Federal Court  Cour fédérale

Date: 20200818

Docket: T-752-19

Citation: 2020 FC 829

Ottawa, Ontario, August 18, 2020

PRESENT: Madam Justice Walker

BETWEEN:

SERGE EWONDE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Serge Ewonde seeks judicial review of a decision of the Parole Board of Canada's Appeal Division (Appeal Division) dismissing his appeal of the decision of the Parole Board of Canada (Board) to deny his application for full parole pursuant to the *Corrections and Conditional Release Act*, SC 1992, c 20 (*CCRA*).

[2] The Board's decision (Board Decision) is dated November 21, 2018 and the Appeal Division's decision (Appeal Decision) is dated April 15, 2019. Generally, an application for

judicial review is limited to a single order in respect of which relief is sought (Rule 302 of the *Federal Courts Rules*, SOR/98-106). However, when the Appeal Division affirms a decision of the Board, the Court is ultimately required to ensure that the Board's decision is lawful (*Chartrand v Canada (Attorney General)*, 2018 FC 1183 at para 38 (*Chartrand*); *Cartier v Canada (Attorney General)*, 2002 FCA 384 at para 10). In the context of Mr. Ewonde's case and his procedural fairness arguments, this means I will consider primarily the process before the Board, specifically the disclosure of information to Mr. Ewonde prior to his parole hearing and the hearing itself.

[3] For the reasons that follow, the application for judicial review is dismissed. I find that Mr. Ewonde's parole hearing was fair. Neither the Board nor the Appeal Division, in discharging their respective roles, breached Mr. Ewonde's right to know the case he was required to meet or impeded his ability to make informed representations.

I. Background

[4] On April 14, 1994, Mr. Ewonde was sentenced to life in prison for the first-degree murders of his ex-spouse and her brother in May 1993. On June 19, 1996, Mr. Ewonde was sentenced to five years in prison, to be served concurrently with his life sentence, for the kidnapping and sexual assault with a weapon of his ex-spouse in February 1993.

[5] Mr. Ewonde is inadmissible to Canada pursuant to paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. A Deportation Order was issued in December 2002

for his removal from Canada to Cameroon. Mr. Ewonde's release plan is to live in Cameroon with family members.

[6] Mr. Ewonde is incarcerated at Bath Institution in Ontario. He became eligible for full parole on May 29, 2018.

II. Board Decision

[7] The Board denied Mr. Ewonde's request for full parole, concluding that he presents an undue risk to society if released and that his release will not contribute to the protection of society by facilitating his reintegration into society as a law-abiding citizen (section 102 of the *CCRA*).

[8] The Board reviewed Mr. Ewonde's kidnapping and sexual assault of his ex-wife in February 1993, followed by his arrest and release on bail, and his May 1993 murders of his ex-wife and her brother, followed by his attempt to flee to the United States. The Board observed that Mr. Ewonde repeatedly denied and minimized his offences and provided changing explanations for his behaviour. Most importantly, he failed to take full responsibility for killing his victims for 23 years. At his 2018 parole hearing, Mr. Ewonde continued his attempts to minimize his responsibility for the offences by blaming his actions on 'bad' people he had met while in remand.

[9] The Board found that Mr. Ewonde:

- Continues to lack real empathy for his victims and their families;

- Has an incarceration history that reflects behaviours that have been a concern to security during much of his long incarceration, including participation in institutional subculture activities such as brew, tobacco and drugs, and possession of a weapon in 2016. Mr. Ewonde has also behaved inappropriately with institutional staff, attempting to establish relationships with female staff and offering to pay staff members to do favours or to bring in contraband;

- Very recently lied about his relationship with a female offender on parole, which led to the suspension of his visiting privileges in September 2018 amidst evidence that the two had conspired to mislead prison authorities;

- Was not forthcoming and open at his hearing before the Board, displaying a tendency to deflect questions;

- Has been diagnosed in psychological risk assessments as having a narcissistic personality disorder and noted personality traits of psychopathy (Factor 1 – lack of remorse, grandiosity, lies and manipulation), although the Board noted a July 2017 assessment of Mr. Ewonde as being a low risk for sexual recidivism;

- Displays little insight and real introspection into his risk factors. In questioning by the Board designed to assess his internalization of the subject matter of a 2016 institutional program (moderate intensity program), Mr. Ewonde struggled to identify his risk factors despite his statement that the program provided him with the tools to be better and to understand what he did and why; and

- Would be unsupervised upon his return to Cameroon. The Correctional Service of Canada (CSC) has been unable to confirm his release plan with anyone in Cameroon.

