F ederal Court		Cour fédérale

Date: 20100601

Docket: T-929-09

Citation: 2010 FC 496

Toronto, Ontario, June 1, 2010

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

CECIL SCOTT

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

AMENDED REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the National Parole Board Appeal Division, which upheld a decision of the National Parole Board (the "Board") denying the Applicant, Mr. Cecil Scott, full parole for deportation.

[2] Mr. Scott alleges that the Board committed several reviewable errors in the course of reaching its decision and that, by affirming the Board's decision, the Appeal Division's decision is unreasonable.

[3] Specifically, Mr. Scott alleges that the Board:

i. erred in law in taking into consideration the fact that, as a citizen of the U.K. who would be deported immediately and deemed to have completed his sentence upon being released on full parole, he would not be subject to any ongoing supervision of his medication regime;

ii. erred in law by stating, at the end of its hearing, that he should "investigate the possibility of an international transfer of parole prior to any future hearing";

iii. reached an unreasonable decision by ignoring the many positive factors in his case, engaging in erroneous speculation and describing his risk to re-offend violently as "significant"; and

iv. breached section 7 of the *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

[4] Mr. Scott further alleges that, by affirming the Board's decision, the Appeal Division's decision was unreasonable.

[5] For the reasons that follow, I have concluded that the decisions of both the Appeal Division and the Board were reasonable and that neither the Appeal Division nor the Board erred in law in the course of reaching their respective decisions.

I. Background

[6] Mr. Scott is serving a life sentence for attacking and stabbing to death a seventeen year old victim in an elevator in 1996. He has a long history of treatment for psychiatric conditions and has frequently failed to follow his medication regime, although it appears that he may have only had one such failure since 2002.

[7] On February 24, 1998, he was convicted on a charge of second degree murder and sentenced to life imprisonment, with eligibility for parole after serving 15 years of his sentence. On March 6, 2002, his sentence was varied to allow for eligibility for parole after serving 10 years of his sentence.

[8] As a citizen of the U.K., Mr. Scott will be deported to the U.K. immediately upon his release, either upon completion of his sentence or upon being granted full parole. In 2008, he applied for full parole with deportation to the U.K.

[9] Mr. Scott's case management team at Correctional Service of Canada (CSC) supported his application for parole. In addition, his most recent psychiatric and psychological assessments, undertaken in 2007 and 2008, respectively, were favourable. However, those assessments were premised on continued medical supervision and adherence to his medication regime. Indeed, the

psychological assessment stressed that continued psychiatric monitoring of Mr. Scott is essential because if his mental status deteriorates it is likely that his risk of violent recidivism will increase. This emphasis on continued monitoring and adherence to his medication regime was consistent with prior assessments dating back to 1998.

[10] An official with Interpol in London confirmed in writing that authorities in the U.K. "will not recognize any foreign parole or licence conditions, so any release and return [of Mr. Scott] to the UK will be unconditional."

[11] Mr. Scott's release plan focused on him living with his parents (who are in their 80s), getting a job in a field in which he has experience, remaining on his prescribed medication, obtaining support from Prisoners Abroad (which confirmed that it is willing to assist him in reintegrating into British society), and obtaining medical support from his sister, who was formerly a nurse and worked at a hospital with mental health patients. Mr. Scott's father attested that should Mr. Scott be released on parole, he would reside with his parents and that his parents would ensure that upon his arrival in the U.K. he would be registered with a licensed psychiatrist.

II. Relevant Legislation

[12] Pursuant to paragraph 50(b) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), a removal order made in respect of a foreign national who has been sentenced to a term of imprisonment in Canada is stayed until the person's sentence has been completed.

[13] Subsection 128(3) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (CCRA) states:

(3) Despite subsection (1), for the purposes of paragraph 50(*b*) of the *Immigration and Refugee Protection Act* and section 40 of the *Extradition Act*, the sentence of an offender who has been released on parole, statutory release or an unescorted temporary absence is deemed to be completed unless the parole or statutory release has been suspended, terminated or revoked or the unescorted temporary absence is suspended or cancelled or the offender has returned to Canada before the expiration of the sentence according to law.	(3) Pour l'application de l'alinéa 50*b*) de la *Loi sur l'immigration et la protection des réfugiés* et de l'article 40 de la *Loi sur l'extradition*, la peine d'emprisonnement du délinquant qui bénéficie d'une libération conditionnelle d'office ou d'une permission de sortir sans escorte est, par dérogation au paragraphe (1), réputée être purgée sauf s'il y a eu révocation, suspension ou cessation de la libération ou de la permission de sortir sans escorte ou si le délinquant est revenu au Canada avant son expiration légale.

