
CANADA / JUDGMENT

Dixon v. Mountain Institution (Warden)

2017 BCSC 183

COURT

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2017 BCSC 183 Dixon v. Mountain Institution (Warden)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dixon v. Mountain Institution (Warden),

2017 BCSC 183

Date: 20170203

Docket: 65332

Registry: Chilliwack

Between:

John Francis Dixon

Applicant

And

Warden of Mountain Institution

Respondent

Before: The Honourable Justice N. Brown

Reasons for Judgment

Applicant Appearing In Person

Counsel for the Respondent:

C.N. Landsiedel

Place and Date of Hearing:

Chilliwack, B.C.

October 25, 2016

Place and Date of Judgment:

Chilliwack, B.C.

February 3, 2017

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[1] The applicant has applied for habeas corpus with certiorari in aid thereof and an order for his immediate release. Other relief sought (edited somewhat for clarity) is as follows:

1. An order directing that the petition for habeas corpus proceed viva voce.
2. An order quashing the decision of the Parole Board of Canada to revoke the applicant's day parole due to that tribunal's alleged lack of jurisdiction.

3. An order that the Surrey, B.C. branch of the Royal Canadian Mounted Police provide all relevant information in regard to the surveillance conducted at the direction of parole officer Jami Albright from the time it commenced until the date of the applicant's arrest on April 11, 2014.
 4. A direction that the Parole Board of Canada provide all information in its possession that it has continually relied upon in regard to the revocation of the applicant's day parole and recommitment to custody; these being the original paper decision dated July 9, 2014, the video hearing conducted on July 22, 2015, and the appeal of the decision on January 25, 2016.
- [2] In paras. 5 to 8, Mr. Dixon seeks orders that the Warden of Mountain Institution bring him before the court, that he be excused from the need to put covers and bindings on the documents required for this application and from compliance with personal service, and that he be excused from having to pay fees or costs associated with the filing of the application. Mr. Dixon appeared personally pursuant to a spring order; the documents were filed in the Registry without bindings; no fees have been levied; and the respondent received Mr. Dixon's documents through the Registry. No order is required.
- [3] Continuing with the orders sought:
5. A declaration that a jurisdictional error by the Parole Board of Canada occurred sufficient to result in a finding that the Parole Board of Canada has lost jurisdiction in this matter, and an order for the applicant's immediate and unconditional release, pursuant to ss. 7, 8, 9, 10(a), 11(a), and 12 of the Charter.
- [4] I should note as a preliminary procedural matter that the respondents were not properly named in the materials. The respondent is supposed to be the person who has physical custody or control over the person applying for the order. The appropriate respondent in this case is the Warden of Mountain Institution, which is where Mr. Dixon is presently incarcerated. The style of cause shall be amended accordingly to reflect that: see *Lord v. Coulter*, 2007 BCSC 1758 at para. 21, *aff'd* 2009 BCCA 62.
- [5] The respondent submitted the legislated parole review procedure completely answers the orders sought in paras. 2 and 9 of the application. Further, this court cannot grant Mr. Dixon immediate and unconditional release as he seeks in para. 9. They argue that the only remedy obtainable pursuant to habeas corpus is a return of the offender to their previous residual liberty. I agree with the respondent that an unconditional release of Mr. Dixon would clearly be a collateral attack on the lawful conviction and life sentence imposed on Mr. Dixon by a superior court. There will be no order for Mr. Dixon's immediate unconditional release.
- [6] With respect to para. 2, the respondent correctly submits that this court cannot quash a decision of the Board because habeas corpus is an exceptional remedy and distinct from other prerogative remedies that may be levied against the Parole Board of Canada (the "Board") or the Correctional Service of Canada ("CSC"). Certiorari in aid of habeas corpus is a

procedural remedy and it is not akin to the substantive use of certiorari to quash a decision. Therefore, the second of the orders Mr. Dixon has sought cannot be attained within the ambit of a habeas corpus application in this court: see *Chambers v. Daou*, 2015 BCCA 50 at paras. 50-56.

- [7] It appears from the materials submitted and the orders Mr. Dixon seeks that the essence of his complaint rests in the Board's 2014 revocation of his Day Parole and its 2015 denial of both Day Parole and Full Parole, which he submits were made without jurisdiction because of an alleged breach of his rights under the Charter, particularly s. 8.

Circumstances of the index offence

- [8] Mr. Dixon is a federally incarcerated inmate. He is serving a life sentence for first-degree murder.
- [9] The circumstances of Mr. Dixon's index offence are set out in the October 14, 2016 affidavit filed by Jami Albright, a Parole Officer, currently employed as such with the CSC out of the Lethbridge Parole Office.
- [10] Between March 3, 2014 and April 17, 2014, she was the Community Parole Officer ("CPO") for Mr. Dixon.
- [11] Ms. Albright explains in her affidavit that she is the CPO who drafted the Assessment for Decision date-and time-locked May 27, 2014 (the "A4D"), wherein she recommended that Mr. Dixon's Day Parole be revoked and his Full Parole denied.
- [12] Ms. Albright has access to the electronic file kept in the ordinary course of business by the CSC on Mr. Dixon and deposes that she has reviewed parts of that in preparation for affirming her affidavit.
- [13] Ms. Albright provided information on Mr. Dixon's index offences in her affidavit as follows:
3. Mr. Dixon is a second-time federal offender, serving a sentence of life imprisonment for firstdegree murder. His sentence commenced on November 23, 1983.
 4. Prior to the index offence of murder, Mr. Dixon had been convicted of kidnapping his former girlfriend's mother and siblings at knifepoint and sentenced to five years' imprisonment.
 5. Both the kidnapping and index offences were committed following the break-up of a relationship with a female.
 6. The circumstances of the index offence involved the abduction and murder of a female victim who was unknown to Mr. Dixon. However, hours before he abducted and murdered the victim, Mr. Dixon attempted to abduct a female cyclist on an isolated stretch of highway. Mr. Dixon used a jagged piece of glass as a weapon, but the cyclist was able to flee.

7. At the time of his arrest for murder, Mr. Dixon gave an account of the crime to police and indicated that he had kidnapped the victim, took her to an isolated trail area, had sex with her, led her to a different part of the trail, shot her in the back with a rifle, and left her body there. Mr. Dixon later retracted his statement that he had sex with the victim. At Mr. Dixon's trial [] the evidence was found to be inconclusive of whether Mr. Dixon had sex with the victim.

Parole History

Respondent's summary of applicant's parole history

[14] Regarding Mr. Dixon's previous parole history, Ms. Albright deposed to the following facts in her October 14, 2016 affidavit:

1. On August 20, 2004 Mr. Dixon became statutorily eligible for Day Parole.
2. On August 16 2005, he was released on Day Parole to the jurisdiction of the Victoria Parole Office.
3. Six days later, on August 22, 2005, he was suspended from Day Parole following an allegation of sexually inappropriate behaviour from a female restorative justice volunteer. Mr. Dixon denied the allegation. The Board assessed Mr. Dixon's risk as no longer being manageable in the community and revoked his Day Parole.
4. On August 20, 2007, Mr. Dixon became statutorily eligible for Full Parole.
5. On March 12, 2009, he was again released on Day Parole to the jurisdiction of the Chilliwack Community Correctional Centre.
6. On March 16, 2010, Mr. Dixon was suspended from Day Parole following a comment to a member of the public that Mr. Dixon's Case Management Team interpreted as threatening. He was then sent to the Temporary Detention ("TD") Unit detention at Matsqui Institution to take part in an intervention program.
7. On April 14, 2010, Mr. Dixon was released on Day Parole to the jurisdiction of the New Westminster Area Community Corrections office. He then left the TD unit for Hobden House, a Community Residential Facility located in Surrey, B.C. and managed by Ms. Pat Gilbert.

[15] At para. 15 of her affidavit Ms. Albright deposed:

15. During his time at Hobden House, Mr. Dixon was subject to the following special conditions for his Day Parole:

Not to Consume Alcohol: Not to consume, purchase, or possess alcohol;

Follow Treatment Plan: Participate in counselling with a mental health professional to deal with emotions management, rigid thinking, and other related issues [Ms. Albright pointed out that this condition was not imposed for the Day Parole term that began on April 10, 2014.];

Avoid Persons - Victims: No direct or indirect contact with [an individual referred to by the initials] KH, her family, or your victim's family without prior written permission of your parole supervisor;

Report Relationships: Immediately report all intimate sexual and nonsexual relationships and friendships with females to your parole supervisor.

- [16] Ms. Albright deposed that Mr. Dixon's assertion in his affidavit that the "Report Relationships" condition was not imposed until later into the period of Day Parole beginning April 14, 2010 is incorrect. She explains, "[r]ather, Mr. Dixon was subject to all four special conditions in the above paragraph 15 until April 9, 2014. Then, following his previous CPO's recommendation in the A4D date and time locked February 6, 2014, the 'Follow Treatment Plan' condition was not imposed during in next term of Day Parole beginning April 10, 2014."
- [17] On March 3, 2014, Ms. Albright became Mr. Dixon's CPO. She notes that at that time, Mr. Dixon was unemployed but searching for employment. She further notes that he told her that once he obtained stable employment, he hoped to rent an apartment for his weekend passes.

Conduct leading to suspension of parole

- [18] In her affidavit, Ms. Albright outlines the nature of Mr. Dixon's behaviour that had led to the suspension of his Day Parole. The full circumstances of Mr. Dixon's case are outlined in the A4D and the document referred to by Ms. Albright as "Correctional Plan Update #7", which she drafted and which is date-and time-locked May 8, 2014. Copies of these documents are attached as Exhibits 4 and 5 of Mr. Dixon's affidavit, which Ms. Albright confirmed were true and accurate copies of the originals.
- [19] I should note here that before the Board hearings Mr. Dixon was given full disclosure of these and all the relevant documents on which the Board relied in coming to its decisions, as confirmed in the affidavit affirmed on October 13, 2016 by Lynn Bergeron, the Regional Manager of the Conditional Release Program for the Board. Through her position she was familiar with the procedures for hearings before the Board and the Appeal Division of the Board (the "Appeal Division"). In her affidavit, she further notes that she reviewed documents from the file maintained by the Board in the usual and ordinary course of business with respect to the parole matters of Mr. Dixon. Her affidavit details in close order the disclosures made to Mr. Dixon of all documents relevant to his parole matters, which included all of the information that was before the Board and the Appeal Division regarding these matters.

