Federal Court  Cour fédérale

Date: 20191007

Docket: T-2211-18

Citation: 2019 FC 1267

Ottawa, Ontario, October 7, 2019

PRESENT: The Honourable Madam Justice Fuhrer

BETWEEN:

ANDREW MCLENNAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Mr. Andrew McLennan, seeks judicial review of the May 30, 2018 decision of Parole Board of Canada Appeal Division ("Appeal Division") to uphold the February 6, 2018 decision of the Parole Board of Canada ("Board or PBC") for the Applicant's continued detention, pursuant to s 147(4)(a) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA].

[2] For the reasons that follow, I find the detention decision and hence, the Appeal Division's decision, were reasonable. This judicial review application is dismissed.

II. Facts

A. *Background*

[3] The Applicant is in his early thirties and serving a sentence of nine years, one month and sixteen days for two robberies he and others committed on June 23, 2010. Several aggravating circumstances were noted at the time of sentencing, including the use of a firearm, the Applicant's long criminal record, and the fact that he was on parole when the offences were committed. He held previous convictions for two robberies in 2008, and his statutory release in April 2010 was subject to the following conditions at the time of the two additional robberies in June 2010: an electronic ankle monitor; increased supervision (from 4 times to 8 times per month); a 9 pm to 6 am curfew; and a lifetime weapons ban.

[4] The Applicant's current sentence began on March 21, 2012. Although he took a Violence Prevention course in February 2014 and a Violent Offender Maintenance Program course in June 2015, there have been ongoing issues with his institutional behaviour, which I address below.

[5] The Applicant was transferred involuntarily from Bath Institution to Beaver Creek Institution. The Applicant outlined his experiences of discrimination at Bath Institution; he believes the move was racially motivated.

[6] The Applicant's sentence will end on May 5, 2021. Under the CCRA, however, he was entitled to statutory release on April 21, 2018 unless the Correctional Service of Canada [CSC] referred the case to the PBC to consider issuing an order for continued detention, as occurred in this case: CCRA s 129(2)(a)(i).

B. *Parole Board of Canada Decision*

[7] The PBC held a video hearing to determine whether the Applicant should be released on the applicable statutory release date, or whether detention should continue. Prior to the hearing, the CSC recommended the continued detention of the Applicant. A psychological assessment also recommended continued detention.

[8] On February 6, 2018, the PBC issued its decision. To order that the Applicant not be released, the PBC found it must have been satisfied that the Applicant is likely, if released, to commit in an offence causing death or serious harm to another person, a sexual offence involving a child or a serious drug offence before the expiration of his sentence. Factors which the PBC could and did consider included: CCRA s 132(1).

- a pattern of persistent and violent behaviour, taking into account the number of offences committed and whether they caused the victims long-lasting physical / psychological harm;
- the seriousness of the current offences;
- reliable information demonstrating the offender has difficulty controlling violent impulses to the point of endangerment to others;

- whether weapons, explicit threats of violence or brutality were associated with the criminal wrongdoing;
- whether the offender exhibited a substantial degree of indifference as to the consequences of their behaviour.

[9] The PBC then reviewed the Applicant's criminal history. The PBC assessed the likelihood of the Applicant abiding by the conditions of release, noting concerns such as unauthorized items in his cell and alleged incidents of fighting and threats, as well as "stalking behaviour towards a female staff member in Health Care". The Applicant also was found to have minimized his role in the robberies, as well as his responsibility generally, and further, his institutional behaviour showed he had "continued to not stop and think of the consequences before acting".

[10] Because of these factors, which pointed to a low potential for reintegration and high risk to reoffend violently, the PBC ordered the Applicant's detention: CCRA s 130(3)(a).

[11] After setting out its findings, the PBC concluded by noting that "[t]he Board would entertain a review of your detention order prior to the legislated two-year review if you are able to demonstrate a period of at least one year without any institutional incidents and a demonstration that you are utilizing the skills that you have learnt". This conflicted with an oral statement at the conclusion of the video hearing that there would be a further review in one year.

C. *Appeal Division Decision*

[12] The Appeal Division affirmed the PBC's decision on May 30, 2018. The Appeal Division found the decision reasonable, noting that its role is to ensure that the PBC makes a fair decision based on relevant, reliable, and persuasive information.