[10] The Board considered Mr. Ewonde's successful completion of a number of institutional programs and acknowledged that he had made some gains with the help of the 2016 program. The Board also considered the CSC's recommendation that full parole be denied.

[11] In conclusion, the Board determined that the negative factors of: Mr. Ewonde's attempts at manipulation; lies and apparent lack of remorse; psychopathic traits; minimization of his offences; and institutional misconduct, outweighed the positive aspects of his carceral history and the CSC's assessment that he presents a low risk of recidivism.

III. Decision under Review

[12] The Appeal Division affirmed the Board's decision to deny Mr. Ewonde full parole. The appeal panel considered Mr. Ewonde's arguments contesting the procedural fairness of the Board's process and the reasonableness of the Board Decision. The Appeal Division did not assess Mr. Ewonde's arguments regarding the conduct of his Parole Officer in the management of his file and during his parole hearing, or his submission that there was erroneous information in his file. The Appeal Division stated that both matters were outside of its jurisdiction.

Procedural fairness issues

[13] Mr. Ewonde submitted that the CSC summaries or "gists" of information provided to him and to the Board with respect to his involvement in the institutional tobacco and drug trade were inadequate. The Appeal Division rejected this submission. The appeal panel referred to paragraph 141(4)(b) of the *CCRA* which permits information to be withheld from an offender if it could reasonably be expected to jeopardize the safety of any person, the security of the correctional institution, or the conduct of any lawful investigation. The Appeal Division found that the Assessments for Decision (A4D) dated September 4, 2018 and October 19, 2018, contained sufficient detail to permit Mr. Ewonde to answer the case against him. Further, the sufficiency of the gists was canvassed at the outset of the Board's hearing and Mr. Ewonde stated that he was ready to proceed. The Appeal Division concluded that the Board made no error in considering the information set forth in the A4D dated September 4, 2018 as the information was reliable and persuasive. I note that the two documents referred to by the Appeal

Division as A4Ds are Addenda to an original A4D dated March 14, 2018 but the name of the document is not material to the Division's substantive assessment.

[14] Mr. Ewonde submitted that the comments of his Parole Officer at the hearing contained new information that had not been provided to him. The Appeal Division stated that it had reviewed the audio recording of his hearing and that none of the information given by his Parole Officer at the end of the hearing was considered by the Board.

[15] The Appeal Division then found that the Board respected Mr. Ewonde's right to be heard. Board members interacted with Mr. Ewonde in a courteous and professional manner throughout the hearing and he was able to provide the representations he felt necessary. The appeal panel also found that it was reasonable for the Board to note that, from the beginning of the hearing, Mr. Ewonde demonstrated an inability to answer questions directly.

[16] Finally, the Appeal Division rejected Mr. Ewonde's submission that he should have been afforded the opportunity to cross-examine his Parole Officer. The appeal panel emphasized that the Board's proceedings are inquisitorial and not adversarial (*Mooring v Canada (National Parole Board)*, [1996] 1 SCR 75 (*Mooring*)). Also, the Federal Court of Appeal (FCA) in *MacInnis v Canada (Attorney General)*, [1997] 1 FC 115 (FCA) (*MacInnis*), stated that the introduction of cross-examination into Board proceedings would lead to an adversarial system which was not envisaged by the Supreme Court of Canada (SCC) in *Mooring*.

Reasonableness of the Board Decision

[17] The Appeal Division found that the Board concluded a fair risk assessment in accordance with the decision-making criteria set out in the *CCRA* and that the Board's conclusions were reasonable given the facts of Mr. Ewonde's case.

