

CANADA / JUDGMENT

## Beaucage v. Attorney General (Canada)

[1977] 2 SCR 293

### COURT

Supreme Court of Canada

### DECIDED

25 January 1977

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Beaucage v. Attorney General (Canada)

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Report

[1977] 2 SCR 293

### Judges

Laskin, Bora; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; de Grandpré, Louis-Philippe

On appeal from

Ontario

Subjects

Criminal law

Decision Content

Supreme Court of Canada

Beaucage v. Attorney General (Canada), [1977] 2 S.C.R. 293

Date: 1977-01-25

Brian Leslie Beaucage (Plaintiff) Appellant;

and

Attorney General of Canada (Defendant) Respondent.

1976: June 15; 1977: January 25.

Present: Laskin C.J. and Martland, Judson, Ritchie, Pigeon, Dickson, Beetz and de Grandpré JJ.

ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO.

Criminal law—Mandatory supervision—Suspension of mandatory supervision for subsequent offence—Concurrent sentence of 21 months imposed while serving eight years—Applicability of mandatory supervision—Effective date of sentence in relation date of operation of act—Parole Act, as amended by 1968-69 (Can.), c. 38, s.101(1),(2).

Appellant while serving an eight-year sentence for manslaughter imposed on February 6, 1969, was on November 29, 1971, sentenced to a term of twenty-one months, for assault causing grievous bodily harm, to run concurrently with the sentence already being served. He was on August 5, 1974, released subject to mandatory supervision. Following charges on a further offence for which he was arrested on October 9, 1974 his release was revoked and he was thereby deprived of 888 days of statutory and earned remission standing to his credit in respect of the 1969 sentence under provisions of the Parole Act. Appellant brought an application for habeas corpus with certiorari in aid contending that he could not be deprived lawfully of his credited remission under the Parole Act as, at the time of his release, he was not legally subject to mandatory supervision. The application succeeded at trial but was reversed by the Court of Appeal.

Held (Laskin C.J. and Dickson J. dissenting): The appeal should be dismissed.

Per Martland, Judson, Ritchie, Pigeon, Beetz and de Grandpré JJ.: Section 15(1) of the Parole Act was in existence at the time of appellant's release prior to the expiration of his sentence. In the absence of some statutory provision to preclude its operation he was therefore subject to mandatory supervision. The combined effect of s. 101(2) of the Criminal Law Amendment Act, 1968-69 (Can.), c. 38, and the proclamation made pursuant thereto was to make the provision of s. 11B (now s. 15) of the Parole Act applicable to the appellant, as a person sentenced to imprisonment after August 1, 1970, by virtue of the later sentence imposed on him. The effect of 14(1) of the Parole Act is that for the purposes of s. 15(1) both the first and second sentences constituted one sentence to which at the time of appellant's releases. 15(1) applied.

Per Laskin C.J. and Dickson J. dissenting: The effect of s. 101(2) of the Criminal Law Amendment Act, 1968-69 (Can.), c. 38 and the proclamation (SOR/70-339) was to make a distinction between persons sentenced to imprisonment on or after August 1, 1970, and persons sentenced before that date. The former were legally subject to mandatory supervision and further incarceration were the supervision revoked, upon release; the latter were not. Prima facie appellant was within the former class of persons made subject to mandatory supervision by s. 15(1) of the Parole Act. However s. 15 is silent as to persons in penitentiary prior to the effective date, August 1, 1970. Section 14 specifically contemplates such persons and provides that where an inmate is sentenced to an additional term, the terms of imprisonment, including that which resulted in his

being in confinement, shall be deemed to constitute one sentence. Since one sentence can have but one date of origin, in appellant's case February 9, 1969, and as this date was prior to August 1, 1970, appellant was outside the operation of s. 15. In any event, the language of ss. 14 and 15, which affects pre-August, 1970 remission entitlement, is not so free from doubt as to justify depriving appellant of statutory and earned remission standing to his credit on the introduction of s. 15(1).

