Date: 20061213

Docket: A-46-06

Citation: 2006 FCA 405

CORAM: **LÉTOURNEAU J.A.**
NADON J.A.
PELLETIER J.A.

BETWEEN:

RENÉ-LUC GOSSELIN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Hearing held at Montréal, Quebec, on December 11, 2006.

Judgment delivered at Montréal, Quebec, on December 13, 2006.

REASONS FOR JUDGMENT BY: LÉTOURNEAU J.A.

CONCURRED IN BY: NADON J.A.
PELLETIER J.A.

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REASONS FOR JUDGMENT

LÉTOURNEAU J.A.

Issues

[1] The appellant is challenging the only special condition, apart from the usual mandatory conditions, which was imposed on him by the National Parole Board (Board). He applied to the Federal Court for judicial review of this special condition but was unsuccessful. He is now appealing the unfavourable decision of Mr. Justice Simon Noël of the Federal Court (judge).

[2] The condition, written in a somewhat convoluted style, reads as follows:

> [TRANSLATION] Prohibited from having any contact and/or any non-fortuitous communication with any person whom he knows or whom he has reason to believe has a criminal record (within the meaning of the interpretation stated by NPB on February 4, 1991) or to be directly or indirectly involved with the drug underworld.

Appellant's submissions

[3] In support of his appeal, the appellant, who is representing himself, alleges that the judge erred in excluding four documents that he considered to be fresh evidence. According to the appellant, the Board could and should have taken judicial notice of these documents because of the nature of its functions. In other words, this evidence was not new for the Board and was part of its field of knowledge and expertise. Therefore, the Board should have accepted the evidence when it was submitted.

[4] In addition, the appellant criticizes the judge for ruling that the special condition which was imposed on him did not infringe section 7 of the *Canadian Charter of Rights and Freedoms* (Charter).

[5] He also submits that the judge was biased in ignoring the very basis of the appellant's application for judicial review, orienting the discussion toward matters having nothing to do with his application, and deciding the issue in the absence of the fresh evidence he sought to adduce.

Facts

[6] The facts which are relevant for the purposes of this appeal may be summed up as follows. The appellant was arrested on June 7, 2000. He was tried and convicted. Since October 9, 2001, he has been serving a first penitentiary term of nine (9) years for conspiracy to import cocaine and possession of a firearm.

[7] When he was arrested, he was carrying 50 kilograms of cocaine from Halifax to Montréal. The Board reviewed the appellant's case in October 2003. It granted day parole but imposed a condition of non-association with persons involved in the drug underworld. This is the abovementioned condition.

[8] On August 23, 2004, the Board granted full parole to the appellant, but still subject to this special condition. After an internal challenge, the Board upheld its decision to impose the condition in question. In April 2005, the Appeal Division of the Board dismissed the appellant's appeal and upheld the Board's decision and the condition imposed. From there, the matter went before the Federal Court and is now before us.

Analysis of the judge's decision

(a) Allegation of bias on the part of the judge

[9] I will dispose of the issue of the judge's bias first because, in my opinion, it is unfounded. This argument is based on the appellant's misunderstanding of the role of a judge who hears a challenge under section 7 of the Charter and an application for admission of new evidence.

[10] As far as the challenge under section 7 is concerned, the judge considered the right infringed by the clause of non-association with the drug underworld. He also inquired into whether the restriction of the appellant's freedom resulting from the condition imposed had been done in accordance with the principles of fundamental justice. He followed the reasoning laid down in decisions of the courts above. It is obvious that there can be no indication of bias in the analysis of an issue arising under section 7 of the Charter when that analysis is done in a manner consistent with the law.

[11] The appellant's argument to the effect that the judge oriented the discussion toward matters having nothing to do with his application is also unfounded. The judge considered the principles of fundamental justice to determine whether the condition imposed by the Board infringed these principles. He cited *Bryntwick v. Canada (National Parole Board)*, [1987] 2 F.C. 184 (F.C.), in which it was ruled that a condition similar to the appellant's was consistent with the fundamental precepts of our legal system. However, on this point, the appellant wanted the judge to examine the Board's complete decision-making process leading to this decision. The evidence on the record

shows that the condition was imposed by the Board in compliance with the process provided by law, with a right of appeal, which the appellant exercised. The appellant was also heard at every step of the process. Although he did not specifically mention it, the judge was of the opinion that this process respected the principles of fundamental justice.

[12] Furthermore, even if the judge's determination of his role under section 7 should prove to be incorrect, although it was not in this case, this does not necessarily lead to a conclusion or an inference of bias.

