] provides guidelines for CSC to assess whether serious physical injury and/or psychological damage to the victim has incurred in the commission of an offence. However, the factors set out in CD 705-8 are not exhaustive and other criteria can also be used to make a finding of serious harm. CD 705-8 provides the following list of offences and victim characteristics which are commonly associated with psychological disorders:

> **Offence characteristics**
> • sexual offence
> • if a sexual offence, penetration was involved
> • brutality (e.g., serious physical injury, torture)
> • victim held captive
> • repeated offences against victim
> • long duration
>
> **Victim characteristics**
> • prior mental health or adjustment problems
> • prior criminal victimization
> • female
> • 50 years old or older
>
> **Other factors**
> • prior positive relationship or relationship of trust with offender (e.g., parent abuses child, assault by marriage partner)
> • no social support for victim provided (e.g., family disbelieves child sexual abuse victim, victim isolated from friends, family, services)

[9] Subsection 130(1) provides that once CSC's assessment for decision is referred to the Board for detention review, the Board must inform the offender and review the case, causing all inquiries to be conducted in connection with the review as it considers necessary. Paragraph 130(3)(*a*) provides that when the case is referred pursuant to subparagraph 129(2)(*a*)(*i*) of the CCRA, the Board will order the offender's detention if it is satisfied that the offender, if released, will likely commit an offence causing death or serious harm to another person.

[10] Paragraph 107(1)(*d*) of the CCRA establishes the Board's exclusive jurisdiction and absolute discretion to review and to decide the case of an offender referred to it pursuant to section 129. Pursuant to subsection 132(1), in conducting its review, the Board considers any factor that is relevant in determining the likelihood of the commission of such an offence, including those set out in subparagraphs 132(1)(*a*) to (*d*):

| | |
|---|---|
| (*a*) a pattern of persistent violent behaviour established on the basis of any evidence, in particular, | *a*) un comportement violent persistant, attesté par divers éléments, en particulier : |
| (i) the number of offences committed by the offender causing physical or psychological harm, | (i) le nombre d'infractions antérieures ayant causé un dommage corporel ou moral, |
| (ii) the seriousness of the offence for which the sentence is being served, | (ii) la gravité de l'infraction pour laquelle le délinquant purge une peine d'emprisonnement, |
| (iii) reliable information demonstrating that the offender has had difficulties controlling violent or sexual impulses to the point of | (iii) l'existence de renseignements sûrs établissant que le délinquant a eu des difficultés à maîtriser ses impulsions violentes ou |

endangering the safety of any other person,

(iv) the use of a weapon in the commission of any offence by the offender,

(v) explicit threats of violence made by the offender,

(vi) behaviour of a brutal nature associated with the commission of any offence by the offender, and

(vii) a substantial degree of indifference on the part of the offender as to the consequences to other persons of the offender's behaviour;

(*b*) medical, psychiatric or psychological evidence of such likelihood owing to a physical or mental illness or disorder of the offender;

(*c*) reliable information compelling the conclusion that the offender is planning to commit an offence causing the death of or serious harm to another person before the expiration of the offender's sentence according to law; and

(*d*) the availability of supervision programs that would offer adequate protection to the public from the risk the offender might otherwise present until the expiration of the offender's sentence according to law.

sexuelles au point de mettre en danger la sécurité d'autrui,

(iv) l'utilisation d'armes lors de la perpétration des infractions,

(v) les menaces explicites de recours à la violence,

(vi) le degré de brutalité dans la perpétration des infractions,

(vii) un degré élevé d'indifférence quant aux conséquences de ses actes sur autrui;

*b*) les rapports de médecins, de psychiatres ou de psychologues indiquant que, par suite d'une maladie physique ou mentale ou de troubles mentaux, il présente un tel risque;

*c*) l'existence de renseignements sûrs obligeant à conclure qu'il projette de commettre, avant l'expiration légale de sa peine, une infraction de nature à causer la mort ou un dommage grave à une autre personne;

*d*) l'existence de programmes de surveillance de nature à protéger suffisamment le public contre le risque que présenterait le délinquant jusqu'à l'expiration légale de sa peine.