[14] Pursuant to subsection 128(4) of the CCRA, "an offender against whom a removal order has been made under the [IRPA] is ineligible for day parole or an unescorted temporary absence until the offender is eligible for full parole."

[15] The practical effect of the foregoing provisions and the aforementioned confirmation from Interpol London is that Mr. Scott (i) will be deported to the U.K. as soon as he is eligible for full parole, (ii) will not be subject to any state supervision or monitoring, including of his medical treatment, in the U.K.; and (iii) will not be released on day parole or unescorted temporary absence within Canada.

[16] Section 3 of the CCRA states:

3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by (*a*) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and (*b*) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.	**3.** Le système correctionnel vise à contribuer au maintien d'une société juste, vivant en paix et en sécurité, d'une part, en assurant l'exécution des peines par des mesures de garde et de surveillance sécuritaires et humaines, et d'autre part, en aidant au moyen de programmes appropriés dans les pénitenciers ou dans la collectivité, à la réadaptation des délinquants et à leur réinsertion sociale à titre de citoyens respectueux des lois.

[17] The full text of section 128 of the CCRA as well as certain other legislation discussed in this decision is set forth in Annex A to this decision.

III. Decisions Under Review

[18] Mr. Scott seeks judicial review of the Appeal Division's decision dated May 4, 2009. However, the issues raised in Mr. Scott's submissions pertain to the Board's decision dated November 21, 2008. The Attorney General's submissions in response focused on the Appeal Division's decision.

[19] In *Cartier v. Canada (Attorney General)*, 2002 FCA 384, [2002] F.C.J. No. 1386, at paras. 8 and 9, it was noted that the Appeal Division's jurisdiction is significantly limited by the express terms of s. 147 of the CCRA. In short, the Appeal Division can intervene only if the Board committed an error described in paragraphs 147(1)(a) – (e), and only if that error was unreasonable.

[20] In these circumstances, on a further application to this Court, "[t]he 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." (*Cartier*, above, at paragraph 10. See also *Aney v. Canada (Attorney General)*, 2005 FC 182, [2005] F.C.J. No. 228, at paragraph 29; and *Ngo v. Canada (Attorney General)*, 2005 FC 49, [2005] F.C.J. No. 71, at paragraph 8.)

A. *The Board's Decision*

[21] After reviewing the circumstances surrounding Mr. Scott's offence and his prior mental history, the Board briefly discussed the victim impact statement on file and Mr. Scott's lack of contact with the criminal justice system prior to his index offence.

[22] The Board then noted various things that may have given it some concern. These included the fact that Mr. Scott seemed to have forgotten many of the events leading up to his offence, the fact that he acknowledged not having read his file in preparation for his hearing, his denial of having heard voices since the age of eleven, and the fact that he seemed visibly confused regarding his actions during the days leading up to his offence.

[23] In addition, the Board noted that Mr. Scott's flight from the murder scene was inconsistent with his claim that he committed the murder in an attempt to obtain psychiatric treatment and protection from himself. The Board further observed that his numerous hospital admissions

provided evidence that he was offered help when it was needed, and that he admitted not following the advice of his physician regarding his prescribed medication.

[24] The Board then reviewed Mr. Scott's positive recidivism score, certain personal and social difficulties he continues to face, his generally satisfactory institutional conduct, his release plan and the highlights of the psychological and psychiatric assessments that were conducted on him in 2007, 2008 and 1998. In the course of discussing those assessments, the Board noted that the 2007 and 2008 assessments may not have taken into account the fact that he would not be supervised or subject to conditions upon his deportation to the U.K. and may not have been prepared with the benefit of access to the 1998 assessment. The Board also discussed Mr. Scott's history of departing from his medication regime.