- [20] I will now return to a review of Ms. Albright's summary of Mr. Dixon's conduct leading to the suspension of his Day Parole and subsequent refusal of both Day and Full Parole.
- [21] Ms. Albright deposed that Mr. Dixon reported to her he had found a job at an auto detailing company in North Vancouver. She stated that when she attempted several times to make arrangements with Mr. Dixon for her to go to the work location and observe him, he made what she regarded as unusual efforts to have her see him somewhere other than at his workplace.
- [22] Ms. Albright deposed that on March 27, 2014, Mr. Dixon told her he might have a place to rent. Ms. Albright noted he was "continually reluctant to give her the address". After she advised him that he was required to give her the address, he provided an address for an apartment building, but not the unit number, which she had to obtain from him later. She noted the apartment unit belonged to a Ms. Melody Song. After further consultation with Mr. Dixon, Ms. Song and her boyfriend, a Mr. Ainscough, and Ms. Albright's supervisor, Mr. Dixon was given permission to have eight hours daily at the apartment. Ms. Albright deposed he was "quite dissatisfied" with this decision.
- [23] Ms. Albright deposed that Mr. Dixon frequently signed out of Hobden House to a nearby Husky gas station. He also regularly signed out to the beach in White Rock or to Lafarge Lake, Coquitlam, "purportedly for walks." Ms. Albright found Mr. Dixon's five to seven daily sign-outs to the nearby Husky gas station excessive. After consultation with her supervisor and the police, it was decided Mr. Dixon should be placed under surveillance for a number of days.
- [24] On April 8, 2014, Mr. Dixon was put under surveillance by the Integrated Sexual Predator Observation Team ("ISPOT"), a provincial integrated unit composed of RCMP members and municipal police. It should be noted that ISPOT is not synonymous with the RCMP; RCMP members participate in the unit but are not the only participants in it.
- [25] Ms. Albright recounted in her affidavit that on April 9, 2014, Mr. Dixon signed out of Hobden House to go to the beach in White Rock. ISPOT reported Mr. Dixon did not go there; rather, he attended at a residence in Surrey for approximately 45 minutes. After that, he left and drove around for some time, and then drove to Costco, quickly entering and exiting it as it was closing up. He then spent a period of time sitting in his car before going to a combined Taco Bell/KFC and then returning to Hobden House. The concern, according to Ms. Albright, was that at no time did Mr. Dixon "report his location changes or changes in destination".
- [26] On April 10, 2014, Ms. Albright says she received notice from Hobden House regarding an April 8, 2014 incident in which Mr. Dixon was said to have insulted a female staff member and later stepped on another female staff member's toes three times, even after she had told him to stop. Ms. Albright notes Mr. Dixon initially denied and minimized this behaviour but after staff confronted him, he apologized.

- [27] Ms. Albright noted that she found the toes stepping incident particularly concerning to her because, in her words, "[n]ot only was it assaultive, but it reflected significant boundary issues." She further noted that "given the circumstances of Mr. Dixon's kidnapping and index offences, [his] continuing unwanted physical contact with a woman after being told to stop is a significant warning sign of escalating risk."
- [28] Ms. Albright deposed that she then consulted with police, her supervisor, and Ms. Gilbert, the Hobden House staff supervisor, to discuss the most appropriate course of intervention. Ms. Gilbert indicated that although Mr. Dixon's emotions had become quite erratic, none of her staff felt at imminent risk, and "she would rather wait another day to determine what was going on with Mr. Dixon." It was agreed that with ISPOT's surveillance of Mr. Dixon, his risk was still manageable in the community.
- [29] Ms. Albright deposed that in the evening of April 10, 2014, Mr. Dixon signed out to go to Lafarge Lake. However, as ISPOT reported, he instead went to an apartment building in New Westminster, remained inside for approximately 45 minutes, then returned to Hobden House, taking an "unnecessarily circuitous route which took him through a neighbourhood with significant prostitution activity." Ms. Albright was concerned because Mr. Dixon again failed to report his location destination changes or changes in destination.
- [30] On April 11, 2014, Ms. Albright consulted again with the police, her supervisor, and Ms. Gilbert about Mr. Dixon's interactions with female staff at Hobden House and his "blatant failure to be accountable for his whereabouts." According to her affidavit, they unanimously agreed Mr. Dixon's risk was no longer manageable in the community.
- [31] On April 11, 2014, the Surrey RCMP executed a warrant of suspension and a warrant of apprehension and recommitment, arresting Mr. Dixon at the Surrey Parole Office and subsequently transporting him to the Surrey Pretrial Services Centre.

Post-suspension interview

- [32] In her affidavit, Ms. Albright reviewed relevant information that arose in a post-suspension interview she conducted with Mr. Dixon at the Surrey Pretrial Services Centre on April 14, 2014.
- [33] Ms. Albright noted that when she asked Mr. Dixon why he thought he was suspended, he "responded that he had been behaving oddly with the staff at Hobden House and related the incident where he insulted the female staff member." She noted Mr. Dixon did not volunteer the toes stepping incident with a female staff member and, when asked, stated he felt close enough to the staff member that they could joke around in that way.

- [34] Ms. Albright deposed that Mr. Dixon agreed his emotional responses had at times been inappropriate to the situation, "and [he] understood that this would be of concern to me and Hobden House staff". She notes that he told her as well that "lately he had been feeling a high level of stress and frustration but admitted that he had never advised me of these increased levels".
- [35] Ms. Albright stated she told Mr. Dixon he had been under surveillance, after which he eventually admitted to going to the residence in Surrey, asserting "he had gone to that residence for a psychic reading and had signed out to White Rock because that was where his initial reading had been." Mr. Dixon also stated during the interview that he felt he had no obligation to report the location change as it was not a "big deal".
- [36] Ms. Albright says that she again asked him if he had anything further to disclose, reminding him he had been under surveillance, and deposed that he made several denials until she reminded him he had signed out to Lafarge Lake. At that point, he granted he had never gone to the lake at all; rather, he went to the New Westminster residence. When Ms. Albright asked Mr. Dixon who lived there, he initially said it did not matter but eventually stated he had gone to meet a woman he had messaged through a dating site, indicating that for quite some time he had an account on a particular dating site but had only recently begun using it actively again. Ms. Albright also noted he had no explanation for why he did not advise her or Hobden House staff of his activity on the dating site. He asserted that the "Report Relationships" condition only applied to Ms. Albright and not to the Hobden House staff. Ms. Albright also noted Mr. Dixon commented that she was too hard on him and that his previous CPO had been "softer".
- [37] Ms. Albright said she also had concerns about a woman whom Mr. Dixon had previously met for coffee. She explained as follows:

We also spoke about a woman named Emily, with whom Mr. Dixon had previously met (with prior notice to me) for a coffee outing. When describing his relationship with Emily, it was concerning to me that Mr. Dixon was significantly distressed and emotionally attached to a woman that he had only met once for coffee.

- [38] As a result of the interview, Ms. Albright determined that Mr. Dixon's case needed to be referred to the Board "in view of his elevated risk in the community as a result of his behaviour".
- [39] Additional concerns stemmed from information found on Mr. Dixon's laptop and a supplemental review Ms. Albright conducted.
- [40] Ms. Albright explained that on April 15, 2014, after receiving information from Ms. Gilbert, she attended Hobden House to investigate the contents of Mr. Dixon's laptop. She noted that she found photographs of the female staff member on whose toes Mr. Dixon had stepped in a desktop folder entitled "mum," and deposed that the staff member had no knowledge of the photos and had never given Mr. Dixon permission to take her picture. Ms. Albright also

discovered over 2,000 emails, the majority of which were from women on dating sites where Mr. Dixon had never disclosed having an account.

[41] Ms. Albright explained her concerns regarding this discovery:

40. I had serious concerns with the content of several of the emails. First, they were indicative of Mr. Dixon offering to pay for sex. Second, they indicated that Mr. Dixon pestered women who turned him down. These concerns were problematic given the circumstances of Mr. Dixon's offences and his ongoing issues with interacting with women.

[42] On April 24, 2014, Ms. Albright conducted a supplemental post-suspension interview with Mr. Dixon by telephone. By then, he had been transferred to Mountain Institution, a medium security penitentiary. Ms. Albright deposed that Mr. Dixon insisted that the female staff member depicted in the photographs on his laptop knew he had taken her picture, but was "also quick to state that the staff member would be wrong to allow him to take her picture". She further noted that "Mr. Dixon also denied being on multiple dating sites, despite the fact that he had a similar username that was attached to many of the sites".

[43] During the interview, Ms. Albright informed Mr. Dixon that she would be recommending revocation of his Day Parole.

[44] Ms. Albright drafted the A4D on May 7, 2014, and referred Mr. Dixon's case to the Board. She deposed that she later unlocked and relocked it on May 27, 2014 "in order to add conditions to the Full Parole eligibility decision."

[45] In concluding her affidavit, Ms. Albright set out her belief regarding Mr. Dixon's risk manageability on a Day Parole release at the time:

I did not believe there was anything that would allow Mr. Dixon's risk to be manageable on a Day Parole release. Ultimately, as I concluded several times in the Post-Suspension A4D, I believed that Mr. Dixon would remain a completely unmanageable risk until such time as he admitted to the sexual components of his past offending, his index offence, and his behaviour (both institutionally and on community release), and then addressed his thought-processes and risky behaviour through sex offender programming.