[11] Subsection 147(1) of the CCRA provides the grounds on which an offender may appeal a decision of the Board:

| | |
|---|---|
| 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, | 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*) failed to observe a principle of fundamental justice; | *a*) la Commission a violé un principe de justice fondamentale; |
| (*b*) made an error of law; | *b*) elle a commis une erreur de droit en rendant sa décision; |
| (*c*) breached or failed to apply a policy adopted pursuant to subsection 151(2); | *c*) elle a contrevenu aux directives établies aux termes du paragraphe 151(2) ou ne les a pas appliquées; |
| (*d*) based its decision on erroneous or incomplete information; or | *d*) elle a fondé sa décision sur des renseignements erronés ou incomplets; |
| (*e*) acted without jurisdiction or beyond its jurisdiction, or failed to exercise its jurisdiction. | *e*) elle a agi sans compétence, outrepassé celle-ci ou omis de l'exercer. |

[12] With this scheme in mind, we can now examine the grounds for review raised by the applicant in this case, but before doing so, we must first address the nature and extent of the review that this Court is allowed to conduct according to the jurisprudence.

**ROLE OF THE REVIEWING COURT**

[13] The applicant is essentially challenging the lawfulness of the referral made to the Board pursuant to subparagraph 129(2)(*a*)(*i*) of the CCRA on the basis that CSC had allegedly no evidentiary foundation in the first place to make the referral to the Board. Relying on *Condo v Canada (Attorney General)*, 2004 FC 991 [*Condo*] and *Cartier v Canada (Attorney General)*, 2002 FCA 384 [*Cartier*], the applicant submits that the Court is ultimately required to ensure that the Board's decision was lawful, although the Court is technically seized of an application for judicial review from the Appeal Division.

[14] The respondent submits that the review of detention by the Board – designated as the Panel to distinguish it from the Appeal Division – was a two step process. First, the Panel had to determine whether CSC had a rational basis for referring the case. Second, if the Panel was satisfied that this was the case, it had full discretion to review the matter and to determine whether in light of the facts and the law, there should be an order continuing the detention until the expiry of the sentence (*Plante v (Attorney General)*, 2007 FC 52 [*Plante*]). The Panel's decision was appealable to the Appeal Division but the latter could only overturn its decision on one of the limited grounds enumerated in subsection 147(1) of the CCRA.

[15] This Court's jurisprudence has refused to allow CSC's referral for detention to the Board to be judicially reviewed on the basis that such a review would be premature (*Dudman v Canada (National Parole Board)*, [1996] FCJ 679; *Condo*, above). That said, once the Board is seized of the referral and once it is satisfied that the criteria of subparagraph 129(2)(*a*)(*i*) of the CCRA are

met, it is incumbent on the Board to exercise its discretion in order to assess whether or not to order the detention of the offender beyond the statutory release date (*Dudman*, above, at para 10 and *Condo*, above, at para 15). The Board's jurisdiction is exclusive and its discretion absolute (paragraph 107(1)(*d*) of the CCRA).

[16] In *Cartier*, above, at paras 7-10, Justice Décary writing for the Federal Court of Appeal, made the following comments with respect to the standard of review to be applied when the Appeal Division affirms the Board's decision:

> Section 147(5)(a) is troubling, to the extent that it imposes a standard of review which for all practical purposes applies only when the Appeal Division, pursuant to s. 147(4)(d), reverses the Board's decision and permits the offender to be released. What standard should be applied when, as in the case at bar, the Appeal Division affirms the Board's decision pursuant to s. 147(4)(a)?
>
> Section 147(5)(a) appears to indicate that Parliament intended to give priority to the Board's decision, in short to deny statutory release once that decision can reasonably be supported in law and fact. The Board is entitled to err, if the error is reasonable. The Appeal Division only intervenes if the error of law or fact is unreasonable. I would be inclined to think that an error of law by the Board as to the extent to which it must be "satisfied" of the risk of release -- an error which is alleged in the case at bar -- is an unreasonable error by definition as it affects the Board's very function.
>
> If the applicable standard of review is that of reasonableness when the Appeal Division reverses the Board's decision, it seems unlikely that Parliament intended the standard to be different when the Appeal Division affirms it. I feel that, though awkwardly, Parliament in s. 147(5)(a) was only ensuring that the Appeal Division would at all times be guided by the standard of reasonableness.
>
> The unaccustomed situation in which the Appeal Division finds itself means caution is necessary in applying the usual rules of administrative law. The judge in theory has an application for judicial review from the Appeal Division's decision before him, but when the latter has affirmed the Board's decision he is actually required ultimately to ensure that the Board's decision is lawful.

[17] There is no need to engage in a standard of review analysis when the applicable standard can be ascertained from existing jurisprudence (*Dunsmuir*, above, at para 62). The jurisprudence has established that decisions of the Appeal Division, including those involving a referral for detention review to the Board under section 129 of the CCRA, are reviewed against a standard of reasonableness (*Plante*, above, at para 31; *Edwards v Canada (Attorney General)*, 2009 FC 73 at paras 8-11 [*Edwards*]; *Fernandez v Canada (Attorney General)*, 2011 FC 275 at para 20; *Latimer v Canada (Attorney General)*, 2010 FC 806 at para 18).