[25] Ultimately, the Board declined to grant Mr. Scott parole on the basis that he still presents a significant level of risk for re-offending in a violent manner. This conclusion was based on the Board's view that his release plan was insufficient to manage his risk, particularly given that (i) he would not be subject to any release conditions or supervision by authorities in the U.K.; (ii) his psychiatric and psychological assessments had underscored the importance of supervision and continued adherence to his prescribed medical regime; and (iii) his history "is replete with examples" of his failure to follow that regime.

B. *The Appeal Division's Decision*

[26] Mr. Scott appealed the Board's decision to the Appeal Division on the basis that the Board's decision was unreasonable, was based on erroneous information and failed to take into account

relevant and reliable information. Mr. Scott also alleged that the Board erred in law when it suggested at the very end of its decision that he should investigate the possibility of an international transfer of parole prior to any future hearing.

[27] After carefully reviewing the file, listening to the recording of the Board's hearing, summarizing Mr. Scott's grounds for appeal and discussing the Board's decision in detail, the Appeal Division denied Mr. Scott's appeal.

[28] With respect to the claim that the Board's decision was unreasonable, the Appeal Division noted that the Board's risk assessment was fair and in accordance with the pre-release decision-making criteria set out in law and in the Board's policy. The Appeal Division found that the Board took account of the various positive factors that supported his parole application and reasonably concluded that they were outweighed by a number of other factors, namely, those mentioned in Part III. A. above. The Appeal Division rejected the suggestion that the Board asked unfair questions regarding Mr. Scott's mental health and concluded that, on the contrary, those questions were relevant based on the available file information.

[29] The Appeal Division also concluded that it was not unreasonable or erroneous for the Board to have expressed some concern about whether the authors of the 2008 and 2007 psychiatric and psychological assessments were aware of the fact that Mr. Scott would not be subject to conditions or the supervision by authorities in the U.K. if deported to that jurisdiction. In addition, the Appeal Division found that it was not unfair or unreasonable for the Board to be concerned about Mr. Scott's continued compliance with his medication regime once released into the community in the

U.K., particularly given that he had not satisfied the Board that he would be subject to appropriate psychiatric supervision and monitoring.

[30] Finally, the Appeal Division rejected the claim that the Board erred in law when it suggested, at the very end of its hearing, that Mr. Scott should investigate the possibility of an international transfer of parole prior to any future hearing. The Appeal Division observed that this comment was made after the Board had rendered its decision, and that the Board was simply attempting to make him aware that there are other ways for an offender to effect a removal to another country.

[31] Based on the foregoing, the Appeal Division concluded that the Board's decision was (i) reasonable and based on sufficient relevant, reliable and persuasive information; and (ii) the least restrictive determination consistent with the protection of society.

IV. Standard of Review

[32] The questions of fact, mixed fact and law, and statutory interpretation that Mr. Scott has raised before this Court are reviewable on a standard of reasonableness. (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at paras. 53-54; and *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at paras. 44-46. See also *Sychuk v. Canada (Attorney General)*, 2009 FC 105, at para. 45; *Bouchard v. Canada (National Parole Board)*, 2008 FC 248, at para. 37; *Tozzi c. Canada (Procureur general)*, 2007 CF 825, at para. 32; and *Strachan v. Canada (Attorney General)*, 2006 FC 155, at para. 15.)

[33] However, the alleged violation of s. 7 of the *Charter* is reviewable on a standard of correctness. (*Dunsmuir*, above, at para. 55; and *Khosa*, above, at para. 44.)

[34] The various specific issues that have been raised by Mr. Scott all relate to the Board's decision. The only separate issue that he has raised with respect to the Appeal Division's decision is that it was not reasonable for the Appeal Division to have confirmed the Board's decision, given the errors alleged to have been made by the Board.

[35] It follows that if this Court is satisfied that the Board's decision did not contravene s. 7 of the *Charter* and can otherwise reasonably be supported in fact and in law, the Appeal Division's affirmation of the Board's decision also should be found to be reasonable, unless the Appeal Division committed a separate error which rendered its decision unreasonable, such as failing to provide adequate reasons for its decision.

[36] In *Khosa*, above, at para. 59, reasonableness was articulated by Justice Ian Binnie as follows:

> Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

V. Analysis

A. Did the Board err in law by considering the fact that Mr. Scott would not be subject to any ongoing supervision of his medication regime in the U.K.?