[13] The Appeal Division also noted CCRA s 132(1) enumerates the factors that can be taken into account in a detention review. It then considered several applicable factors that in its view supported the PBC's decision, including:

- the pattern of persistent violent behaviour;
- the seriousness of the underlying offences;
- explicit threats of violence;
- institutional behaviour that displayed entrenched criminal values, including events of muscling, bullying, fighting, use of intoxicants, and stalking; and a February 2017 fight with another offender;
- the finding that the Applicant was likely to reoffend, which was supported by the psychological assessment; and
- the lack of supervision programs that would provide adequate protection to the public from the risk the offender otherwise would present until the expiration of his sentence.

[14] The Appeal Division concluded the PBC's finding that the detention criteria had been met was reasonable, and was based on relevant, reliable, and persuasive information.

[15] On the issue of the next review, the Appeal Division noted that the PBC's statement as to the timing of the next review "was not determinative and had no bearing on its analysis".

[16] The Appeal Division refused to entertain the argument that the file had been prepared in a prejudicial manner, indicating the Applicant should make a request under the CCRA s 24(2) to correct any erroneous information, and noting that the Applicant could make a formal complaint about the perceived prejudice. The Appeal Division stated these issues were outside its and/or the PBC's jurisdiction.

III. Issue

1. *Was the detention decision fair and reasonable?*
    - A. Did the PBC err by not clarifying which of the Applicant's explanations were "potentially believable"?
    - B. Did the PBC err by preferring information from unsworn police reports over the Agreed Statement of Facts and Reasons for Sentencing?
    - C. Did the Appeal Division err by concluding the PBC's inconsistent oral and written statements about the timing of the Applicant's next review were not determinative and had no bearing on the detention analysis?

IV. Standard of Review

[17] Both the PBC and the Appeal Division are specialized tribunals with expert knowledge in their home statute. Their decisions are reviewable on the reasonableness standard: *Cartier*

v Canada (Attorney General), 2002 FCA 384 [*Cartier*], at paras 6-9, upheld most recently in *Canada (MCI) v Huruglica*, 2016 FCA 93 at para 50; *Gagnon v Canada*, 2017 FC 258 at para 13; *Jean-Baptiste v Canada (AG)*, 2012 FC 522 at paras 16-17. Where the Appeal Division affirms the PBC's decision, it is permissible, in the context of judicial review of the Appeal Division's decision, to look into the lawfulness and reasonableness of the PBC's underlying decision: *Condo v Canada (AG)*, 2005 FCA 391 at paras 51-57; *Chartrand v Canada (AG)*, 2018 FC 1183 at paras 38-40; *Cartier*, *supra* at paras 8-10.

[18] The reasonableness standard requires consideration of whether the decisions were justified, transparent and intelligible and whether they fell within the range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47.

[19] Whether the PBC and the Appeal Division respected procedural fairness, however, is reviewable on what "most closely aligns to the correctness standard, but in reality what a reviewing court must do is to determine whether the process was fair, having regard to all of the circumstances": *Oladihinde v Canada (Citizenship and Immigration)*, 2019 FC 1246 [*Oladihinde*] at para 5, citing *Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at para 54.

V. Relevant Provisions

[20] The applicable statutory provisions in this case include the following:

Corrections and Conditional	Loi sur le système

Release Act, SC 1992, c 20	correctionnel et la mise en liberté sous condition (L.C. 1992, ch. 20)
…	…
129 (1) Before the statutory release date of an offender who is serving a sentence of two years or more that includes a sentence imposed for an offence set out in Schedule I or II or an offence set out in Schedule I or II that is punishable under section 130 of the *National Defence Act*, the Commissioner shall cause the offender's case to be reviewed by the Service.	129 (1) Le commissaire fait étudier par le Service, préalablement à la date prévue pour la libération d'office, le cas de tout délinquant dont la peine d'emprisonnement d'au moins deux ans comprend une peine infligée pour une infraction visée à l'annexe I ou II ou mentionnée à l'une ou l'autre de celles-ci et qui est punissable en vertu de l'article 130 de la *Loi sur la défense nationale*.
…	…
(a) in the case of an offender who is serving a sentence that includes a sentence for an offence set out in Schedule I, including an offence set out in Schedule I that is punishable under section 130 of the *National Defence Act*,	a) dans le cas du délinquant dont la peine d'emprisonnement comprend une peine infligée pour toute infraction visée à l'annexe I, dont celle punissable en vertu de l'article 130 de la *Loi sur la défense nationale* :
(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 serious harm to another person before the expiration of the offender's sentence according to law, or	(i) soit l'infraction 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,
…	…
130 (1) Where the case of an offender is referred to the Board by the Service pursuant to subsection 129(2) or	130 (1) Sous réserve des paragraphes 129(5), (6) et (7), la Commission informe le détenu du renvoi et du

referred to the Chairperson of the Board by the Commissioner pursuant to subsection 129(3) or (3.1), the Board shall, subject to subsections 129(5), (6) and (7), at the times and in the manner prescribed by the regulations,

