Federal Court  Cour fédérale

Date: 20210804

Dockets: T-101-18
T-102-18
T-103-18
T-1358-12
T-465-20
T-1884-19

Citation: 2021 FC 821

Ottawa, Ontario, August 4, 2021

PRESENT: Madam Justice McVeigh

Dockets: T-101-18
T-102-18
T-103-18
T-1358-12

BETWEEN:

KAREN FRASER, JENNIFER SWEET, NICOLE SWEET, KIM SWEET, JOHN SWEET, J. ROBERT SWEET, CHARLES SWEET, PATRICIA CORCORAN, ANN PARKER AND TORONTO POLICE ASSOCIATION

Applicants

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS,

ATTORNEY GENERAL OF CANADA, CORRECTIONAL SERVICE CANADA, PAROLE BOARD OF CANADA AND CRAIG MUNRO

Respondents

Docket: T-465-20

AND BETWEEN:

DOUG FRENCH, DONNA FRENCH AND DEBORAH MAHAFFY

Applicants

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, ATTORNEY GENERAL OF CANADA, PAROLE BOARD OF CANADA, AND PAUL BERNARDO

Docket: T-1884-19

AND BETWEEN:

CANADIAN BROADCASTING CORPORATION

Applicant

and

PAROLE BOARD OF CANADA

Respondent

JUDGMENT AND REASONS

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I. Introduction

[1] This is regarding judicial review applications of six decisions—four by the Parole Board of Canada [“Parole Board”] and two by the Correctional Service of Canada [“CSC”]—denying requests for the further disclosure of personal information about two incarcerated individuals, Craig Munroe and Paul Bernardo [together the “Inmates”]. Of these requests, five were made pursuant to the *Access to Information Act*, RSC 1985, c A-1 [“*ATIA”*] and one by way of letter, requesting disclosure based on the Open Court Principle [“OCP”].

[2] I will dismiss these applications for the reasons that follow.

II. Background

[3] In their submissions, Canada (the Respondents: Minister of Public Safety and Emergency Preparedness, Attorney General of Canada, Parole Board of Canada), indicates that the files on the Inmates include records relating to:

- admission and discharge records (i.e. personal effects, valuables);
- case management reports (i.e. police reports, offender applications);
- discipline and disassociation reports (i.e. disciplinary measures, segregation records);
- education and training (i.e. employment records);
- health care (i.e. medical and surgical, dental and psychiatric assessments);
- preventative security (i.e. incident reports, modus operandi);
- psychology (i.e. psychological assessments, treatment records);
- sentence administration (i.e. victim information, community contact information); and

- visits and correspondence (i.e. list of visitors, declarations of common law unions).

[See also paragraph 15 for what is sought to be disclosed]

[4] This judicial review comprises of six decisions grouped into three proceedings. The six judicial reviews were heard together in one hearing, and the reasons are consolidated. The Respondent, Inmates did not file materials or participate in the hearing.

A. *First Group*

[5] The first group involves —Court files T-1358-12; T-101-18; T-102-18 and T-103-18 [the "1358 Applications"]—consists of four applications pursuant to s. 41 of the *ATIA* [Annex A]. These Applications are for the judicial review of Parole Board and CSC decisions denying the disclosure, either in whole or in part, of the personal CSC and Parole Board files on Mr. Munro and the disclosure of recordings of Mr. Munro's parole hearings.

[6] Mr. Munro was convicted of the brutal murder of Toronto Police Constable Michael Sweet in 1980, in a case that garnered considerable public and media attention due to Mr. Munro's cruel and repugnant conduct. The 1358 Applications are made by relatives of the deceased Cst. Sweet, i.e. the Fraser and Sweet families, and by the Toronto Police Association.

[7] In file T-1358-12, the Applicants submitted a Notice of Constitutional Question in 2013. They amended the question in 2020, asking the Court to determine:

> the constitutional validity and/or applicability and effect of sections 3.1, 4(a), (b), (c) and (e), 26(1), 27(1) and (2), 100.1, 101(a) and (b), 102, 132, 140(4), 140(5), 140(13), 140(14), 140.2(1), (2) and (3), 142(1)(b), 143(1) and 144(4) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("*CCRA*"); sections 2(1), 4(1), (2.1), 19(1), (2)(b) and (c) and 20(6) of the *Access to Information Act*, R.S.C., 1985, c. A-1; sections 7, 8(1), 8(2)(a), 8(2)(m)(i), 12 and 26 of the *Privacy Act*, R.S.C., 1985, c. P-21

[8] Neither the original or amended constitutional question was filed with the Court. Rule 73.1 of the *Federal Courts Rules,* SOR/98-106, requires that a Notice of Constitutional Question must be filed with the Registry, with proof of service, after service to all the parties. This was not brought to the attention of the Court by the parties and was only recently discovered neither question had been filed with the Court. Given Canada did not object and the non-filing could have been because of COVID related issues with the Registry or the parties, I will answer the question regardless of the procedural misstep on the part of the Applicants in the 1358 Applications.

[9] The four files comprising the 1358 Applications are as follows.

[10] File T-1358-12 is an application for the judicial review of the decision of the Parole Board dated June 20, 2011 [“PBC-1”], and the decision of the CSC date-stamped May 6, 2011 [“CSC-1”]. The former was affirmed by the Office of the Information Commissioner [“OIC”] on June 4, 2012, and the latter was affirmed by the OIC on June 4, 2012. The decisions denied the request for full disclosure and production of Mr. Munro’s complete Parole Board and CSC files,

and particularly what was before the Parole Board for his parole hearings held on March 30, 2011, March 16, 2010, and February 26, 2009. In PBC-1 and CSC-1, the request was declined pursuant to s. 19(1) of the *ATIA*.

[11] File T-102-18 is an application for the judicial review of the decision of the Parole Board dated June 27, 2018 [“PBC-2”] and affirmed by the OIC on September 25, 2018. The decision denied disclosure and production of Craig Munro’s complete Parole Board file regarding his parole hearings, and the audio/video recordings and transcripts of those parole hearings. Note that this decision was a redetermination pursuant to the Order of Prothonotary Aalto dated May 17, 2018. In PBC-2, the request was declined pursuant to s. 19(1) and 19(2)(c) of the *ATIA*.

[12] File T-103-18 is an application for judicial review of the decision of CSC dated July 3, 2018 [“CSC-2”], affirmed by the OIC on October 3, 2018. CSC-2 was a redetermination, pursuant to an Order of Prothonotary Aalto dated May 17, 2018, of the decision of the CSC dated May 17, 2017 declining disclosure pursuant to s. 19(1) of the *ATIA*. File T-101-18 consists of the judicial review of CSC’s May 17, 2017 decision. CSC-2 declined to disclose records pertaining to the cancellation of Mr. Munro’s unescorted temporary absences [“UTA”] and his transfer to the Matsqui Institution, and documents included from Exhibits “I” and “J” of the affidavit of Ginette Pilon, sworn on March 21, 2014 and filed in file T-1358-18. In CSC-2, the request was declined pursuant to s. 8(2)(m)(i) of the *Privacy Act*, RSC, 1985, c P-21 [*Privacy Act*] [See also para 16 re: intervener].

B. *Second Group*

[13] The second group consists of file T-465-20 [the "465 Application"] is an application pursuant to s. 41 of the *ATIA* for the judicial review of the decision of the Parole Board dated March 8, 2019 ["PBC-3"] and affirmed by the OIC, denying the release of Mr. Bernardo's prison and parole hearing records. Mr. Bernardo was convicted of a series of offenses, most notably the horrific first-degree murders of Ms. Leslie Mahaffy and Ms. Kristen French, in the early 1990s. This case garnered considerable public and media attention due to Mr. Bernardo's cruel and abhorrent conduct. The Applicants seek the release of all materials and information that were before and/or available to the Parole Board as well as complete copies of the audio/video recordings and transcript of the parole hearing held on October 17, 2018.

[14] The Applicants in the 1358 Applications and 465 Application made joint written and oral submissions. I refer to the Applicants in the first two applications collectively as the "Families" because they largely consist of family members of the victims of the Inmates [See also para 17 re: intervener].

[15] The records the Families' seek (in their own words) are:

> Their entire CSC files commencing from the first day they entered the Canada correctional system regarding any offence, including trial and sentencing transcripts;
>
> Their entire PBC files commencing from the first time that they came under its jurisdiction regarding any offence including trial and sentencing transcripts;
>
> In the case of Craig Munro, details of his 1979 Mandatory Supervision release and the conditions he was on at the time he murdered Police Constable Michael Sweet;

> More specifically, after Munro's first ATIP request, all ATIP requests included the disclosure of the entire CSC/PBC files that were directly or indirectly before the PBC for each hearing or which they had access to, as well as the materials that were before and/or used by CSC and the Case Management Team ("CMT") for the purpose of presenting their position at each parole hearing;
>
> In the case of Craig Munro, documentation regarding his institutional offences which resulted in his January 2016 transfer from the minimum security Kwikwexwelhp Institution to the medium security Matsqui Institution;
>
> In the case of Craig Munro, documents explaining the breaches and offences leading to the cancellation of his UTAs [unescorted temporary absence] in 2012 and consequently, the cancellation of his 2012 parole hearing, including full details of his positive cocaine tests, his involvement with the sex trade workers and how he went about to hide this activity from his CMT contrary to the conditions of his UTAs;
>
> In the case of Craig Munro, the circumstances and facts leading to his February 2016 withdrawal of his application for UTAs;
>
> Production of the audio recording and transcript (if they exist) of all of Munro, Bernardo, and Gayle's parole hearings;
>
> In the case of Paul Bernardo, the ATIP request included all documents relating to his application to be relieved from the full consequences of his dangerous offender designation, including all medical records/reports addressing findings supporting the dangerous offender designation and all evidence tendered at his dangerous offender hearing, i.e., Victim Impact Statements of the Scarborough rape victims, transcript of the hearing and reports filed
>
> (T-1358 Applicant's Memorandum of Fact and Law ["AMFL"] at para 8

C. *Third Group*

[16] The third group consists of file T-1884-19 [the "CBC Application"]. T-1884-19 is an application for judicial review by the Canadian Broadcasting Corporation ["CBC"] of a decision

of the Parole Board denying CBC's request for withheld personal information about the Inmates similar to the Families requests. CBC did not request the information pursuant to any specific legislation, however, but rather on the basis of the OCP.

[17] In addition CBC was granted leave to intervene in the judicial review of the Families, and made written and oral submissions before me as regards the applicable standard of review and the legal framework for resolving the 1358 Applications. CBC took no position on the specific outcome of the applications in the proceedings of the Families.

D. *Summary of the Three Groups*

[18] The submissions of the parties overlap substantially, and some arguments are only advanced on some of the applications. When possible, I will address similar arguments together.

[19] I will refer to the Respondents from all proceedings as "Canada" and all of the convicted Respondents as "Inmates". As well as previously set above references will be made to the Families and CBC. The various requested records will be referred to as the "Withheld Information".

[20] As noted at the beginning, these reasons are in regards to all of the Applications.

III. Preliminary Matters

[21] Canada raises a set of preliminary issues in respect of the scope of the Families' submissions. Canada submits that the Families:

- improperly made submissions and filed evidence regarding matters not before the Parole Board /CSC when it made the decisions under judicial review;
- sought the review of decisions made pursuant to *CCRA* provisions that fall beyond the scope of s. 41 of the *ATIA* and that are therefore outside of the scope of this judicial review;
- erroneously introduced evidence and made arguments regarding a decision declining an *ATIP* request for information regarding Mr. Clinton Gayle that is not on judicial review before this Court; and
- improperly sought the disclosure of information in CSC's possession regarding Mr. Bernardo, given that the judicial review in PBC-3 only covers Parole Board records.

[22] During oral submissions, the Families argued that all evidence submitted was relevant to contextualize the judicial review, and that the Court may decide on the weight given to this evidence. The evidence at issue included a refusal of disclosure by the Parole Board of information from an inmate who is not a party to these proceedings (Mr. Gayle). I would note that the Parole Board's decision with respect to Mr. Gayle is not yet properly available for judicial review because the opinion of the OIC has not yet been released. The Families also reference the closed nature of Mr. Munroe's April 3, 2020 parole hearing due to COVID-19. There was no decision on an *ATIP* request before the Court in relation to this issue.

[23] This Court may only consider the evidence before it in the record, and may not accept evidence, or give weight to any evidence which was not before the decision-maker and goes to the merits of the matter, with three exceptions (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20). The exceptions are: general evidence of a background nature; evidence of a breach of procedural fairness; and evidence that demonstrates a lack of evidence before the decision-maker (*Henry v Canada (Attorney General)*, 2021 FC 31 at para 15). None of these exceptions are present in this case, and so only the information which was before the decision-maker will be considered in this judicial review.