[18] The Appeal Division stated that the Board reviewed the positive and negative factors of Mr. Ewonde's case in a fair manner, namely that: Mr. Ewonde is serving a life (25) sentence for first-degree murder (x2) and, among other offences, sexual assault with a weapon, kidnapping, uttering threats, and possession of a weapon; his behaviour has been a concern to security during much of his incarceration; Mr. Ewonde has behaved inappropriately with staff; he has a narcissistic personality disorder with personality traits of psychopathy; and, clinicians have described him as articulate, self-centred and manipulative and have stated that the actuarial measures that rate him as low-moderate risk for both general and violent recidivism are lower than their clinical impressions.

[19] In terms of positive factors, the Appeal Division noted that the Board considered Mr. Ewonde's July 2017 assessment as a low risk for sexual recidivism; his successful completion of a number of institutional programs; and, the most recent program reports that noted he was a respectful and enthusiastic participant who took a leadership role within the group. The appeal panel acknowledged that the General Statistical Information on Recidivism risk assessment tool rated Mr. Ewonde as low risk for re-offending in the three years following release.

[20] Nevertheless, the Appeal Division found that it was reasonable for the Board to place significant weight on the aggravating factors in Mr. Ewonde's file and to weigh the fact that he is now in a medium security institution where he continues to have problems with authority figures. Mr. Ewonde failed to demonstrate long periods of stability that would show progress. The appeal panel found that the Board's conclusion that Mr. Ewonde presents an undue risk to society if released on full parole was reasonable.

[21] The Appeal Division concluded:

> It is important for you to note that the mandate of the Appeal Division is not to substitute its discretion for that of the Board members who assessed your risk of reoffending, and made a decision with respect to the manageability of your risk in the community, unless the decision is unreasonable and unfounded. In this regard, having reviewed all of the information available to the Board, in your file and at the hearing, the Appeal Division finds that the Board had sufficient relevant, reliable and persuasive information upon which to base its decision. The Board's decision is reasonable and consistent with the decision-making criteria set out in law and Board policy.

IV. Issue and Standard of Review

[22] The determinative issue in this application is whether Mr. Ewonde was denied procedural fairness in the process leading to the Appeal Decision. Mr. Ewonde argues that his rights to know the case against him and to answer it by making informed representations to the Board were not respected. He challenges the content of the information disclosed to him and asserts a right to cross-examine his Parole Officer at the Board hearing.

[23] The parties submit and I agree that Mr. Ewonde's allegations of procedural unfairness are subject to review for correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian*

Pacific Railway Company v Canada (Attorney General), 2018 FCA 69 at paras 34-56 (*Canadian Pacific*)). The Supreme Court of Canada's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 (*Vavilov*), does not change this conclusion (*Vavilov* at paras 16, 23; for pre-*Vavilov* jurisprudence, see *Miller v Canada (Attorney General)*, 2010 FC 317 at para 39). The review of a decision maker's procedure for correctness is a legal question for the Court to answer and requires me to ask whether the process in question was "fair having regard to all of the circumstances", including the factors set out by the SCC in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 22-27 (*Canadian Pacific* at paras 46, 54). In other words, the content of the duty of fairness in an administrative process is context-specific (*Vavilov* at para 77). The more serious the consequences of a decision are to the affected individual, the more stringent the procedural protections that are mandated.

[24] The Board and Appeal Decisions result in Mr. Ewonde's continued incarceration until he is next eligible to apply for parole in 2023. The process followed in arriving at those decisions necessarily attracts a high degree of procedural fairness. I have assessed whether the process followed by the Board and reviewed by the Appeal Division was just and fair "with a sharp focus on the nature of the substantive rights involved and the consequences for" Mr. Ewonde (*Canadian Pacific* at para 54).

[25] Mr. Ewonde does not challenge the merits of the Board and Appeal Decisions except to argue that they must lack justification if they are based on inadequate information and uninformed submissions from the applicant. I agree. Mr. Ewonde's argument highlights the fundamental importance of procedural fairness in an administrative process. If the decision

maker does not have before it an adequate record and the individual affected by the process is impeded from understanding and responding to the case against them, the decision maker proceeds on an uninformed basis. A decision made on that basis cannot be justified. If access to relevant and probative documents and information was unduly restricted to either or both the affected party and/or the decision maker, the decision under review will not be upheld regardless of its reasoning and outcome.