(a) inform the offender of the referral and review, and

(b) review the case,

and the Board shall cause all such inquiries to be conducted in connection with the review as it considers necessary.

prochain examen de son cas — déféré en application des paragraphes 129(2), (3) ou (3.1) — et procède, selon les modalités réglementaires, à cet examen ainsi qu'à toutes les enquêtes qu'elle juge nécessaires à cet égard.

…

…

(3) On completion of the review of the case of an offender referred to in subsection (1), the Board may order that the offender not be released from imprisonment before the expiration of the offender's sentence according to law, except as provided by subsection (5), where the Board is satisfied

(3) Au terme de l'examen, la Commission peut, par ordonnance, interdire la mise en liberté du délinquant avant l'expiration légale de sa peine autrement qu'en conformité avec le paragraphe (5) si elle est convaincue :

(a) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule I, or for an offence set out in Schedule I that is punishable under section 130 of the *National Defence Act*, that the offender is likely, if released, to commit an offence causing the death of or serious harm to another person or a sexual offence involving a child before the expiration of the offender's sentence according to law,

a) dans le cas où la peine d'emprisonnement comprend une peine infligée pour une infraction visée à l'annexe I, ou qui y est mentionnée et qui est punissable en vertu de l'article 130 de la *Loi sur la défense nationale*, que le délinquant commettra, s'il est mis en liberté avant l'expiration légale de sa peine, soit une infraction causant la mort ou un dommage grave à une autre personne, soit une infraction d'ordre sexuel à l'égard d'un enfant;

…

131 (1.1) Despite subsection (1), if the order made under subsection 130(3) relates to an offender who is serving a sentence imposed for an offence set out in Schedule I whose commission caused the death of or serious harm to another person, the Board shall review the order within two years after the date the order was made, and thereafter within two years after the date of each preceding review while the offender remains subject to the order.

…

132 (1) For the purposes of the review and determination of the case of an offender pursuant to section 129, 130 or 131, the Service, the Commissioner or the Board, as the case may be, shall take into consideration any factor that is relevant in determining the likelihood of the commission of an offence causing the death of or serious harm to another person before the expiration of the offender's sentence according to law, including

(a) a pattern of persistent violent behaviour established on the basis of any evidence, in particular,

(i) the number of offences committed by the offender causing physical or psychological harm,

(ii) the seriousness of the offence for which the sentence

…

131 (1.1) Malgré le paragraphe (1), lorsque l'ordonnance visée au paragraphe 130(3) est prise à l'égard d'un délinquant qui purge une peine infligée pour une infraction mentionnée à l'annexe I ayant causé la mort ou un dommage grave à une autre personne, la Commission réexamine, dans les deux ans suivant la prise de l'ordonnance et tous les deux ans par la suite, le cas du délinquant à l'égard duquel l'ordonnance est toujours en vigueur.

…

132 (1) Le Service et le commissaire, dans le cadre des examens et renvois prévus à l'article 129, ainsi que la Commission, pour décider de l'ordonnance à rendre en vertu de l'article 130 ou 131, prennent en compte tous les facteurs utiles pour évaluer le risque que le délinquant commette, avant l'expiration légale de sa peine, une infraction de nature à causer la mort ou un dommage grave à une autre personne, notamment :

a) un comportement violent persistant, attesté par divers éléments, en particulier :

(i) le nombre d'infractions antérieures ayant causé un dommage corporel ou moral,

(ii) la gravité de l'infraction pour laquelle le délinquant

is being served,	purge une peine d'emprisonnement,
(iii) reliable information demonstrating that the offender has had difficulties controlling violent or sexual impulses to the point of endangering the safety of any other person,	(iii) l'existence de renseignements sûrs établissant que le délinquant a eu des difficultés à maîtriser ses impulsions violentes ou sexuelles au point de mettre en danger la sécurité d'autrui,
(iv) the use of a weapon in the commission of any offence by the offender,	(iv) l'utilisation d'armes lors de la perpétration des infractions,
(v) explicit threats of violence made by the offender,	(v) les menaces explicites de recours à la violence,
(vi) behaviour of a brutal nature associated with the commission of any offence by the offender, and	(vi) le degré de brutalité dans la perpétration des infractions,
(vii) a substantial degree of indifference on the part of the offender as to the consequences to other persons of the offender's behaviour;	(vii) un degré élevé d'indifférence quant aux conséquences de ses actes sur autrui;
(b) medical, psychiatric or psychological evidence of such likelihood owing to a physical or mental illness or disorder of the offender;	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) 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	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) the availability of supervision programs that would offer adequate protection to the public from the risk the offender might	d) l'existence de programmes de surveillance de nature à protéger suffisamment le public contre le risque que présenterait le délinquant