[24] Likewise there is no basis on which the evidence or the submissions relating to Mr. Gayle may be considered as part of this judicial review. While I acknowledge that the families of the victims of Mr. Gayle [the "Baylis/Leone" parties] have agreed to be bound by the outcome of this decision, no s. 41 *ATIA* application for judicial review has been made regarding their *ATIP* request for the disclosure of information regarding Mr. Gayle. Any evidence and submissions relating to Mr. Gayle are therefore immaterial to the resolution of the judicial reviews before me. For those same reasons, I cannot bind the Baylis/Leone parties to any outcome resulting from these judicial reviews.

[25] I agree with Canada that s. 20(6) of the *ATIA* has no application to these proceedings. That provision applies only if a disclosure refusal was made under s. 20(1) of the *ATIA* because the sought-after records contained confidential commercial information supplied by a third party. That is manifestly not the case here.

[26] Finally on the point of admissible arguments and evidence, Canada argues that the submissions and evidence regarding the April 3, 2020 parole review hearing of Mr. Munro should be disregarded as they are not part of this judicial review. I agree.

[27] Canada further submits that several of the arguments on the constitutional invalidity of the *ATIP* decision-making framework raised by the Families do not reflect the position they took before the administrative decision-makers, and therefore are improperly raised on judicial review.

[28] While the Families did not dispute the constitutional validity of the presumption against disclosure in their *ATIP* request, they raise a host of constitutional questions in their Notice of Application [see para 7] for Judicial Review and their Notice of Constitutional Question. Generally speaking, a party may not raise a new issue in a judicial review that they could have raised before the decision-maker (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 23; *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245 at para 37).

[29] However, in this case, the new issues arose because of the decision rendered. I therefore disagree with Canada that the Families cannot advance their arguments on constitutional invalidity on account of having not espoused those arguments in their *ATIP* request. The Families cannot be expected to bind themselves to their arguments about errors in the statutory delegates' decisions prior to having seen those decisions. Given that there is no dispute that the Notice of Constitutional Question was properly served and that it adequately reflects the

Families' constitutional arguments raised in their submissions, I am of the view that these questions are properly before me.

[30] As a closing observation, it is useful to restate that this decision is not a judicial review of the parole review decisions concerning the Inmates or their heinous crimes. The issues for determination by this Court are whether the Parole Board and CSC erred in law when they declined to disclose the requested personal information about the Inmates and the audio recordings of their Parole Board hearings while still allowing victims, their families and observers to attend the hearings and victim's families to have access to audio of hearings they did not attend.

IV. Issues

[31] The Families identify five points at issue related to the denial of the Withheld Information:

> When an offender seeks to be released from prison on parole and reintegrated back into the community on the basis of the assertion that he/she no longer poses a risk to public safety, are they seeking a "public" remedy or a "private" remedy?
>
> Having chosen to seek parole at a "public" hearing, are offenders like Craig Munro, Paul Bernardo and Clinton Gayle entitled to assert a "privacy" interest over documents that (a) they intend to rely upon at their hearing for the purpose of persuading their respective CSC CMT and/or the PBC, that they no longer pose a risk to public safety, and, therefore entitled to be released back into the community on parole and (b) are referred to and identified at the hearing and in the decision of PBC?
>
> In the event that this Honourable Court determines that offenders can assert a "privacy" right over their institutional files and records, upon which they rely, including documents discussed publicly at their parole hearing and relied upon and referred to in

> the decision of PBC (which are of public record), as well as assert a privacy interest over the audio recordings and transcripts of their parole hearings, did CSC/PBC (as the case may be) err in concluding under s. 8(2)(m)(i) of the *Privacy Act*, that the privacy interests of these types of offenders (that is offenders serving life sentences as distinct from offenders with fixed sentences), outweighed the public interest and the interests of their victims?
>
> Does the *CCRA*, the *ATIA* and the *Privacy Act* collectively and/or individually (or as interpreted by PBC/CSC and affirmed by the OIC), create an unconstitutional reverse onus by impermissibly creating a presumption in favour of non-disclosure?
>
> To the extent that the impugned legislative regime (the *CCRA*, the *ATIA* and the *Privacy Act*), prevent disclosure and production of the materials and information sought by the applicants in their respective ATIP requests, do they violate the open Court principles and free speech rights of the applicants and the general public embedded in s. 2(b) of the *Charter*?
>
> (Families AMFL at para 56)

[32] CBC characterizes the issues as:

> A. Does the constitutional openness principle apply to Parole Board hearings, or should the Recordings have been disclosed under s. 2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*]?
>
> B) Did the Decision reflect a proportionate balancing of the *Charter* protections at play?
>
> C) Does the *Privacy Act* bar disclosure?

[33] Addressing all relevant questions from the submissions of the Applicants, I have characterized the issues as follows:

A. Is there an s. 2(b) *Charter* right to the information requested?

B. Were the decisions of the Parole Board and CSC unreasonable?

V. Standard of Review

A. *The Families' and CBC's Submissions*

[34] The Families submit, both in their written submissions and at the hearing, that the applicable standard of review ["SOR"] is correctness, but provide no jurisprudential support for their claim. During the hearing, counsel for the Families stated that he was adopting CBC's submissions with respect to the SOR. Nevertheless, the Families asserted that the constitutional issue, the issue of statutory interpretation, and the balancing of public and private interest pursuant to *Privacy Act* s. 8(2)(m)(i) [Annex B] are reviewable on a standard of correctness. The Families' position is that only the Parole Board/CSC's discretionary decision is reviewable on a standard of reasonableness.

[35] Notwithstanding the Families' adoption of CBC's arguments on the SOR, it is useful to recall that the latter made submissions that specifically address the particularities of the 1884 Application. CBC's argument on SOR is tailored to its application, and does not transpose well to the decision on review in the Families' applications.

[36] Specifically, the difficulty arises because the Parole Board/CSC decisions in the Families' applications do not engage on the topic of the OCP. Unlike CBC application, which considered and then waived the matter, the Parole Board/CSC did not turn their attention to the matter in the Families' applications.

[37] During the hearing, CBC did not distinguish the applicable SOR as between the 1358 Applications and the 1884 Application. It likewise did not suggest that a different standard of review applies to CSC and Parole Board decisions.

[38] CBC argues that the questions at issue attract different SOR. As regards the first issue before me, CBC submits that the first question is reviewable on a standard of correctness. That is, whether the OCP and the *DM/Sierra* test, (see: paragraphs 54 & 56) apply to the disclosure of government records arising from a parole hearing pursuant to the *ATIA* is a constitutional question of the type identified in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], that attracts a correctness standard. In support of its argument, CBC relies on a recent decision of the Ontario Court of Appeal that held that a decision declining to apply the *DM/Sierra* test in restricting access to an administrative hearing was reviewable on a correctness standard (*Canadian Broadcasting Corporation v Ferrier*, 2019 ONCA 1025 at paras 33-37 [*Ferrier*]).

[39] On the second issue, CBC submits that the Parole Board/CSC's decision to not disclose the Withheld Information is reviewable on a reasonableness standard as formulated in *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*].

B. *Canada's Submissions*

[40] Canada's submission on the SOR do not exactly track the issues as I have formulated them. Nevertheless, it can be said, regarding the first issue, that Canada's position seems to be that the "issues decided by the Board do not fall into any of the limited exceptions in *Vavilov*".

They also submit that a determination on whether the OCP applies in a particular administrative hearing is a matter of interpretation by an administrative body of its own statute and mandate, which calls for a reasonableness review under *Vavilov*.

[41] On the second issue, Canada submits that judicial reviews pursuant to s. 41 of the *ATIA* proceed in two stages: *Husky Oil Operations Limited v Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2018 FCA 10 at paragraphs 15 & 17 [*Husky*]. First, correctness governs the decision on whether the Withheld Information falls within the statutory exemption to disclosure at s. 19(1) of the *ATIA*. Then, reasonableness governs the discretionary decision to refuse to release exempted information under s. 19(2). To the extent that *Charter* protections are engaged, the reasonableness review at articulated out in *Doré* is applicable on the second step of the *Husky* analysis. Notwithstanding that *Husky* was decided prior to *Vavilov*, Canada submitted that it remains good law regarding the applicable SOR for judicial reviews pursuant to s. 41 of the *ATIA*.

C. *Analysis*

[42] The standard of review applicable to the first question is correctness. I agree with the Ontario Court of Appeal in *Ferrier* at paragraph 35 that an assessment of whether the OCP applies to Parole Board hearings is reviewable on a correctness SOR. The applicability of *Charter* rights, here the OCP under s. 2(b) of the *Charter* [Annex C], to Parole Board hearings is specifically the type of question that requires that a standard of correctness be applied. This is not a situation like the one envisioned under the *Doré* analysis where, a *Charter* right is infringed upon by an administrative decision. Rather, the question here is a threshold question regarding

the applicability of a *Charter* right — whether Parole Board hearings are subject to the OCP and therefore are decisions on disclosure subject to the test recently reformulated in *Sherman Estate v Donovan*, 2021 SCC 25 [*Sherman Estate*]—which requires consistency and a "final and determinate answer" (*Vavilov*, at para 53). The correctness standard is therefore applicable.

[43] Regarding the second question, I agree with Canada that the two-part analysis from *Husky*, (see above at para 41), sets out the applicable SOR for applications for disclosure under s. 41 of the *ATIA*. I agree with Canada that *Vavilov* has not altered the application of *Husky.* A correctness SOR applies to determining whether the Withheld Information falls within the statutory exemption at s. 19(1) of the *ATIA*. Conversely, a reasonableness SOR applies to the discretionary decision not to disclose information under s. 19(2) of the *ATIA* subject to a *Doré* framework.

VI. The Law

[44] The *CCRA* provides for the disclosure of information to victims. S. 140 through 140.2 of the *CCRA* [Annex D] set out the law for review hearings, including the information to which the families of victims have access and the circumstances under which the families and other observers can apply to attend review hearings:

140 (4) Subject to subsections (5) and (5.1), the Board or a person designated, by name or by position, by the Chairperson of the Board shall, subject to such conditions as the Board or person considers appropriate and after taking into account	140 (4) Sous réserve des paragraphes (5) et (5.1), la Commission, ou la personne que le président désigne nommément ou par indication de son poste, doit, aux conditions qu'elle estime indiquées et après avoir pris en compte les observations du

the offender's views, permit a person who applies in writing therefor to attend as an observer at a hearing relating to an offender, unless the Board or person is satisfied that

(a) the hearing is likely to be disrupted or the ability of the Board to consider the matter before it is likely to be adversely affected by the presence of that person or of that person in conjunction with other persons who have applied to attend the hearing;

(b) the person's presence is likely to adversely affect those who have provided information to the Board, including victims, members of a victim's family or members of the offender's family;

(c) the person's presence is likely to adversely affect an appropriate balance between that person's or the public's interest in knowing and the public's interest in the effective reintegration of the offender into society; or

(d) the security and good order of the institution in which the hearing is to be held is likely to be adversely affected by the person's presence.

délinquant, autoriser la personne qui en fait la demande écrite à être présente, à titre d'observateur, lors d'une audience, sauf si elle est convaincue que, selon le cas :

a) la présence de cette personne, seule ou en compagnie d'autres personnes qui ont demandé d'assister à la même audience, nuira au déroulement de l'audience ou l'empêchera de bien évaluer la question dont elle est saisie;

b) sa présence incommodera ceux qui ont fourni des renseignements à la Commission, notamment la victime, la famille de la victime ou celle du délinquant;

c) sa présence compromettra vraisemblablement l'équilibre souhaitable entre l'intérêt de l'observateur ou du public à la communication de l'information et l'intérêt du public à la réinsertion sociale du délinquant;

d) sa présence nuira à la sécurité ou au maintien de l'ordre de l'établissement où l'audience doit se tenir.

