

CANADA / JUDGMENT

Latham v. Canada

2004 FC 1585

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Decision Content

Date: 20041110

Docket: T-1232-02

Citation: 2004 FC 1585

Ottawa, Ontario, this 10th day of November, 2004

Present: THE HONOURABLE MR. JUSTICE O'REILLY

BETWEEN:

BRIAN R. LATHAM

Applicant

and

HER MAJESTY THE QUEEN, HER SERVANT THE SOLICITOR
GENERAL OF CANADA, AND HIS AGENTS THE NATIONAL
PAROLE BOARD AND THE CORRECTIONAL SERVICE OF CANADA
Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Brian Latham is serving an indeterminate prison sentence in Saskatchewan Penitentiary. He was convicted in 1987 of sexual assault and designated a dangerous offender. The National Parole Board reviewed Mr. Latham's case periodically in accordance with s. 761(1) of the Criminal Code, R.S.C. 1985, c. C-46 (relevant enactments are set out in the attached Annex). After a hearing in January 2002, the Board concluded that he should not receive any form of conditional release because he would pose an undue risk to society.

[2] Mr. Latham appealed to the Appeal Division of the National Parole Board, which affirmed the Board's decision in July 2002. Mr. Latham argues that the Appeal Division made a number of errors and asks me to order a new hearing.

[3] While Mr. Latham presented his case very ably, I cannot find any basis for overturning the Appeal Division's decision. I must, therefore, dismiss his application for judicial review.

I. Issues

1. Did the Board and the Appeal Division rely on erroneous, incomplete and prejudicial information in Mr. Latham's file?
2. Did the Appeal Division err in concluding that the Board was not biased?
3. Were Mr. Latham's rights under s. 12 of the Canadian Charter of Rights and Freedoms violated?

[4] Mr. Latham began his argument by telling me that he wished to refer to events and decisions that preceded his appeal to the Appeal Division. In particular, he alleged errors on the part of the Board and improper conduct on the part of the Correctional Service of Canada. I allowed him to make those submissions even though they did not relate directly to the Appeal Division's decision. I did so to the extent that his arguments seemed to be related to the overall fairness of the proceedings before the Appeal Division. Madam Prothonotary Roza Aronovitch had ruled in February 2003 that Mr. Latham could seek judicial review only of one decision (the Appeal Division's) and denied Mr. Latham's request for further production of documents. My ruling at the hearing did not contradict her order. It merely allowed Mr. Latham some latitude in the manner in which he framed the issues before me.

II. Analysis

[5] I can overturn the Appeal Division's decision only if I find that it was patently unreasonable, in the sense that it was entirely out of keeping with the evidence before it (*Costiuc v. Canada (Attorney General)*, [1999] F.C.J. No. 241 (T.D.) (QL)), if it was arrived at by way of an unfair procedure (*Hay v. Canada (National Parole Board)*, [1991] F.C.J. No. 561 (T.D.) (QL)), or if it violated Mr. Latham's constitutional rights (*Steele v. Mountain Institution*, [1990] 2 S.C.R. 1385). Mr. Latham's arguments related primarily to issues of fairness and his rights under the Canadian Charter of Rights and Freedoms.

1. Did the Board and the Appeal Division rely on erroneous, incomplete and prejudicial information in Mr. Latham's file?

[6] Mr. Latham claimed that both the Board and Appeal Division erred by considering erroneous, incomplete and prejudicial information.

[7] First, he argued that the Board was wrong to have characterized his convictions in Australia in 1970 as sexual assaults rather than common assaults. According to his file, Mr. Latham was convicted of three assaults on women. The Appeal Division noted that at least two of those assaults had "sexual connotations" and, therefore, concluded that the Board's mislabelling of them did not cause Mr. Latham any real harm. In any case, however, it ordered the Board correct to its error.

[8] Mr. Latham also suggested that the Appeal Division depended on unreliable evidence. He noted some discrepancies between his warrant of committal on the Australian charges, a letter from the Assistant Commissioner of Police of Sydney, New South Wales, dated July 30, 1971, and RCMP records of his convictions. These documents contain slightly different dates for Mr. Latham's convictions in Australia. Also, one of them refers to his having committed "assaults on females" and another mentions "common assaults". Mr. Latham contends that this documentation is unreliable and should not have been considered in determining whether he might be entitled to conditional release.

[9] These discrepancies were not brought to the attention of the Appeal Division or the Board. In any case, they are clearly not sufficient to discredit the substance of the

information contained in those documents. Mr. Latham asked me to order that his record be clarified. However, the proper procedure for correcting an institutional record is to request the Correctional Service of Canada to do so (s. 24, Corrections and Conditional Release Act, S.C. 1992, c. 20), or to seek judicial review of the Commissioner of the Correctional Service of Canada: *Tehrankari v. Canada* (Correctional Services) 2001 FCT 918, [2001] F.C.J. No. 1275 (T.D.) (QL).

[10] Mr. Latham complained to me that the letter from the Assistant Commissioner of Police was not disclosed to him until October 24, 2002, months after his parole hearing and appeal. However, a summary of the contents of that letter was disclosed to him more than a year earlier, well before his hearing and appeal, in a Correctional Plan Progress Report. While the original source of the information was not identified, Mr. Latham certainly had an opportunity to respond to the allegations about the Australian charges in his submissions to the Board and the Appeal Division. There was no unfairness to Mr. Latham.

[11] Mr. Latham argued that the Appeal Division was wrong not to criticize the Board's consideration of an alleged threat made by Mr. Latham against a staff member. At the time of the hearing before the Board, the matter was still under investigation. The Appeal Division noted that the Board was aware of the fact that the matter was unresolved. Further, the Board did not rely solely on that incident when it concluded that Mr. Latham had difficulties in his relationship with correctional staff. It referred to Mr. Latham's other confrontations with staff members and problems in taking directions from persons in authority. In the end, the Board concluded that these difficulties suggested that community supervision of Mr. Latham might not be effective. I can find no error in the Appeal Division's conclusion that the Board had properly considered the evidence before it.

[12] Further, Mr. Latham argued that the Appeal Division erred when it concluded that his conditional release had previously been unsuccessful in protecting the public. The Appeal Division referred to Mr. Latham's two convictions in 1974 for offences committed while under supervision in the community. Mr. Latham pointed out that he was paroled in relation to a previous offence in 1966 and did not commit any offences while under supervision. In my view, the Appeal Division was entitled to take note of the offences Mr. Latham committed while under supervision. Again, I can find no error in the Appeal Division's decision on this issue.

[13] Mr. Latham alleged that his file contains a psychiatric report that was inaccurate and inflammatory. The report mentioned two sexual assault charges for which Mr. Latham had been acquitted and a third for which a stay was entered because the complainant refused to testify. The report also referred to two convictions for rape for which Mr. Latham received sentences of four years and twelve years respectively. He argued that the Board must only consider convictions; otherwise, his right under the Canadian Charter of Rights and Freedoms to be presumed innocent would be violated. He submits that the Appeal Division erred when it concluded differently.

[14] A person's guilt or innocence is not at issue in parole hearings. The Board may consider other evidence about an offender's conduct besides convictions, so long as the information is reliable and reasonably specific: *Okeinyan v. Canada* (Prince Albert Penitentiary), [1988] F.C.J. No. 261 T.D. (QL); *Prasad v. Canada* (National Parole Board), [1991] F.C.J. No. 1165 T.D. (QL); *Giroux v. Canada* (National Parole Board), [1994] F.C.J. No. 1750 (T.D.) (QL). I cannot find any unfairness to Mr. Latham arising from the inclusion of the psychiatric report in his file. The Board and the Appeal Division were entitled to consider this evidence. In any case, I do not see any indication, in their reasons, that either of them actually did so.

[15] I can find no basis, therefore, for concluding that the evidence considered in Mr.

Latham's case was in any way improper.

2. Did the Appeal Division err in concluding that the Board was not biased?

[16] Mr. Latham raised bias in three respects. First, he argued that the Board's consideration of the information referred to above demonstrated a biased approach to his case. Given my conclusion that this evidence could be considered, I must reject this argument.

[17] Second, Mr. Latham complained to the Appeal Division that a certain member of the Board should not have been allowed to vote on his case because that member had sat on a number of Mr. Latham's previous parole reviews. The Appeal Division rejected that argument and Mr. Latham did not seriously challenge that decision before me.

[18] Third, Mr. Latham argued that a member of the Appeal Division may not sit on any subsequent appeal involving the same person. In Mr. Latham's case, a particular member had been involved in an appeal decision in 2000, as well as the 2002 decision under review here. Mr. Latham referred me to s. 146(3) of the Corrections and Conditional Release Act, which provides that "a member of a panel of the Appeal Division that orders a new review of a case . . . may not sit on the panel of the Board that reviews the case or on a panel of the Appeal Division that subsequently reviews the case on an appeal". As I read this provision, an Appeal Division member cannot sit on an appeal and then sit as a regular member of the Board, or later sit on the Appeal Division, in relation to the same case. It does not prevent the member from sitting on a subsequent and different appeal involving the same person. Accordingly, I must reject Mr. Latham's argument on this point.

3. Were Mr. Latham's rights under s. 12 of the Canadian Charter of Rights and Freedoms violated?

[19] Mr. Latham has been in prison for 17 years since he was designated a dangerous offender. He maintains that if he had been sentenced for the most recent offences that gave rise to his dangerous offender status, he would only have served a maximum of 10 years. He argues that the duration of his imprisonment is grossly disproportionate to his misconduct, constitutes cruel and unusual punishment and, therefore, violates s. 12 of the Charter.

[20] The Supreme Court of Canada has held that s. 12 may be violated in situations where the Board has unreasonably denied a person parole: *Steele*, above. To decide whether there has been an unconstitutional denial of parole, the Court must determine whether the Board has given careful consideration to the applicable statutory criteria. Justice Cory stated: "If it is clear on the face of the record that the Board has misapplied or disregarded those criteria over a period of years, with the result that an offender remains incarcerated far beyond the time he or she should have been properly paroled, then the Board's decision to keep the offender incarcerated may well violate s. 12" (at para. 67).

[21] The Board's powers are guided by a statement of the purpose of conditional release and an accompanying set of principles (Corrections and Conditional Release Act, ss. 100, 101). The purpose of conditional release is "to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their integration into the community as law-abiding citizens". To achieve that purpose, the Board must give "paramount consideration" to the protection of society (s. 101(a)); take account of all available, relevant information (s. 101(b)); communicate with "other components of the criminal justice system" (s. 101(c)); "make the least restrictive determination consistent with the protection of society" (s. 101(d)); adopt and follow appropriate policies (s. 101(e)); and provide offenders with

relevant information "to ensure a fair and understandable conditional release process" (s. 101(e)).

[22] Keeping in mind the purpose of conditional release and the various accompanying principles, the Board may grant parole under s. 102 of the Act if:

- (a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and
- (b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.

[23] Mr. Latham did not argue that the Board failed to apply these statutory criteria. Rather, he suggested that the Appeal Division erred by applying the wrong test for determining whether, on the whole, his sentence was grossly disproportionate. In particular, and in addition to the alleged mistakes already discussed above, Mr. Latham submitted that the Appeal Division wrongly considered his overall criminal history, not just the offences for which he was sentenced. He also argued that the Appeal Division failed to consider the comments of the sentencing judge.

[24] Justice Cory stated in *Steele*, above, that all of the relevant circumstances relating to "the offence and the offender" should be taken into account in deciding whether an indeterminate sentence is grossly disproportionate. In that case, the offender had committed a single offence of attempted rape in 1953 and had been designated a "criminal sexual psychopath". He was sentenced to five years' imprisonment to be followed by an indeterminate term. He had served a total of 37 years at the time of his appeal to the Supreme Court of Canada. The Court reviewed the entire history of Mr. Steele's case, including his various parole violations and difficulties with alcohol. It concluded that his was one of the rare cases when an indeterminate sentence had become grossly disproportionate. The Court did not specifically address whether the Board was entitled to consider the offender's entire criminal history. However, the Court emphasized repeatedly that all of the circumstances must be considered.

[25] Here, the Appeal Division told Mr. Latham in its reasons that it was "appropriate and necessary for the Board to assess your risk in light of your entire criminal history, and not just the offence" giving rise to the dangerous offender designation. It referred to s. 761 of the Criminal Code, which obliges the Board to "review the condition, history and circumstances" of the offender when deciding whether to grant parole.

[26] In my view, the Appeal Division took the correct approach. The Criminal Code clearly mandates a broad review of the offender's circumstances. The Supreme Court prescribed a similar approach in *Steele*, above. In addition, the provisions of the Corrections and Conditional Release Act cited above require the Board to take account of any information that is relevant to a decision whether to release a person from custody.

[27] Mr. Latham submitted that the Appeal Division's approach is contrary to what the Supreme Court held in *R. v. Lyons*, [1987] 2 S.C.R. 309. There, the Court upheld the constitutionality of the dangerous offender provisions of the Criminal Code. The Court specifically stated that an indeterminate sentence is imposed for the particular offence for which the offender has been convicted, not for his or her various criminal antecedents. As Justice La Forest stated:

The individual is clearly being sentenced for the "serious personal injury offence" he or she has been found guilty of committing, albeit in a different way than would ordinarily be done. It must be remembered that the appellant was not picked up off the street because of his past criminality (for which he has already been punished), or because of fears or suspicions about his criminal proclivities, and then subjected

to a procedure in order to determine whether society would be better off if he were incarcerated indefinitely. Rather, he was arrested and prosecuted for a very serious violent crime and subjected to a procedure aimed at determining the appropriate penalty that should be inflicted upon him in the circumstances. (At p. 328.)

[28] Justice La Forest's statement does not mean, however, that on a subsequent review the Board should not consider circumstances beyond the particular offence for which the offender was convicted. As mentioned, the Court itself counselled a broad approach to determining the issue of disproportionality in *Steele*, above. Further, Justice La Forest was not suggesting that the offender's criminal history was irrelevant in deciding whether to impose an indeterminate sentence. Elsewhere in his judgment, he referred to the requirement that the offence be part of "a pattern of behaviour which has involved violence, aggressive or brutal conduct, or a failure to control sexual impulses" (at p. 338). I find that the Appeal Division's approach to the issue of disproportionality was consistent with the prevailing case law.

[29] Mr. Latham also argued that the Appeal Division and the Board had neglected to consider the views of the sentencing judge in his case. Justice Kroft had stated that if he were to sentence Mr. Latham to a determinate sentence for his offence, he would impose a term of seven to ten years. Mr. Latham suggests that the Appeal Division was obliged to consider those remarks in deciding whether his sentence was grossly disproportionate.

[30] Mr. Latham's argument has a superficial appeal. In effect, by emphasizing the significance of the trial judge's remarks, he is suggesting that they set a benchmark for measuring disproportionality. Obviously, "disproportionality" is a relative term. It involves a comparison. Mr. Latham suggests that the appropriate comparison is between the actual punishment he has served (17 years) and the sentence he would otherwise have had imposed on him (maximum 10 years).

[31] I believe the issue is more complex. I have already noted that the Supreme Court of Canada has held that disproportionality should be evaluated according to all of the circumstances of the case. It certainly did not suggest that one could simply compare the offender's actual punishment with the sentence that might have been imposed. To do so would be to ignore many factors that are relevant to the decision whether to release an offender. Granted, at some point, it may be manifestly clear that a sentence is greatly out of proportion with the conduct for which it was imposed. The kind of simple comparison Mr. Latham proposes might be appropriate in that kind of case. But I note that the Supreme Court of Canada did not take that approach in *Steele*, above, where the offender had served 37 years for attempted rape. In fact, Cory J. said that "[t]he passage of several decades in prison may not in itself justify parole" (at para. 78). He also made clear that "[i]t will only be on rare and unique occasions that a court will find a sentence so grossly disproportionate that it violates the provisions of s. 12 of the Charter" (at para. 80).

[32] Obviously, the sentencing judge's comments are not irrelevant. The Board has a duty to consider all relevant and reliable evidence and, clearly, the comments of the trial judge will usually be important. Indeed, the principles that guide the Board specifically refer to the significance of "the stated reasons and recommendations of the sentencing judge". (s. 101(b), Corrections and Conditional Release Act). However, in the circumstances of this case, I cannot find that a failure specifically to mention those comments constitutes, in itself, a faulty analysis of disproportionality. Nor would I conclude that it necessarily amounts to reviewable error.

[33] Therefore, I must dismiss Mr. Latham's arguments that his constitutional rights under s. 12 of the Charter have been denied.

III. Disposition

[34] I have found no grounds for overturning the decision of the Appeal Division of the National Parole Board in this case and, must, therefore dismiss this application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT IS that:

1. The application for judicial review is dismissed with costs. "James W. O'Reilly" F.C.J. Annex Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act (U.K.), 1982, c. 11 Treatment or punishment
12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. Corrections and Conditional Release Act, S.C. 1992, c. 20 Accuracy, etc., of information
24. (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible. Correction of information
- (2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2) believes that there is an error or omission therein,
 - (a) the offender may request the Service to correct that information; and
 - (b) where the request is refused, the Service shall attach to the information a notation indicating that the offender has requested a correction and setting out the correction requested. Purpose of conditional release
100. The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens. Principles guiding parole boards
101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are
 - (a) that the protection of society be the paramount consideration in the determination of any case;
 - (b) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender;

- (c) that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programs to offenders, victims and the general public;
 - (d) that parole boards make the least restrictive determination consistent with the protection of society;
 - (e) that parole boards adopt and be guided by appropriate policies and that their members be provided with the training necessary to implement those policies; Criteria for granting parole
102. The Board or a provincial parole board may grant parole to an offender if, in its opinion,
- (a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and
 - (b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen. Constitution of Appeal Division
146. (1) There shall be a division of the Board known as the Appeal Division, consisting of not more than six full-time members designated by the Governor in Council on the recommendation of the Minister from among the members appointed pursuant to section 103, and one of those members shall be designated Vice-Chairperson, Appeal Division. ... Idem
- (3) A member of a panel of the Appeal Division that orders a new review of a case pursuant to subsection 147(4) may not sit on the panel of the Board that reviews the case or on a panel of the Appeal Division that subsequently reviews the case on an appeal. Criminal Code, R.S.C. 1985, c. C-46 Review for parole
761. (1) Subject to subsection (2), where a person is in custody under a sentence of detention in a penitentiary for an indeterminate period, the National Parole Board shall, as soon as possible after the expiration of seven years from the day on which that person was taken into custody and not later than every two years after the previous review, review the condition, history and circumstances of that person for the purpose of determining whether he or she should be granted parole under Part II of the Corrections and Conditional Release Act and, if so, on what conditions. Idem
- (2) Where a person is in custody under a sentence of detention in a penitentiary for an indeterminate period that was imposed before October 15, 1977, the National Parole Board shall, at least once in every year, review the condition, history and circumstances of that person for the purpose of determining whether he should be granted parole under Part II of the Corrections and Conditional Release Act and, if so, on what conditions. Charte canadienne des droits et libertés, Loi constitutionnelle de 1982, édictée comme l'annexe B de la Loi de 1982 sur le Canada, 1982, ch. 11 (R.-U.), Cruauté

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12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités. Loi sur le système correctionnel et la mise en liberté sous condition, L.C. 1992, ch. 20 Exactitude des renseignements
24. (1) Le Service est tenu de veiller, dans la mesure du possible, à ce que les renseignements qu'il utilise concernant les délinquants soient à jour, exacts et complets. Correction des renseignements
- (2) Le délinquant qui croit que les renseignements auxquels il a eu accès en vertu du paragraphe 23(2) sont erronés ou incomplets peut demander que le Service en effectue la correction; lorsque la demande est refusée, le Service doit faire mention des corrections qui ont été demandées mais non effectuées. Objet
100. La mise en liberté sous condition vise à contribuer au maintien d'une société juste, paisible et sûre en favorisant, par la prise de décisions appropriées quant au moment et aux conditions de leur mise en liberté, la réadaptation et la réinsertion sociale des délinquants en tant que citoyens respectueux des lois. Principes
101. La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes qui suivent_:
- a) la protection de la société est le critère déterminant dans tous les cas;
 - b) elles doivent tenir compte de toute l'information pertinente disponible, notamment les motifs et les recommandations du juge qui a infligé la peine, les renseignements disponibles lors du procès ou de la détermination de la peine, ceux qui ont été obtenus des victimes et des délinquants, ainsi que les renseignements et évaluations fournis par les autorités correctionnelles;
 - c) elles accroissent leur efficacité et leur transparence par l'échange de renseignements utiles au moment opportun avec les autres éléments du système de justice pénale d'une part, et par la communication de leurs directives d'orientation générale et programmes tant aux délinquants et aux victimes qu'au public, d'autre part;
 - d) le règlement des cas doit, compte tenu de la protection de la société, être le moins restrictif possible;
 - e) elles s'inspirent des directives d'orientation générale qui leur sont remises et leurs membres doivent recevoir la formation nécessaire à la mise en oeuvre de ces directives; Critères
102. La Commission et les commissions provinciales peuvent autoriser la libération conditionnelle si elles sont d'avis qu'une récidive du délinquant avant l'expiration légale de la peine qu'il purge ne présentera pas un risque inacceptable pour la société et que cette libération contribuera à la protection de celle-ci en favorisant sa réinsertion sociale en tant que citoyen respectueux des lois. Constitution de la Section d'appel

146. (1) Est constituée la Section d'appel composée d'un maximum de six membres de la Commission - dont le vice-président - choisis par le gouverneur en conseil, sur recommandation du ministre, parmi les membres à temps plein nommés en vertu de l'article 103. [...] Idem
- (3) A member of a panel of the Appeal Division that orders a new review of a case pursuant to subsection 147(4) may not sit on the panel of the Board that reviews the case or on a panel of the Appeal Division that subsequently reviews the case on an appeal. Code criminel, L.R..C. 1985, ch. C-46 Révision
761. (1) Sous réserve du paragraphe (2), la Commission nationale des libérations conditionnelles examine les antécédents et la situation des personnes mises sous garde en vertu d'une sentence de détention dans un pénitencier pour une période indéterminée dès l'expiration d'un délai de sept ans à compter du jour où ces personnes ont été mises sous garde et, par la suite, tous les deux ans au plus tard, afin d'établir s'il y a lieu de les libérer conformément à la partie II de la Loi sur le système correctionnel et la mise en liberté sous condition et, dans l'affirmative, à quelles conditions. Idem
- (2) La Commission nationale des libérations conditionnelles examine, au moins une fois par an, les antécédents et la situation des personnes mises sous garde en vertu d'une sentence de détention dans un pénitencier pour une période indéterminée imposée avant le 15 octobre 1977 afin d'établir s'il y a lieu de les libérer conformément à la partie II de la Loi sur le système correctionnel et la mise en liberté sous condition et, dans l'affirmative, à quelles conditions. FEDERAL COURT NAMES OF COUNSEL AND SOLICITORS OF RECORD DOCKET: T-1232-02 STYLE OF CAUSE: BRYAN R. LATHAM v. THE QUEEN, ET AL. PLACE OF HEARING: SASKATCHEWAN DATE OF HEARING: May 20, 2004 REASONS FOR JUDGMENT AND JUDGMENT BY: THE HONOURABLE MR. JUSTICE O'REILLY DATED: November 10, 2004 APPEARANCES BY: Bryan Latham ON HIS OWN BEHALF Rochelle Wempe FOR THE RESPONDENT SOLICITORS OF RECORD: BRYAN LATHAM ON HIS OWN BEHALF Saskatoon, SASK. MORRIS ROSENBERG FOR THE RESPONDENT Deputy Attorney General of Canada Ottawa, ON.

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