otherwise present until the expiration of the offender's sentence according to law.	jusqu'à l'expiration légale de sa peine.
…	…
147 (4) The Appeal Division, on the completion of a review of a decision appealed from, may	147 (4) Au terme de la révision, la Section d'appel peut rendre l'une des décisions suivantes :
(a) affirm the decision;	a) confirmer la décision visée par l'appel;

VI. Analysis

A. *Did the PBC err by not clarifying which of Mr. McLennan's explanations were "potentially believable"?*

(1) Applicant's Submissions

[21] The Applicant submits the importance of his institutional behaviour cannot be overstated and, along with integration potential and risk to reoffend, are determining factors in the Applicant's case: *Dunn v Canada (AG)*, 2019 FC 403. He is entitled, therefore, to know which of his explanations were "potentially believable". During the oral hearing, counsel for the Applicant clarified that this information is important because if the PBC believed the Applicant's explanations with respect to the fight or stalking allegations, it should have weighed these factors differently, which in turn may have impacted the overall outcome.

(2) Respondent's Submissions

[22] The Respondent did not provide submissions on this point.

(3) Analysis

[23] Though this argument was not advanced before, and therefore not addressed by, the Appeal Division, this Court nonetheless must ensure the PBC's underlying decision is lawful: *Cartier, supra* at para 10. The Applicant's arguments speak to the reasonableness of the PBC's analysis of the record and ultimate conclusion, which in the administrative context is assessed by looking at its reasons and determining if they are sufficient: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62 [*NL Nurses*] at paras 20-22. This begs the question: does the PBC decision adequately convey that it reasonably considered all information, and offer an intelligible and transparent justification for its final decision?: *Dunsmuir, supra* at para 47. Put another way, recognizing that a "decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion …, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the Dunsmuir criteria are met": *NL Nurses, supra,* at para 16.

[24] In my view, the *Dunsmuir* criteria have been met in this case. Despite the PBC's apparent willingness to accept some of the Applicant's explanations for certain infractions in his file, it clearly establishes the factors that led to its decision, namely that the Applicant:

i. was found at high risk to reoffend violently;

ii. was found to have low reintegration potential;

iii. committed violent crimes while on release from sentences for previous convictions;

iv. demonstrated a lack of respect for the rules and regulations, for example by using THC in the manner the Applicant described;

v. was placed on behavioural contracts even after completing Violence Prevention Programming;

vi. demonstrated limited insight and retention of programming skills during his release interview;

vii. minimized his actions and level of responsibility on numerous occasions; and

viii. failed to provide a viable release plan.

[25] On this basis, it was not necessary for the PBC to discuss all the Applicant's explanations which it found "potentially believable" (or conversely, not believable). Nonetheless, I note the PBC provided at least one example: it accepted the Applicant's explanation surrounding his testing positive for THC use (he was not thinking of the consequences, did not think he would get caught, and it did not hurt anyone, was not violent and not a big issue). In the PBC's view, this explanation demonstrated "not thinking", a trend in the Applicant's history of offending, and lack of respect for rules and regulations which speaks to the likelihood of not abiding by conditions of release.

[26] Overall, the PBC has provided sufficient and reasonable justification for its final decision, which is all that was required.

B. *Did the Appeal Division err by affirming the PBC's decision to prefer unsworn police reports over the Agreed Statement of Facts and Reasons for Sentencing?*

(1) Applicant's Submissions

[27] The Applicant asserts that by preferring the police reports over the Agreed Statement of Facts and the Reasons for Sentence, the PBC unreasonably relied on erroneous information. Given how aggravating the information in the police reports was, the Applicant asserts this tainted the PBC's overall analysis. For example, the police statements suggest the Applicant pointed a firearm at a police officer's head and kicked a female victim. These facts are not included in the Agreed Statement of Facts, and are disputed strenuously by the Applicant.