[37] Mr. Scott claims that the Board's conclusion that his "release plan to Great Britain is … insufficient to manage [his] risk" depends on an erroneous assumption that the Board has a duty or the jurisdiction to protect British society. He alleges that this incorrect assumption arises from the Board's interpretation of the term "society" in s. 3 of the CCRA, above.

[38] Mr. Scott notes that this assumption is also reflected in the *National Parole Board Policy Manual*, which states, at s. 4.4:

> When reviewing cases for deportation, extradition and voluntary departure Board members must take into consideration the criteria of undue risk to society (not only Canadian society) and the facilitating of the offender's reintegration into the community.

[39] It is also relevant to note that, pursuant to paragraph 101(a) of the CCRA, the "protection of society" is stated to be the paramount consideration in guiding the Board's determination of any case. In addition, pursuant to paragraph 102(a), the criteria for granting parole include the Board's opinion as to whether "the offender will not, by reoffending, present an undue risk to society" before the expiration of his or her sentence.

[40] Mr. Scott claims that the Board's interpretation of s. 3 of the CCRA is incorrect, because the term "society" is defined and qualified in terms of "carrying out sentences" and "providing programs," both of which can only be done in Canada. He submits that the Board has no jurisdiction to protect foreign nations and that this conclusion is reinforced by the fact that his sentence will be

deemed to have been completed as soon as he is granted full parole. He further asserts that it is not possible to interpret s. 3 and ss. 128(3) in a way that permits the word “society” to be given a meaning that extends beyond Canada’s borders. As a result, he maintains that the Board is obliged to ignore the risk that an offender may pose to a foreign society upon his removal from Canada.

[41] Mr. Scott further submits that the Board must assess the risk that the offender poses to Canadian society notwithstanding that he will be removed from Canada immediately, if and when he is granted parole. To do this, he states that the Board must adopt the legal fiction that the Applicant’s risk would be manageable in Canada, if he were released on full parole with conditions.

[42] I do not find these arguments to be persuasive.

[43] The fact that Parliament chose to insert the word “society” in various sections of the CCRA, including in the articulation of its purposes in s. 3, whereas it chose the words “Canadian society” in articulating the objectives of the IRPA, as set forth in s. 3 of that legislation, suggests that it did not intend to limit the word “society” as it is used in the CCRA to “Canadian society.”

[44] To ignore the interests of a foreign society in determining when to deport an offender believed to pose a significant risk to reoffend for murder or any other serious crime, and under what circumstances, would result in an extreme form of international beggar-thy-neighbour policy. Such a policy would be incompatible with nations’ interest in promoting harmonious relations with each other, if not their moral obligations towards each other.

[45] With respect to the determination of *when* to deport, I agree with my colleague Justice Russell that a consideration of Canada's international interests likely influenced Parliament to establish eligibility for full parole as the earliest point in time at which an offender can be removed from Canada, particularly given the fact that such an offender "is not subject to supervision by any Canadian authority" (*Capra v. Canada (Attorney General)*, 2008 FC 1212 at para 34). As Justice Russell noted (at para. 36), prior to the enactment of the CCRA, "[t]here was considerable criticism that some foreign offenders were receiving lengthy sentences for serious crimes, only to return to their home country after a matter of months, under no correctional restrictions."

[46] With respect to *the circumstances* under which an offender is removed from Canada, those same international interests, considered together with the fact that Parliament refrained from qualifying the word "society" in the CCRA (as it did in s. 3 of the IRPA), provide the jurisdiction for the Board to consider whether a foreign offender's release plan sufficiently mitigates the risk to the foreign society to warrant removing the offender to that society. As my colleague Justice Phelan observed in *Pashkurlatov v. Canada (Attorney General)*, 2008 FC 153, at para. 10, "[i]t would seem incongruous that a foreign prisoner could obtain parole without any regard for later supervision upon deportation while a Canadian prisoner would have to be subject to supervision.

[47] I note that in *Ng v. Canada*, 2003 FCT 781, [2003] F.C.J. No. 1018, at paras. 21-26, my colleague Justice Gibson also was inclined to interpret the term "society" as it appears in the CCRA to include "society at large", rather than "Canadian society" or some other narrower concept of "society." However, on the facts of that case, he did not find it necessary to reach a decision on this specific issue.