The Board's July 7, 2014 decision

[46] On July 7, 2014, the Board revoked Mr. Dixon's parole. Since then, he has remained incarcerated at Mountain Institution. In its decision revoking his parole (the "Revocation Decision"), it concluded:

In reaching its decision the Board considered the seriousness and gravity of the index offence and your ongoing insistence to push the boundaries with your supervising case management team (CMT). You are secretive and deceitful with your supervising parole officer in relation to your activities in the community. Even when presented with specific details indicating your untruthfulness you minimize and attempt to rationalize your actions. You continue to react

inappropriately with female staff members, yet you see nothing wrong with your behaviours and cast blame on others and again minimize. It is apparent to the Board that you continue to lack insight into risk factors pertaining to female relationships and your interactions with females. The information relative to your deteriorating behaviour and breach of your report female relationships special condition is considered by the Board to be reliable and persuasive and therefore believable. Your behaviour and actions were within your control.

In the context of the seriousness of the index offence and your many years of inappropriate behaviours towards females and release suspensions, the Board concludes that your risk has become elevated and undue. Your day parole release is revoked.

[47] On July 9, 2014, Board notified Mr. Dixon of its Revocation Decision in a letter (to which the decision was attached), and advised him that he could appeal to the Appeal Division, which he did not do at that time according to the affidavit of Ms. Bergeron.

The Board's July 22, 2015 decision

[48] After the Revocation Decision, a further hearing was scheduled for June 2015. On April 27, 2015, in preparation for the pending Parole Review hearing, Jodene Wood, a Parole Officer, updated Mr. Dixon's Correctional Plan, thus creating a document which has been referred to as Correctional Plan/Community Strategy #8.

[49] On May 5, 2015, another Parole Officer, Andrew Quilty, completed an Assessment for Decision, which became known as the "Denial A4D" (as it recommended the Board deny Mr. Dixon both Day and Full Parole). The Denial A4D and Correctional Plan/Community Strategy #8 were time-and date-locked on July 15, 2015. Both documents are attached as Exhibits to Ms. Bergeron's affidavit. Ms. Bergeron deposed that Mr. Dixon was made aware of his right to have all information, or a summary of it, which the Board would consider in arriving at a decision in the case, at least 15 days before the hearing of the case. Mr. Dixon waived his right to have the information listed on the initial 2015 Checklist, which included the Denial AD4 and Correctional Plan Update #8, shared with him in that time. Mr. Dixon was provided with copies of these documents on July 16, 2015. He also received many other documents according to Ms. Bergeron's affidavit, including numerous previous Assessments for Decisions, and previous progress and psychiatric reports.

[50] An oral hearing to review Mr. Dixon's case for Day and Full Parole was set for July 22, 2015. After the hearing the Board decided to deny Mr. Dixon both Day and Full Parole (the "Denial Decision"), concluding in part:

The Board notes positive and negative factors in your case. Concerning to the board is the nature and gravity of the index offence. In an emotional rage you abducted a woman and killed her in cold blood, seemingly to counter the pain you felt from the end of a relationship. As well, you continue to deny a sexual component in the murder. You killed the victim after several hours after [sic] you had abducted her. The victim's family live in fear of you. The Board finds that you minimize, rationalize and deny much of your history of inappropriate behaviour with women.

You told the Board today that at the time of the murder that [sic] you had power and control issues with women. The Board finds that you lack insight into your offending and your long history of poor emotional control, anger and violence. The Board finds that your explanations today that focused on the index offence and the sexual aspects of the murder to be not credible. You have demonstrated in the community and within the institution that you reveal the bare minimum to your CMT and only divulge more information when you are caught being deceptive. The most recent psychological report assesses you as a moderate-high risk for general and violent offending. Your CMT indicates that your risk is not manageable in the community.

To your credit, you appear to accept responsibility for your convicted offences; however you continue to deny and rationalize your behaviour around relationship[s] and inappropriate behaviour surrounding women. You have participated in counselling and are making some limited gains. The Board notes that you spent 4.5 years in the community on day parole; however when faced with stress you demonstrated a non-disclosive behaviour and have still not been open and honest about why you went places and visited questionable internet sites.

On balance the Board finds that the negative factors outweigh the positive give[n] the consequences of you reoffending. The Board concludes that your risk to reoffend on day parole is undue and therefore day and full parole are denied.

[Emphasis added.]

[51] Earlier in the Denial Decision, the Board stated in part:

In making its decision the Board must determine whether or not your release will constitute an undue risk to society and whether your release will contribute to the protection of society by facilitating your reintegration as a law abiding citizen. Undue risk is an assessment of your likelihood of reoffending, taking into consideration the nature and gravity of the offence that could be anticipated, should you reoffend, and your degree of responsibility.

After considering the information in your file and listening to you today, the Board is denying day and full parole. In making the decision, the Board has considered the following:

At 59 years of age, you are serving a Life Sentence for First Degree Murder.

On August 18, 1982, you forced a young female victim into your vehicle, drove her to an isolated area and beat her before shooting her in the back. There was evidence of a sexual motivation for your offence but you deny this. Prior to this offence, you had tried to abduct a female cyclist.

There are two recent victim statements (October 2014, March 2015) on file from the sister of the victim who states that she lives in fear for herself and others, especially whenever she receives notification that a travel permit has been granted or that you may be driving unescorted. She speaks of your anger issues and believes that it is just a matter of time before you commit another horrific crime. She notes you have had every opportunity to be integrated into the community but you have failed one too many times. In her most recent statement she reported feeling gullible for listening to your former correspondence with your claim to be free from violence,

alcohol, control, possessiveness and judgements.

Your criminal history includes convictions for theft and kidnapping. Your victims were three members of a former girlfriend's family. You have also been suspected of but not charged in other sexual assaults and in the murder of another young woman.

You were first released on day parole in 2005; however, that release was revoked due to allegations that you were inappropriately touching a female community support volunteer and for being in possession of sexually explicit materials.

[52] The Board also noted a high need for improvement, according to a Correctional Plan completed in March 2015, in the areas of "personal/emotional orientation and employment," and a moderate need for improvement in "marital/family, attitude, associate/social interaction and community functioning."

[53] The Board also made reference to a psychological report completed in April 2015 in which the psychologist indicated "that [Mr. Dixon's] risk to reoffend generally, violently and sexually had previously been assessed in the moderate to high range and [that] in her opinion that assessment is still accurate."

[54] Other areas of concern and need for improvement were noted in the Board's decision. I will not recount all of them here. However, it is noteworthy that Mr. Dixon's Community Management Team believed Full and Day Parole should be denied.

[55] The Board also noted Mr. Dixon's inconsistent attitude towards participation in the Sex Offender Maintenance Program in the community and his statement to the Board that he would "not attend."

[56] The Board also noted the following with respect to Mr. Dixon's seeming inability to acknowledge the sexual aspect to the index offence:

You told the Board that there was no sexual aspect to the murder. The Board asked why you chose the victim and the young woman that escaped your previous abduction attempt. You told the Board that you chose women and not men because women were vulnerable and that females were easier to abduct. The Board asked if it was a control issue and you said that you definitely had power and control issues regarding women. You stated that you killed the victim because you thought it would be easier to deal with the pain and suffering than other alternatives. You felt that releasing her was not an option for you. You denied the statement in the police notes that stated that you had sex with the victim; however, every other aspect of their notes you agreed with as we explored them in detail. You could not explain why every other element of the report would be correct with the exception of that one detail.

[57] The need for sexual offender programming obviously remained a continuing concern for the Board.

Appeal to the Appeal Division

[58] As set out in Ms. Bergeron's affidavit, Mr. Dixon appealed the Denial Decision to the Appeal Division, which dismissed the appeal and affirmed the Denial Decision on January 25, 2016. The Appeal Division concluded its decision as follows:

Mr. Dixon, the Appeal Division does not have the jurisdiction to substitute its discretion for that of the Board which assessed your risk to reoffend unless its decision is unreasonable or unfounded. After a review of your case, the Appeal Division finds that the Board conducted a thorough and fair risk assessment, and that it based its decision on available information that is relevant, reliable and persuasive. Given the nature and gravity of your criminal offending, your actuarially assessed moderate to high risk to reoffend generally, violently, and sexually, your problematic conditional release history, your risk factors requiring a High and Moderate Need for Improvement, the lack of support from your CMT, and the lack of support from the community for a day parole release, the Appeal Division also finds that the Board's decision is reasonable.

Mr. Dixon's evidence and submissions

- [59] In his affidavit sworn July 26, 2016, Mr. Dixon states that he was released April 14, 2010 on a Day Parole to reside in a Community Residential Facility called Hobden House in Surrey, British Columbia. He deposes that the parole conditions imposed by the Board were abstention from alcohol, follow up with psychological counselling, and no direct or indirect contact with an individual, "KH," her family, or the victim's family.
- [60] He states his parole conditions were changed to include the following: not to consume alcohol, not to have any direct or indirect contact with KH, her family, or the victim's family without prior written permission from his Parole Officer; and he was to immediately report all intimate sexual or nonsexual relationships and friendships with females to his Parole Officer.
- [61] He asserts that throughout the "four plus years" he was on Day Parole he attended weekly meetings with his Parole Officer and psychologist. He further asserts he had no breaches of his parole conditions, no contact with the police regarding any problems, and that he was managing himself as a law-abiding citizen.
- [62] Mr. Dixon asserts that on April 11, 2014, he attended the Surrey Parole Office to meet with his Parole Officer, Ms. Albright. Moments after his arrival, an unidentified person entered and sat between them, followed by a police officer who told him he was under arrest. He asserts that when he asked Ms. Albright the reason for his arrest, she just replied, "that is right Mr. Dixon, you are being arrested", and that she would discuss it with him later. Ms. Albright rejected Mr. Dixon's account of his arrest; notably, that he asked her what he was being arrested for and that she dismissively stated, "that is right Mr. Dixon, you are being arrested", explaining that she does not go into great detail with offenders at the time of their arrest because it is always best for staff safety to make the arrest quickly, and allow the

police to return to their duties, leaving to a post-suspension interview a more detailed conversation. I pause here to note that I do not see this exchange being of any moment either way as Ms. Albright at the very least intended to have a discussion with him at a later time.