APPEAL from a judgment of the Court of Appeal for Ontario[1] reversing a decision of Cory J.[2] on an application for habeas corpus with certiorari in aid. Appeal dismissed, Laskin C.J. and Dickson J. dissenting. Ronald R. Price, for the appellant.

A.M. Garneau and Leslie S. Holland, for the respondent.

### **The judgment of Laskin C.J. and Dickson J. was delivered by**

DICKSON J. (dissenting)—On February 6, 1969 the appellant was sentenced to a term of eight years' imprisonment following conviction on a charge of manslaughter. He was credited with statutory remission amounting to one-quarter of the period to which he had been sentenced. Statutory remission is time off, subject to good conduct, pursuant to s. 22(1) of the Penitentiary Act, 1960-61 (Can.), c. 53.

On November 29, 1971, while still in custody, the appellant was sentenced for assault causing bodily harm to serve a further term of twenty-one months' imprisonment concurrent with the sentence he was then serving. On August 5, 1974 he was released from custody subject to mandatory supervision until February 5, 1977. In placing appellant under mandatory supervision, the parole authorities seem to have relied upon amendments to the Parole Act, R.S.C. 1970, c. P-2 made some time after the appellant was received into the penitentiary. While under mandatory supervision, the appellant in October, 1974 was arrested and charged with assault causing bodily harm and common assault, and released on his own recognizance. In January, 1975 he was taken into custody. The National Parole Board on February 26, 1975 issued an order purporting to revoke appellant's release on mandatory supervision. Appellant was committed to gaol. On March 12, 1975 he brought an application for a writ of habeas corpus with certiorari in aid, contending that he could not lawfully be deprived under the provisions of the Parole Act of the statutory and earned remission which stood to his credit in respect of the sentence imposed on him on February 6, 1969. The application was granted by Mr. Justice Cory but this decision was reversed on appeal by the Ontario Court of Appeal.

Section 15(1) of the Parole Act provides: 15. (1) Where an inmate to whom parole was not granted is released from imprisonment, prior to the expiration of his sentence according to law, as a result of remission, including earned remission, and the term of such remission exceeds sixty days, he shall, notwithstanding any other Act, be subject to mandatory supervision commencing upon his release and continuing for the duration of such remission.

Section 15(2) of the Act provides:

15. (2) Paragraph 10(1)(e), section 11, section 13 and sections 16 to 21 apply to an inmate who is subject to mandatory supervision as though he were a paroled inmate and as though the terms and conditions of his mandatory supervision were terms and conditions of his parole.

By s. 101(2) of the Criminal Law Amendment Act, 1968-69 (Can.), c. 38 it was provided that s. 15(1), then s. 11B(1):

...shall apply only in respect of persons who are sentenced to imprisonment in or transferred to a class or classes of penitentiaries or other places of imprisonment described in a proclamation on and after a day or days fixed by the proclamation.

By proclamation SOR/70-339, dated July 30, 1970, s. 11B was brought into force, to "have effect in respect of persons who are sentenced to imprisonment in or transferred to any class of penitentiary on and after the first day of August, 1970".

It will be readily discerned that the effect of s. 101(2) of the 1968-69 Amendment Act and SOR/70-339 is to make a distinction between persons sentenced to imprisonment on or after August 1, 1970, and persons sentenced before that date. Persons sentenced on or after August 1, 1970 would be subject to mandatory supervision upon release and face the prospect of being returned to the institution, if mandatory supervision were revoked; persons sentenced before August 1, 1970 were exempt from mandatory supervision and free from the possibility, after release, of being returned to the institution to serve further time. The crucial issue in this appeal, therefore, is whether at the time of his release in 1974, appellant was subject to mandatory supervision. If he was, the Parole Board was entitled to revoke the conditional release; if he was not so subject, there was nothing for the Parole Board to revoke.