[48] Mr. Scott submits that his position is supported that Justice Russell's use of the term "Canadian society" in *Capra*, above. However, that case concerned an offender who had been granted refugee status and who, therefore, was not subject to being removed from Canada unless the Minister of Citizenship and Immigration issued an opinion that he constituted a danger to the public in Canada. The focus of that case was upon whether subsection 128(4) of the CCRA violated the *Charter* by discriminating against the offender on basis of his citizenship. Accordingly, the issue of whether the term "society" as it appears in the CCRA contemplates "Canadian society" or "society at large" was not directly addressed. In this context, Justice Russell's references to the protection of Canadian society were entirely appropriate and do not appear to have been intended to support in any way the position advanced by Mr. Scott. Indeed, Justice Russell's conclusion that "[t]he fundamental purpose of the scheme created by CCRA s. 128(3) – (7) is to ensure the circumstances of impending removal are factored into how an offender's sentence is served" is entirely consistent with my view that Parliament intended to give the Board jurisdiction to consider the elements of an offender's release plan abroad in determining whether to grant full parole to the offender (*Capra*, above, at paragraphs 42 and 72).

[49] In summary, I agree with the Respondent's position that word "society" in the CCRA must be read as including "any society", rather than just "Canadian society."

[50] I also agree that this interpretation is entirely consistent with the Board's obligation, set forth in paragraph 101(b) of the CCRA, to take into consideration "all available information that is relevant to a case." I find it difficult to accept that an offender's plan for release in the society to

which he will be removed, and the fact that he may not be subject to any ongoing state or other effective supervision or monitoring, is not "information that is relevant to a case."

B. Did the Board err in law in making the statement at the end of its hearing?

[51] Mr. Scott claims that the Board erred in law by stating, at the end of its hearing, that he should "investigate the possibility of an international transfer of parole prior to any future hearing." He submits that this amounted to a reviewable error because, to transfer his parole, he would first have to be granted day parole, which, pursuant to subsection 128(4) of the CCRA, is not possible.

[52] I disagree that this constituted a reviewable error. I am satisfied that this statement and the alleged misunderstanding that the Board may have had with respect to the options available to Mr. Scott had no bearing whatsoever on the decision made by the Board.

[53] As noted by the Appeal Division, this statement was made after the Board had rendered its decision. I am satisfied that the Board was simply attempting to make a helpful suggestion to Mr. Scott. Indeed, I note that the Applicant's counsel conceded during the oral hearing before this Court that the Appeal Division's interpretation of the Board's statement was not unreasonable.

C. Did Board err by ignoring the various positive factors in support of Mr. Scott's application, by engaging in erroneous speculation or by describing his risk to re-offend violently as "significant"?

[54] In his written submissions, Mr. Scott baldly asserted that the Board "ignored all of the positive factors which indicate that [his] risk to re-offend is low and that his mental illness is in remission through effective medication." I disagree. As his counsel conceded at the hearing before

this Court, the Board did in fact discuss many of those factors in the course of its decision. These included Mr. Scott's lack of prior contact with the criminal justice system, his favourable recidivism score, the assessment that he has a high level of motivation with medium reintegration potential, the fact that he had completed his correctional plan, his generally satisfactory institutional conduct, and his "quite positive" behaviour. The Board was not under any obligation to discuss these factors in greater detail.

[55] Mr. Scott also submitted that the Board's inability to understand the inherently irrational features of his behaviour, and its attempt to rationalize his behaviour before and after the murder for which he was convicted, were unreasonable. I do not agree. It was entirely appropriate for the Board to do these things as part of its assessment of his risk to reoffend. In any event, it is clear from the Board's decision that its refusal to grant full parole with deportation to Mr. Scott was primarily based on the insufficiency of his release plan, the fact that he would not be subject to effective supervision and monitoring, and the fact that his history "is replete with examples of [his] failure to follow" his prescribed medication regime.