- [63] When Mr. Dixon was placed in the back of the police car, he says the arresting officer showed him the warrant of apprehension, which stated "Warrant of Apprehension, Suspension and Recommitment to Custody of Day Parole (s. 135. (1))." He was then read his rights and transported to Surrey Pretrial Services Centre.
- [64] I found nothing material turned in these background facts.
- [65] Mr. Dixon deposed that when Ms. Albright saw him at the Surrey Pretrial Services Centre three days later on April 14, 2014, she asked him why he thought his Day Parole was suspended. He asserts Ms. Albright accused him of acting "very poorly" with staff at Hobden House; asked him why he had visited two locations without informing the Hobden House staff; and ultimately accused him of being with a prostitute. He says she then told him if he continued to lie to her he would spend two to three years back in prison and that she would be sending his case to the Board.
- [66] Mr. Dixon denies that since his release on Day Parole he has entered into any relationships that he failed to report to his Parole Officers and that he was ever involved with any prostitutes.
- [67] Mr. Dixon denies that his behaviour at the halfway house was "elevated" as described in the updated Correctional Plan dated May 8, 2014 and the A4D.
- [68] He acknowledged that both of those documents were shared with him before the initial "paper decision" revoking his Day Parole.
- [69] Mr. Dixon states that the updated Correctional Plan dated May 8, 2014 and the A4D misrepresented his conduct while he was in the community on his Day Parole.
- [70] He complains that he has not been provided "supporting source information" - including the police surveillance - that would support the assertion he was involved with a prostitute or that he violated the condition requiring him to report relationships with women.
- [71] Mr. Dixon deposed that after the search of his laptop on April 15, 2014, Ms. Albright became very specific that he had been with a prostitute. Mr. Dixon contends the search of his laptop violated his privacy rights.
- [72] He also complains that Ms. Albright failed to include in her A4D the conditions, if any, under which he could return to Day Parole.
- [73] Mr. Dixon pointed out that the Board has conducted three parole hearings since his return to custody on April 11, 2014, all based on the information Ms. Albright had set out in A4D.

[74] He alleges that certain statements made by Ms. Albright in the A4D were false. He states in his affidavit:

In the Assessment for Decision dated May 27, 2014, the parole officer Jami Albright describes my conduct and behaviour around a CRF [Community Residential Facility] worker, she describes my behaviour as being fixated on one staff member, overly emotional, over attachment, that I committed what she considered to be a physical assault on a female CRF worker and offers her opinion that my offence included a sexual assault.

[75] Mr. Dixon further argues:

The statements made by parole officer Jami Albright are false statements, they are not supported by any independent source information, the language she uses is exaggerated and out of context, it is defamatory in nature, unwarranted and it is my belief that the parole officer acted in bad faith and in having done so has predigested my character.

[76] Mr. Dixon complains that the Board relied on the information provided to them in the A4D without inquiring as to the credibility or reliability of the information. There does not appear to be any evidentiary foundation in the materials for that assertion.

[77] Mr. Dixon stated he wrote a letter dated December 14, 2015 to the RCMP asking if they would provide him a copy of the police surveillance conducted on him in April 2014 "at the direction of parole officer Jami Albright"; but to date he has not received a response to the request. I note the RCMP is not a party to this matter and they are not obliged to provide any information to Mr. Dixon. I will discuss this further at the end of the reasons.

ISSUES AND FINDINGS

Denial of Full Parole

[78] With respect to the Board's denial of Mr. Dixon's Full Parole, his application must fail on the grounds that a denial of parole does not constitute a deprivation of liberty.

[79] As the Supreme Court of Canada explained in *May v. Ferndale Institution*, 2005 SCC 82 [May] at para. 74:

[74] A successful application for habeas corpus requires two elements: (1) a deprivation of liberty and (2) that the deprivation be unlawful. The onus of making out a deprivation of liberty rests on the applicant. The onus of establishing the lawfulness of that deprivation rests on the detaining authority.

[80] In *Dumas v. Leclerc Institute*, [1986] 2 S.C.R. 459 [Dumas] at para. 12, the Court explained:

[12] The continuation of an initially valid deprivation of liberty can be challenged by way of habeas corpus only if it becomes unlawful. In the context of parole, the continued detention of an inmate will only become unlawful if he has acquired the status of a parolee. An inmate acquires that status as of the moment the decision to grant him parole takes effect. Thus, if

parole is granted effective immediately, he becomes a parolee when the decision is rendered. If, for some reason, the restriction to his liberty continues, he may then have access to habeas corpus. If parole is granted effective at some later date, then the inmate acquires the status of parolee at that date and not at the date of the decision. Similarly, where a decision is made to grant parole but it is subject to the fulfilment of a condition, the inmate only becomes a parolee if and when the condition is fulfilled. If he is not released on parole when the term arrives or the condition is fulfilled, then he may resort to habeas corpus. Finally, if parole is refused, it is obvious that the inmate has not become a parolee and he cannot have recourse to habeas corpus to challenge the decision. [Emphasis added.]

- [81] In *Lord v. Coulter*, 2009 BCCA 62 at para. 6, Ryan J.A., writing for the court, explained why a refusal to grant a release on parole is not reviewable via habeas corpus:
- [6] In the *Dumas* case, Mr. Justice Lamer (as he then was) held that a refusal to grant release on parole is not reviewable on habeas corpus because it does not constitute a deprivation of liberty. In such a case a prisoner who has been refused parole does not suffer a more restrictive form of confinement that he was suffering before the refusal.
- [82] In *Mapara v. Ferndale Institution (Warden)*, 2012 BCCA 127, Frankel J.A., writing for the court, followed this line of authorities after explaining the context in which the appellants in that case were seeking relief through habeas corpus:
- [13] It is important to understand the context in which the appellants seek relief in the nature of habeas corpus. The crux of their argument is that their detentions have become unlawful by reason of the manner in which they were denied ETAs [escorted temporary absences]. Their position is that an ETA is a statutory component of a federal sentence and that an unlawful or improper denial of an ETA constitutes an infringement of a residual liberty interest. They say that [they] are not seeking a mere privilege but the restoration of an explicit statutory component of their sentences.
- [14] The appellants argue that the purpose of habeas corpus is to challenge the lawfulness of a sentence, including the manner in which it is administered, and that resort to the writ is the only means by which inmates can assert their liberty rights under 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. They say that the regulatory scheme under the CCRA is limited by the Charter and by the purposes and principles of the CCRA, and that the lawfulness of those regulations and policies can be determined on a habeas corpus application. Further, they say that under this statutory framework, an ETA is not a form of conditional release and, thus, should not be subject to the policies regarding conditional releases, namely the requirement for a psychiatric assessment.

- [15] The appellants' arguments misconceive the scope of habeas corpus in the corrections context. The writ is not available to challenge all administrative decisions made by corrections officials. Rather, it is available to challenge only those decisions that result in a substantial change in the conditions of an inmate's confinement that adversely affects his or her residual liberty interests.
- [16] It is well established that an administrative decision that transfers an inmate to a more restrictive setting constitutes a deprivation of that inmate's residual liberty interests: *May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809 at para. 76. However, it is equally clear from *Dumas v. Leclerc Institution*, [1986] 2 S.C.R. 459, that a decision that denies an inmate access to less restrictive conditions does not constitute such a deprivation.
- [17] In *Dumas*, the National Parole Board granted Mr. Dumas day parole, conditional upon his being accepted by a community residential centre. Prior to that acceptance Mr. Dumas was accused of a number of disciplinary offences. This resulted in the Board delaying his day parole so that his case could be reviewed. Several weeks later the Board revoked its earlier grant of parole. In rejecting Mr. Dumas's efforts to use habeas corpus as a means of challenging the denial of parole, the Supreme Court of Canada held that the Board had not affected his residual liberty interests because its decision to revoke did not result in Mr. Dumas being subjected to a more restrictive form of confinement.
- [Emphasis added.]
- [83] Accordingly, the Board's denial of Full Parole to Mr. Dixon cannot be challenged through an application for habeas corpus, as it did not result in a substantial change in the conditions of his confinement. Mr. Dixon was never granted Full Parole. Adopting the language used in *Dumas*, Mr. Dixon's parole was refused; obviously he had not become a full parolee and thus he cannot have recourse to habeas corpus to challenge the decision.
- [84] I note as well that an order for habeas corpus is distinct from a judicial review. The remedy of the quashing of an order is not available on an application for habeas corpus; rather, this form of relief is available only in the Federal Court: *Khela v. Mission Institution (Warden)*, 2011 BCCA 450, aff'd 2014 SCC 24, at para. 88. Nor are other prerogative remedies such as certiorari, mandamus, or declaratory relief available as against a federal board, commission, or other tribunal. These remedies fall within the exclusive jurisdiction of the Federal Courts pursuant to ss. 18(1) and 2(1) of the Federal Courts Act, R.S.C. 1985, c. F-7 [FCA].
- [85] In *Chambers v. Daou*, 2015 BCCA 50, Groberman J.A., writing for the court, explained the use of prerogative remedies in the context of habeas corpus applications:
- [54] The "aid" that certiorari can give to habeas corpus is limited. It is procedural - to bring the record before the court. The point was reiterated, recently, in *Khela*:

- [35] Finally, Miller enhanced the effectiveness of habeas corpus by confirming that inmates may apply for certiorari in aid of habeas corpus. Without certiorari in aid, a court hearing a habeas corpus application would consider only the "facts as they appear[ed] on the face of [the] return" or on the "face" of the decision, as the case may be, in determining whether the deprivation of liberty was lawful (D. A. C. Harvey, *The Law of Habeas corpus in Canada* (1974), at p. 103). But certiorari in aid brings the record before the reviewing judge so that he or she may examine it to determine whether the challenged decision was lawful (*Mooring v. Canada (National Parole Board)*, [1996] 1 S.C.R. 75, at para. 117). Certiorari in aid therefore operates to make habeas corpus more effective by requiring production of the record of the proceedings that resulted in the decision in question (Miller, at p. 624; Laskin C.J. in *Mitchell v. The Queen*, [1976] 2 S.C.R. 570, at p. 578).
- [36] It should be noted that certiorari applied for in aid of habeas corpus is different from certiorari applied for on its own. The latter is often used to quash an order, and it is only available in the Federal Court to an applicant challenging a federal administrative decision. In the context of a habeas corpus application, what is in issue is only the writ of certiorari employed to "inform the [c]ourt" and assist it in making the correct determination in a specific case, and not the writ of certiorari used to bring the record before the decision maker in order to "have it quashed" as would be done on an application for judicial review in the Federal Court (Cromwell, at p. 321).
- [55] As explained in Miller, this limited use of certiorari is unrelated to the substantive use of certiorari to quash decisions. The procedural use of certiorari to bring the administrative record before the court has no counterpart in the other prerogative writs or in declaratory relief. There is, then, no place for those remedies to be used "in aid" of habeas corpus.
- [56] In particular, remedies such as mandamus or declaratory relief are not available to supplement the jurisdiction of the court. The remedy available on habeas corpus is a limited, though important one. It was described in [*Mission Institution v. Khela*, 2014 SCC 24] as follows:
- [39] In the Federal Court, a wide array of relief can be sought in an application for judicial review of a CSC [Correctional Service of Canada] decision (see s. 18.1(3)(b) of the FCA). But all a provincial superior court can do is determine that the detention is unlawful and then rule on a motion for discharge.

[Emphasis added.]

Suspension, revocation, and denial of Day Parole

- [86] Although on the face of the issue it is arguable the suspension of Mr. Dixon's Day Parole, the Revocation Decision, and the aspect of the Denial Decision denying Day Parole infringed his residual liberty interests, the respondent submits that where there is in place, as here, a complete, comprehensive, and expert procedure for determination of the correctional matter, the court should decline to exercise its habeas corpus jurisdiction. This proposition

is well supported by numerous decisions at the appellate level. As for the case at bar, the procedure for a review from the Board to the Appeal Division, and then for an appeal to the Federal Court of Canada, has been codified.

- [87] In May, the Supreme Court of Canada explained at paras. 44 and 50 those limited circumstances in which provincial superior courts should decline habeas corpus jurisdiction:
- [44] To sum up therefore, the jurisprudence of this Court establishes that prisoners may choose to challenge the legality of a decision affecting their residual liberty either in a provincial superior court by way of habeas corpus or in the Federal Court by way of judicial review. As a matter of principle, a provincial superior court should exercise its jurisdiction when it is requested to do so. Habeas corpus jurisdiction should not be declined merely because another alternative remedy exists and would appear as or more convenient in the eyes of the court. The option belongs to the applicant. Only in limited circumstances will it be appropriate for a provincial superior court to decline to exercise its habeas corpus jurisdiction. For instance, in criminal law, where a statute confers jurisdiction on a court of appeal to correct the errors of a lower court and release the applicant if need be, habeas corpus will not be available (i.e. *Gamble*). Jurisdiction should also be declined where there is in place a complete, comprehensive and expert procedure for review of an administrative decision (i.e. *Pringle and Peiroo*).
- [50] [P]rovincial superior courts should decline habeas corpus jurisdiction only where (1) a statute such as the Criminal Code, R.S.C. 1985, c. C-46, confers jurisdiction on a court of appeal to correct the errors of a lower court and release the applicant if need be or (2) the legislator has put in place [a] complete, comprehensive and expert procedure for review of an administrative decision.

[Emphasis added.]

- [88] Several relatively recent decisions of appellate courts in this and other provinces have held that the procedure for review of Board decisions that have resulted in a revocation of parole is a complete, comprehensive and expert procedure governed by Part II of the Corrections and Conditional Release Act, S.C. 1992, c. 20 [CCRA], and ss. 1, 18, and 18.1 of the FCA.
- [89] In *John v. Canada* (National Parole Board), 2011 BCCA 188, leave to appeal ref'd [2011] S.C.C.A. No. 256 [John], the Board had revoked Mr. John's Full Parole and the Appeal Division had affirmed that decision. Because Mr. John's counsel had been informed a judicial review in Federal Court would entail a six-month delay, Mr. John brought a habeas corpus application instead of seeking judicial review in Federal Court. Writing for the court and relying on *R. v. Latham*, 2009 SKCA 26 and *R. v. Graham*, 2011 ONCA 138, Lowry J.A. explained the hearing processes involved in appeals to the Appeal Division and to the Federal Court of Appeal; the independent nature of the Appeal Division; and the rationale for the courts to decline to assume jurisdiction where there is a complete, comprehensive, and expert procedure for the review of parole decisions. At paras. 19-20, Lowry J.A. wrote:

- [19] In Latham, upon which the judge relied, the conclusion of the Saskatchewan Court of Appeal was based on an analysis of the procedure having regard for the aspects of the immigration scheme discussed in May:
- [18] The Supreme Court considered the following factors when comparing the procedures available under the immigration and prison schemes: (1) whether there was an intention to grant exclusive jurisdiction over the issue; (2) whether the decision was reviewed by an independent administrative tribunal; (3) whether there were remedies set out in the legislation; (4) whether there were articulated grounds upon which grievances could be reviewed and whether the process was clearly laid out; (5) whether the decisions with respect to grievances were legally enforceable; (6) whether there was a detailed procedure for appeals to the Federal Court; and (7) whether the scheme provided for a review at least as broad as habeas corpus and no less advantageous. The Court's review led it to the conclusion the relevant factors favoured a concurrent jurisdiction in order to afford prisoners "a meaningful and significant access to justice in order to protect their liberty rights, a Charter value." In other words, the CCRA grievance procedure failed to provide such meaningful and significant access to justice to protect a prisoner's liberty rights as to avoid the need for further access to provincial superior courts.
- [19] In the case before us the question is whether the NPB review procedure meets the criteria such as to allow a provincial superior court to exercise its discretion to decline jurisdiction.
- [20] The respondent argues the CCRA establishes a complete, comprehensive and expert procedure for review of a parole decision. The CCRA gives the NPB exclusive jurisdiction to authorize parole matters including UTAs [Unescorted Temporary Absences] (s. 107(1)(e)). Section 147(1) gives inmates a right of appeal to the Appeal Division, and gives the Appeal Division broad appellate powers. Furthermore, the Federal Court has jurisdiction to exercise judicial oversight of NPB decisions pursuant to the Federal Courts Act.
- [21] As stated, s. 107(1)(e) of the CCRA gives the NPB exclusive jurisdiction and absolute discretion to authorize or cancel unescorted temporary absences for offenders serving indeterminate sentences. In [May] the provision in issue made it "clear that the regulator contemplated the possibility that an inmate may choose to pursue a legal remedy, such as an application for habeas corpus, in addition to filing an administrative grievance under the Regulations." In other words, there was no exclusivity of jurisdiction.
- [22] Further, the Appeal Division is an independent administrative tribunal. Section 146(1) of the CCRA sets out that the Appeal Division is a division of the National Parole Board made up of at most six full-time members of the Board. Board members are appointed pursuant to s. 103 of the CCRA which provides Board members are appointed by the Governor in Council, on the recommendation of the Minister, to hold office for a period of 10 years. Section 105 of the CCRA provides Board members "shall be sufficiently diverse in their backgrounds to be able to collectively represent community values and views in the work of the Board ..." This is clearly different from the procedure in Ferndale where grievances or appeals from

decisions made by prison authorities were reviewed by other prison authorities.

[23] The grounds for review are articulated and the process for review is clearly laid out. Section 147(1) of the CCRA provides:

147(1) An offender may appeal a decision of the Board to the Appeal Division on the ground that the Board, in making its decision,

- (a) failed to observe a principle of fundamental justice;
- (b) made an error of law;
- (c) breached or failed to apply a policy adopted pursuant to subsection 151(2);
- (d) based its decision on erroneous or incomplete information; or
- (e) acted without jurisdiction or beyond its jurisdiction, or failed to exercise its jurisdiction.

Section 147(4) sets out the powers of the Appeal Division as follows:

147(4) The Appeal Division, on the completion of a review of a decision appealed from, may

- (a) affirm the decision;
- (b) affirm the decision but order a further review of the case by the Board on a date earlier than the date otherwise provided for the next review;
- (c) order a new review of the case by the Board and order the continuation of the decision pending the review; or
- (d) reverse, cancel or vary the decision.

[24] Section 168 of the CCRA Regulations includes the following appeal provision:

168. For the purposes of subsection 147(3) of the Act, an offender or a person acting on behalf of an offender may appeal a decision of the Board to the Appeal Division by sending a written notice to the Board stating the grounds on which the appeal is made and providing the information and material in support of the grounds of appeal, within two months after the decision of the Board.

[25] Finally, and similar to the Immigration Appeal Division, a detailed procedure is set out in the Federal Courts Act for the manner in which applications and appeals are to be brought before the Federal Court. The Federal Court provides effective oversight over the NPB by way of judicial review and is fully capable of providing a remedy where appropriate. Therefore in my opinion the NPB and the Appeal Division constitute a complete, expert and comprehensive review procedure, such that provincial superior courts should decline to exercise their habeas corpus jurisdiction as the Chambers judge did in this case. Other courts have come to the same conclusion. [Footnotes omitted.]