(2) Respondent's Submissions

[28] The Respondent submits the PBC's decision was reasonable and based on relevant, reliable and persuasive information to the effect that the Applicant committed two armed robberies involving gratuitous violence while on conditional release. Further, the Appeal Division conducted a thorough review of the PBC's decision and reasonably concluded there were no grounds for intervention. Both decisions should be reviewed as an organic whole, without a line-by-line treasure hunt for error: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 [*Irving Pulp & Paper*] at para 54; *Getschel v Canada (AG)*, 2018 ABQB 409 at paras 52-53.

[29] The Respondent nonetheless asserts the PBC properly relied on file information contained in the assessments of correctional authorities, including the Applicant's Assessment for Decision, Correctional Plan, and Psychological Assessment, when considering whether the Applicant was likely to reoffend. It was open to the PBC to verify, weigh, and subsequently rely on any file information so long as it found the information was reliable and persuasive: *Miller v Canada (AG)*, 2010 FC 317 at paras 49-50; *Elliot v Canada (AG)*, 2018 FC 673 at para 51;

Mooring v Canada (National Parole Board), [1996] 1 SCR 75 [*Mooring*] at paras 26-27, 36. Police reports are considered to have reliable and persuasive information: *DLE v Canada*, 2019 FC 909 [*DLE*] at paras 35-37, 40; *Charalambous v Canada (AG)*, 2015 FC 1045 [*Charalambous*] at para 16. As such, they may be relied upon even where the information they contain is not referenced in an Agreed Statement of Facts, which is written to contain only the essential elements of the crime and may not contain all information relevant to the PBC: *Russell v Canada (AG)*, 2006 FC 1209 [*Russell*] at paras 19-25; *Riley v Canada (AG)*, 2011 FC 1126 [*Riley*] at paras 17-23; *Charalambous*, *supra* at paras 14-16.

(3) Analysis

[30] The Supreme Court of Canada indicates both the PBC and the Appeal Division are entitled to act on all reliable information: *Mooring*, *supra* at para 26; see also *Riley*, *supra* at paras 22-24. Because information may originate from a police report rather than an Agreed Statements of Facts does not mean it is incorrect and cannot be relied upon. Rather, what is important is that the information is reliable and persuasive in the context of the whole file: *Russell*, *supra* at para 19; *Charalambous*, *supra* at paras 7, 16; *DLE*, *supra* at para 37.

[31] I cannot conclude definitively it was unreasonable for the PBC, and by extension the Appeal Division, to refer to the police officer's allegation that the Applicant had pointed a firearm at him while fleeing the vehicle. I acknowledge both the Applicant's oral testimony and the Agreed Statement of Facts placed a firearm, in fact the same type and model of firearm used in the commission of the robberies, in the getaway vehicle, and not on the Applicant's person when he fled. This was accepted judicially as fact. It is unknown, however, whether this was the

only firearm at the Applicant's disposal. Given there was no trial in the Applicant's case, we cannot know from the current record whether these are truly inconsistent statements in the file. The Appeal Division correctly noted that should this (or any other) of the Applicant's file information be incorrect (and if in fact there was only ever one firearm), the Applicant could request a correction: CCRA s 24(2).

[32] In any event, the PBC's decision must be read as a whole: *Irving Pulp & Paper*, *supra* at para 54. The key concern on judicial review is whether the decision maker truly engaged with the evidence and applied the appropriate legal tests. This does not require perfect treatment of all evidence. So long as the chain of reasoning of the decision maker can be understood, and it shows proper engagement with or consideration of the evidence, the decision will be reasonable: *Oladihinde*, *supra* at para 16.

[33] As detailed above, the alleged incident with the firearm was one of many factors the PBC considered before arriving at a final decision. The PBC references numerous sources, including the Applicant's release interview, victim impact statements, other police reports, a Statistical Information on Recidivism report, Correctional Plan updates, an Assessment for Decision (A4D) report, Dynamic/Static Factors assessments, and a psychological risk assessment. Of these, only the criminal profile report and the psychological evaluation reference the firearm incident. I note both do so in their summary of the Applicant's offences, but their conclusions do not appear to be influenced by or based on the incident. I am not convinced, therefore, that the firearm incident influenced the PBC's assessment of other more relevant, reliable and persuasive evidence: *DLE*, *supra* at para 40. Rather, after excluding the PBC's mention of the potentially inconsistent

or erroneous firearm allegation in the police report, there remains more than enough evidence in and of itself to justify the PBC's decision. In essence, the firearm incident is a peripheral issue and therefore not determinative on the decision as a whole. In other words, the PBC's decision remains justifiable, intelligible and transparent: *Dunsmuir, supra* at para 47.