(5.1) In determining whether to permit a victim or a member of the victim's family to attend as an observer at a hearing, the Board or its designate shall make every effort to fully understand the need of the victim and of the members of his or her family

(5.1) Lorsqu'elle détermine si une victime ou un membre de sa famille peut être présent, à titre d'observateur, lors d'une audience, la Commission ou la personne qu'elle désigne s'efforce de comprendre le besoin de la victime ou des membres de sa famille d'être

to attend the hearing and witness its proceedings. The Board or its designate shall permit a victim or a member of his or her family to attend as an observer unless satisfied that the presence of the victim or family member would result in a situation described in paragraph (4)(a), (b), (c) or (d).	présents lors de l'audience et d'en observer le déroulement. La Commission ou la personne qu'elle désigne autorise cette présence sauf si elle est convaincue que celle-ci entraînerait une situation visée aux alinéas (4)a), b), c) ou d).
(5.2) If the Board or its designate decides under subsection (5.1) to not permit a victim or a member of his or her family to attend a hearing, the Board shall provide for the victim or family member to observe the hearing by any means that the Board considers appropriate. [emphasis added]	(5.1), de ne pas autoriser la présence d'une victime ou d'un membre de sa famille lors de l'audience, elle prend les dispositions nécessaires pour que la victime ou le membre de sa famille puisse observer le déroulement de l'audience par tout moyen que la Commission juge approprié. [soulignement ajouté]

[45] In addition to permitting attendance by victims, victims' families, and observers at a Parole Board hearing, victims and their families may participate by presenting statements:

140 (10) If they are attending a hearing as an observer,	140 (10) Lors de l'audience à laquelle elles assistent à titre d'observateur :
(a) a victim may present a statement describing the harm, property damage or loss suffered by them as the result of the commission of the offence and its continuing impact on them — including any safety concerns — and commenting on the possible release of the offender; and	a) d'une part, la victime peut présenter une déclaration à l'égard des dommages ou des pertes qu'elle a subis par suite de la perpétration de l'infraction et des répercussions que celle-ci a encore sur elle, notamment les préoccupations qu'elle a quant à sa sécurité, et à l'égard de l'éventuelle libération du délinquant;
(b) a person referred to in subsection 142(3) may present	b) d'autre part, la personne visée au paragraphe 142(3)

a statement describing the harm, property damage or loss suffered by them as the result of any act of the offender in respect of which a complaint was made to the police or Crown attorney or an information laid under the Criminal Code, and its continuing impact on them — including any safety concerns — and commenting on the possible release of the offender.

peut présenter une déclaration à l'égard des dommages ou des pertes qu'elle a subis par suite de la conduite du délinquant — laquelle a donné lieu au dépôt d'une plainte auprès de la police ou du procureur de la Couronne ou a fait l'objet d'une dénonciation conformément au Code criminel — et des répercussions que cette conduite a encore sur elle, notamment les préoccupations qu'elle a quant à sa sécurité, et à l'égard de l'éventuelle libération du délinquant.

(10.1) The Board shall, in deciding whether an offender should be released and what conditions might be applicable to the release, take into consideration any statement that has been presented in accordance with paragraph (10)(a) or (b).

(10.1) Lorsqu'elle détermine si le délinquant devrait bénéficier d'une libération et, le cas échéant, fixe les conditions de celle-ci, la Commission prend en considération la déclaration présentée en conformité avec les alinéas 10a) ou b).

(11) If a victim or a person referred to in subsection 142(3) is not attending a hearing, their statement may be presented at the hearing in the form of a written statement, which may be accompanied by an audio or video recording, or in any other form prescribed by the regulations.

(11) La déclaration de la victime ou de la personne visée au paragraphe 142(3), même si celle-ci n'assiste pas à l'audience, peut y être présentée sous la forme d'une déclaration écrite pouvant être accompagnée d'un enregistrement audio ou vidéo, ou sous toute autre forme prévue par règlement.

(12) A victim or a person referred to in subsection 142(3) shall, before the hearing, deliver to the Board a transcript of the statement that they plan to present under subsection (10) or (11).

(12) La victime et la personne visée au paragraphe 142(3) doivent, préalablement à l'audience, envoyer à la Commission la transcription de la déclaration qu'elles entendent présenter au titre des paragraphes (10) ou (11).

[46] S. 140(14) indicates that because the information and documents were discussed at the hearing that does not mean it was publicly available within the meaning of the *ATIA* and *Privacy Act*:

140 (14) If an observer has been present during a hearing or a victim or a person has exercised their right under subsection (13), any information or documents discussed or referred to during the hearing shall not for that reason alone be considered to be publicly available for purposes of the Access to Information Act or the Privacy Act.	(14) Si un observateur est présent lors d'une audience ou si la victime ou la personne visée au paragraphe 142(3) a exercé ses droits au titre du paragraphe (13), les renseignements et documents qui y sont étudiés ou communiqués ne sont pas réputés être des documents accessibles au public aux fins de la Loi sur la protection des renseignements personnels et de la Loi sur l'accès à l'information.

[47] A victim or family member can request to listen to the audio recording, subject to conditions imposed by the Board and privacy interests:

140 (13) Subject to any conditions specified by the Board, a victim, or a person referred to in subsection 142(3), is entitled, on request, after a hearing in respect of a review referred to in paragraph (1)(a) or (b), to listen to an audio recording of the hearing, other than portions of the hearing that the Board considers (a) could reasonably be expected to jeopardize the safety of any person or reveal a source of information obtained in confidence; or	(13) La victime ou la personne visée au paragraphe 142(3) a le droit, sur demande et sous réserve des conditions imposées par la Commission, une fois l'audience relative à l'examen visé aux alinéas (1)a) ou b) terminée, d'écouter l'enregistrement sonore de celle-ci, à l'exception de toute partie de l'enregistrement qui, de l'avis de la Commission : a) risquerait vraisemblablement de mettre en danger la sécurité d'une personne ou de permettre de remonter à une source de renseignements obtenus de façon confidentielle;

(b) should not be heard by the victim or a person referred to in subsection 142(3) because the privacy interests of any person clearly outweighs the interest of the victim or person referred to in that subsection.	b) ne devrait pas être entendue par la victime ou la personne visée au paragraphe 142(3) parce que l'intérêt de la victime ou de la personne ne justifierait nettement pas une éventuelle violation de la vie privée d'une personne.

[48] Pursuant to s. 144 of the *CCRA*, a person who demonstrates an interest in a case is entitled to receive a copy of the Parole Board decision.

[49] There is a provision that if a transcript of the hearing is made, then on request a copy can be provided to the victim or their family providing for *ATIA* and *Privacy Act* exceptions (*CCRA* s. 140.2(1)). However, there is no requirement to make a transcript. Outside of these situations, there is no provision for observers or others to obtain a transcript.

[50] S.19 and 20 of the *ATIA* provide that the head of a government institution shall refuse to disclose any record which contains personal information, with some exceptions, including when it is in accordance with s. 8 of the *Privacy Act*, also reproduced below. S. 8(2)(m)(i) allows disclosure when "the public interest in disclosure clearly outweighs any invasion of privacy that could result form the disclosure…"

VII. Analysis

A. *Is there an s. 2(b)* Charter *right to the information requested?*

[51] For the reasons below, I find that the Applicants did not have an s. 2(b) *Charter* right to the Withheld Information because hearings of the Parole Board are not judicial or quasi-judicial in character. Stemming from that determination, all of the Applicants' constitutional challenges fail.

(1) Submissions of the Families

[52] The Families apply for judicial review of the CSC/Parole Board decisions denying the disclosure of the parts of their *ATIP* requests that were not disclosed pursuant to s. 41 of the *ATIA*. They seek the disclosure of the Withheld Information and a declaration that the legislative regime governing *ATIP* requests as employed by the CSC/Parole Board is unconstitutional. The Families' position is that the Parole Board erred in failing to apply the *DM/Sierra* test in its decision not to disclose the Withheld Information.

[53] The submissions regarding the *CCRA*, the *ATIA*, and the *Privacy Act* consist of summaries of the provisions or critiques of the statutory framework. The Families emphasize these statutes' statements of purpose and principles, notably as they relate to serving the public interest, transparency, accountability and openness.

[54] The arguments are that any restriction on disclosure and the OCP must be justified on the basis of the test set out in *Dagenais v CBC*, [1994] 3 SCR 835, *R v Mentuck*, 2001 SCC 76 and *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41.

[55] Their position is that the legislative framework governing *ATIP* applications creates a presumption against the disclosure of personal information which violates the OCP that exists under s. 2(b) of the *Charter* (*Toronto Star v AG Ontario*, 2018 ONSC 2586 at para 65 [*Toronto Star 2018*]). They submit administrative tribunals are subject to the OCP, and cite *Southam Inc v Canada (Minister of Employment and Immigration)*, [1987] 3 FC 329 at para 9, 13 FTR 138 [*Southam MCI*].

[56] To better understand the Applicants' argument, a brief description of the test is that the test provides that a presumption of openness is overridden only where a restriction is necessary to prevent a serious risk to the public interest and where the salutary effects outweigh the deleterious effects of the restriction [the "*DM/Sierra*" test]. It is worth noting here that the Supreme Court of Canada ["SCC"] has recently updated the test for rebutting the presumption of the OCP in *Sherman Estate*. The parties provided further written submissions after the release of *Sherman Estate*. I will proceed with my analysis under the new state of the law.

[57] While they do not expressly state it, the Families implicitly argue that the *DM/Sierra* test is not satisfied under the circumstances, and that the *ATIP* decision-making framework therefore infringes on s. 2(b) of the *Charter*. Then, the assertion is that the infringement on s. 2(b) is not justified under s. 1 of the *Charter*.

[58] The Families cite a series of cases (see below) that contain statements of principle relating to the importance of public accessibility and openness to maintaining the public's confidence in the administration of justice. These principles, they assert, weigh in favour of granting the disclosure of the Withheld Information (*Toronto Star 2018*; *CTV Television v Ontario Superior Court of Justice*, [2002] OJ No 1141, 59 OR (3d) 18; *Attorney General of Nova Scotia v MacIntyre*, [1982] 1 SCR 175; *Canadian Broadcasting Corporation v New Brunswick (Attorney General)*, [1996] 3 SCR 480; *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326; and *Dodd v Cossar*, [1998] OJ No 335, 77 ACWS (3d) 287; *Canadian Broadcasting Corporation v Lessard*, [1991] SCJ No 87, 67 CCC (3d) 517).

[59] Finally, the Families in their written submissions fault the Parole Board for its reliance on article 1.3.3 of the Parole Board's *Decision-Making Policy Manual for Board Members* (2018 edition) [Annex E], which provides that only victims and families who do not attend a hearing are entitled to listen to audio recording under s. 140(13) of the *CCRA*. They argue that there is further fault because this right is limited to the recording of the most recent parole hearing. The Families suggest this reliance on the manual was a reviewable error given that s. 140(13) of the *CCRA* contains no such restrictions.

[60] In post-hearing written submissions on *Sherman Estate*, the Families submitted that the decision of the SCC bolsters their argument. They say that the decision stands for a strong presumption of openness, and that the exceptional circumstances required for rebutting the principle of openness has not been met. They characterize the SCC's decision as requiring the affront to dignity being required to rise to a level of public importance, which they assert is not

the case here. They also deny the facts of this matter even go to the issue of human dignity, and even if they do, there is no affront to the human dignity of the Inmates.

(2) Submissions of CBC

[61] CBC takes no position on the disposition of the applications in T-1358-12 or T-465-20. Note that in addition to its submissions in T-1358-12 as intervener, it adopts and relies on its submissions in T-1884-19, summarized below, whereby the OCP applies to parole hearings and therefore requires that presumptive access be granted unless a restriction is justified under the *DM/Sierra* test.

[62] CBC's core submission is that requests for records from Parole Board hearings should be presumed to meet the public interest threshold under s. 8(2)(m)(i) of the *Privacy Act* unless restrictions are warranted under the *DM/Sierra* test. CBC makes submissions on three issues grounded in the OCP and s. 2(b) of the *Charter*, and suggests a new test they believe the Court should adopt.

[63] CBC argues that the framework governing *ATIP* disclosures under the *ATIA* and the *Privacy Act* must operate consistently with s. 2(b) of the *Charter*. Since competing interests of public access to adjudicative records and privacy are at issue, CBC invokes the OCP and the *DM/Sierra* Test.

[64] CBC cites *Lukács v Canada (Transport, Infrastructure and Communities)*, 2015 FCA 140 at para 37 [*Lukács*], as an authority for the proposition that quasi-judicial administrative

decision-makers are subject to the *DM/Sierra* test. As such, CBC suggests that incorporating the *DM/Sierra* test into the assessment of *ATIP* disclosures insulates the framework from *Charter* scrutiny.

[65] CBC contends that the OCP and s. 2(b) of the *Charter* apply to parole hearings and that the *DM*/*Sierra* test for withholding the hearing recordings is not satisfied. CBC relies on jurisprudence indicating that administrative tribunals are subject to the *Charter* and that the OPC applies to tribunals engaged in quasi-judicial acts.

[66] CBC submits that Parole Board hearings satisfy the four-part *Coopers & Lybrand* framework (see *Minister of National Revenue v Coopers and Lybrand*, [1979] 1 SCR 495 [*Coopers & Lybrand*]) for determining whether a tribunal is acting in a quasi-judicial capacity: a hearing is contemplated; individual rights are directly affected; the hearing can be adversarial; and the board applies substantive rules to individual cases. CBC asserts that the Parole Board's reliance on *Mooring v Canada (National Parole Board)*, [1996] 1 SCR 75 [*Mooring*] is misplaced in light of the SCC's subsequent decision in *R v Bird*, 2019 SCC 7 [*Bird*]. They say that *Bird* held that the Parole Board was a court of competent jurisdiction for the purpose of granting *Charter* remedies.

[67] CBC's position that the Parole Board's current practice with respect to *ATIP* disclosures erroneously creates "an unconstitutional presumption of non-disclosure for all personal information." This approach they say is inconsistent with s. 2(b) of the *Charter* and the OCP because it places on the *ATIP* requestor the onus of satisfying that an exception to the default

rule of non-disclosure is met. Rather, quasi-judicial proceedings and connected records are required to be open and accessible subject to the restrictions of the *DM/Sierra* Test. CBC relies on *Toronto Star 2018*, *Langenfeld v Toronto Police Services Board*, 2019 ONCA 716 [*Langenfeld*] and *Ferrier* for its conclusion that the presumption against disclosure infringes s. 2(b) regardless of whether the openness principle is found to be applicable.