[20] The same conclusion was most recently reached by the Ontario Court of Appeal in *Graham*. There, after quoting the limited exception pertaining to circumstances where there is a complete, comprehensive, and expert procedure in place recognized by the Supreme Court of Canada in *May*, the rationale was explained:

[9] The rationale underlying the exceptions referred to above is rooted in the risks associated with parallel procedures and the ineffective use of public resources flowing from such procedures. Cory J. succinctly explained these policy reasons, in the NPB context, in *Steele v. Mountain Institution*, [1990] 2 S.C.R. 1385, at p. 1418:

Since any error that may be committed occurs in the parole review process itself, an application challenging the decision should be made by means of judicial review from the National Parole Board decision, not by means of an application for habeas corpus. It would be wrong to sanction the establishment of a costly and unwieldy parallel system for challenging a Parole Board decision. As well, it is important that the release of a long-term inmate should be supervised by those who are experts in the field.

The court concluded as follows:

[16] This, in my view, is the very type of statutory regime envisioned in the habeas corpus exception articulated in *May v. Ferndale Institution*. The CCRA establishes a complete and comprehensive procedural regime for the review and appeal of a parole officer supervisor's decision to suspend parole. In addition, the process is carried out at its various stages by experts in the parole field.

[Emphasis added.]

[90] At para. 34, Lowry J.A. concluded that what was said in para. 9 of *R. v. Graham*, 2011 ONCA 138 (above) in reference to *Steele v. Mountain Institution*, [1990] 2 S.C.R. 1385, was:

determinative of the appellant's contention that the limited discretion to decline to exercise habeas corpus jurisdiction in a provincial superior court is, as a matter of course, foreclosed once the administrative procedure governing the suspension and revocation of parole has been completed. What was said in *Steele* suggests that if the administrative procedure is to be challenged it should be done by way of judicial review before the Federal Court in accordance with the legislative scheme rather than invoking what is the extraordinary remedy of habeas corpus in a provincial superior court. The Federal Court is the appropriate forum and judicial review is the appropriate procedure for judicial inquiry into the reasonableness of the administrative decisions which, at least in this instance, is what the appellant is seeking.

[Emphasis added.]

[91] The issue in *P.S.L. v. Matsqui Institution*, 2013 BCCA 390 [P.S.L.], as summarized by the trial judge, was set out by Chiasson J.A. at para. 8 of the appellate decision:

[8] The judge outlined the basic issue at paras. 1 and 2 of his reasons for judgment:

- [1] The petitioner, a federally incarcerated offender, seeks relief in the nature of habeas corpus with certiorari in aid, if necessary, following the suspension of his day parole. He acknowledges the well-developed body of appellate jurisprudence, binding on this Court, to the effect that provincial superior courts should decline to exercise habeas corpus jurisdiction where, as in this case, there is in place a complete, comprehensive and expert procedure for the review of administrative decisions made by parole officers to suspend parole. He seeks to distinguish this body of law on grounds that the parole officer who suspended his day parole lacked jurisdiction or the lawful authority to do so.
- [2] He argues that where a decision to suspend a grant of parole is based on considerations which lie beyond the scope of the statutory authority conferred on the National Parole Board by the Corrections and Conditional Release Act, S.C. 1992, c. C.20. (the Act or the CCRA) this Court is obliged to entertain the habeas corpus application. He contends that the line of appellate authority to which I have referred including, most recently, *Woodhouse v. Canada (Correctional Service)*, 2012 BCCA 45, should be confined to those cases where the Board acts within its assigned statutory jurisdiction. The issue on this petition is whether this Court should accept jurisdiction to rule on a habeas corpus application where what is in issue is not the reasonableness of a decision to suspend or revoke parole, but the jurisdiction of the Board to do so.
- [92] Chiasson J.A., referring to s.147 of the CCRA, noted at para. 18:
- [18] Section 147(1) of the [CCRA] states:
- 147.(1) An offender may appeal a decision of the Board to the Appeal Division on the ground that the Board, in making its decision,
- (a) failed to observe a principle of fundamental justice;
 - (b) made an error of law;
 - (c) breached or failed to apply a policy adopted pursuant to subsection 151(2);
 - (d) based its decision on erroneous or incomplete information; or
 - (e) acted without jurisdiction or beyond its jurisdiction, or failed to exercise its jurisdiction.
- It is apparent that the appellant's contention that the suspension was made without jurisdiction is subject to review on appeal to the Appeal Division.
- [19] Lowry J.A. observed in *John*:
- [33] ... [W]hether the limited discretion to decline habeas corpus jurisdiction is available does not turn on the status of the process engaged with respect to a suspension or revocation of parole but ... on the existence of what affords a complete, comprehensive and expert procedure in that regard.

[Emphasis added.]

- [93] Lowry J.A. also delivered the decision in *Woodhouse v. Canada (Correctional Service)*, 2012 BCCA 45. In that case the hearing judge made his ruling before the appeal decision in *John* had been issued. Having concluded the parole revocation process did not meet the requirements for refusing habeas corpus that the May decision had established, he decided to address the merits of Mr. Woodhouse's petition. The Court of Appeal found the judge had erred when he concluded the provisions of the CCRA did not constitute a complete, comprehensive, and expert, procedure for the review of parole decisions.
- [94] Lowry J.A. rejected Mr. Woodhouse's argument that the initial part of the process addressing the suspension of parole by a parole officer was not complete and comprehensive. He pointed to *R. v. Graham*, 2011 ONCA 138, in which the court held:
- [13] With respect to a suspension of parole, the statutory scheme works as follows. "A person designated by name or by position, by the Chairperson of the Board or by the Commissioner" may, by warrant, suspend the parole, authorize the apprehension of the offender, and authorize the recommitment of the offender until the suspension is cancelled, the parole is revoked or the sentence has expired: s. 135(1). A parole officer supervisor is such a person: Commissioner's Directive No. 718: Designation of Persons With Authority for Suspension Under s. 135 of the Corrections and Conditional Release Act, s. 10, June 16, 2008 (available at <http://www.csc-scc.gc.ca/text/plcy/cdshtm/718-cd-eng.shtml>). Section 107(1) grants the NPB exclusive jurisdiction and absolute discretion to grant, terminate or revoke parole, or to cancel a suspension, termination or revocation of parole. Where the offender is recommitted, the parole officer supervisor must forthwith review the offender's case and either cancel the suspension or refer the matter to the NPB for review within a tight statutorily defined time frame (within 14 days if the offender is serving a sentence of less than two years; within 30 days in any other case): s. 135(3). The NPB must then review the case ("the Board", for review purposes) and, within the 90-day period prescribed by the regulations, either cancel the suspension or terminate or revoke the parole: s. 135(4) and (5).
- [14] During this review process, where the offender is serving a sentence of two years or more - as the appellant is - the Board will take into account the offender's conduct since his or her release, including whether the possibility of re-offending will pose an undue risk to society: s. 135(5). The process, then, is not simply point-in-time. It involves more than a review of whether the parole officer supervisor's decision betrays an error of law or is otherwise wrong on its merits. But s. 135 is not to be read so narrowly as to preclude the Board from considering those factors, for - as the application judge noted - the decision of the parole officer supervisor is itself a part of the process transpiring since the offender's release. The Board will undoubtedly take into account the substantive reasons for suspending parole as part of the overall review.

- [15] The Board's review decision is, in turn, subject to an appeal to the Appeal Division of the NPB, pursuant to s. 147. The statutory grounds for such an appeal are wide-ranging and include jurisdictional error, error in law, and the failure to observe the principles of fundamental justice. Finally, the decision of the Appeal Division is subject to judicial review in the Federal Court.
- [16] This, in my view, is the very type of statutory regime envisioned in the habeas corpus exception articulated in *May v. Ferndale Institution*. The CCRA establishes a complete and comprehensive procedural regime for the review and appeal of a parole officer supervisor's decision to suspend parole. In addition, the process is carried out at its various stages by experts in the parole field.
- [95] At para. 11, Lowry J.A. surveyed the state of the jurisprudence on the issue:
- [11] There have been several appellate court decisions on the issue of whether the provisions of the [CCRA] contain a complete, comprehensive, expert procedure for the review of decisions to suspend parole. This Court, among others, has determined they do: *John v. Canada* (National Parole Board), 2011 BCCA 188, 270 C.C.C. (3d) 355, leave to appeal refused, [2011] S.C.C.A. No. 256. In *John*, after quoting from the Saskatchewan Court of Appeal's decision in *R. v. Latham*, 2009 SKCA 26, 244 C.C.C. (3d) 196, and the Ontario Court of Appeal's decision in *R. v. Graham*, 2011 ONCA 138, 268 C.C.C. (3d) 517, in this regard, I said:
- [21] In addition to *Latham* and *Graham*, the conclusion that the CCRA [Corrections and Conditional Release Act, S.C. 1992, c. 20] provides a complete, comprehensive and expert procedure for the review of NPB [National Parole Board] decisions is also to be found in the decisions of the Quebec Court of Appeal in *Lena v. Donnacona Prison*, 2011 QCCA 140; the Saskatchewan Court of Appeal in *R. v. Ross*, 2009 SKCA 24 (heard and released with *Latham*); the Nova Scotia Court of Appeal in *L.R.F. v. Canada* (National Parole Board), 2008 NSCA 56; as well as the decision of the Ontario Superior Court of Justice in *Elguindy v. Canada* (Attorney General), 2010 ONSC 1757. Before *May* was decided, the exercise of habeas corpus jurisdiction was declined, because of the nature of the NPB procedure in place, by the Alberta Court of Appeal in *Armaly v. Canada* (Parole Service), 2001 ABCA 280, 299 A.R. 188, and by the Ontario Superior Court of Justice in *McGrayne v. Canada* (Attorney General), [2002] O.T.C. 191, where *Armaly* was followed.
- [96] Although these appellate authorities clearly indicate that jurisdictional questions fall with the ambit of the review processes of the CCRA and judicial review in the Federal Court, Mr. Dixon relies on *D.G. v. Bowden Institution* (Warden), 2016 ABCA 52, aff'g 2015 ABQB 373 [D.G.] in arguing that this court should assume jurisdiction because of Ms. Albright's investigation of his laptop computer, thereby (Mr. Dixon argues) taking the matter out of the jurisdiction of the Board.