[13] Finally, the appellant unfairly criticizes the judge for having rendered his decision on a complete lack of facts, which in my view is in no way the case. The position adopted by the judge was to say that even if fresh evidence had been submitted, his conclusion on the merits would have been the same. This evidence was as follows:

(a) An excerpt from a 2001 document of the Correctional Service of Canada containing statistics and facts about the Canadian correctional system;

(b) An undated article from the weekly newspaper *Photo Police*;

(c) An article from the daily newspaper *La Presse*, dated November 10, 2002; and

(d) An article from the *Journal de Montréal*, dated March 26, 2005.

[14] It appears that the judge concluded that these documents did not have much probative value in relation to the issue of law he was called upon to decide. It is difficult to see how the judge's conclusion as to the relevancy and usefulness of this fresh evidence shows any bias on his part.

(b) Judicial notice of the fresh evidence

[15] The appellant submits—incorrectly, in my humble opinion—that the Board should have taken judicial notice of the information contained in the four previously documents.

[16] There is no evidence on record to the effect that the facts mentioned in these documents are so notorious as not to be the subject of dispute among reasonable persons or are capable of immediate and accurate demonstration by resorting to readily accessible sources of indisputable accuracy: *R. v. Williams* [1998] 1 S.C.R. 1128, at page 1156.

[17] This is an essential condition for judicial notice to be taken. I must add that, after having read this documentation, I am of the same opinion as the judge to the effect it does not in any way affect the validity and legality of the non-association condition.

[18] In addition, these documents were never submitted to the Board, and it was never asked to consider them. Their content did not fall within the expertise of the judge to whom they were submitted. Accordingly, he could not take judicial notice of them.

(c) The non-association condition imposed by the Board

[19] Three conditions must be met for the appellant to be found in breach of the condition which was imposed on him. They are as follows:

(a) the meeting or contact must not be fortuitous (in paragraph 26 of his decision, the judge mistakenly referred to fortuitous meetings, but this mistake does not affect his decision);
(b) the appellant must know or have reason to believe; and
(c) the person must have a criminal record or be directly or indirectly involved with drugs.

[20] The appellant is mistaken when he submits that his liability is incurred if he meets, even fortuitously, persons with criminal records of which he is unaware. That is definitely not the meaning or the scope of the condition. It has the limits which I mentioned and which reduce the scope of its application so as to give the appellant a defence to counter an allegation of a breach of condition.

[21] In fact, what became evident at the hearing is that the appellant was not contesting the condition as such but rather the ensuing process when a breach of condition is alleged and must be determined on the merits. The appellant alleges that the process is arbitrary, that his rights are trampled on, and that the burden of proving that he did not breach the obligations imposed by the non-association condition is placed on him.

[22] In my humble opinion, this issue is a premature and strictly theoretical one which was not submitted either to the judge or to us. For this reason, there is no need for us to rule on it.

[23] Having reviewed the decision under appeal, the evidence on the record, and the parties' memoranda of fact and law, I am satisfied that the judge did not err in concluding that it was not

unreasonable in the circumstances to impose such a condition on the appellant and that the condition in itself was neither excessive nor vague, although it was restrictive.

[24] Likewise, I do not see any reason to interfere with the judge's conclusion to the effect that the non-association condition was imposed in accordance with the principles of fundamental justice.

[25] For these reasons, I would dismiss the appeal.

"Gilles Létourneau"
J.A.

"I concur
Marc Nadon J.A."

"I concur
J.D. Denis Pelletier J.A."

Certified true translation
Michael Palles

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-46-06

APPEAL FROM THE ORDER OF HONOURABLE MR. JUSTICE SIMON NOËL OF THE FEDERAL COURT, DATED JANUARY 5, 2006, DOCKET NUMBER T-705-05.

STYLE OF CAUSE:	RENÉ-LUC GOSSELIN v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	December 11, 2006
REASONS FOR JUDGMENT BY:	LÉTOURNEAU J.A.
CONCURRED IN BY:	NADON J.A. PELLETIER J.A.
DATED:	December 13, 2006

APPEARANCES:

René-Luc Gosselin (On his own behalf)	FOR THE APPELLANT
Nadia Hudon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT

Date: 20061213

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Montréal, Quebec, December 13, 2006

CORAM: **LÉTOURNEAU J.A.**
NADON J.A.
PELLETIER J.A.

BETWEEN:

RENÉ-LUC GOSSELIN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT

The appeal is dismissed.

"Gilles Létourneau"
J.A.

Certified true translation
Michael Palles