**ANALYSIS**

[18] The standard of reasonableness requires this Court to determine whether the Appeal Division's conclusion falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47), and as long as this outcome fits comfortably with the principles of justification, transparency, and intelligibility, it is not open to this Court to substitute its own view for a more preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339).

*The evidence*

[19] The applicant in this case is a 34 year old federal offender serving an aggregate sentence of five years, eleven months and twenty nine days. The applicant was originally sentenced to four years of imprisonment for assault (x2), theft under $5,000.00 (x2), sexual assault, possession of prohibited firearm (unloaded), storing a firearm in violation of regulations, exerting force in

connection with prostitution, living off the avails of prostitution and uttering threats in respect of a female victim during a period of approximately four months.

[20] Outstanding charges pertaining to occurrences both prior to and after the applicant's admission to federal custody have been judicially dealt with and have resulted in the current aggregate sentence. These additional charges include riot, mischief in relation to other property, arson damage to property and assault with a weapon. Prior to the current offence, the applicant was also convicted of living off the avails of prostitution and luring an underage female for that purpose.

[21] All of the offences relating to the original sentence in the present case involved a 19 year old woman from New Brunswick (the victim) that the applicant met in May 2004 in Montreal. Shortly after, in September 2004, believing that she and the applicant were in a serious loving relationship, the victim moved to Montreal with her young daughter to live with the applicant but her hopes were soon disappointed. The applicant advised her that they were not in a relationship and forced her to become a stripper in various strip clubs in Ontario and Quebec, and to prostitute herself for nearly four months.

[22] During this time, the applicant kept his victim under constant supervision and domination, depriving her of contacting her parents, forcing her to work very long hours without leave and threatening her that he would kill her father if she attempted to escape or to tell anyone about her situation. He took her debit card, the money in her bank account and the money that she gained from work. The applicant also forced his victim to have his alias tattooed on her lower back.

According to the criminal court's reasons for sentence, the applicant also beat and raped his victim and on one occasion he beat her young child.

[23] In January 2005, the applicant informed the victim that he wanted her to go work in Toronto for a while and to leave her daughter in Montreal. This incident appears to have been the proverbial straw that broke the camel's back. On January 25, 2005, the victim took advantage of the applicant's absence to escape with her daughter and find refuge in a shelter for abused women (reasons for sentence rendered by Justice Provost, Cour du Québec, Chambre criminelle et pénale, dated November 2, 2006).

*CSC's referral*

[24] Pursuant to subsection 127(3) of the CCRA, the applicant was entitled to statutory release after serving two-third of his sentence i.e. since December 31, 2010. However, on April 28, 2010, CSC decided, pursuant to subparagraph 129(2)(*a*)(*i*) of the CCRA, to refer the applicant's case to the Board for a detention review, having determined that the applicant's acts had caused "serious harm" to the victim and that there were "reasonable grounds to believe that the offender is likely to commit an offence causing death or serious harm to another person" before the expiration of his sentence on January 29, 2013.

[25] In support of its referral, CSC provided a detailed account of the acts of violence suffered by the victim at the hands of the applicant. CSC notably considered a number of relevant factors, such as the number and the prolonged character of offences committed by the applicant causing physical and psychological harm to the victim; the seriousness of the offence according to Justice Provost's

reasons for sentence; the systematic versus impulsive nature of the offences committed against the victim; the use of a weapon in the commission of the offence; the explicit threats of violence during the commission of the offence, as well as the applicant's "denial of guilt and clear lack of remorse". CSC considered this last factor to be the most determinative in the applicant's case.

*Detention review*

[26] On November 19, 2010, the Panel conducted a review of the applicant's case by way of a detention review/referral hearing.

[27] The Panel first determined that it had jurisdiction to hear the case, having found that the detention referral meets the legislative criteria set out in subparagraph 129(2)(*a*)(*i*) of the CCRA, and therefore proceeded with hearing the matter on the merit. The Panel found that the victims "have suffered significant psychological harm" and that the applicant had employed violence. At the end of the hearing, the Panel was satisfied for reasons similar to those considered by CSC that if released, the applicant was likely to commit an offence causing serious harm to another person before the expiration of the sentence that he is serving under the law.