Prima facie the appellant was within the class of persons subject to mandatory supervision by the operation of s. 15(1), as a person sentenced to imprisonment in a penitentiary after August 1, 1970. Section 15 is silent, however, as to the position of persons in penitentiary on the date set for the operation of s. 15(1), i.e. August 1, 1970 and silent as to the effect of s. 15(1) upon remission, statutory and earned, to which such persons were entitled in respect of sentences imposed prior to August 1, 1970. Section 14 appears to contemplate such persons. The section provides:

14. (1) Where, either before, on or after the 25th day of March 1970,
- (a) a person is sentenced to two or more terms of imprisonment, or
  - (b) an inmate who is in confinement is sentenced to an additional term or terms of imprisonment,

the terms of imprisonment to which he has been sentenced, including in a case described in paragraph (b) any term or terms that resulted in his being in confinement, shall, for all purposes of this Act, the Penitentiary Act and the Prisons and Reformatories Act, be deemed to constitute one sentence consisting of a term of imprisonment commencing on the earliest day on which any of those sentences of imprisonment commences and ending on the expiration of the last to expire of such terms of imprisonment.

- (2) This section does not affect the time at which any sentences that are deemed by subsection (1) to constitute one sentence commence pursuant to sub-section 649(1) of the Criminal Code.

The section provides that where an inmate who is in confinement is sentenced to an additional term of imprisonment, the terms of imprisonment to which he has been sentenced, including the term that resulted in his being in confinement, shall be deemed to constitute one sentence. One sentence, of course, can have but one date of origin. The question decisive in this appeal is what is that date of origin for, if the date antedated the date set for the operation of s. 15, the appellant could not have been subject to mandatory supervision. Section 14 gives a precise answer. The one sentence to which the section refers is deemed to consist of a term of imprisonment commencing on the earliest day on which any of the sentences commences. In the appellant's case that date was February 6, 1969, being prior to the effective date of s. 15(1). Therefore, in my view, the appellant was outside the operation of s. 15. In any event, it would appear to me that the language of ss. 14 and 15 of the Parole Act, as affecting pre-August, 1970 remission entitlement, is not so free from doubt as to justify depriving appellant, and others similarly situated, of the statutory and earned remission standing to their credit at the introduction of s. 15(1) of the Act. In the case of the appellant, such credits totalled eight hundred and eighty-eight days.

I would allow the appeal, set aside the order of the Ontario Court of Appeal, and restore the order of Mr. Justice Cory.

### **The judgment of Martland, Judson, Ritchie, Pigeon, Beetz and de Grandpré JJ. was delivered by**

MARTLAND J.—The essential facts are that the appellant, while serving in a penitentiary an eight-year sentence for manslaughter imposed on February 6, 1969, was sentenced, on November 29, 1971, to a term of twenty-one months for assault occasioning grievous bodily harm, to run concurrently with the sentence already being served. By virtue of s. 659(2) of the Criminal Code this sentence was to be served in the penitentiary.

The appellant was released on August 5, 1974, not on parole, but subject to mandatory supervision. Following the commission of a further offence for which he was arrested on October 9, 1974, the Parole Board on February 26, 1975, revoked his release under mandatory supervision for violation of the terms of the mandatory supervision, and he was thereby made subject to the consequences of the application of s. 15(2) of the Parole Act.

The issue to be determined is as to whether or not the appellant, at the time he was released from imprisonment, became legally subject to mandatory supervision.

Section 15 of the Parole Act, R.S.C. 1970, c. P-2, reads as follows:

15. (1) Where an inmate to whom parole was not granted is released from imprisonment, prior to the expiration of his sentence according to law, as a result of remission, including earned remission, and the term of such remission exceeds sixty days, he shall, notwithstanding any other Act, be subject to mandatory supervision commencing upon his release and continuing for the duration of such remission.
- (2) Paragraph 10(1)(e), section 11, section 13 and sections 16 to 21 apply to an inmate who is subject to mandatory supervision as though he were a paroled inmate and as though the terms and conditions of his mandatory supervision were terms and conditions of his parole.

Subsection (2) of s. 15 refers to sections of the Parole Act which provide for suspension and revocation of parole, and for re-committal in that event to serve the portion of the term of imprisonment remaining unexpired at the time parole was granted, including any remission, whether statutory or earned.