[56] Mr. Scott further submits that the Board erred by speculating that the 2007 psychiatric evaluation may not have taken into account his 1998 psychiatric assessment and may not have taken into account the fact that he would not be subject to conditions or supervision if granted full parole with deportation to the U.K. Mr. Scott claims that by reaching such erroneous conclusions, the Board undermined the value and accuracy of the 2007 evaluation. I am unable to agree. The Board specifically noted that the 2007 evaluation suggested that Mr. Scott's risk for recidivism would increase if he had any relapse, which the 2007 evaluation described in terms of discontinuing his

medication and decompensating. It was this risk, which was also noted in his 1998 and 2008 assessments, that was the principal concern that led to the Board's refusal to grant parole.

[57] Finally, Mr. Scott asserted that it was unreasonable for the Board to conclude, on the evidence before it, that he presents a "significant" level of risk for re-offending in a violent manner. He submitted that the Board should instead have used the clinical language of "low, moderate, or high" risk that is used by professional assessors of risk. He submitted that the term "significant" has no meaning in any clinical or actuarial assessment of risk for violent recidivism. However, at the oral hearing before this Court, his counsel conceded that the Board was not under any obligation to use the terms "low, moderate, or high" in discussing that risk.

[58] I am unable to conclude that the Board's use of the term "significant" in this case was unreasonable in any way or that the use of that term, rather than another term which connotes a similar level of risk for violent recidivism that the Board found to exist, influenced the ultimate conclusion reached by the Board.

D. Did the Board's decision breach s. 7 of the Charter?

[59] Mr. Scott submits that the Board's decision deprives him of his liberty in a fundamentally unjust manner because (i) it places him in the impossible position of never being able to establish that he will be subject to state supervision of his psychiatric care in the U.K.; and (ii) it was influenced by the misunderstanding that he might be able to transfer his parole to the U.K. He did not elaborate upon these submissions in his written arguments and they were not addressed by his counsel in the hearing before this Court.

[60] I disagree with both of Mr. Scott's submissions. As to the latter one, it suffices to reiterate that the Board's suggestion that he explore the possibility of an international transfer of his parole was an attempt to make a helpful suggestion, at the very end of the Board's hearing, and after its decision had been rendered. I am satisfied that any misunderstanding that the Board may have had regarding Mr. Scott's options did not influence its decision in any way.

[61] As to the suggestion that the Board's decision places Mr. Scott in an impossible position, that is simply not true. An important factor in the Board's conclusion was that Mr. Scott's release plan was, in the Board's view, insufficient to manage his risk. It is entirely possible that if he submits a more robust plan in the future, the Board may reach a different conclusion. Indeed, this seems to have been contemplated by the Appeal Division's decision, in which it was observed that Mr. Scott's "release plans did not contain any official letter from a licensed psychiatrist in England stating that he/she would be prepared to take you as a patient and regularly monitor your mental health issues and medication region." While I do not interpret this statement as suggesting that such a letter may suffice in the absence of additional release plan components that help to provide significant additional comfort that Mr. Scott's risk to reoffend is low, it does suggest that parole is not an impossibility, as Mr. Scott submits.

[62] In any event, I cannot accept that even if it was impossible for Mr. Scott to obtain parole due to the combination of the unique factors in his case and the operation of the CCRA, this would necessarily result in a violation of his rights under s. 7 of the *Charter*.

[63] Parole is one form in which a sentence is served. As the Supreme Court of Canada has observed, “a change in the form in which a sentence is served, whether it be favourable or unfavourable to the prisoner, is not, in itself, contrary to any principle of fundamental justice” (*Cunningham v. Canada*, [1993] 2 S.C.R. 143, at 152). Likewise, a refusal to grant parole does not necessarily amount to a deprivation of a liberty interest protected by s. 7 of the *Charter* (*Cunningham*, at 149-151).

[64] On the particular facts of this case, I am unable to conclude that the refusal of the Board and the Appeal Division to grant full parole to Mr. Scott amounted to a deprivation of any liberty interest protected by s. 7 of the *Charter*. Mr. Scott ought to have been aware from the outset of his sentence that he might not obtain parole with deportation to the U.K. until the Board decides that he no longer poses a significant risk to reoffend in a violent manner. The possibility that he might never be granted parole with full deportation to the U.K. has existed from the very outset of his sentence.