[68] CBC says that the Parole Board/CSC erroneously applies a "reverse onus" that improperly subordinates interests under s. 2(b) of the *Charter* to an overly expansive interpretation of "invasion of privacy". In conducting an *ATIP* disclosure analysis, the first branch of the *DM/Sierra* test should involve only necessity because proportionality—i.e. balancing—should occurs at the second step. This sequencing CBC says helps ensure that interests under s. 2(b) of the *Charter* are not improperly subordinated to privacy interests. Conversely, they say that the Parole Board/CSC improperly started with a presumption of non-disclosure and require the party seeking disclosure to demonstrate that one of the exceptions is met. Given that the Parole Board has acknowledged that the public interest outweighs an inmate's privacy interests only under very restricted circumstances, such an approach, they say, is inconsistent with *DM/Sierra* test, and, as a result also being inconsistent with s. 2(b) of the *Charter*.

[69] In the alternative, if the Court disagrees that the *ATIP* framework should begin with a presumption of disclosure, CBC asserts that the statutory framework violates s. 2(b) and cannot be saved by s. 1 of the *Charter*. They provide no further argument in support of this assertion.

[70] CBC's position is that systemic delays in obtaining adjudicative records from Parole Board hearings create an ongoing violation of s. 2(b) rights. Freedom of the press, as protected under s. 2(b) of the *Charter*, requires that it have timely access to the subject of its reporting. Delays in public access, it notes, has a deleterious effect on the public's right to be informed.

[71] Finally, in their submissions on file T-1884-19, CBC suggests that the Court adopt a "modern functional public interest test" where any tribunal deciding matters involving important public interest must be open to the public. They argue that this would be in line with the modern approach to tribunal openness, and not a significant departure from jurisprudence and the *Coopers & Lybrand* test.

[72] With this approach, any administrative tribunal deciding matters of public interest is subject to the openness principle, subject only to the *DM*/*Sierra* test. CBC's position is that the public interest in Parole Board hearings in general is manifest in the *CCRA* itself, and the public interest in these specific hearings is clear on account of the Inmates' violent offences and the public's right to observe the functioning of the criminal justice system.

[73] Given that the OCP and s. 2(b) of the *Charter* apply, CBC submits the Parole Board erred in its analysis when they declined to release the hearing recordings to them. The Parole Board erred CBC says in not applying the *DM*/*Sierra* test in its decision. The Parole Board's application of the test for the disclosure of documents in government hands from *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23 [*Criminal Lawyers*] to the hearing recordings was erroneous, given that the recordings are adjudicative records and not

government information, and that CBC's request was not made pursuant to the *ATIA*. Rather, CBC submits that on a proper application of the *DM*/*Sierra* test, there is no serious risk to a public interest, and the salutary effects of withholding access do not outweigh the rights and interests of the public. The Parole Board's refusal to release the hearing recordings was not justified.

[74] In post-hearing submissions, CBC argues that *Sherman Estate* does not assist the Respondent. They say that there is no serious risk of harm to dignity such that society as a whole has a stake in protecting, and that there must be a serious risk well grounded in the record or the circumstances of the particular case.

(3) Canada's Submissions

[75] As regards the Families' applications, Canada stated that the CSC and Parole Board "correctly determined that the withheld records contain personal information, and reasonably exercised their discretion not to disclose them after balancing the two competing values of governmental disclosure and individual privacy as required by the ATIA."

[76] They argue that the *Privacy Act* and the *ATIA* act together to reconcile two competing values: governmental disclosure and individual privacy. They cite *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403 [*Dagg*] for the principle that a court reviewing under s. 41 of the *ATIA* must have regard to the purpose of both statutes, balancing privacy and disclosure.

[77] Canada strongly asserts that decisions made by the CSC under the *CCRA* and parole reviews are neither judicial nor quasi-judicial, but rather inquisitorial. For the CSC decisions, they cite *Boudreau v Canada*, 2000 CanLII 16709 at para 7 (FCTD); *Canada (Correctional Services) v Plante*, [1995] FCJ No 1509 at para 6 (FCTD); *Hendrickson v Kent Institution*, [1990] FCJ No 19, 1990 CarswellNat 771 at para 10 (FCTD); *Blanchard v Millhaven Institution*, [1983] 1 FC 309, 1982 CarswellNat 78 at para 2 (FCTD); *Martineau v Matsqui Institution*, [1980] 1 SCR 602 at 631-632. For the Parole Board hearings, they cite *Mooring,* at paragraph 25 and *Smith v Canada*, 2019 FC 1658 at paragraph 64.

[78] In support of the argument that Parole Board reviews are not judicial or quasi-judicial proceedings, Canada provided a number of considerations. They noted that parole reviews do not always involve hearings and that the parole review is conducted in a non-adversarial, inquisitorial capacity without contending parties irrespective of whether there is a hearing or not. Other factors that point to the fact that the Parole Board is not judicial or quasi-judicial board is that there is no evidence received under oath, and the tribunal is not bound to apply rules of evidence. The Parole Board, they argue, acts on information, and must consider all relevant available information, including that which is received from the CSC and victims which is evidence they are not judicial or quasi-judicial. As well, there is no right of cross-examination, and while the offender may be assisted by someone, that person's role is not equivalent to that of a lawyer. Nor are the Parole Board members required to have legal training, and they may not issue subpoenas which are matters that are judicial in nature. While the reasons for decisions of the Parole Board are available to the public, the audio recordings of the hearings are not part of the record.

[79] Canada submits that a person must apply in writing to attend a hearing for a parole review as an observer. The Parole Board may refuse attendance if they are satisfied that the person's presence is likely to adversely affect: "(i) the security and good order of the institution where the hearing is to be held; (ii) the Parole Board's ability to consider the matter; (iii) those who have provided information to the Parole Board including victims; or (iv) the balance between the public's interest in knowing and the public's interest in the effective reintegration of the offender into society". They cite s. 140(4) of the *CCRA*.

[80] Canada also points out that s. 140(13) of the *CCRA* was amended effective June 21, 2019. The amendment allows victims to listen to audio recordings of proceedings irrespective of whether they attended the hearing. The Applicants' submissions do not reflect this amendment which Canada indicates is a proper balancing and also shows that parliament is open to amendments when appropriate.

[81] Regarding CBC Application, Canada argues that the Parole Board reasonably exercised its discretion in refusing to disclose the hearing recordings after considering all relevant, including constitutional, factors. Canada notes that there was no formal request for information under the *ATIA*, and so that the only applicable statutory provisions come from the *CCRA* and the *Privacy Act*.

[82] Regarding *Sherman Estate*, Canada asserts that the case is not applicable because the instant matters are not judicial or quasi-judicial.

(4) Analysis

[83] To summarize, the Applicants base their position on the characterization of the Parole Board hearing as being a judicial or quasi-judicial proceeding. From that position, their argument is that since the public has a considerable and legitimate interest in the hearings, the additional material they seek should be disclosed.

[84] The first step in deciding this issue is determining whether Parole Board hearings are judicial or quasi-judicial in nature. I find that they are not.

[85] The SCC in *Mooring* addressed this issue and held that a Parole Board hearing is inquisitorial rather than judicial or quasi-judicial. Admittedly in a somewhat different context, Justice Sopinka addressed the character of parole hearings in *Mooring* at paragraph 25, writing "[t]he Parole Board acts in neither a judicial nor a quasi-judicial manner." He noted several factors that distinguish parole hearings from hearings before a court, including: the limited role of counsel; the inquisitorial nature of the hearing; and the inapplicability of rules of evidence or the presumption of innocence (*Mooring*, at paras 25-26).

[86] This Court has subsequently followed *Mooring* for the proposition that parole hearings are not judicial or quasi-judicial in nature in *Gallone v Canada (Attorney General)*, 2015 FC 608 at paragraph 16; *Elliott v Canada (Attorney General)*, 2018 FC 673 at paragraph 20; *Barrett v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1030 at paragraph 43; *Bilodeau-*

Massé v Canada (Attorney General), 2017 FC 604 at paragraph 173. See also *MacInnis v Canada (Attorney General)*, [1997] 1 FC 115 at page 9 (FCA).

[87] This Court has consistently followed *Mooring* and I see no reason to depart from those precedents on these facts. The *Coopers & Lybrand* test for determining whether a decision is judicial or quasi-judicial in nature provides no assistance to the Applicants given the established jurisprudential findings regarding the Parole Board.

[88] I agree with Canada that the SCC's decision in *Bird* neither overturns nor displaces *Mooring*. The decision in *Bird* merely distinguishes *Mooring* given that the Court in the latter took no position on whether a Parole Board could award *Charter* remedies other than remedies under s. 24(2) of the *Charter* (*Bird*, at para 54). That said, the Court in *Bird* did acknowledge that there was an open question as to whether *Mooring* remains good law, in light of a subsequent SCC decision in *R v Conway*, 2010 SCC 22 (*Bird*, at para 54). Nevertheless, in light of the subsequent treatment of *Mooring* by this Court, it remains a valid precedent for the proposition that federal Parole Boards are neither judicial nor quasi-judicial bodies.

[89] CBC's position is that I should instead rely on the decision of Justice Morgan in *Toronto Star 2018*, in which he found that Ontario's application of parts of the *Freedom of Information and Protection of Privacy Act* ["*FIPPA*"]—a regime similar to the *ATIA* and *Privacy Act*—violated the OCP under s. 2(b) of the *Charter*. The Court held that the statutory imposition of an onus on the requesting party in order to obtain the disclosure of an "Adjudicative Record" was unconstitutional (*Toronto Star 2018*, at paras 57-65).

[90] That is not the case before me with the Parole Board and the binding decision in *Mooring*. I am not bound by *Toronto Star 2018* and, in any event, it is distinguishable since it addressed the application of the *FIPPA* to tribunals that "preside over adversarial processes… and act judicially or quasi-judicially" (*Toronto Star 2018*, at para 2). For the reasons discussed above, I am of the opinion that the Parole Board cannot be so characterized. Indeed, the Court did not list the Ontario Parole Board as one of the administrative tribunals to which the OCP applies (*Toronto Star 2018*, at endnote 2).

[91] I agree with Canada that the jurisprudence advanced by both CBC and the Families applying s. 2(b) of the *Charter* to courts exercising judicial functions is of no assistance in this case. Canada puts it succinctly: "Courts exercising judicial functions and tribunals exercising quasi-judicial functions involving adversarial processes operate in an entirely different legal and institutional context, compared to government organizations exercising administrative functions."

[92] Given that the jurisprudence does not characterize the Parole Board as either a judicial or a quasi-judicial body, and that no jurisprudence has demonstrated that the OCP or s. 2(b) require the disclosure of the Withheld Information, I am of the view that the Applicants' constitutional challenge to the disclosure framework does not succeed. CBC and the Families have failed to demonstrate that the statutory disclosure framework infringes their *Charter* rights.

[93] Further the "Modern Functional Public Interest Test" proposed by CBC is also not supported in the authorities. The two decisions cited by CBC, *Southam MCI* and *Canadian*

Broadcasting Corp v Summerside (City) (1999), 170 DLR (4th) 731 (PEI SC (TD)), both involved proceedings that were judicial or quasi-judicial in nature, and are therefore unhelpful in the present circumstances. CBC seems merely to be trying to attempt to alter the legislative framework to better suit its interests in broad-based disclosure by administrative tribunals. It provides no judicial support for engaging in such a far-reaching change.

[94] This Court will not engage in legislative reform in this judicial review and these are arguments for Parliament. For example s. 140(13) of the *CCRA* was amended effective June 21, 2019. That amendment allows victims to listen to audio recordings of proceedings irrespective or whether or not they attended the hearing. Over the course of time other amendments have been made and it is possible parliament will see fit to make future amendments.

[95] As well, the SCC in *Criminal Lawyers* establishes the test for circumstances in which s. 2(b) of the *Charter* entitles a party to access documents in the government's possession. Justices Abella and McLachlin, writing for the Court, note that "s. 2(b) does not guarantee access to all documents… access is a derivative right which may arise where it is a necessary precondition of meaningful expression on the function of government" (*Criminal Lawyers* at para 30). The Court articulated a two-step test, whereby s. 2(b) entitles access: "only where it is shown to be a necessary precondition of meaningful expression, does not encroach on protected privileges, and is compatible with the function of the institution concerned" (*Criminal Lawyers* at para 5).

[96] While the Families have not made detailed submission on this point, I am of the view that the *Criminal Lawyers* test is not satisfied. On the first condition, it is not apparent that access to

the Withheld Information is "a necessary precondition of meaningful expression". The meaning of that phrase was further discussed in *Criminal Lawyers*, with the Court writing that a right of access exists where, in its absence, "meaningful discussion and criticism on matters of public interest would be substantially impeded" (*Criminal Lawyers* at para 37). That exacting standard is not met here. After all, Parole Board hearings may be attended by the public and the media. Although the matters at hand are certainly of public interest, there is no reason to believe that meaningful discussion is substantially impeded by the decision to withhold the sought-after records yet allow persons to attend the hearings themselves.