As s. 15(1) was in existence when the appellant was released from imprisonment prior to the expiration of his sentence he would, by virtue of its operation, be subject to mandatory supervision in the absence of some statutory provision to preclude its operation. The appellant contends that such a provision is to be found in s. 101(2) of the Criminal Law Amendment Act, 1968-69 (Can.), c. 38, under the provisions of which statute, what is now s. 15 of the Parole Act was enacted so as to become s. 11B of the Parole Act. Section 101(2) provided as follows:

101. (2) Section 11B of the said Act as enacted by subsection (1) shall apply only in respect of persons who are sentenced to imprisonment in or transferred to a class or classes of penitentiaries or other places of imprisonment described in a proclamation on and after a day or days fixed by the proclamation.

A proclamation was made, pursuant to the provision, on July 30, 1970, the operative portion of which read as follows:

Now Know Ye that We, by and with the advice of our Privy Council for Canada, do by this our Proclamation declare and direct that section 11B of the Parole Act shall come into force and have effect in respect of persons who are sentenced to imprisonment in or transferred to any class of penitentiary on and after the first day of August, 1970.

The combined effect of s. 101(2) and the proclamation was to make the provisions of s. 11B (now s. 15) applicable to any person within the class described in the proclamation. That class included any person sentenced to imprisonment in a penitentiary on and after August 1, 1970.

The appellant was within that class. He was a person who had been sentenced to imprisonment in a penitentiary on November 29, 1971. In my opinion, the fact that the sentence which he was already serving at the time of his sentence on November 29, 1971, had been imposed on February 6, 1969, does not affect his legal position. In the absence of the later sentence, had he completed his sentence, less remissions, s. 15 of the Parole Act would not have been applicable, but because by his own criminal act, he incurred a further sentence after August 1, 1970, s. 15 thereupon became applicable to him.

The appellant contends that s. 15(1) could only be applicable in respect of the sentence which was imposed after August 1, 1970, which had already been served before his release, and did not apply to the earlier sentence which had been imposed on February 6, 1969. This submission is not supported by the wording of that subsection. It applies generally to an inmate to whom parole was not granted who is released from imprisonment prior to the expiration of his sentence as a result of remission. As previously pointed out, the proclamation made s. 15 applicable to any person sentenced to imprisonment in a penitentiary after August 1, 1970, and the appellant was so sentenced. It defines a class of persons to whom s. 15 is applicable and the appellant was within that class.

Section 14(1) of the Parole Act is of assistance in dealing with this submission. It provides as follows:

14. (1) Where, either before, on or after the 25th day of March 1970,
- (a) a person is sentenced to two or more terms of imprisonment, or
  - (b) an inmate who is in confinement is sentenced to an additional term or terms of imprisonment,

the terms of imprisonment to which he has been sentenced, including in a case described in paragraph (b) any term or terms that resulted in his being in confinement, shall, for all purposes of this Act, the Penitentiary Act and the Prisons and Reformatories Act, be deemed to constitute one sentence consisting of a term of imprisonment commencing on the earliest day on which any of those sentences of imprisonment commences and ending on the expiration of the last to expire of such terms of imprisonment.

The effect of this provision is, that for the purposes of s. 15(1) of the Parole Act, both the first and second sentences constituted one sentence. When the appellant was released there existed one sentence and it was to that sentence that s. 15(1), by its terms, was applicable.

With respect to the other points raised by the appellant, as also with respect to the issue which I have discussed, I agree with the reasons of Kelly J.A. in the Court of Appeal.

I would dismiss the appeal.

Appeal dismissed with costs, LASKIN C.J. and DICKSON J. dissenting.

Solicitor for the appellant: Ronald R. Price, Kingston.

Solicitor for the respondent: D.S. Thorson, Ottawa.

[1] (1976), 31 C.C.C. (2d) 219.

[2] (1975), 24 C.C.C. (2d) 126.

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