V. Analysis

Mr. Ewonde's submissions

[26] Mr. Ewonde makes two related submissions in support of his allegation of breach of procedural fairness. He first argues that he was not provided with adequate information to permit him to rebut the negative assessments of his institutional behaviour contained in the record, namely the A4D dated March 14, 2018 and a number of Addenda to the A4D. Mr. Ewonde states that the full contents of four reports, including two Security Intelligence Reports (SIRs), were withheld pursuant to subsections 27(3) and 141(4) of the *CCRA*. The four reports relate to his involvement in the institutional drug subculture and the CSC provided only a gist of the information in those reports (October 18, 2018 Addendum). In addition, Mr. Ewonde submits that videotape surveillance of his alleged misconduct (trafficking and threats towards other inmates) and the contents of the allegations against him by other inmates should have been disclosed.

[27] Second, Mr. Ewonde submits that the gaps in the CSC information provided to him and to the Board were not addressed during the Board process. He argues that he should have been

given the right to cross-examine his Parole Officer during the hearing to ensure that accurate information regarding his institutional behaviour be placed on the record.

[28] Mr. Ewonde acknowledges the FCA decision in *MacInnis* and the general prohibition on an offender's ability to cross-examine during a Board hearing but argues that an exception should be made in his case. He states that he is not seeking to unduly complicate the hearing process and is not insisting on a formal cross-examination. Mr. Ewonde wants merely to address the accuracy of the conclusions set forth in the A4D and Addenda by questioning his Parole Officer's assertions and memories. In the event it is not appropriate for Mr. Ewonde to question his Parole Officer, he submits that the Board in its inquisitorial role should have done so.

Overview

[29] The parameters for conditional release are contained in sections 100, 100.1 and 101 of the *CCRA*. Section 100.1 situates the protection of society as the paramount consideration for the Board in the determination of all cases and section 101 sets out the guiding principles for the Board in considering a request for conditional release. The starting point for the Board is described in subsection 101(a):

Principles guiding parole boards	**Principes**
101 The principles that guide the Board and the provincial parole boards in achieving the purpose of conditional release are as follows:	101 La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes suivants :
(a) parole boards take into consideration all relevant available information,	a) elles doivent tenir compte de toute l'information pertinente

including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process and information obtained from victims, offenders and other components of the criminal justice system, including assessments provided by correctional authorities;	dont elles disposent, notamment les motifs et les recommandations du juge qui a infligé la peine, la nature et la gravité de l'infraction, le degré de responsabilité du délinquant, les renseignements obtenus au cours du procès ou de la détermination de la peine et ceux qui ont été obtenus des victimes, des délinquants ou d'autres éléments du système de justice pénale, y compris les évaluations fournies par les autorités correctionnelles;

[30] The criteria for the granting of parole can be summarized as (section 102 of the *CCRA*):

(a) the offender will not present an undue risk to society by reoffending prior to the expiry of their sentence; and

(b) the offender's release will contribute to the protection of society by facilitating their reintegration as a law-abiding citizen.

[31] Paragraph 107(1)(a) reserves to the Board exclusive jurisdiction and absolute discretion to grant parole to an offender.

[32] In order for the Board to be able to consider all relevant information in its determination of a case, the CSC must first provide the information to the Board. In turn, subsection 141(1) of the *CCRA* requires the Board to provide to the offender all or a summary of the information it will consider in reviewing their case. The information must be furnished to the offender at least 15 days prior to the date set for the review of the case. The Board's obligation to disclose information is subject to the exceptions set forth in subsection 141(4):

141 (4) Where the Board has reasonable grounds to believe (a) that any information should not be disclosed on the grounds of public interest, or (b) that its disclosure would jeopardize (i) the safety of any person, (ii) the security of a correctional institution, or (iii) the conduct of any lawful investigation, the Board may withhold from the offender as much information as is strictly necessary in order to protect the interest identified in paragraph (a) or (b).	141 (4) La Commission peut, dans la mesure jugée strictement nécessaire toutefois, refuser la communication de renseignements au délinquant si elle a des motifs raisonnables de croire que cette communication irait à l'encontre de l'intérêt public, mettrait en danger la sécurité d'une personne ou du pénitencier ou compromettrait la tenue d'une enquête licite.