[28] The Panel most notably relied on the following facts in ordering the applicant's detention:

- the applicant's lack of concern for the victim;
- the applicant's pattern of persistent violent behaviour both in and out of prison;
- the numerous and lengthy offences committed by the applicant which were susceptible to cause psychological harm to the victim;
- the fact that the applicant forced, threatened and exerted control over the victim's life in order for her to prostitute herself for the applicant's gain as well as various acts of sexual and physical assault such as slapping and punching the victim, banging her head against

a car window, grabbing her by the throat, punching the back of her head and forcing her to be tattooed with the applicant's name;

- the applicant's use of a variety of weapons in his various offences;
- the applicant's numerous threats against the victim and her father in order to gain her compliance;
- the impulsive, instrumental and indiscriminate violence to which the applicant subjected the victim and other female victims;
- the fact that the applicant continued to deny any involvement in most of the offences that he committed and the limited progress that was achieved to reduce his risk to the public; and,
- the fact that the applicant was found by the police to be part of a street gang known for their violence and criminal activities.

[29] Accordingly, the Board ordered the detention of the applicant until the expiry of his sentence.

*Appeal*

[30] The applicant appealed the Panel's decision to the Appeal Division of the Board, arguing that there was no information indicating that he has caused serious physical harm or severe psychological harm to the victim as described in CD 705-8. The applicant contended that the sentencing judge never made findings regarding the extent to which psychological harm was caused to the victim and therefore the Panel's decision was based on speculation.

[31] On May 4, 2011, the Appeal Division found the Panel's decision to be reasonable and founded upon relevant, reliable and persuasive information concerning the seriousness of the applicant's offences, his problematic institutional behaviour, and the major risk factors associated

with his denial of current offences. Reminding that its mandate is not to substitute its discretion for that of the Panel members who assessed the risk of the applicant, the Appeal Division also found that the decision to detain the applicant was reasonable in the circumstances and consistent with the criteria set out in law and Board policy, and accordingly denied the appeal.

*Grounds of attack for judicial review*

[32] The applicant contends mainly that CSC's finding that serious harm was caused by the applicant during the commission of his index offence was unreasonable since, in absence of any information with respect to the victim's current physical and psychological conditions, the information contained in the tribunal's record concerning his conduct alone was insufficient to justify an inference of severe psychological harm.

[33] The applicant notes that there is no victim impact statement on file. The applicant argues that although according to CD 705-8 sexual offences are more likely than non-sexual offences to cause severe psychological harm to the victim, CSC did not dispose of any information concerning how the victim was affected, whether psychologically or physically, by the applicant's offence. More specifically, the applicant states that apart from the criminal court's findings, there is no additional information supporting the conclusion that as a result of the applicant's conduct the victim experienced severe psychological symptoms such as those identified in CD 705-8, namely suicidal ideation, inability to keep a job or to leave home, inability to acquire or maintain friendship, inclination to frequent shoplifts, negligence of family, suffering from delusions, panic attacks, persistent insomnia, compulsive drinking habits or drug addition.

[34] As for the finding of physical harm caused to the victim, the applicant argues that CSC or the Board disposed of no information as to the size of the tattoo that would enable them to draw an inference about whether the tattooing contributed in causing serious harm to an adult victim. The applicant thus contends that there was no evidentiary foundation before either CSC or the Board upon which to base a finding of severe psychological or physical harm.

[35] Finally, the applicant submits that his behaviour was less vicious and terrifying than what is described in *Edwards*, above, where the offender was found to have sexually assaulted a female victim in addition to attempting to murder her and was sentenced to ten years of imprisonment while the applicant's aggregate sentence is less than six years.

*Respondent's arguments*

[36] As for the rationale underlying the referral of the applicant's case, the respondent submits that the Panel discharged its obligation to determine whether a legal basis existed for the referral on the basis of CSC's detailed account of the abuse suffered by the applicant's victim. The Panel explicitly stated the reasons why the detention referral met the legislative criteria of subparagraph 129(2)(*a*)(*i*) of the CCRA and the Appeal Division did not err in finding this decision to be lawful and reasonable in view of the facts. The respondent submits that there is no legal requirement that victim impact statements be produced.

[37] As for the finding of serious harm, the respondent submits that it is in line with the factors enumerated in section 132 of the CCRA and in CD 705-8. Such finding is wholly supported by the evidence and is thus reasonable. Many if not most of the offence and victim characteristics listed in

annex B or C of CD 705-8 as causing severe psychological harm were present in the applicant's case, namely, the victim was female, had a prior positive relationship with the offender, and was deprived of social support (isolated from her friends and family). The offence was of a sexual character, involving penetration and brutality (e.g., serious physical injury, torture). Furthermore, the victim was held captive and suffered repeated offences occurring over a long duration.