[65] In any event, even if the Board’s decision amounted to a deprivation of a liberty interest protected by s. 7 of the *Charter*, that deprivation was not contrary to the principles of fundamental justice that are contemplated by s. 7. If Mr. Scott’s liberty interest was adversely affected by the decisions of the Board and the Appeal Division, it was “only to the extent that this [was] shown to be necessary for the protection of the public” (*Cunningham*, above, at 153).

[66] Moreover, the procedure by which Mr. Scott’s liberty interest may have been adversely affected was also in accordance with the principles of fundamental justice. He was provided with a

fair hearing and an opportunity to prepare for that hearing, he was represented at that hearing by counsel, he had a right to appeal and he exercised that right to appeal (*Cunningham*, above, at 153).

E. *Did the Appeal Division Reach an Unreasonable Decision in Affirming the Board's Decision?*

[67] Mr. Scott's final submission is that the Appeal Division's decision affirming the Board's decision was unreasonable because the Board's decision was unreasonable and because the Board committed the various alleged errors that have been dealt with above.

[68] As noted at paragraph 19 above, the Appeal Division can intervene only if the Board committed an error described in paragraphs 147(1)(a) – (e), and only if that error was unreasonable.

[69] Given my conclusions that the Board's decision was not unreasonable and that the Board did not commit the various errors alleged by Mr. Scott, it follows that the Appeal Division's decision was not unreasonable, unless the Appeal Division committed a separate error that rendered its decision unreasonable, such as failing to provide adequate reasons for its decision.

[70] As discussed in Part III.B. above, the Appeal Division carefully reviewed Mr. Scott's file and gave Mr. Scott a full opportunity to present his submissions. It then addressed each of those submissions in detailed reasons that explained the basis for its specific conclusions as well as its general conclusion that the Board's decision to deny Mr. Scott full parole was reasonable and based on sufficient relevant, reliable and persuasive information.

[71] The Appeal Division also found that the Board's decision is the least restrictive determination consistent with the protection of society.

[72] Based on the foregoing, I am satisfied that the Appeal Division's decision was appropriately justified, transparent and intelligible.

[73] I therefore conclude that the Appeal Division's decision was reasonable.

VII. Conclusion

[74] Mr. Scott's application for judicial review is dismissed with costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES THAT this application for judicial review is dismissed with costs to the Respondent.

"Paul S. Crampton"

Judge

ANNEX "A"

RELEVANT LEGISLATION

Corrections and Conditional Release Act, S.C. 1992, c. 20	*Loi sur le système correctionnel et la mise en liberté sous condition*, L.C. 1992, c. 20
Principles guiding parole boards	Principes
101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are	101. La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes qui suivent :
(a) that the protection of society be the paramount consideration in the determination of any case;	a) la protection de la société est le critère déterminant dans tous les cas;
(b) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender;	b) elles doivent tenir compte de toute l'information pertinente disponible, notamment les motifs et les recommandations du juge qui a infligé la peine, les renseignements disponibles lors du procès ou de la détermination de la peine, ceux qui ont été obtenus des victimes et des délinquants, ainsi que les renseignements et évaluations fournis par les autorités correctionnelles;
…	…
Criteria for granting parole	Critères
102. The Board or a provincial parole board may grant parole to an offender if, in its opinion,	102. La Commission et les commissions provinciales peuvent autoriser la libération conditionnelle si elles sont d'avis qu'une récidive du délinquant avant l'expiration légale de la peine qu'il purge ne présentera pas un risque inacceptable pour la société et que cette libération contribuera à la protection de celle-ci en favorisant sa réinsertion sociale en tant que citoyen respectueux des lois.
(a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and	
(b) the release of the offender will contribute to the protection of society by	

facilitating the reintegration of the offender into society as a law-abiding citizen.

…

Continuation of sentence

128. (1) An offender who is released on parole, statutory release or unescorted temporary absence continues, while entitled to be at large, to serve the sentence until its expiration according to law.

Freedom to be at large

(2) Except to the extent required by the conditions of any day parole, an offender who is released on parole, statutory release or unescorted temporary absence is entitled, subject to this Part, to remain at large in accordance with the conditions of the parole, statutory release or unescorted temporary absence and is not liable to be returned to custody by reason of the sentence unless the parole, statutory release or unescorted temporary absence is suspended, cancelled, terminated or revoked.