[33] The purpose of disclosure is to allow the offender to know the case they must meet and to have the opportunity to respond (*Mymryk v Canada (Attorney General)*, 2010 FC 632 at paras 16, 31 (*Mymryk*); *Demaria v Canada (Attorney General)*, 2017 FC 45 at paras 41-42). In *Mymryk* (at para 17), the Court stated that "[f]undamental justice requires the Board to provide the offender with details of the relevant information upon which it will base its decision". An offender must receive sufficient information, in sufficient detail, to allow them to answer the case against them and to make informed representations in support of their position.

The provision of information to Mr. Ewonde

[34] Mr. Ewonde relies on the SCC's decision in *Mooring* to emphasize that the Board must ensure that the information upon which it acts is reliable and persuasive, and that it is fair to consider a particular piece of information (*Mooring* at paras 35-37). Mr. Ewonde submits that the Board must also ensure that it acts on a complete set of facts.

[35] I find that the Board had sufficient information to discharge its duty to act fairly in considering Mr. Ewonde's request for full parole. I also find that Mr. Ewonde was able to fully participate in the hearing and to address any and all alleged gaps and errors in the information provided to him. Both the Board and Mr. Ewonde received comprehensive and accurate information and documents regarding Mr. Ewonde's offences, institutional history, psychological assessments, offender release plans and CSC recommendations. The recording of the Board hearing supports this conclusion as it demonstrates the Board's full understanding of Mr. Ewonde's case and status.

[36] The record contains a Primary Information Sharing Checklist that sets out, by document title, date of document and date of disclosure, two pages of documents given to Mr. Ewonde, including the A4D dated March 14, 2018. The Primary Information Sharing List was signed by Mr. Ewonde on May 7, 2018. The record also contains a number of Information Sharing Checklist Updates and Procedural Safeguard Declarations, each signed by Mr. Ewonde.

[37] At the outset of the hearing, the Board's hearing officer listed in some detail the information that had been provided to Mr. Ewonde 15 days before the hearing or, in certain cases, within a shorter period with Mr. Ewonde's consent, in compliance with subsection 141(1) of the *CCRA*. The hearing officer referred to the Procedural Safeguard Declarations on file and confirmed that certain information Mr. Ewonde had provided had been received by the Board. The hearing officer also confirmed with Mr. Ewonde that he was prepared to proceed and he raised no issues regarding the information disclosed to him.

[38] Among other assessments and reports in the record, I have reviewed the A4D dated March 14, 2018 and the Addenda (or gists) dated September 5, 2018 and October 9, 17, 18, and 19, 2018. The A4D explains the CSC's negative recommendation for Mr. Ewonde's parole review. It is a comprehensive statement of Mr. Ewonde's criminal and institutional history and his participation through the years in a number of psychological risk assessments. The A4D details Mr. Ewonde's institutional behaviour, revealing that he had amassed over 100 charges resulting in 48 findings of guilt and repeated segregation placements. The A4D speaks to the nature of the institutional charges against Mr. Ewonde, whether serious or minor, his involvement in inmate assaults as aggressor and victim, and his inappropriate behaviour with female staff. The A4D also recounts Mr. Ewonde's recent incidents which include his allegations of sexual harassment at the hands of a female correctional officer, his possession of a weapon, and threats against other inmates.

[39] The September 5, 2018 Addendum provides a lengthy update for the Board following Mr. Ewonde's transfer to Bath Institution and discusses the CSC's ongoing concerns regarding

his credibility. It sets out a number of incident reports and discusses the reasons for the CSC's recommendation to Mr. Ewonde that he not request full parole but work on demonstrating further institutional stability. The Addendum details: an updated Correctional Plan Progress Report; an August 2018 interview with Mr. Ewonde in the presence of a security intelligence officer regarding concerns Mr. Ewonde had with the updated Correctional Plan Progress Report; his unconfirmed release plan to reside in Cameroon with family members; his prohibited relationship with a Federal parolee; and, the duo's attempts to have her visit him at the institution by providing false information in her visitor's applications. The Addendum also describes his recent charge for possession of brew that resulted in a conviction on May 22, 2018.