*No reason to intervene*

[38] The Court finds no reason to intervene in this case. Both the Panel and the Appeal Division of the Board dismissed the jurisdictional argument made by the applicant that there was no evidentiary basis to make a referral pursuant to paragraph 129(2)(*a*)(*i*) of the CCRA and rejected the applicant's contention that his offence did not cause significant psychological harm to his victims, in light of the evidence and in view of the findings of the criminal court. This outcome is reasonable in the circumstances considering the evidence and Justice Provost's description of the events that took place (see *DT v Canada (Attorney General)*, 2003 FC 1147 at para 19).

[39] Moreover, the applicant does not contest the finding that if released he would be likely to commit an offence causing serious harm or death to another person; a finding that, as mentioned earlier, was upheld by the Appeal Division. The applicant is now advancing the very same jurisdictional argument before this Court, seeking to have judicially reviewed CSC's referral decision. Having reviewed the record and read the reasons given by the Panel and the Appeal Division, I find that the referral was lawful and, that overall, the impugned decision should not be disturbed as in all aspects, the Panel's decision and the Appeal Division's decision are reasonable and entirely supported by the evidence.

[40] Again, contrary to what the applicant contends, both the CSC referral and the Panel's decision explicitly concluded that the applicant caused serious psychological and physical harm to the victim in the commission of his various offences against her and her child. The Appeal Division summarized the Panel's detailed findings as follows:

> [T]he Board reviewed your criminal history, with a particular focus on the circumstances surrounding the current offence, which involved you using force and threats in order to exert control over the life of the victim in order for her to prostitute herself for your own gain. The Board noted that the current offence occurred over a period of several months and that the [criminal court] judge found the severity of the offence to be serious. The Board concluded that you caused serious psychological harm to the victim given the total control you exerted over her through the use of violence, threats and isolation. The Board further considered that prior to the current offence, you were convicted of luring an underage female for the same purpose. Your conviction for the weapon related offence and violent institutional behavior were also noted. The Board further considered your denial of the current offence, which led the Board to conclude that the major contributing factors to your violent acting out have not been addressed. This led the Board to conclude that given the seriousness of the current offence and your pattern of persistent violence, and your unaddressed contributing factors, you were likely, if released to commit an offence causing serious harm to another person before the expiration of your sentence.

[41] In my view, both the Appeal Division's affirmation and the Board's conclusions pertaining to the applicant having caused serious psychological harm to the victim are reasonable, based on the overall available information and most notably considering the criminal court's reasons for sentence which specifically focused on the severity and seriousness of the applicant's index offences against his female victim (Justice Provost's reasons for sentence, paragraphs 46-71). The fact that the offences described in the *Edwards* case, or any other case, were more severe or vicious than those of the applicant does not affect the reasonableness of the decision under review. Moreover, there

was no legal requirement for CSC to obtain prior to making the referral, and in the course of the hearing, victim impact statements.

[42] I am also satisfied that the Board discharged its obligation to "take into account all available information that is relevant to a case" (*Edwards*, above, at para 19, citing *Mooring v Canada (National Parole Board)*, [1996] 1 SCR 75 at paras 26 and 29). As such, the obligation not to exclude relevant evidence does not require the Board to inquire into additional evidence, unless sufficient reasons exist for the Board to consider that it is necessary to conduct further inquiries in connection with the review in accordance with subsection 130(1) of the CCRA.

[43] In view of all these reasons, I find that this Court's intervention in the Appeal Division's decision to maintain the detention in the applicant's case indubitably requires a reweighing of the factors and the information that was before the Panel, which is not the task of the Court on judicial review. Accordingly, the present application for judicial review is dismissed with costs in favour of the respondent.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this present application for judicial review is dismissed with costs in favour of the respondent.

"Luc Martineau"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | T-976-11 |
| **STYLE OF CAUSE:** | PATRICK JEAN-BAPTISTE v THE ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | Ottawa, Ontario |
| **DATE OF HEARING:** | April 30, 2012 |
| **REASONS FOR JUDGMENT:** | MARTINEAU J. |
| **DATED:** | May 4, 2012 |

**APPEARANCES:**

| | |
|---|---|
| Mr. Brian A. Callender | FOR THE APPLICANT |
| Ms. Talitha Nabbali | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Barrister & Solicitor<br>Kingston, Ontario | FOR THE APPLICANT |
| Myles J. Kirvan,<br>Deputy Attorney General of Canada<br>Ottawa, Ontario | FOR THE RESPONDENT |