Deeming

(3) Despite subsection (1), for the purposes of paragraph 50(b) of the *Immigration and Refugee Protection Act* and section 40 of the *Extradition Act*, the sentence of an offender who has been released on parole, statutory release or an unescorted temporary absence is deemed to be completed unless the parole or statutory release has been suspended, terminated or revoked or the unescorted temporary absence is suspended or cancelled or the offender has returned to Canada before the expiration of the sentence according to

…

Présomption

128. (1) Le délinquant qui bénéficie d'une libération conditionnelle ou d'office ou d'une permission de sortir sans escorte continue, tant qu'il a le droit d'être en liberté, de purger sa peine d'emprisonnement jusqu'à l'expiration légale de celle-ci.

Mise en liberté

(2) Sauf dans la mesure permise par les modalités du régime de semi-liberté, il a le droit, sous réserve des autres dispositions de la présente partie, d'être en liberté aux conditions fixées et ne peut être réincarcéré au motif de la peine infligée à moins qu'il ne soit mis fin à la libération conditionnelle ou d'office ou à la permission de sortir ou que, le cas échéant, celle-ci ne soit suspendue, annulée ou révoquée.

Cas particulier

(3) Pour l'application de l'alinéa 50b) de la *Loi sur l'immigration et la protection des réfugiés* et de l'article 40 de la *Loi sur l'extradition*, la peine d'emprisonnement du délinquant qui bénéficie d'une libération conditionnelle d'office ou d'une permission de sortir sans escorte est, par dérogation au paragraphe (1), réputée être purgée sauf s'il y a eu révocation, suspension ou cessation de la libération ou de la permission de sortir sans escorte ou si le délinquant est revenu au Canada avant son expiration légale.

law.

Removal order

(4) Despite this Act or the *Prisons and Reformatories Act*, an offender against whom a removal order has been made under the *Immigration and Refugee Protection Act* is ineligible for day parole or an unescorted temporary absence until the offender is eligible for full parole.

Mesure de renvoi

(4) Malgré la présente loi ou la *Loi sur les prisons* et les maisons de correction, l'admissibilité à la libération conditionnelle totale de quiconque est visé par une mesure de renvoi au titre de la *Loi sur l'immigration et la protection des réfugiés* est préalable à l'admissibilité à la semi-liberté ou à l'absence temporaire sans escorte.

Parole inoperative where parole eligibility date in future

(5) If, before the full parole eligibility date, a removal order is made under the *Immigration and Refugee Protection Act* against an offender who has received day parole or an unescorted temporary absence, on the day that the removal order is made, the day parole or unescorted temporary absence becomes inoperative and the offender shall be reincarcerated.

Réincarcération

(5) La libération conditionnelle du délinquant en semi-liberté ou en absence temporaire sans escorte devient ineffective s'il est visé, avant l'admissibilité à la libération conditionnelle totale, par une mesure de renvoi au titre de la *Loi sur l'immigration et la protection des réfugiés*; il doit alors être réincarcéré.

Exception

(6) An offender referred to in subsection (4) is eligible for day parole or an unescorted temporary absence if the removal order is stayed under paragraph 50(a), 66(b) or 114(1)(b) of the *Immigration and Refugee Protection Act*.

Exception

(6) Toutefois, le paragraphe (4) ne s'applique pas si l'intéressé est visé par un sursis au titre des alinéas 50a) ou 66b) ou du paragraphe 114(1) de la *Loi sur l'immigration et la protection des réfugiés*.

Exception

(7) Where the removal order of an offender referred to in subsection (5) is stayed under paragraph 50(a), 66(b) or 114(1)(b) of the *Immigration and Refugee Protection Act* on a day prior to the full parole eligibility of the offender, the unescorted temporary absence or day parole of that offender is resumed as of the

Exception

(7) La semi-liberté ou la permission de sortir sans escorte redevient effective à la date du sursis de la mesure de renvoi visant le délinquant pris, avant son admissibilité à la libération conditionnelle totale, au titre des alinéas 50a) ou 66b) ou du paragraphe 114(1) de la *Loi sur l'immigration et la protection des réfugiés*.

day of the stay.

Canadian Charter of Rights and Freedoms	*Charte canadienne des droits et libe*rtés
Life, liberty and security of person	Vie, liberté et sécurité
7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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