[40] The October 5, 2018 Addendum reviews the CSC's concerns regarding the authenticity of Mr. Ewonde's letters of support and arrangements for his return to Cameroon. The October 17, 18, and 19, 2018 Addenda are gists of information and reference, among other things, the May 22, 2018 institutional charge against Mr. Ewonde for possession of contraband (a brew-like substance) and his fractious relationships and incidents with other inmates. The October 18, 2018 Addendum is brief but provides an indication of the security intelligence information implicating Mr. Ewonde in the institutional drug and tobacco subculture at Warkworth Institution (see also October 17, 2018 Addendum that is a gist of numerous other Protected B and SIRs). I note that the information in the October 18, 2018 Addendum is described in more detail in the September 5, 2018 Addendum.

[41] Mr. Ewonde relies on Annex C to *Commissioner's Directive 701* to emphasize that a gist is to be used only in exceptional circumstances as normally all information must be shared with

the offender. He refers to recent videotapes of his alleged misconduct regarding substance trafficking and threats towards other inmates; written CSC reports with respect to these allegations; analyses of information and reasons for the CSC's conclusions and recommendations; and, the content of the alleged allegations against him by other inmates. Mr. Ewonde argues that these materials should have been given to him.

[42] The Respondent submits that Mr. Ewonde has provided no detail as to what gaps in the information provided to him the additional information would remedy. Rather, he takes issue generically with the fact that he was furnished only with a number of gists and not the original information. In any event, the 2018 charge which is at the centre of Mr. Ewonde's concerns is described in the September 5, 2018 Addendum. Mr. Ewonde spoke about the incident during his hearing and had every opportunity to provide his version of this and other events.

[43] I agree with the Respondent. Mr. Ewonde has identified no material gaps or errors in the voluminous information provided to him and to the Board prior to his hearing. Mr. Ewonde's receipt of that information was confirmed at the Board hearing. I find that the information before the Board established a comprehensive narrative beginning with Mr. Ewonde's criminal conduct in 1993, through his long incarceration and institutional misconduct, to the CSC's continued security and conduct concerns. Mr. Ewonde had the opportunity to submit written submissions contesting the scope and content of the information received and to make oral submissions before the Board. The Board questioned Mr. Ewonde at length regarding his carceral history. His Assistant presented Mr. Ewonde's account of his recent behaviour and prospects for release, and Mr. Ewonde was given a final opportunity to state his case, all after the Parole Officer's final

comments. I am satisfied that there has been no breach of Mr. Ewonde's right to receive sufficient information to enable him to know the case against him and to make fully informed representations to the Board (*Canadian Pacific* at para 56).

[44] I note that there was some confusion as to whether the 2018 brew charge remains on Mr. Ewonde's record. Mr. Ewonde argues that the Board was misled regarding the status of his conviction. Respondent's counsel clarified at the hearing before me that the conviction has been removed from Mr. Ewonde's record because the testing results were not shared with him. However, this information was not known by the Parole Officer at the date of the Board hearing. While it would have been preferable to have the information available to the Board for its deliberations, I am satisfied that the one conviction was not a determinative factor in either the Board or Appeal Decision.

Request to Cross-examine the Parole Officer

[45] The starting point for considering an offender's request to cross-examine during a Board hearing is the FCA's decision in *MacInnis*. There, an offender serving an indeterminate prison sentence argued that the National Parole Board's refusal to allow him to cross-examine the authors of clinical reports during a biennial review of his indeterminate sentence violated section 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. The FCA rejected the argument. The Court stated that, while the *CCRA* does not specifically preclude cross-examination, it is a matter for the discretion of the Board. The FCA also stated that one can assume from the relevant provisions and terminology of the *CCRA* that Parliament did not intend for the Assistant role

before the Board to be the equivalent of counsel's role before a judge or jury (*MacInnis* at para 13). The Court considered the content of the principles of fundamental justice in the administrative context and concluded that, while an increased role for counsel and a right to cross-examine may be critical to ensuring fairness in a criminal trial, they are not always required before administrative tribunals.