- [97] In D.G., the chambers judge determined she should assume jurisdiction to hear an inmate's habeas corpus application after the Board revoked his Day Parole and took him back into custody. The chambers judge went on to grant the inmate an order releasing him into the community and resuming his parole on conditions to be determined at a later hearing before the Board. The Court of Appeal dealt only with the chambers judge's assumption of jurisdiction and not the order granted.
- [98] The appellant Warden and Board did not challenge the chambers judge's jurisdiction but argued that she ought to have declined to exercise jurisdiction because the CCRA and FCA provided a "complete, comprehensive and expert procedure for the review of an administrative decision in parole matters; [and that] the matter should have been taken before the Federal Court on an application for judicial review, rather than before a provincial superior court on an application for habeas corpus": D.G. at para. 2.
- [99] The Alberta Court of Appeal dismissed the appeal, with Bielby and Wakeling JJ.A. writing separate concurring reasons and McDonald J.A. dissenting. At paras. 32-38, Bielby J.A. criticized some of the conclusions reached by Lowry J.A. in *John*, and held at para. 36 that "[t]he balance of the appellate authorities addressing habeas corpus in the parole revocation context do not expressly address the issue of whether the right to have such a decision reviewed in the Federal Courts brings this process within the May exception, i.e. a complete, comprehensive and expert process, a fact Justice Lowry noted himself at para. 30 of *John*." I note, however, that the Supreme Court of Canada refused leave to appeal Lowry J.A.'s decision in *John*: [2011] S.C.C.A. No. 256. Ultimately Bielby J.A. concluded that FCA's "process for judicial review by the Federal Court and appeal of the resulting decision by the Federal Court of Appeal is not a complete, comprehensive or expert procedure," and that the chambers judge accordingly had not erred in choosing to exercise her habeas corpus jurisdiction: D.G. at para. 49. As mentioned, Wakeling J.A. concurred in the result with Bielby J.A., holding that habeas corpus "is a constitutional remedy that should be issued unless it is beyond doubt that the applicant has access to another remedial procedure equally as efficacious as that provided by habeas corpus": D.G. at para. 143.
- [100] Schultes J. considered D.G. in *Vong v. Mountain Institution (Warden)*, 2016 BCSC 999 [Vong].
- [101] At paras. 65-67 of *Vong*, Schultes J. summarized the objections raised to *John* by Bielby and Wakeling JJ.A. of the Alberta Court of Appeal:
- [65] In one of the concurring judgments, Justice Bielby declined to follow the decision of our Court of Appeal in *John*, on the basis that it had drawn an incorrect analogy between the parole revocation system and the immigration scheme that had been used in *May* as an example of a procedure that was complete enough to justify the refusal of habeas corpus. Bielby J.A. also found that *John* had relied on a previous decision of the Supreme Court (*Steele v. Mountain Institution*, [1990] 2 S.C.R. 1385) that the Court in *May* had held was wrongly decided.

- [66] Applying the criteria from *May and Khela*, which had led the Supreme Court to conclude that the classification and transfer systems were not complete, comprehensive and expert procedures, Bielby J.A. reached the same conclusion with respect to parole revocation. In reaching this conclusion, she was particularly concerned with the delays inherent in pursuing the Federal Court review process, noting that the 160 days referred to in *John* were only the time until a hearing could be set. Based on the Federal Court Rules one should add another 90 days to reach the hearing date, plus whatever time was required by the Court after that to issue a decision.
- [67] In his concurring judgment, Justice Wakeling emphasized the constitutional status of habeas corpus and its important advantages as a procedure over a Federal Court review, such as its timeliness, the prisoner's access to superior courts throughout the province, the onus on prison authorities to justify deprivation of liberty and the non-discretionary nature of the remedy once unlawfulness of the deprivation is proven. He also noted that Parliament had not seen fit to bar habeas corpus when setting up the review structure for parole revocation. Concluding that the hearing judge had been correct not to decline jurisdiction, he expressly disagreed with the various contrary appellate decisions in British Columbia and elsewhere across Canada.
- [Footnote omitted.]
- [102] At paras. 70-74, Schultes J. held:
- [70] On the face of it, the decisions of our Court of Appeal in *John*, *Woodhouse* and *P.S.L.* require me to decline habeas corpus jurisdiction, on the basis that the legislated parole revocation review procedure provides one of the limited exceptions to the usual rule that jurisdiction should be accepted. The only question is whether the cases relied on by Mr. Vong's counsel show that there is a type of loss of jurisdiction by the Board that stands outside the scope of those decisions.
- [71] In considering that question, I do not think anything turns on the fact that Mr. Vong obtained an order for a new hearing from the Appeal Division, and indeed the Warden's counsel did not suggest otherwise. As Lowry J.A. pointed out in *John*, what matters in deciding whether habeas corpus should be declined is the completeness of the legislated procedure, not the stage to which the offender has progressed within it. If these Court of Appeal decisions do not preclude it, Mr. Vong is entitled to pursue a complete release through habeas corpus, even if he already has an order for a new hearing in hand.
- [72] The cases described by his counsel in her able submissions clearly demonstrate that, in situations similar to his, courts in this province have considered failures by the Board to observe mandatory time requirements, resulting in a loss of jurisdiction (and ancillary denials of natural justice through infringements of the mandatory disclosure requirements), to be a proper basis for granting habeas corpus and ordering release.

- [73] What I find impossible to accept however, is that all of the subsequent cases that have found the parole revocation process sufficiently complete to justify declining habeas corpus (including P.S.L.'s explicit finding that lack of jurisdiction is not an exception to this process) would have somehow inadvertently failed to mention that their rulings do not include this particular sub-category of error by the Board. The inescapable conclusion is instead that this type of loss of jurisdiction has been subsumed within the overall conclusion of the post-May authorities that errors within the revocation process are properly dealt with within the legislated review procedure. That is why none of the cases that Mr. Vong has relied on post-date Latham, and also why the decision in D.G., despite its severe criticism of the reasoning in John and other post-May decisions, does not suggest anything resembling the continuing additional basis for habeas corpus for which Mr. Vong's counsel advocates.
- [74] Of course the reasoning in D.G. is not the law in British Columbia. Its contention that other appellate courts have mis-applied May to improperly restrict offenders' access to habeas corpus when their parole has been revoked is something that only the Supreme Court of Canada can definitively resolve.
- [103] As counsel for the respondent noted in the case at bar, D.G., at most rises to the level of persuasive authority. It is not binding and is not the law in this province. The contention in D.G. that all of the other appellate courts have misapplied May is a matter that can only be resolved definitively by the Supreme Court, as noted by Schultes J.
- [104] Also of interest is Schultes J.'s comment on the time required to obtain a Federal Court review, a subject canvassed in Mr. Vong's affidavit materials and upon which he had hoped to distinguish his case as exceptional; that is, the procedures available under the CCRA and on judicial review to the Federal Courts allegedly failed to operate properly because Mr. Vong could not avail himself of a timely review. Schultes J. observed, however, at para. 75, that
- para. 43 of John seems to require that an offender actually seek such a review (including I would add, availing themselves of any available procedures to expedited it in view of their custodial status) and, despite all reasonable efforts, still be deprived of access to a timely hearing. Lowry J.A. found representations about review timelines, given in the abstract, to be insufficient to demonstrate an exceptional situation, and I find myself in the same situation here.
- [105] There are no concerns about time delays in the processing of Federal Court appeals in the case at bar as Mr. Dixon has declined to file any appeal to the Federal Court, although he is aware of that entitlement.
- [106] In conclusion, on the subject of jurisdictional errors in the Board's decisions to suspend, revoke, and ultimately deny Mr. Dixon's Day Parole, as the court in P.S.L. found, Mr. Dixon's contention that his parole was suspended without jurisdiction falls within the scope of review of the Appeal Division and judicial review before the Federal Courts. In summary, I agree with counsel for the respondent that the alleged jurisdictional errors fall within the compass of the complete, comprehensive, and expert procedure established under the

CCRA and FCA.

THE SEARCH OF MR. DIXON'S LAPTOP

[107] Still to be specifically considered is Mr. Dixon's argument that the Board lost jurisdiction because his computer was allegedly improperly searched by Hobden House staff and Ms. Albright, or both.

[108] I have already determined, following P.S.L., that this is a question falling within the jurisdiction of the Federal Courts by virtue of s. 18(1) of the FCA. However, I note that in *Mooring v. Canada (National Parole Board)*, [1996] 1 S.C.R. 75 [Mooring], the Supreme Court of Canada held, McLachlin J. (as she then was) and Major J. dissenting, held that the Board was not a court of competent jurisdiction for the purposes of excluding evidence under s. 24(2) of the Charter.

[109] Sopinka J., writing for the majority, explained at paras. 25-29:

[25] The Parole Board acts in neither a judicial nor a quasi-judicial manner: *Mitchell v. The Queen*, [1976] 2 S.C.R. 570, at p. 593. The elements of a parole hearing are described by David Cole and Allan Manson in *Release From Imprisonment* (1990). The authors point out that several elements of the hearing distinguish Parole Board proceedings from those which take place before a traditional court. For example, counsel appearing before the Parole Board serve an extremely limited function. According to Cole and Manson (at p. 428):

Although counsel is present as an advocate, since the hearing is inquisitorial there is no one against whom counsel can act as an adversary. Indeed, counsel should recall throughout that as far as the Board is concerned, the only occasion on which he may speak, as outlined in the Regulation, is at the end of the hearing when he is given an opportunity to address the Board on behalf of the client.

In addition, the traditional rules of proof and evidence do not apply in post-suspension proceedings before the Board. As Cole and Manson point out (at p. 431):

While the Board will consider legal defences or mitigating circumstances where a new charge has been laid, in the post-suspension hearing context Board members do not regard themselves as constrained by the formal rules of the criminal law respecting the admissibility of evidence, the presumption of innocence, or the necessity for proof beyond a reasonable doubt.

Other differences between parole hearings and more traditional court proceedings include (1) the Board lacks the power to issue subpoenas, (2) "evidence" is not presented under oath, and (3) the panel presiding over the hearing may have no legal training.

[26] In the decision currently under review, the Appeal Division of the Board described its function in the following terms:

The function of the Board at a post-suspension review is quite distinct from that of the courts. The Board must decide whether the risk to society of [the respondent's] continued conditional release is undue. In making that determination, the Board will review all information available to it, including any information indicating a return to criminal activity in the community. This applies whether or not the charges in court have been withdrawn, stayed or dismissed.

Clearly then, the Parole Board does not hear and assess evidence, but instead acts on information. The Parole Board acts in an inquisitorial capacity without contending parties -- the state's interests are not represented by counsel, and the parolee is not faced with a formal "case to meet". From a practical perspective, neither the Board itself nor the proceedings in which it engages have been designed to engage in the balancing of factors that s. 24(2) demands.

[27] In the risk assessment function of the Board, the factors which predominate are those which concern the protection of society. The protection of the accused to ensure a fair trial and maintain the repute of the administration of justice which weighs so heavily in the application of s. 24(2) is overborne by the overriding societal interest. In assessing the risk to society, the emphasis is on ensuring that all reliable information is considered provided it has not been obtained improperly. As stated by Dickson J., as he then was, in *R. v. Gardiner*, [1982] 2 S.C.R. 368, at p. 414, in relation to sentencing proceedings:

One of the hardest tasks confronting a trial judge is sentencing. The stakes are high for society and for the individual. Sentencing is the critical stage of the criminal justice system, and it is manifest that the judge should not be denied an opportunity to obtain relevant information by the imposition of all the restrictive evidential rules common to a trial. Yet the obtaining and weighing of such evidence should be fair. A substantial liberty interest of the offender is involved and the information obtained should be accurate and reliable.

[28] These principles apply a fortiori to proceedings before the Parole Board in which the subject has already been tried, convicted and sentenced. As stated by the Supreme Court of the United States in *Morrissey v. Brewer*, 408 U.S. 471 (1972), at p. 489:

We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.

[29] Like the basic structure and function of the Parole Board, the language of the Board's enabling statute makes it clear that the Board lacks the ability or jurisdiction to exclude relevant evidence. The language of the Corrections and Conditional Release Act confers on the Board a broad inclusionary mandate. Not only is it not bound to apply the traditional rules of evidence, but it is required to take into account "all available information that is relevant to a case". No mention is made of any power to apply exclusionary rules of evidence. Indeed, such a provision would conflict with its duty to consider "all available information that is relevant".

[110] As was the case with the applicant in *Skulsh v. Katz*, 2012 BCSC 350 [Skulsh], Mr. Dixon has not challenged the constitutional validity or applicability of the Board's governing statutes or sought a remedy under s. 52 of the Constitution Act, 1982, R.S.C. 1985, App. II, No. 44, Schedule B. His complaint is solely directed at the actions and decisions of members of the Correctional Services of Canada and the Board, who acted under constitutionally valid provisions.

[111] Habeas corpus is not the appropriate proceeding for declaratory relief under s. 24(2) of the Charter. As noted by L. Smith J. at para. 73 of *Skulsh*:

[73] If Mr. *Skulsh* did not invoke habeas corpus but simply claimed that various acts in the administration of his sentence had infringed his Charter rights, the appropriate proceeding would be an application for declaratory and injunctive relief. Section 18 of the Federal Courts Act grants the Federal Court exclusive jurisdiction to hear actions for and issue declaratory and injunctive relief concerning the actions of federal boards or tribunals.

[112] Section 18(1)(a) of the FCA states:

18(1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) To issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus, or writ of quo warranto, or grant declaratory relief against any federal board, commission or other tribunal.

[113] Section 101(a) of the CCRA states:

101 The principles that guide the Board and the provincial parole boards in achieving the purpose of conditional release are as follows:

(a) parole boards take into consideration all relevant available information, 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.

[114] Apart from the fact that a Charter breach cannot be properly alleged on a habeas corpus application, I found no foundation for a s. 7 or s. 8 Charter breach and s. 24(2) exclusion order. An inmate may have a residual expectation of privacy, but objectively, it is a greatly reduced one, whether the inmate is incarcerated or on parole.

[115] In *Weatherall v. Canada (Attorney General)*, [1993] 2 S.C.R. 872 [Weatherall], La Forest J., writing for the Court, noted at para. 5 that "[i]mprisonment necessarily entails surveillance, searching and scrutiny. A substantially reduced level of privacy is present in this setting and a prisoner thus cannot hold a reasonable expectation of privacy." *Weatherall* dealt with frisk searches and patrolling of cell ranges in male penitentiaries by female guards, but the general principle that prison entails a reduced expectation of privacy applies more broadly

than to these types of searches and encompasses parole, especially when parole conditions designed to protect public safety have been imposed.

[116] As I noted earlier, Mr. Dixon has not appealed the findings of the Appeal Division to the Federal Court. I will narrow my comments to the reasonableness of the search, and to the cornerstone proposition that the Board could lawfully consider whatever information it determined to be reliable and persuasive. As we saw in s. 101(1)(a) of the CCRA and in *Mooring*, the Board is required to take into account all relevant and properly obtained information. Also, as the Court stressed in *Mooring*, while it does not have jurisdiction to exclude evidence that has been obtained in a manner that contravenes the Charter, the Board is bound by a duty of fairness in the conduct of its proceedings; and to that end, it must ensure the information on which it bases its decisions is reliable and persuasive.

[117] Counsel for the respondent submitted the Board was completely justified in its consideration of the pictures and emails found on Mr. Dixon's computer, pointing out that Mr. Dixon essentially vouched for their reliability in his written submission to the Board, which it received June 17, 2014. I note as well that Mr. Dixon stated that several Hobden House staff members had access to his laptop, apparently with his knowledge. The letter is attached as an Exhibit to Ms. Bergeson's affidavit. Mr. Dixon wrote, in part:

With regards to the photos of the staff member [S], the pictures were consensual as [S] had knowledge I was tak[ing] the pictures. She worked at Hobden house for 5 months; we prepared meals together for the staff and residents for a period of 3.5 months. We agreed to make a photo album of the meals we prepared, [S] took some pictures and I took some pictures of different meals we prepared. The pictures will show she is in the process of preparing food in the kitchen, they will also show that she is looking directly at my phone, and laughing.

With respect to the pictures in a folder on my computer desktop, I had nothing to hide or anything to be deceitful about with the pictures so I [had] no reason to hide them. Several staff members including [S] had access to my computer when I was present with them and when I was not present with them.

[Emphasis added.]

[118] Given the surrounding context of Mr. Dixon's index offences; the concerns that arose from his conduct while on Day Parole; the relevant information that became available to Ms. Albright from her investigations and interviews of Mr. Dixon and Hobden House staff, which in due course was considered by the Board; the information contained in Correctional Plan Update #8; and the fact the information on Mr. Dixon's laptop was reliable, it was appropriate for the Board to consider the information in making its decisions. I will not comment on the Charter and privacy aspects of the case beyond that what I have stated thus far. If Mr. Dixon wishes to pursue that matter, he will have to apply for judicial review in Federal Court. As the evidence stands before this court, I see no merit in it.

[119] In summary, therefore, I agree with the respondent that the Board considered relevant information that was reliable and persuasive, properly carried out its mandate, and did not lose jurisdiction. It took no steps that were procedurally unfair; it did not fail to take steps it was statutorily obliged to take and which could justify an inquiry as to whether Board lost jurisdiction. If for the sake of argument a jurisdictional error had occurred, however, the appropriate course for Mr. Dixon to pursue a remedy would be by way of an application for judicial review in Federal Court.

APPLICATION FOR DISCLOSURE FROM THE RCMP

[120] As for the order sought to require a RCMP detachment to disclose surveillance evidence, there are several obstacles to this.

[121] Mr. Dixon has received full disclosure of the information upon which the Board and Appeal Division based their decisions. The information shared with Mr. Dixon is outlined in Checklists attached as Exhibits to Ms. Bergeron's affidavit. Duplicating this would be an unproductive use of resources.

[122] As for disclosure of surveillance evidence, the RCMP is not a party to this proceeding. Further, the surveillance was conducted by ISPOT. Some RCMP officers participate in the work of ISPOT, but ISPOT is not the same as the RCMP, nor is it part of the RCMP.

[123] I note as well that this case does not entail a Crown obligation to make full disclosure to a person accused of a criminal offence.

[124] Mr. Dixon may be operating under the misunderstanding that there is video evidence that could assist him. He has been provided with particulars of the surveillance evidence the Board had before it, which was sufficient to enable him to respond to the Board's concerns in respect of its decisions.

[125] For the foregoing reasons, there is no legal basis in this case for an order that the RCMP provide Mr. Dixon with documents related to ISPOT's surveillance of Mr. Dixon while on Day Parole.

CONCLUSION

[126] The application for habeas corpus and all other relief sought by Mr. Dixon is dismissed.

"N. Brown J."

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