[97] There is consequently no constitutional right of access to records, and s. 2(b) of the *Charter* has not be violated. Due to this finding, I answer the constitutional question that the sections noted are not in violation of the *Charter*.

[98] If I am wrong about the non-judicial nature of the proceedings, then I must proceed to analyze whether the presumption of an open court is rebutted in this case. As explained below, I believe the presumption has been rebutted.

[99] A unanimous SCC in *Sherman Estate*, in a decision penned by Justice Kasirer, restated the test to rebut the presumption of the OCP. The decision re-characterizes the *DM/Sierra* test into a three step process, requiring that those asking a court to limit the OCP must establish that:

> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,

> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
>
> Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188, at paras. 7 and 22).
>
> (*Sherman Estate* at para 38)

[100] Justice Kasirer goes on to say that privacy does have some social importance beyond the person most immediately concerned, and cannot be simply excluded as an interest that could limit court openness (*Sherman Estate* at para 46). He then connects the types of privacy rights that could justify limits to the OCP as ones related to the protection of dignity (*Sherman Estate* at para 46), and says that there will be times when interests in protecting personal privacy will have a public interest (*Sherman Estate* at para 52).

[101] He notes that "in order to preserve the integrity of the open court principle, an important public interest concerned with the protection of dignity should be understood to be seriously at risk only in limited cases" (*Sherman Estate* at para 63). He clarifies that "[v]iolations of privacy that cause a loss of control over fundamental personal information about oneself are damaging to dignity because they erode one's ability to present aspects of oneself to others in a selective manner…" (*Sherman Estate* at para 71).

[102] Specifically, he notes that:

> [72] Where dignity is impaired, the impact on the individual is not theoretical but could engender real human consequences,

> including psychological distress … Viewed in this way, a privacy interest, where it shields the core information associated with dignity necessary to individual well-being, begins to look much like the physical safety interest also raised in this case, the important and public nature of which is neither debated, nor, in my view, seriously debatable. The administration of justice suffers when the operation of courts threatens physical well-being because a responsible court system is attuned to the physical harm it inflicts on individuals and works to avoid such effects. Similarly, in my view, a responsible court must be attuned and responsive to the harm it causes to other core elements of individual well-being, including individual dignity. This parallel helps to understand dignity as a more limited dimension of privacy relevant as an important public interest in the open court context.
>
> [73] I am accordingly of the view that protecting individuals from the threat to their dignity that arises when information revealing core aspects of their private lives is disseminated through open court proceedings is an important public interest for the purposes of the test.
>
> (*Sherman Estate* at paras 72-3)

[103] He further expands these principles:

> …The presumption of openness means that mere discomfort associated with lesser intrusions of privacy will generally be tolerated. But there is a public interest in ensuring that openness does not unduly entail the dissemination of this core information that threatens dignity — even if it is "personal" to the affected person.
>
> (*Sherman Estate*, at para 75)

[104] The SCC leaves the list of possible examples of what will qualify open, but does note that stigmatized medical conditions and sexual orientation (among other listed examples) would potentially qualify. He says that "[t]he question in every case is whether the information reveals something intimate and personal about the individual, their lifestyle or their experiences" (*Sherman Estate* at para 77).

[105] Finally, Justice Kasirer notes that for the risk to justify a limit, an applicant must show that "the threatened loss of control over information about oneself is so fundamental that it strikes meaningfully at individual dignity" (*Sherman Estate* at para 84).

[106] Although these Inmates' crimes are repugnant beyond reproach or human decency, this legislation equally applies to all inmates. I have to see the intensely intimate details of the requests by the Applicants as potentially striking at individual dignity, and thereby rebutting the presumption of the OCP. Not only are copies of medical records and psychological assessments asked for, but every detail of their lives since their incarceration. Parliament must have considered this given they specifically address that, though attendees can hear what is said regarding the reports for instance they may not receive copies it and it is not considered as being public (see paragraph 46).

[107] I do not read *Sherman Estate* as the Families do. They seem to argue that the affront to dignity must specifically be something that society as a whole has a stake in protecting. I disagree. When reading the whole decision, and specifically the paragraph cited by the parties for this, it seems to me that the Court has recognized a concept of "dignity" (as opposed to simple privacy) which must be protected, and that society as a whole has a stake in protecting it:

> Personal information disseminated in open court can be more than a source of discomfort and may result in an affront to a person's dignity. Insofar as privacy serves to protect individuals from this affront, it is an important public interest relevant under Sierra Club. **Dignity in this sense is a related but narrower concern than privacy generally; it transcends the interests of the individual and, like other important public interests, is a matter that concerns the society at large.** A court can make an exception to the open court principle, notwithstanding the strong presumption in its favour, if the interest in protecting core aspects

> of individuals' personal lives that bear on their dignity is at serious risk by reason of the dissemination of sufficiently sensitive information. **The question is not whether the information is "personal" to the individual concerned, but whether, because of its highly sensitive character, its dissemination would occasion an affront to their dignity that society as a whole has a stake in protecting.**
>
> (*Sherman Estate* at para 33, emphasis added)

In my view, the highly sensitive nature of the information requested does go to the dignity of the Inmates. This satisfies the first stage of the test.

[108] As for the other two stages of the test, I am of the view that they are satisfied in this case. For the second stage, when the records are released, there is no control over if or how widely they will be distributed. For the final stage of the test, there is no reason to believe that the release of this information will have any bearing on the parole status of the Inmates given that the tribunal which actually makes the decision will have unfettered access to the information.

[109] I understand the Families need to put forth the emotional argument that the Inmates do not deserve any right to privacy given their crimes, but on this judicial review that may not be considered. The Parole Board is charged with hearing the impact on the victims and making decisions concerning their incarceration. The Families submits that if they attend the hearing then they can hear the details, so it is illogical that they cannot have the underlying documents and the recordings. *CCRA* s. 140(14) indicates that because the information and documents were discussed at the hearing that does not mean it was publicly available within the meaning of the *ATIA* and *Privacy Act*. My answer to the Applicants is that parliament has chosen to draw a line, and it is not this Court's job to alter it.

B. *Were the decisions of the Parole Board and CSC unreasonable?*

[110] The Families and CBC advance a series of arguments on the Parole Board/CSC's decisions with respect to their *ATIP* requests. These arguments, and my analysis, are grouped thematically below.

(1) Insufficient reasons

[111] The Families argue that the Parole Board and CSC provided insufficient reasons for rejecting the *ATIP* requests and instead relied on "boiler-plate" language in their reasons and that the Parole Board and CSC decisions "are completely devoid of any reasons or analysis." The submissions are that the outcome of the *ATIP* requests was pre-determined and that the Parole Board failed to adequately assess the particular merits of each request. They also state that the Parole Board/CSC provided no evidence that granting the *ATIP* requests would "subvert the ends of justice" or result in a "serious danger of an injustice" and then provided insufficient reasons for which the public interest in disclosure was not satisfied. The Families cite no jurisprudence for their various arguments relating to the insufficiency of reasons.

[112] As regards the sufficiency of reasons, the SCC instructs that "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). I find that the reasons satisfy this requirement.

[113] In judicial reviews of a decision to withhold information under the *ATIA*, the reviewing court may consult "all of the evidence in the record, including the entire history of the OIC's investigation and the correspondence provided by the [decision maker] during the investigation" (*Canada (Information Commissioner) v Toronto Port Authority*, 2016 FC 683 at para 206). The FCA has likewise noted that correspondence and memoranda relating to the OIC investigation may be considered in assessing whether there is a sufficiently clear account of why officials opposed disclosure (*3430901 Canada Inc v Canada (Minister of Industry)*, 2001 FCA 254 at para 114; also see *Vavilov* at para 96). Contrary to what the Families argue, the justifications for the decision under review are not limited to what is contained in the decision-maker's written response to the *ATIP* requestor.

[114] On that basis, and on a review of the six Parole Board/CSC decisions, the correspondence between the Parole Board /CSC and the OIC, and the OIC investigative reports, I am of the view that the record in each instance discloses sufficient reasons and evidence to understand the decisions and to assess whether they were reasonable. The Families are correct in stating that the letters communicating the outcome of the decisions in PBC-1 and CSC-1 are devoid of analysis. However, those letters are supported in the record by letters from Parole Board and CSC, respectively, which outline the rationale for those decisions. As for the remaining decisions, PBC-2, CSC-2, PBC-3, and the letter from the Parole Board to CBC, they all contain analysis justifying the decision to withhold information. These materials identify the basis on which the decision-makers weighed the Inmates' privacy interests against the public interest in disclosure, identify the variety of factors under consideration by the decision makers, and provide an overall basis to understand how the decision-makers arrived at their decisions.

(2) Pre-Determined Outcome

[115] The Families' argument that "use of boiler-plate paragraphs for the substantive part of the analysis demonstrates the outcome of the *ATIP* requests has been pre-determined" is likewise misplaced. While portions of the decisions do indeed use identical language in describing their statutory obligations and the general framework within which decisions are made, the analysis is varied across the impugned decisions. The factors that are considered and weighed across the decisions are largely similar, but this does not mean the decisions had been pre-determined. Indeed, four of the five decisions (PBC-1, CSC-1, PBC-2, and CSC-2) arise from two *ATIP* applications in relation to the same inmate. It is therefore reasonable that decision-makers would have considered similar factors. On balance, the decisions were justified, transparent and intelligible. There is no basis on which to intervene in this regard.

(3) Selection of Factors

[116] The Families' submissions are that the Parole Board committed a series of reviewable errors in selecting the factors it considered.

- First, they argue that the Parole Board erred in not considering the interests of the victims' families—which they claim are "entirely aligned" with the public interest—in their assessment of the public interest under s. 8(2)(m) of the *Privacy Act*.
- Second, the Parole Board and CSC erred as they were "blindly driven" by the motive of facilitating the offenders' safe re-integration into the community.
- Third, the Families say that the Parole Board/CSC failed to account for the dangerous offender designation of the Inmates in the decision making process.

- Fourth, the Parole Board failed to consider the public interest arising from the threat to public safety that would arise if the inmates were released from prison.
- Fifth, the Parole Board erred in failing to determine an identifiable group that had a genuine stake in the information sought by the *ATIP* request.

[117] I disagree. The records containing the decision-makers' analysis demonstrate that they considered and weighed a variety of factors in their assessment of the Applicants' requests. These factors include:

- the sensitive nature of the information;
- the existence of an imminent need for disclosure;
- a risk to public safety, the statutory framework;
- the mandate and role of the Parole Board and CSC;
- the adverse effect on rehabilitees and reintegration;
- the high probability of injury;
- the inmate's expectation of non-disclosure;
- the Families' private interest in disclosure;
- the risk of personal information being widely dispersed; and
- the absence of an identifiable group with a genuine stake in disclosure.

[118] It is apparent on reviewing the decisions that the Parole Board and CSC considered the requirements of s. 19(2)(c) of the *ATIA* and s. 8(2)(m)(i) of the *Privacy Act*, assessed the nature of the sought-after evidence through the prism of the public interest in disclosure and the

intrusion upon the Inmates' privacy interests, and arrived at a decision grounded in their assessment of the evidence.

[119] Of note is that *Vavilov* provides that "where the legislature chooses to use broad, open-ended or highly qualitative language — for example, "in the public interest" — it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language" (*Vavilov*, at para 110). While the Families and CBC disagree with the Parole Board and CSC's determination about the nature and character of the public interest, I do not agree that they have demonstrated that the decisions at issue were unreasonable in this regard.

(4) Section 8(2)(m)(i) of the *Privacy Act*

[120] Both the Families and CBC suggest that the decision-maker erred in their assessment of the privacy interests of the Inmates and in their approach to the concept of the invasion of privacy. Both argue that the inmates had no reasonable expectation of privacy as it relates to records that were adduced or discussed at the hearing and to the hearing recordings, and that there was therefore no invasion of privacy in disclosing the Withheld Information. CBC further submits that the decision-makers erred in failing to adopt a contextual analysis of privacy, instead relying on "a blanket assertion" that disclosing the Withheld Information would constitute an invasion of privacy.

[121] CBC advanced the position that the Parole Board/CSC made reviewable errors by not conducting a contextual analysis of whether personal information could be released pursuant to the exception at s. 8(2)(m)(i) of the *Privacy Act*. That provision allows for the disclosure of

personal information where the public interest in disclosure clearly outweighs the invasion of privacy arising from the disclosure of the records.

[122] They say that the Parole Board/CSC erroneously adopted a *pro forma* approach to their assessment of the privacy rights at issue and they failed to appreciate that privacy rights are not absolute and that not every disclosure of personal information constitutes an invasion of privacy. The Parole Board/CSC therefore erred, argues CBC, in finding that the Inmates' privacy interests overrode the public interest in disclosure under s. 8(2)(m)(i) of the *Privacy Act*.

[123] Rather, CBC submits that the Inmates had no reasonable expectation of privacy with respect to the Withheld Information discussed or adduced in their parole hearings. They argue that:

- First, these hearings are open to the public so the information has already been exposed to the public when anything is discussed orally at the hearing. So a further disclosure by means of a copy of the hearing to listen to and the actually documents being discussed at the hearing is not a big leap from where it is already;
- second, the Inmate's application to the Parole Board to be allowed to return to society "requires giving up a level of privacy";
- third, the Inmates already forfeited considerable privacy as a result of having been convicted and incarcerated;
- fourth, the Parole Board has a mandate to facilitate openness, transparency and accountability, which suggests that there is a lowered expectation of privacy; and

- fifth, the Parole Board/CSC did consider that some personal information had already been made public.

[124] Again, I disagree. The decision-makers considered the privacy interests at stake and their reasons reflected the context in which the requests were made. The CSC rejected the suggestion that offenders have no privacy interests because they were convicted. The decision-makers considered that the Inmates expected that their personal information would remain protected from public disclosure. Likewise, the decision-makers drew a distinction between the receipt of information at a *viva voce* hearing and being supplied audio recordings. Whereby the latter marks a heightened invasion of privacy on account of the possibility that information could be widely distributed. The SCC recognized that distinction, albeit in the context of surveillance by law enforcement, noting that the infringement on privacy associated with a permanent electronic recording is "of a different order of magnitude" vis-à-vis having someone merely listening in (*R v Duarte*, [1990] 1 SCR 30 at p 48). I find that the Parole Board and CSC did not make a reviewable error in their analysis of the Inmates' privacy interests under s. 8(2)(m)(i) of the *Privacy Act*.

(5) Weighing of Factors

[125] The Families say that the decision-makers improperly weighed the various factors they considered. This argument is without merit. The SCC instructs that a reviewing court "must also refrain from reweighing and reassessing the evidence considered by the decision maker" (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at

para 55). The decision-makers' weighing of the factors should not be disturbed on judicial review and is not a basis to intervene in the decision.

(6) Inmates' privacy interests

[126] The Applicants make several submissions with respect to the Inmates' privacy interests.

[127] Generally, they argue that the Parole Board/CSC arrived at unreasonable decisions as the Inmates have "no expectation of privacy in documents relevant to the decision-making process of the PBC at a public hearing" or at Parole Board hearings generally. They likewise suggest that the privacy interests of inmates seeking parole are "far removed from the core privacy interest contemplated by the *Privacy Act*." Given that they misapprehended the privacy interest at stake, the Parole Board /CSC arrive at unreasonable decisions in weighing the invasion of privacy against the public interest.

[128] The Applicants assert that s. 8(2)(m)(i) of the *Privacy Act* does not apply to a public hearing, but make no further argument in this regard.

[129] They likewise fault the Parole Board/CSC for using an "invasion of privacy" test that they say is unfounded in the statutory framework and inconsistent with the policy objectives of the *ATIA* and *Privacy Act* statutes. The Applicants state that the relatively limited instances identified by the Parole Board/CSC as instances where the public interest might override the private interest have no basis in s. 8(2)(m)(i) of the *Privacy Act* and skewed the Parole Board's

assessment of the balance between the public interest in disclosure and the Inmates' privacy interests.

[130] Finally, they fault the Parole Board for failing to differentiate between the privacy interests at issue in the hearing recordings and the withheld files. They submit that the Inmates had no reasonable expectation of privacy in the recordings as a result of the attendance of media and the victims' families at the hearings.

[131] The Applicants' foregoing submissions are without merit. Rather, I agree that the Parole Board and CSC's decisions to withhold personal information in the five *ATIP* requests bear "the hallmarks of reasonableness — justification, transparency and intelligibility — [they are] justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

[132] Under s. 19(2) of the *ATIA*, a decision-maker may make a discretionary decision to disclose otherwise protected personal information under s. 19(1) *ATIA* on three grounds:

> (a) the individual to whom it relates consents to the disclosure;
>
> (b) the information is publicly available; or
>
> (c) the disclosure is in accordance with s. 8 of the *Privacy Act*.

[133] As a preliminary matter, it is useful to consider how the OIC's investigative findings fit into this Court's reasonableness review. There appear to be two strands of jurisprudence on this issue. Several decisions provide than an OIC's investigative findings should be given "significant deference and weight" in light of the OIC's expertise (*Blank v Canada (Minister of*

Justice), 2015 FC 753 at para 56 [*Blank 753*]; *Blank v Canada (Minister of Justice)*, 2010 FCA 183 at para 35; *Tomar v Canada (Parks Canada Agency)*, 2018 FC 224 at para 40 [*Tomar*]). Conversely, other authorities suggesting that the OIC's findings are merely "a relevant factor" to be considered (*Layoun v Canada (AG)*, 2014 FC 1041 at para 55 [*Layoun*]; *Blank v Canada (Minister of Justice),* 2009 FC 1221 at para 26 [*Blank 1221*]).

[134] Notwithstanding this disagreement on the amount of deference owed to the OIC findings, there is agreement in the jurisprudence that "it is the refusal of the head of a government institution that the Court is charged to review, not the Commissioner's recommendations" (*Blank 1221* at para 26; *Blank 753* at para 56).

[135] The Parole Board and CSC reasonably decided that the first two grounds for disclosing personal information under s. 19(2) *ATIA* were not met. First, the record indicates that the Inmates did not consent to the release of their respective personal information. This fact is not contested by the Applicants.

[136] Second, the Withheld Information was not "publicly available" within the meaning of s. 19(2)(b) of the *ATIA*. The FCA in *Lukács* defined "publicly available" as meaning information "that is available or accessible to the citizenry at large" (*Lukács*, at para 69). Neither the Families nor CBC have advanced a competing definition of the meaning of "publicly available" and they have not suggested that the Withheld Information was publicly available within the meaning of *Lukács*.

[137] The fact that the Withheld Information was disclosed during parole hearings does not make it "publicly available" for the purpose of s. 19(2)(b) of the *ATIA*. Subsection 140(14) of the *CCRA* is explicative and clear that "information or documents discussed of referred to during a hearing shall not for that reason alone be considered to be publicly available for the purpose of the [*ATIA* or *Privacy Act*]." Parliament put its mind to this particular situation when enacting this section. As frustrating this may be for the Families, it remains valid law. A similar restriction applies to information discussed or referred to in a hearing transcript, pursuant to s. 140.2(3) of the *CCRA*.

[138] I find the CSC/Parole Board's decision that the public interest in disclosing the Withheld Information did not clearly outweigh the invasion of the Inmates' privacy to be reasonable. The OIC arrived at the same conclusion in all five of its investigations. Recalling this Court's decisions in the *Blank* cases, and in *Tomar*, and in *Layoun*—all discussed above at paragraph 133 the OIC's determination of reasonableness is at the very least a factor that militates in favour of a finding of reasonableness, and may attract significant deference.

[139] As noted above, the Families and CBC challenge the reasonableness of the decisions to not disclose the Withheld Information in both the written request by CBC and in PBC-1, CSC-1, PBC-2, CSC-2 and PBC-3 and in CBC request.

[140] CBC's argument faults the Parole Board and CSC for not conducting a contextual analysis of the privacy interests at issue; for considering that all infringement of privacy are "invasions of privacy"; and for relying on a generalized statement that the disclosure of personal

information constitute invasions of privacy. The Inmates, according to CBC, did not have a reasonable expectation of privacy in records that were discussed or introduced at parole hearings, and it was unreasonable that the decision-makers did not consider this context in arriving their decisions in weighing the competing factors under s. 8(2)(m)(i) of the *Privacy Act*. Moreover, CBC faults the Parole Board for failing to consider what information was already public and for not conducting an analysis of particular records at issue.

[141] Under the first prong of the two step test for s. 41 *ATIA* reviews articulated in *Husky* at paragraphs 15 and 17, Canada argues, and I agree, that the Parole Board and CSC correctly determined that the Withheld Information contains personal information, and therefore fall within the exemption at s. 19(1) of the *ATIA*. Canada notes that the Applicants do not dispute that the Withheld Information contain "information about an identifiable individual that is recorded in any form" which is the *ATIA* definition of personal information.

[142] Under the second prong, Canada argues that the Parole Board and CSC reasonably exercised their discretion not to release the information under s. 19(2) of the *ATIA*. Judicial intervention is warranted only where the decision was made in bad faith or for an improper purpose, or if the decision took into account irrelevant considerations or failed to take relevant ones into consideration. They assert that the Parole Board and CSC made no such errors in the decisions under review.

[143] Canada submits that this Court owes significant deference to the OIC, who reviewed the decisions of the Parole Board and CSC and found them to be reasonable (*Layoun* at para 55;

Tomar at para 40). Thus they say that the decision-makers reasonably determined that none of the conditions for disclosure at s. 19(2) of the *ATIA* were met.

[144] Canada further invokes the fact that the Inmates did not consent (s. 19(2)(a) of the *ATIA*) and that the Withheld Information was not publically available (s. 19(2)(b) of the *ATIA*) in support of its submissions. None of the Withheld Information form part of the Parole Board's registry of decisions that are generally available to members of the public. Furthermore the public interest in disclosing the records did not clearly outweigh any invasion of privacy (s. 19(2)(c) of the *ATIA*). The CSC and Parole Board acted reasonably in balancing the public interest in disclosure and the invasion of privacy, and any other relevant statutory and constitutional principles in accordance with s. 8(2)(m)(i) of the *Privacy Act*.

[145] In doing so, Canada submits, the Parole Board and CSC considered the "need for victims and the community", and the degree to which public discussion about the Parole Board's decision-making can take place, even without access to the withheld information. There was also, they say, the possibility of review from the Parole Board Appeal Division, and judicial review by the Federal Court of the parole decisions. Canada also asserts that the interests of the victims were considered, the privacy interests of the offenders, the expectation of the individual regarding the personal information, the sensitivity of the information, the high probability of injury, adverse effects on rehabilitation and re-integration, the statutory context and balances struck by the *CCRA* between access and privacy and noted their consideration in their reasons.

[146] Finally, regarding constitutional consideration, Canada argues that while there is no jurisprudence on the application of s. 2(b) of the *Charter* to records withheld by CSC and the Parole Board, the applicable test is set out in *Criminal Lawyers*. They argue that s. 2(b) of the *Charter* only guarantees access to government documents "where it is shown to be a necessary precondition of meaningful expression, does not encroach on protected privileges, and is compatible with the function of the institution concerned" (*Criminal Lawyers* at para 5). Further, that necessity is shown if denial of access would mean that public discussion and criticism on matters of public interest would be substantially impeded (*Criminal Lawyers* at para 37). Canada says there must be a proportionate balancing of interests.

[147] I agree with Canada's submissions on these points.

(7) *Doré/Loyola*

[148] A reasonable administrative decision must be transparent, intelligible, and justified (*Vavilov* at para 15). When an administrative decision risks infringing *Charter* rights, the decision maker must take those constitutional interests into account and apply the *Doré/Loyola* framework to their decision-making process, balancing the statutory aims with the rights of the parties (*Doré* at para 57 and *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at para 39 [*Loyola*]). Reasons are a good indication of the process used by the decision maker when considering the decision (*Vavilov* at paras 79-81).

[149] Under the *Doré/Loyola* framework, the reviewing court must first ask whether the *Charter* has been engaged by limiting *Charter* protections, and if so, whether the decision

reflects a proportionate balancing of the *Charter* protections with the statutory objectives (*Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 58 [*Trinity Western*]).

[150] For the reasons discussed above, I do not find that the Applicants' *Charter* rights were limited. However, if I am wrong, I find that the reasons show an acceptable balancing of the Applicants' *Charter* rights with the Inmates' privacy rights. The majority decision in *Trinity*

Western gives a helpful summary of what a reasonable and proportionate decision under the *Doré/Loyola* framework will look like:

> …For a decision to be proportionate, it is not enough for the decision-maker to simply balance the statutory objectives with the *Charter* protection in making its decision. Rather, the reviewing court must be satisfied that the decision proportionately balances these factors, that is, that it "gives effect, as fully as possible to the Charter protections at stake given the particular statutory mandate" (*Loyola High School*, at para. 39). Put another way, the *Charter* protection must be "affected as little as reasonably possible" in light of the applicable statutory objectives (*Loyola High School*, at para. 40). When a decision engages the *Charter*, reasonableness and proportionality become synonymous. Simply put, a decision that has a disproportionate impact on *Charter* rights is not reasonable.
>
> 81 The reviewing court must consider whether there were other reasonable possibilities that would give effect to *Charter* protections more fully in light of the objectives. This does not mean that the administrative decision-maker must choose the option that limits the *Charter* protection least. The question for the reviewing court is always whether the decision falls within a range of reasonable outcomes (*Doré*, at para. 57; *Loyola High School*, at para. 41, citing *RJR-Macdonald Inc. c. Canada (Procureur général)*, [1995] 3 S.C.R. 199 (S.C.C.), at para. 160). However, if there was an option or avenue reasonably open to the decision-maker that would reduce the impact on the protected right while still permitting him or her to sufficiently further the relevant statutory objectives, the decision would not fall within a range of reasonable outcomes. This is a highly contextual inquiry.
>
> 82 The reviewing court must also consider how substantial the limitation on the *Charter* protection was compared to the benefits to the furtherance of the statutory objectives in this context (*Loyola High School*, at para. 68; *Doré*, at para. 56). The *Doré* framework therefore finds "analytical harmony with the final stages of the *Oakes* framework used to assess the reasonableness of a limit on a *Charter* right under s. 1: minimal impairment and balancing" (*Loyola High School*, at para. 40). In working "the same justificatory muscles" as the *Oakes* test (*Doré*, at para. 5), the *Doré* analysis ensures that the pursuit of objectives is proportionate. In the context of a challenge to an administrative decision where the constitutionality of the statutory mandate itself is not at issue, the proper inquiry is whether the decision-maker has furthered his or

> her statutory mandate in a manner that is proportionate to the resulting limitation on the *Charter* right.
>
> (*Trinity Western* at paras 80-82)

[151] The reasons given here show that there was a consideration of the factors required in a *Doré*/*Loyola* analysis. The decision contemplates the effects of disclosure with the effectiveness of the legislative scheme, the potential for public safety and harming reintegration.

[152] In my review of the reasons, I find that the Parole Board sufficiently contemplated other reasonable possibilities. The reasons discuss losing control of future use of the information, showing that the decision-maker considered a limited disclosure. It is also difficult to see what other possibilities would be reasonable, and CBC's letter to the Parole Board suggests no alternatives other than disclosure of the hearing recordings. The reasons point out that the media has been in attendance to some of the Parole Board hearings for which the disclosure is requested, which could be seen as an alternative to disclosure of the information.

[153] Reasons do not have to be perfect and address every possibility (*Vavilov* at para 91). "'Administrative justice' will not always look like 'judicial justice', and reviewing courts must remain acutely aware of that fact" (*Vavilov* at para 92). The reasons must be read in light of the history and context of the proceedings, and should be read in light of the record (*Vavilov* at paras 91, 94). This does not mean that the reviewing court may provide reasons that were not given, but it does allow it to read reasons "holistically and contextually, for the very purpose of understanding the basis on which a decision was made" (*Vavilov* at para 97). While the Parole Board may not have considered the alternatives that CBC wished, such as releasing parts of the

recordings, the reasons and the legislation shows that it considered how to permit the media to access the information at parole hearings. The alternative is that is that the media can attend the hearings as observers and hear the submissions and discussions. It was conceded at the hearing that media requests to attend Parole Board hearings were not refused to date.

[154] While CBC argues that there is a blanket policy of refusal of providing the withheld information, such a policy is not reflected in the lengthy, reasoned response from the Parole Board.

[155] The reasoning is that because the media has access to the hearings, the media has direct access to the information when it is being recorded. I find that because the Parole Board refuses to disclose the audio recordings, pursuant to s. 140(13) of the *CCRA*, this does not show that they have not considered the rights of the media — and the fact that they are allowed at the hearing shows that the legislation has contemplated this.

[156] Further, just because the Parole Board does not release audio recordings to the media does not show that there was no balancing — a tribunal can consider an issue, make a determination on disclosure, and then follow that determination on subsequent requests with the same facts. The assertion of CBC that the decision did not engage with any case-specific factors is simply not true — there is engagement with factors that would be common to any case, but that does not mean they are not also specific to the Inmates. The decision specifically mentions rehabilitation, reintegration, and other factors which would directly affect the specific people potentially being granted parole even if in these cases that is highly unlikely.

[157] The decision by the Parole Board in response to CBC request addressed the *Doré/Loyola* balancing in its reasons, explaining their rational for why they came to the decision. First, the decision points out that the Parole Board has exclusive jurisdiction and absolute discretion to grant, deny, terminate, or revoke parole. As for the hearings being open to the public, they note that measures are taken to ensure the safety of all parties, and that requests to observe hearings must be submitted in advance. The decision goes on to explain why the hearings are inquisitorial, not adversarial. It points out that the Parole Board decisions often involve third parties and contain medical and psychological evidence, and that despite the fact that observers may apply to attend, the hearings are not considered open to the public. The decision goes on to cite *Mooring* to reply to the argument that the Parole Board is a judicial or quasi-judicial proceeding, concluding that the OCP does not apply to the Parole Board. This issue is addressed above.

[158] The reasons go on to address the s. 2(b) *Charter* issues. The reasons note that the SCC has recently held that the *Charter* does not guarantee access to all government documents, and that, in their view, CBC has the burden of showing that disclosure "is necessary to permit meaningful discussion on a matter of public importance." The decision's subsequent seven paragraphs give a detailed explanation of how the Parole Board arrived at its decision and how they balanced *Charter* rights with their statutory mandates. The reasons include reference to CBC, as well as direct replies to both the *CCRA* and the *Privacy Act*.

[159] While it is true that the decision does not detail the specific rights and privacy interests of the particular persons involved, I do not conclude that is fatal to the completeness of the reasons. There is no reason why the balancing of the factors cannot be at a higher level, and be

generalised to include “victims” and “offenders”. It is notable in this respect that CBC’s request was for the disclosure of recordings of multiple parole hearings of multiple inmates. I conclude that the Parole Board giving general reasons is appropriate in the case, and allows the party receiving the decision to understand how the Parole Board came to its decision.

[160] In sum, I am of the opinion that the Parole Board proportionately balanced *Charter* values with its statutory objectives and mandates. The media and the public have the right to request attendance at the hearings. Requests are only denied based on the list of potential issues described in s. 140(4) *CCRA*. The media has been in attendance at the parole hearings. This shows reasonable balancing between the *Charter* rights of the media and public and the Inmates’ privacy rights. Nothing is being hidden, but there is a control of the flow of private information. There is nothing disproportionate about putting the onus on the media to ensure they are in attendance at the parole hearings in question.

[161] In sum, I find that the Parole Board and CSC’s decisions to not disclose the Withheld Information was reasonable.

VIII. Conclusion

[162] I will dismiss the applications.

IX. Costs

[163] Both the Families and Canada provided post-hearing submissions on costs and bills of costs for the five applications they brought. Those parties were unable to agree to an amount.

[164] The Families' bill of costs dated March 11, 2021 was $33,195.01. Canada's was $19,142.27. The Families submit "…that they are entitled to their costs, whether they win or lose. In the alternative, no cost [*sic*] should be awarded against the applicants."

[165] The Families assert that this was a test case and public interest litigation, and so should be treated differently. As well, the Families have suffered enough and the Canadian public would be shocked if costs were awarded against them. The submissions go on to ask that even if they are not successful that they should be entitled to costs because "[t]he clear message from Parliament is that the public benefits from these types of legal proceedings and they should be encouraged. There should be no Sword of Damocles hanging over the heads of Canadians who bring forward responsible and bona fide public interest cases." The Families then list a number of reasons to award the costs to them if they are the unsuccessful party. The Families relied on *Ruby v Canada (Solicitor General)*, 2002 SCC 75; *Yeager v Canada (Correctional Service)*, 2003 FCA 30 at paragraph 68 [*Yeager*]; and *Bonner v VIA Rail Canada Inc*, 2009 FC 857 at paragraph 130. These are all cases where costs were awarded to the unsuccessful party.

[166] Canada' submissions are that costs should follow the event and they should be awarded an inclusive lump sum of $19,142.27. This amount calculated on the basis of Column III of

Tariff B of the *Federal Courts Rules*. Canada relies on the *ATIA* s. 53(1) that deals with s. 41 review applications.

[167] Canada argues that the Families have not provided a valid argument to have me exercise my discretion otherwise, given that they do not meet the factors to be considered a public interest litigant as set out in *Bielli v Canada,* 2013 FC 953 at paragraphs 13-14 . Those factors are:

> a) The proceeding involves issues the importance of which extends beyond the immediate interests of the parties involved.
>
> b) The person has no personal, proprietary or pecuniary interest in the outcome of the proceeding, or, if he or she has an interest, it clearly does not justify the proceeding economically.
>
> c) The issues have not been previously determined by a court in a proceeding against the same defendant.
>
> d) The defendant has a clearly superior capacity to bear the costs of the proceeding.
>
> e) The plaintiff has not engaged in vexatious, frivolous or abusive conduct.

[168] Canada submits that this application is not public interest litigation and is in fact an inherently personal interest as is "their personal motivation is to use the information sought to make statements to the Parole Board." They also argue that if the first application brought in 2012 had been heard in a timely manner then there would have been precedent to follow but instead there have been a "…multiple, duplicative proceedings that unnecessarily delayed an complicated the process, requiring additional case management conference, two status review hearings and large volumes of material." They say that it was the Families conduct which militates against a reasonable cost order against them.

[169] As well, Canada strongly opposes an award of costs to the Families if they are unsuccessful given "[t]he resolution of these proceedings involved the application of these well-established principles of interpretation to personal information records in the correctional and parole review context, not a novel or unique issue relating to the interpretation of any provision of the *ATIA*." Nor were the s. 2(b) constitutional issues novel as this principle of open court has been raised by litigants in the past when seeking to gain access to private records (*Toronto Star 2018*; *Southham MCI*). Canada also distinguish *Yeager* and note that even though it is similarly a s. 53(2) case, it was the first time that s. 4(3) of the *ATIA* and s. 3 of the related regulations were being considered, and in contrast s. 19 of the *ATIA* and s. 8(2)(m)(i) of the *Privacy Act* are often litigated. I note that s. 3 of the Regulations was never brought to the attention of the Court nor argued by the Families in their submissions.

[170] Though I agree with Canada that this is not public interest matter or a test case, I do have discretion after considering all of the factors listed in s. 400 of the *Federal Courts Rules*. The Families have suffered enough. What I heard in the lengthy application is that the Families really are seeking legislative change that is accomplished politically. However, an application for judicial review is not the vehicle to achieve what they seek.

[171] I considered the submissions regarding the Families particular personal financial situations and will award costs to Canada as the successful party in the lump sum amount (inclusive of taxes and disbursements) of $4000.00. The Inmates did not participate so will not receive costs. Nor will costs be awarded against the intervener CBC.

[172] The Applicant, CBC and the Respondent, the Parole Board of Canada, have agree to costs in the amount of $5,770.00 to the successful party in the T-1884-19 application. Therefore, lump sum costs will be awarded against CBC in the amount of $5,770.00 payable to the Respondent.

JUDGMENT IN T-1358-12, T-101-18, T-102-18, T-103-18, T-465-20

THIS COURT'S JUDGMENT is that:

1. The Applications are dismissed;
2. With regards to the applications in T-1358-12; T-101-18; T-102-18; T-103-18, T-465-20, costs are awarded in a lump sum inclusive of fees, taxes and disbursements are payable forthwith to the Respondents, Minister of Public Safety and Emergency Preparedness, Attorney General of Canada, Correctional Service Canada, Parole Board of Canada by the Applicants in the amount of $4,000.00;
3. With regards to the file- T-1884-19 costs are awarded in a lump sum inclusive of taxes and disbursements payable forthwith to the Respondent, Parole Board of Canada, by the Applicant CBC in the amount of $5,770.00.

"Glennys L. McVeigh"
Judge

ANNEX A

Access to Information Act (R.S.C., 1985, c. A-1)

Purpose of Act

2 (1) The purpose of this Act is to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society and to enable public debate on the conduct of those institutions.

Personal information

19 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains personal information.

Where disclosure authorized

(2) The head of a government institution may disclose any record requested under this Part that contains personal information if

(a) the individual to whom it relates consents to the disclosure;

(b) the information is publicly available; or

(c) the disclosure is in accordance with section 8 of the Privacy Act.

Third party information

20 (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Part that contains

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government

Objet de la loi

2 (1) La présente loi a pour objet d'accroître la responsabilité et la transparence des institutions de l'État afin de favoriser une société ouverte et démocratique et de permettre le débat public sur la conduite de ces institutions.

Renseignements personnels

19 (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements personnels.

Cas où la divulgation est autorisée

(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements personnels dans les cas où :

a) l'individu qu'ils concernent y consent;

b) le public y a accès;

c) la communication est conforme à l'article 8 de la Loi sur la protection des renseignements personnels.