[46] Citing the SCC decision in *Mooring*, the FCA found that Board hearings are different from judicial proceedings as the Board does not act in either a judicial or quasi-judicial capacity. It is an inquisitorial, not an adversarial, process where the traditional rules of evidence do not apply (*MacInnis* at para 22):

> **22** … The introduction of the adversarial elements the respondent desires do not fit into this model. If the prisoner has the right to cross-examine, the next logical step would be to give the state the right to counsel and to cross-examine witnesses also. The use of cross-examination techniques and enhanced roles for counsel would inevitably lead to an increasingly formal process, one which a "lay bench" would have difficulty presiding over. The Board would have to be given the power to subpoena. On a practical point, the increased cost of requiring the authors of clinical reports to be available for cross- examination would be an enormous strain to introduce on an already cash strapped system. The respondent argues that such requirements would only be granted to offenders serving indeterminate sentences. I have difficulty imagining how such a distinction could be maintained. If the right to cross-examine and the power of subpoena is made available to one category of offender, it would inevitably have to be granted to all.

(See also *Boeyen v Canada (Attorney General)*, 2013 FC 1175 at paras 152-153)

[47] Mr. Ewonde emphasizes that the FCA did not preclude a right of cross-examination in *MacInnis* and submits that an exception should be made in his case. He argues that a cross-

examination of his Parole Officer is the only way he could contest the accuracy and completeness of the information provided by the CSC.

[48] Mr. Ewonde's argument that his is an exceptional case is not persuasive. The FCA addressed similar arguments in *MacInnis*, stating (at para 26):

> **26** The procedures advocated by the Board allow the respondent to make his argument for parole fully and are in keeping with the rules of fairness. Indeed the procedures requested by the respondent would do little in my opinion to enhance the procedural fairness of his parole hearing. He is entitled to the help of an assistant during the review process. The reports concerning the respondent were provided ahead of time and he was given ample opportunity to submit a written response. Given that the respondent had an ample opportunity to challenge these reports, cross-examination of the authors was not necessary to ensure fairness.

[49] Mr. Ewonde received the A4D and Addenda which are at the centre of his arguments before the Board hearing. He chose not to provide written submissions to the Board. At the hearing, he confirmed receipt of the documentation and indicated that he was prepared to proceed. Mr. Ewonde's Assistant participated in the hearing and made submissions on his behalf.

[50] I have listened to the full recording of the Board hearing. The Board engaged with Mr. Ewonde and his submissions regarding the information in the A4D and Addenda. He had ample opportunity to raise any concerns regarding the information and, in fact, addressed some of the concerns he now raises before me, including his disputed charge for possession of contraband brew. In his closing submissions, Mr. Ewonde challenged his Parole Officer and her involvement in the preparation of his new correctional plan soon after his arrival at Bath Institution. At no point was he precluded by the Board from raising issues regarding the CSC

information. He had the final word as, following the Parole Officer's final statement, both Mr. Ewonde and his Assistant made closing submissions to the Board.

[51] Mr. Ewonde states that his request to question his Parole Officer need not involve a formal cross-examination. He should simply be permitted to test the assertions made regarding his institutional record. However, Mr. Ewonde has provided no explanation as to how a right to test the Parole Officer's evidence would differ from a cross-examination. His reference to a "robust exchange" to establish credibility is, in my view, another description of a cross-examination.

[52] Mr. Ewonde submits that, if he was properly precluded from questioning his Parole Officer, the Board itself could and should have done so. I agree that the Board could have questioned the Parole Officer. Its choice not to do so was well within its discretion in the conduct of the hearing and warrants no interference by this Court.

[53] I find that the Appeal Division made no error in stating that Mr. Ewonde's request to cross-examine his Parole Officer was not within the Board's discretion in light of the FCA's comprehensive treatment of the issue in *MacInnis* and the facts of this case. As a result, I conclude that Mr. Ewonde's right to procedural fairness in the consideration of his parole request was respected throughout the Board and Appeal Division processes.

VI. Conclusion

[54] The application for judicial review is dismissed.

[55] The Respondent does not seek costs in this application and no costs are awarded.

JUDGMENT IN T-752-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No costs are awarded.

"Elizabeth Walker"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-752-19
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