C. *Did the Appeal Division err by concluding that the PBC's inconsistent oral and written statements about the timing of the Applicant's next review were not determinative and had no bearing on the detention analysis?*

(1) Applicant's Submissions

[34] In its oral decision, the PBC noted, "You are eligible for a review in a years' time". This was corrected in the PBC's written decision: "The Board would entertain a review of your detention order prior to the legislated two-year review if you are able to demonstrate a period of at least one year without any institutional incidents and a demonstration that you are utilizing the skills that you have learnt." The Applicant submits the PBC was unaware of changes in the law reducing the frequency of detention review hearings from one to two years when it rendered its oral decision, and this impacted its decision to support continued detention. Had the PBC been alive to the fact that the statutory release date was two years, the Applicant submits he may have been released, as the PBC's comments indicated he "must have had a close case."

(2) Respondent's Submissions

[35] The Respondent states there is no merit to the Applicant's assertion that he must have a "close case". During the oral hearing, the Respondent submitted this is a peripheral issue: the period of two years was referenced in the written decision. Moreover, at most the Applicant

could expect another hearing; the PBC's oral statements could not create a legitimate expectation that he would be released any sooner.

(3) Analysis

[36] I accept the Applicant's submissions have no merit. It is clear the PBC understood the law, namely that the Applicant was eligible for a review in two years' time. Its reference to review within a one year span appears to indicate the PBC's willingness to accelerate this timeline if the Applicant demonstrates significant improvements in his behaviour, which is also reproduced in the written decision:

> The Board does note that you have successfully completed programming and you have developed limited insight; however, your institutional behaviour has yet to reflect these gains for a sustained period of time. **The Board would entertain a review of your detention order prior to the legislated two-year review if you are able to demonstrate a period of at least one year without any institutional incidents and a demonstration that you are utilizing the skills that you have learnt**. You have succeeded in completing our Grade 12 education which demonstrates that you can put your mind to something if you choose to. You now have to demonstrate the same commitment and motivation in terms of not making bad decisions and actually thinking before acting for a substantive period in an effort to show that you have indeed matured. that age does make a difference, and that you are not going to return to a life of violent offending that causes serious harm to the victims.
>
> [Bold emphasis added.]

[37] While CCRA s 131(1.1) mandates a maximum amount of time within which reviews must occur, it does not limit the PBC's discretion to hear a review earlier if it feels doing so is appropriate. Therefore, this was an option available to the PBC:

131 (1.1) Despite subsection (1), if the order made under	131 (1.1) Malgré le paragraphe (1), lorsque l'ordonnance visée

subsection 130(3) relates to an offender who is serving a sentence imposed for an offence set out in Schedule I whose commission caused the death of or serious harm to another person, the Board shall review the order within two years after the date the order was made, and thereafter within two years after the date of each preceding review while the offender remains subject to the order.	au paragraphe 130(3) est prise à l'égard d'un délinquant qui purge une peine infligée pour une infraction mentionnée à l'annexe I ayant causé la mort ou un dommage grave à une autre personne, la Commission réexamine, dans les deux ans suivant la prise de l'ordonnance et tous les deux ans par la suite, le cas du délinquant à l'égard duquel l'ordonnance est toujours en vigueur.

[38] Finally, I agree the PBC's oral comment did not create a legitimate expectation that the Applicant would be released in one year.

VII. Conclusion

[39] This judicial review application is dismissed. Although the PBC referred to potentially inconsistent information, it predominantly relied on other reliable and persuasive facts in arriving at its conclusion and, therefore, its decision is justifiable as a whole on the record before it: *Irving Pulp & Paper, supra* at para 54. Perfection is not the standard: *Canada Post Corp v Public Service Alliance of Canada*, 2010 FCA 56 at para 163, upheld 2011 SCC 57; *NL Nurses*, *supra* at para 18. Both decisions met the necessary *Dunsmuir* standard of intelligibility, transparency and justification and, therefore, were reasonable.

JUDGMENT in T-2211-18

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed.

2. No costs are awarded.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2211-18
STYLE OF CAUSE:	ANDREW MCLENNAN v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	OCTOBER 1, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	FUHRER J.
DATED:	OCTOBER 7, 2019

APPEARANCES:

John Dillon	FOR THE APPLICANT
Carolyn Phan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John Dillon Barrister and Solicitor Kingston, Ontario	FOR THE APPLICANT
Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT