

CANADA / JUDGMENT

Ng v. Canada

2003 FCT 781

COURT

Federal Court

DECIDED

26 June 2003

Source: decisions.fct-cf.gc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Ng v. Canada

Court (s) Database

Federal Court Decisions

Date

2003-06-26

Neutral citation

2003 FCT 781

File numbers

T-2278-01

Decision Content

Date: 20030626

Docket: T-2278-01

Citation: 2003 FCT 781

BETWEEN:

CHUN WAI NG

Applicant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

REASONS FOR ORDER

GIBSON J.:

INTRODUCTION

- [1] These reasons follow the hearing of an application for judicial review of a decision of the Appeal Division of the National Parole Board (the "Appeal Division") wherein the Appeal Division affirmed a decision of a panel (the "Panel") of members of the National Parole Board (the "NPB") denying the Applicant full parole for deportation from Canada to the People's Republic of China. The decision under review is dated the 14th of November, 2001.
- [2] The grounds for the Applicant's application for judicial review are described in the application in the following terms:

...the National Parole Board erred in law and exceeded their [sic] jurisdiction when they [sic] ruled that the word "society" in the Corrections and Conditional Release Act includes Chinese society; and

...the National Parole Board erred in not holding that the failure of the Corrections Service Canada [sic] to provide equal access to programming and equal benefit of the law violated the Corrections and Conditional Release Act and sections 7, 15 and 27 [of] the Charter of Rights and Freedoms; ...

...

- [3] In terms of relief, the Applicant seeks certiorari quashing the decisions of the National Parole Board and the Appeal Division of the National Parole Board denying the Applicant parole and mandamus to compel the release of the Applicant for deportation to the People's Republic of China.

BACKGROUND

- [4] In his affidavit sworn the 21st of December, 2001 and filed in support of his application for judicial review, the Applicant attests that he was then thirty-eight (38) years old and was incarcerated at Fenbrook Institution, a medium security correctional facility near Bracebridge, Ontario, operated by the Correctional Service of Canada. The Applicant acknowledges that he is serving a sentence of thirteen (13) years, five (5) months and five (5) days for conspiracy to traffic in narcotics, trafficking in narcotics, possession of narcotics and laundering the proceeds of crime. The narcotic in question was heroine. The Applicant further acknowledges that he commenced serving his sentence on the 20th of December, 1996.
- [5] In the decision of the Panel of the NPB that was appealed to the Appeal Division, the Panel wrote:

You have been convicted of very serious offences involving trafficking in drugs over a period of time. The police undertook extensive surveillance, over three continents, of your drug dealing activities. In the 'Agreed Upon Statement of Facts' it is noted that eighty phone lines were tapped, in which two thousand drug related conversations were identified. Huge quantities of heroin, known on the street as "China White Number Four" were being traded and it is possible that these drugs were responsible for a number of overdose deaths in British Columbia and southern Ontario. Four separate syndicates were identified and you acted as the head of the largest and most active syndicate known as the "Big Circle Boys". You admitted that you were the person with the most money and capital to initiate the deals. You had extensive connections in both China and Thailand with the drug trade. Enormous profits resulted from these activities and you told the Board today that you sent money to your brother in China to buy a coal mine and a taxi. You were motivated by profit, as well as by your own use of drugs, and you told the Board that, at the time, you had no thought or concern about the devastating impact that importing such large quantities of drugs would have on society.

The Board discussed your addiction to heroin and you agreed that it had been a major problem. In 1992 you said you were using about a \$1000.00 worth of heroin a week, and that you started to smoke heroin from the moment you got up in the morning. When you were interviewed at penitentiary intake, you admitted that it was only a matter of time before you would have died. The Board is concerned that you have not taken any treatment to address this problem. Your assistant pointed out that no substance abuse treatment is available in your native language, and therefore you are not responsible for this lack of programming. It is noted that you have been taking English as a Second Language for a number of years but, for whatever reason, you have not made sufficient progress to take treatment programs in English.

While you were in Joyceville Institution you were observed to be associating with inmates involved in the drug sub-culture and, although nothing has been substantiated, you continue to be monitored. There are no negative reports from the institution indicating that you have used drugs since you have been incarcerated. The Board noted that a previously submitted community plan proposed working at a location where a fellow worker was a convicted heroin trafficker and this would suggest that you continue to have connections on the street in the world of drug dealing.

On a positive side, the Board heard that you have been taking Math in school with excellent results, and that you have had a fellow inmate translate the Cognitive Skills Program for you. Nevertheless, the Board does not feel that you have taken sufficient programming to address your risk factors.

Your plan is to be deported to China, where a brother will offer you support and employment. The Board notes that this is not the same brother that was referred to as being implicated in the drug deals. The Board remains unconvinced that you have severed all your ties with the drug trade here and in China, and notes you have the potential to become re-involved in the future. You originally came to Canada illegally. The Board has no reassurance that you will not attempt to return, especially taking into account the severe penalties for drug trafficking that are the

practice in that country.

THE DECISION UNDER REVIEW

[6] In the decision under review, the Appeal Division wrote:

You submit that the word society in the CCRA [Corrections and Conditional Release Act] means Canadian society, and that the Board exceeds its jurisdiction when it considers the risk to other societies. You state that by interpreting society as meaning the international community and therefore denying your parole, the Board erred in law.

You submit that you have been discriminated against both in terms of language and your status as an inmate who is to be deported upon release. You argue that throughout your incarceration and at the time of your parole hearing you were deprived of your rights under section 15 and section 27 of the Charter because:

- you are required to take programs which are only provided in English, therefore you were denied access to programs.
- you are required to learn English although you will be deported to a non-English speaking country.
- you are required to bring a structured release plan to the Board, despite the fact that you would not be released into Canadian society where such monitoring would be possible.

...

You also argue that the Board erred in law in holding that there is no reassurance that you will not attempt to return to Canada, as there is no evidence that you would attempt to return to Canada. You explain that you have immediate employment in China, and the majority of your family lives there. You also say that you have never appealed your deportation order to China.

... It is important to understand that the Board assesses risk in a similar manner, regardless of whether an offender is released in Canada or is deportable to another country. In any pre-release case, the Board must take into consideration the criteria of undue risk to society (not only Canadian society) in assessing risk.

With respect to your programming, it is CSC [the Correctional Service of Canada] that has responsibility for programming and treatment of offenders. Therefore, your complaints regarding the availability of programs should be directed to CSC. ...

...

We find that the Board was well aware of the fact that because of your situation, you could not provide a supervised release plan. However, we do not find that you were discriminated against as a result. Deportable inmates can provide viable and structured release plans in terms of personal support, employment, and available treatment/programming to address their needs. You did not.

...

RELEVANT PROVISIONS OF THE CORRECTIONS AND CONDITIONAL RELEASE ACT

- [7] The NPB is continued and its mandate is provided by Part II of the Corrections and Conditional Release Act[1] (the "CCRA").
- [8] The purpose of conditional release, the principles guiding the NPB and provincial parole boards and the criteria for granting parole are set out in sections 100 to 102 of the CCRA. The portions of those sections relevant for the purposes of this judicial review are the following:
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.
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;
- ...
- (d) that parole boards make the least restrictive determination consistent with the protection of society;
- ...
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.
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.
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;

...

- d) le règlement des cas doit, compte tenu de la protection de la société, être le moins restrictif possible;
- ...
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.
- [9] The only direction to the Governor in Council regarding the characteristics of persons appointed to be members of the NPB is reflected in subsection 105(1) of the CCRA which reads as follows:
105. (1) Members appointed to the Board shall be sufficiently diverse in their backgrounds to be able to collectively represent community values and views in the work of the Board and to inform the community with respect to unescorted temporary absence, parole and statutory release.
105. (1) Les membres sont choisis parmi des groupes suffisamment diversifiés pour pouvoir représenter collectivement les valeurs et les points de vue de la collectivité et informer celle-ci en ce qui touche les libérations conditionnelles ou d'office et les permissions de sortir sans escorte.
- [10] The jurisdiction of the NPB is provided by sections 107 to 110 of the CCRA. The only element of those provisions that is relevant for the purposes of this matter reads as follows:
107. (1) Subject to this Act, the Prisons and Reformatories Act, the Transfer of Offenders Act, the National Defence Act, the Crimes Against Humanity and War Crimes Act and the Criminal Code, the Board has exclusive jurisdiction and absolute discretion
- (a) to grant parole to an offender;
- ...
107. (1) Sous réserve de la présente loi, de la Loi sur les prisons et les maisons de correction, de la Loi sur le transfèrement des délinquants, de la Loi sur la défense nationale, de la Loi sur les crimes contre l'humanité et les crimes de guerre et du Code criminel, la Commission a toute compétence et latitude pour_:
- a) accorder une libération conditionnelle;
- ...

- [11] I am satisfied that no other provision of the CCRA and no provision the Prisons and Reformatories Act, the Transfer of Offenders Act, the National Defence Act, the Crimes Against Humanity and War Crimes Act and the Criminal Code impacts on the mandate of the NPB for the purposes of this matter.
- [12] Finally, a right of appeal from a decision of a panel of the Board to the Appeal Division and the mandate of the Appeal Division are provided in section 147 of the CCRA. Subsections (1), (4) and (5) of that section read as follow:
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.
- ...
147. (1) Le délinquant visé par une décision de la Commission peut interjeter appel auprès de la Section d'appel pour l'un ou plusieurs des motifs suivants_:
- a) la Commission a violé un principe de justice fondamentale;
 - b) elle a commis une erreur de droit en rendant sa décision;
 - c) elle a contrevenu aux directives établies aux termes du paragraphe 151(2) ou ne les a pas appliquées;
 - d) elle a fondé sa décision sur des renseignements erronés ou incomplets;
 - e) elle a agi sans compétence, outrepassé celle-ci ou omis de l'exercer.
- ...
- (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.

- (5) The Appeal Division shall not render a decision under subsection (4) that results in the immediate release of an offender from imprisonment unless it is satisfied that
 - (a) the decision appealed from cannot reasonably be supported in law, under the applicable policies of the Board, or on the basis of the information available to the Board in its review of the case; and
 - (b) a delay in releasing the offender from imprisonment would be unfair.
- (4) Au terme de la révision, la Section d'appel peut rendre l'une des décisions suivantes_:
 - a) confirmer la décision visée par l'appel;
 - b) confirmer la décision visée par l'appel, mais ordonner un réexamen du cas avant la date normalement prévue pour le prochain examen;
 - c) ordonner un réexamen du cas et ordonner que la décision reste en vigueur malgré la tenue du nouvel examen;
 - d) infirmer ou modifier la décision visée par l'appel.
- (5) Si sa décision entraîne la libération immédiate du délinquant, la Section d'appel doit être convaincue, à la fois, que_:
 - a) la décision visée par l'appel ne pouvait raisonnablement être fondée en droit, en vertu d'une politique de la Commission ou sur les renseignements dont celle-ci disposait au moment de l'examen du cas;
 - b) le retard apporté à la libération du délinquant serait inéquitable.

THE ISSUES

- [13] Counsel for the Applicant and counsel for the Respondent present substantially different statements of the issues arising on this application for judicial review. Based on their submissions and taking into account the submissions made before me at hearing, I am satisfied that the issues are the following: first, whether the Applicant is entitled on an application such as this to attack the decision of a panel of the NPB, the decision of which was before the Appeal Division, as well as the decision of the Appeal Division itself; secondly, what is the appropriate standard of review of the decision or decisions that is or are under review; thirdly, whether the NPB erred in law or exceeded its jurisdiction in addressing the risk to society at large that would be posed by the release of the Applicant from custody; fourthly, whether the NPB erred in failing to address the question of absence of programming at the Correctional Service of Canada in the Applicant's first language; fifthly, whether the NPB violated section 7 or sections 15 and 27 of the Canadian Charter of Rights and Freedoms[2]; and finally, in the event that I determine that the Applicant is entitled to relief, the appropriate relief.

ANALYSIS

- [14] While the foregoing constitutes a rather long preamble to my analysis on this application for judicial review, it has been provided because, I am satisfied, the Applicant's application lacks any substantive merit and what has gone before in these reasons, to a large extent, explains that conclusion. In the result, the analysis portion of these reasons will be relatively brief.
- a) The subject matter of this application for judicial review
- [15] I am satisfied that it is clear beyond doubt that the sole subject matter of this application for judicial review is the decision of the Appeal Division in relation to the Applicant, dated the 14th of November, 2001. That being said, since the essence of the decision of the Appeal Division is the affirmation of a decision of a panel of the NPB that was before it on appeal, I am satisfied that it is entirely appropriate to consider the panel decision in arriving at a determination of whether the Appeal Division erred in a reviewable manner in any respect.
- b) Standard of Review
- [16] Counsel for the Applicant did not address the issue of standard of review, either in written submissions or in oral submissions at hearing. By contrast, counsel for the Respondent urged that the appropriate standard of review is patent unreasonableness. In support of this position, counsel for the Respondent cited *Fehr v. National Parole Board et al*[3] and *Costiuc v. Canada (Attorney General)*[4]. The presiding judge in those matters did not undertake a pragmatic and functional analysis in determining the appropriate standard of review, as mandated by the Supreme Court of Canada in *Pushpanathan v. Canada (MCI)*[5]. Nor did counsel for the Respondent present any such analysis in support of his argument.
- [17] Factors to be considered on a pragmatic and functional analysis are the following: first, the presence or absence of a privative clause insulating, to a greater or lesser degree, from judicial review the decision under review; secondly, the expertise of the tribunal in relation to the Court's expertise; thirdly, the purpose of the law underlying the decision under review, here the CCRA, and of the particular provisions of that Act; and finally, the nature of the issues before the Court.
- [18] On the background to this matter, the first consideration is easily dealt with. The CCRA contains no privative clause. This factor supports a less deferential standard of review. The NPB, while a specialized tribunal, can hardly be said to be an expert tribunal. I am satisfied that that section 105 of the CCRA quoted above supports this conclusion and that, in the result, a less deferential standard is warranted. The issues on this matter raise questions of statutory interpretation and Charter application. I am satisfied that in both cases, the NPB has no greater expertise than that of members of this Court. Once again, a less deferential standard is warranted.
- [19] The purpose of the "Federal Correctional System", as enunciated in section 3 of the CCRA, and I interpret the concept of "Federal Correctional System" to include the Correctional Service of Canada and the National Parole Board, is to contribute to the maintenance of a

just, peaceful and safe society. That purpose certainly extends to include the role of the NPB by virtue of section 100 of that the CCRA as quoted earlier in these reasons. Thus, I am satisfied that the purpose of the CCRA as a whole, and of the provisions earlier quoted in particular, is largely "polycentric" in the words of the Supreme Court. What is centrally at issue on the facts of this matter is the determination of what might or might not constitute an "undue risk to society". As the NPB is charged with the responsibility of balancing "society's", whatever that term may mean, interest with that of offenders such as the Applicant, I am satisfied that the NPB's mandate supports, on the facts of this matter, a more deferential approach to the NPB's decisions. Finally, the substantive issues on this application for judicial review are largely questions of law and as such justify a less deferential approach to the decision of the Appeal Board that is here at issue.

[20] Against the foregoing considerations, I am satisfied that the appropriate standard of review of the decision of the Appeal Board, on the particular facts of this matter, is not patent unreasonableness but rather reasonableness simpliciter. I emphasize that I reach this conclusion based on the issues that are before the Court and the particular background of this matter. Notwithstanding the foregoing, I am satisfied that the appropriate standard of review of another decision of the Appeal Division, dealing with different issues on different facts, might well be patent unreasonableness.

c) Risk to "Society"

[21] As earlier noted in these reasons, the Appeal Division and the panel of the NPB whose decision was before the Appeal Division considered the concept of "society" in the mandate of the NPB to be "world society" or "society at large" rather than "Canadian society" or some other narrower concept of "society". Counsel for the Applicant urged that the Appeal Division erred in endorsing the interpretation of the panel of the NPB that was before it, in this particular regard.

[22] In *Bristol-Myers Squibb Co. v. Canada (Attorney General)*[6], Justice Evans, for the Court, wrote at paragraphs [12] and [13]:

The starting point for statutory interpretation in Canada is the following familiar extract from *Driedger, Construction of Statutes*, 2nd edn. (Toronto: Butterworths, 1983) at 87:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

This holistic approach to the interpretation of legislation, including, as here, subordinate legislation, requires a court to attribute the meaning that provides the best fit with both the text and the context of the provision in question. Neither can be ignored, although the clearer the "ordinary meaning" of the text, the more compelling the contextual considerations must be in order to warrant a different reading of it, especially when that involves adding words to those used by the legislator.

- [23] While the foregoing was not cited before me, the same quotation from Driedger was relied on by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*[7] which was cited before me on behalf of the Applicant.
- [24] The term "society" appears in a number of contexts within the CCRA and more specifically within sections 100 to 102 of that Act as, in part, earlier quoted. While, philosophically, I find the CCRA, read as it is required to be read, supports the interpretation of "society" adopted by the panel and by the Appeal Division, particularly given the place of Canada in an increasingly integrated world community sometimes described as the "global village", I decline to engage in the exercise of statutory interpretation that is urged on me.
- [25] The material that is before the Court on this matter indicates that the Applicant was engaged in an international narcotic distribution scheme extending at least from the People's Republic of China at one end to Canada at the other end. The deportation of the Applicant to the People's Republic of China, in the absence of a structured release plan such as it might be in that country, provides no assurance that the Applicant would not re-engage himself in narcotic distribution, to the detriment of Canadian society, either from the People's Republic of China or Thailand or through return to Canada. Even if "society" were interpreted to be the narrower concept of "Canadian society" which is urged on behalf of the Applicant, I am satisfied that the decision of the Appeal Division, confirming the decision of the panel that was before it, was reasonably open to it.
- [26] In the result, interpretation of the term "society" in the context of the CCRA and more particularly in the context of the role of the NPB, appropriately awaits determination at the level of this Court on another day.
- d) The lack of programming within the Correctional Service of Canada in the Applicant's first language
- [27] As noted earlier in these reasons, the Appeal Division succinctly disposed of this issue in the following sentences:

With respect to your programming, it is CSC that has responsibility for programming and treatment of offenders. Therefore, your complaints regarding the availability of programs should be directed to CSC.

- [28] I am satisfied that the Appeal Division was entirely correct in this conclusion. The mandate of the NPB simply does not extend to reviewing the compliance by the Correctional Service of Canada with the provisions of the Canadian Charter of Rights and Freedoms in carrying out its mandate. While the issues on behalf of the Applicant in this regard could well come before this Court following review of those issues within the context of the grievances procedure available to inmates in relation to the actions or inactions of the Correctional Service of Canada, there is no role for the NPB in that process.

- e) Alleged breaches by the NPB, and more specifically the Appeal Division, of section 7 and sections 15 and 27 of the Canadian Charter of Rights and Freedoms

[29] Sections 7, 15 and 27 of the Canadian Charter of Rights and Freedoms read as follows:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

...

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

...

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

...

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

- (2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

...

27. Toute interprétation de la présente charte doit concorder avec l'objectif de promouvoir le maintien et la valorisation du patrimoine multiculturel des Canadiens.

- [30] There can be no question that the conduct of the NPB must be in compliance with the Canadian Charter of Rights and Freedoms. In *Eldridge v. British Columbia (Attorney General)*[8], Justice LaForest, for the Court wrote at paragraph 19:

As I will develop later, in my view, it is not the impugned legislation that potentially infringes the Charter. Rather, it is the actions of particular entities - hospitals and Medical Services Commission - exercising discretion conferred by that legislation that does so. The second question is whether the Charter applies to those entities. In my view, the Charter applies to both in so far as they act pursuant to the powers granted to them by the statutes. ...

[31] At paragraph 21, Justice LaForest continued:

... There is no doubt, however, that the Charter also applies to action taken under statutory authority. The rationale for this rule flows inexorably from the logical structure of s. 32 [of the Charter]. As Professor Hogg explains in his Constitutional Law of Canada ...

Action taken under statutory authority is valid only if it is within the scope of that authority. Since neither Parliament nor a Legislature can itself pass a law in breach of the Charter, neither body can authorize action which would be in breach of the Charter. Thus, the limitations on statutory authority which are imposed by the Charter will flow down the chain of statutory authority and apply to regulations, by-laws, orders, decisions and all other action (whether legislative, administrative or judicial) which depends for its validity on statutory authority.

[32] I am satisfied that it is beyond question that the decision of the Appeal Division that is here under review "...depends for its validity on statutory authority."

[33] That being said, on the totality of the material before the Court, and leaving aside the alleged Charter breaches by CSC, I find nothing whatsoever to support the Applicant's allegations that the Appeal Division, or the NPB more broadly, in arriving at the decision here under review, breached either section 7 or sections 15 and 27 read together of the Charter. Given this conclusion, I decline to engage in the rather elaborate analysis required where there is some evidence to support a Charter breach.

f) Appropriate remedies

[34] In light of my analysis to this point, I need not engage in a discussion of the issue of appropriate remedies. That being said, if I were required to do so, I would be inclined to find the remedies sought to be inappropriate. At most, assuming a remedy to be warranted, and I conclude that that is not the case, I would set aside the decision of the Appeal Division that is under review and refer the Applicant's appeal back to the Appeal Division for redetermination in a manner not inconsistent with my reasons.

CONCLUSION

[35] Based upon the foregoing, this application for judicial review will be dismissed. While the Respondent sought costs in the event of success, costs were not seriously pursued at the end of the hearing before me. In the exercise of my discretion, I will provide no order as to costs.

J.F.C.C.

Ottawa, Ontario

June 26, 2003

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-2278-01

STYLE OF CAUSE: Chun Wai Ng v. Her Majesty the Queen
in Right of Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: June 11, 2003

REASONS FOR JUDGEMENT OF:

THE HONOURABLE MR. JUSTICE GIBSON

DATED: June 26, 2003

APPEARANCES:

Ronald Guertin FOR APPLICANT

Derek Rasmussen FOR RESPONDENT

SOLICITORS OF RECORD:

Ronald G. Guertin FOR APPLICANT

Ottawa, Ontario

Morris Rosenberg FOR RESPONDENT

Deputy Attorney General of Canada

[1] S.C. 1992, c. 20.

[2] Part I of the Constitution Act, 1982 (R.S.C. 1985, Appendix II No. 44), being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

[3] (1995), 93 F.T.R. 161.

[4] [1999] F.C.J. No. 241 (Q.L.), (F.C.T.D.).

- [5] [1998] 1 S.C.R. 982 at paras. 27-38.
- [6] [2003] F.C.J. No 566 (Q.L.), (C.A.), not cited before me.
- [7] [1998] 1 S.C.R. 27 at paragraph 21.
- [8] [1997] 3 S.C.R. 624.
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/51707/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/ng-v-canada-2003>

Prepared on 29 October 2026 · Esheria