Renseignements de tiers

20 (1) Le responsable d'une institution fédérale est tenu, sous réserve des autres dispositions du présent article, de refuser la communication de documents contenant :

a) des secrets industriels de tiers;

b) des renseignements financiers, commerciaux, scientifiques ou techniques

institution by a third party and is treated consistently in a confidential manner by the third party;

(b.1) information that is supplied in confidence to a government institution by a third party for the preparation, maintenance, testing or implementation by the government institution of emergency management plans within the meaning of section 2 of the Emergency Management Act and that concerns the vulnerability of the third party's buildings or other structures, its networks or systems, including its computer or communications networks or systems, or the methods used to protect any of those buildings, structures, networks or systems;

(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

fournis à une institution fédérale par un tiers, qui sont de nature confidentielle et qui sont traités comme tels de façon constante par ce tiers;

b.1) des renseignements qui, d'une part, sont fournis à titre confidentiel à une institution fédérale par un tiers en vue de l'élaboration, de la mise à jour, de la mise à l'essai ou de la mise en oeuvre par celle-ci de plans de gestion des urgences au sens de l'article 2 de la Loi sur la gestion des urgences et, d'autre part, portent sur la vulnérabilité des bâtiments ou autres ouvrages de ce tiers, ou de ses réseaux ou systèmes, y compris ses réseaux ou systèmes informatiques ou de communication, ou sur les méthodes employées pour leur protection;

c) des renseignements dont la divulgation risquerait vraisemblablement de causer des pertes ou profits financiers appréciables à un tiers ou de nuire à sa compétitivité;

d) des renseignements dont la divulgation risquerait vraisemblablement d'entraver des négociations menées par un tiers en vue de contrats ou à d'autres fins.

ANNEX B

Privacy Act (R.S.C., 1985, c. P-21)

Disclosure of personal information

8 (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Where personal information may be disclosed

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

(c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;

(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;

(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request

Communication des renseignements personnels

8 (1) Les renseignements personnels qui relèvent d'une institution fédérale ne peuvent être communiqués, à défaut du consentement de l'individu qu'ils concernent, que conformément au présent article.

Cas d'autorisation

(2) Sous réserve d'autres lois fédérales, la communication des renseignements personnels qui relèvent d'une institution fédérale est autorisée dans les cas suivants :

a) communication aux fins auxquelles ils ont été recueillis ou préparés par l'institution ou pour les usages qui sont compatibles avec ces fins;

b) communication aux fins qui sont conformes avec les lois fédérales ou ceux de leurs règlements qui autorisent cette communication;

c) communication exigée par subpoena, mandat ou ordonnance d'un tribunal, d'une personne ou d'un organisme ayant le pouvoir de contraindre à la production de renseignements ou exigée par des règles de procédure se rapportant à la production de renseignements;

d) communication au procureur général du Canada pour usage dans des poursuites judiciaires intéressant la Couronne du chef du Canada ou le gouvernement fédéral;

e) communication à un organisme d'enquête déterminé par règlement et qui en fait la demande par écrit, en vue de faire

specifies the purpose and describes the information to be disclosed;

(f) under an agreement or arrangement between the Government of Canada or any of its institutions and the government of a province, the council of the Westbank First Nation, the council of a participating First Nation as defined in subsection 2(1) of the First Nations Jurisdiction over Education in British Columbia Act, the council of a participating First Nation as defined in section 2 of the Anishinabek Nation Education Agreement Act, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;

(g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;

(h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;

(i) to the Library and Archives of Canada for archival purposes;

(j) to any person or body for research or statistical purposes if the head of the government institution

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that

respecter des lois fédérales ou provinciales ou pour la tenue d'enquêtes licites, pourvu que la demande précise les fins auxquelles les renseignements sont destinés et la nature des renseignements demandés;

f) communication aux termes d'accords ou d'ententes conclus d'une part entre le gouvernement du Canada ou l'un de ses organismes et, d'autre part, le gouvernement d'une province ou d'un État étranger, une organisation internationale d'États ou de gouvernements, le conseil de la première nation de Westbank, le conseil de la première nation participante — au sens du paragraphe 2(1) de la Loi sur la compétence des premières nations en matière d'éducation en Colombie-Britannique —, le conseil de la première nation participante — au sens de l'article 2 de la Loi sur l'accord en matière d'éducation conclu avec la Nation des Anishinabes — ou l'un de leurs organismes, en vue de l'application des lois ou pour la tenue d'enquêtes licites;

g) communication à un parlementaire fédéral en vue d'aider l'individu concerné par les renseignements à résoudre un problème;

h) communication pour vérification interne au personnel de l'institution ou pour vérification comptable au bureau du contrôleur général ou à toute personne ou tout organisme déterminé par règlement;

i) communication à Bibliothèque et Archives du Canada pour dépôt;

j) communication à toute personne ou à tout organisme, pour des travaux de recherche ou de statistique, pourvu que soient réalisées les deux conditions suivantes :

would identify the individual to whom it relates, and

(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(k) to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

(l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

Personal information disclosed by Library and Archives of Canada

(3) Subject to any other Act of Parliament, personal information under the custody or control of the Library and Archives of Canada that has been transferred there by a government institution for historical or archival purposes may be disclosed in accordance with the regulations to any

(i) le responsable de l'institution est convaincu que les fins auxquelles les renseignements sont communiqués ne peuvent être normalement atteintes que si les renseignements sont donnés sous une forme qui permette d'identifier l'individu qu'ils concernent,

(ii) la personne ou l'organisme s'engagent par écrit auprès du responsable de l'institution à s'abstenir de toute communication ultérieure des renseignements tant que leur forme risque vraisemblablement de permettre l'identification de l'individu qu'ils concernent;

k) communication à tout gouvernement autochtone, association d'autochtones, bande d'Indiens, institution fédérale ou subdivision de celle-ci, ou à leur représentant, en vue de l'établissement des droits des peuples autochtones ou du règlement de leurs griefs;

l) communication à toute institution fédérale en vue de joindre un débiteur ou un créancier de Sa Majesté du chef du Canada et de recouvrer ou d'acquitter la créance;

m) communication à toute autre fin dans les cas où, de l'avis du responsable de l'institution :

(i) des raisons d'intérêt public justifieraient nettement une éventuelle violation de la vie privée,

(ii) l'individu concerné en tirerait un avantage certain.

Communication par Bibliothèque et Archives du Canada

(3) Sous réserve des autres lois fédérales, les renseignements personnels qui relèvent de Bibliothèque et Archives du Canada et

person or body for research or statistical purposes.

Copies of requests under paragraph (2)(e) to be retained

(4) The head of a government institution shall retain a copy of every request received by the government institution under paragraph (2)(e) for such period of time as may be prescribed by regulation, shall keep a record of any information disclosed pursuant to the request for such period of time as may be prescribed by regulation and shall, on the request of the Privacy Commissioner, make those copies and records available to the Privacy Commissioner.

Notice of disclosure under paragraph (2)(m)

(5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.

Definition of Indian band

(6) In paragraph (2)(k), Indian band means

(a) a band, as defined in the Indian Act;

(b) the band, as defined in subsection 2(1) of the Naskapi and the Cree-Naskapi Commission Act;

(c) the Band, as defined in the Sechelt Indian Band Self-Government Act,

qui y ont été versés pour dépôt ou à des fins historiques par une institution fédérale peuvent être communiqués conformément aux règlements pour des travaux de recherche ou de statistique.

Copie des demandes faites en vertu de l'al. (2)e)

(4) Le responsable d'une institution fédérale conserve, pendant la période prévue par les règlements, une copie des demandes reçues par l'institution en vertu de l'alinéa (2)e) ainsi qu'une mention des renseignements communiqués et, sur demande, met cette copie et cette mention à la disposition du Commissaire à la protection de la vie privée.

Avis de communication dans le cas de l'al. (2)m)

(5) Dans le cas prévu à l'alinéa (2)m), le responsable de l'institution fédérale concernée donne un préavis écrit de la communication des renseignements personnels au Commissaire à la protection de la vie privée si les circonstances le justifient; sinon, il en avise par écrit le Commissaire immédiatement après la communication. La décision de mettre au courant l'individu concerné est laissée à l'appréciation du Commissaire.

Définition de bande d'Indiens

(6) L'expression bande d'Indiens à l'alinéa (2)k) désigne :

a) soit une bande au sens de la Loi sur les Indiens;

b) soit la bande au sens du paragraphe 2(1) de la Loi sur les Naskapis et la Commission crie-naskapie;

c) soit la bande au sens de la Loi sur l'autonomie gouvernementale de la bande

chapter 27 of the Statutes of Canada, 1986; or

(d) a first nation named in Schedule II to the Yukon First Nations Self-Government Act.

Definition of aboriginal government

(7) The expression aboriginal government in paragraph (2)(k) means

(a) Nisga'a Government, as defined in the Nisga'a Final Agreement given effect by the Nisga'a Final Agreement Act;

(b) the council of the Westbank First Nation;

(c) the Tlicho Government, as defined in section 2 of the Tlicho Land Claims and Self-Government Act;

(d) the Nunatsiavut Government, as defined in section 2 of the Labrador Inuit Land Claims Agreement Act;

(e) the council of a participating First Nation as defined in subsection 2(1) of the First Nations Jurisdiction over Education in British Columbia Act;

(e.1) the Tla'amin Government, as defined in subsection 2(2) of the Tla'amin Final Agreement Act;

(f) the Tsawwassen Government, as defined in subsection 2(2) of the Tsawwassen First Nation Final Agreement Act;

(f.1) the Cree Nation Government, as defined in subsection 2(1) of the Cree Nation of Eeyou Istchee Governance Agreement Act or a Cree First Nation, as defined in subsection 2(2) of that Act;

indienne sechelte, chapitre 27 des Statuts du Canada de 1986;

d) la première nation dont le nom figure à l'annexe II de la Loi sur l'autonomie gouvernementale des premières nations du Yukon.

Définition de gouvernement autochtone

(7) L'expression gouvernement autochtone à l'alinéa (2)k) s'entend :

a) du gouvernement nisga'a, au sens de l'Accord définitif nisga'a mis en vigueur par la Loi sur l'Accord définitif nisga'a;

b) du conseil de la première nation de Westbank;

c) du gouvernement tlicho, au sens de l'article 2 de la Loi sur les revendications territoriales et l'autonomie gouvernementale du peuple tlicho;

d) du gouvernement nunatsiavut, au sens de l'article 2 de la Loi sur l'Accord sur les revendications territoriales des Inuit du Labrador;

e) du conseil de la première nation participante, au sens du paragraphe 2(1) de la Loi sur la compétence des premières nations en matière d'éducation en Colombie-Britannique;

e.1) du gouvernement tlaamin, au sens du paragraphe 2(2) de la Loi sur l'accord définitif concernant les Tlaamins;

f) du gouvernement tsawwassen, au sens du paragraphe 2(2) de la Loi sur l'accord définitif concernant la Première Nation de Tsawwassen;

f.1) du Gouvernement de la nation crie, au sens du paragraphe 2(1) de la Loi sur l'accord concernant la gouvernance de la

(g) a Maanulth Government, within the meaning of subsection 2(2) of the Maanulth First Nations Final Agreement Act;

(h) Sioux Valley Dakota Oyate Government, within the meaning of subsection 2(2) of the Sioux Valley Dakota Nation Governance Act; or

(i) the council of a participating First Nation as defined in section 2 of the Anishinabek Nation Education Agreement Act.

Definition of council of the Westbank First Nation

(8) The expression council of the Westbank First Nation in paragraphs (2)(f) and (7)(b) means the council, as defined in the Westbank First Nation Self-Government Agreement given effect by the Westbank First Nation Self-Government Act.

nation crie d'Eeyou Istchee, ou d'une première nation crie, au sens du paragraphe 2(2) de cette loi;

g) de tout gouvernement maanulth, au sens du paragraphe 2(2) de la Loi sur l'accord définitif concernant les premières nations maanulthes;

h) du gouvernement de l'oyate dakota de Sioux Valley, au sens du paragraphe 2(2) de la Loi sur la gouvernance de la nation dakota de Sioux Valley;

i) du conseil de la première nation participante, au sens de l'article 2 la Loi sur l'accord en matière d'éducation conclu avec la Nation des Anishinabes.

Définition de conseil de la première nation de Westbank

(8) L'expression conseil de la première nation de Westbank aux alinéas (2)f) et (7)b) s'entend du conseil au sens de l'Accord d'autonomie gouvernementale de la première nation de Westbank mis en vigueur par la Loi sur l'autonomie gouvernementale de la première nation de Westbank.

ANNEX C

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11

Fundamental freedoms	**Libertés fondamentales**
2 Everyone has the following fundamental freedoms:	2 Chacun a les libertés fondamentales suivantes :
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;	b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
Enforcement of guaranteed rights and freedoms	**Recours en cas d'atteinte aux droits et libertés**
24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.	24 (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

ANNEX D

Corrections and Conditional Release Act (S.C. 1992, c. 20)

Paramount consideration

3.1 The protection of society is the paramount consideration for the Service in the corrections process.

Principles that guide Service

4 The principles that guide the Service in achieving the purpose referred to in section 3 are as follows:

(a) the sentence is carried out having regard to 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, the release policies of and comments from the Parole Board of Canada and information obtained from victims, offenders and other components of the criminal justice system;

(b) the Service enhances its effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about its correctional policies and programs to victims, offenders and the public;

(c) the Service uses the least restrictive measures consistent with the protection of society, staff members and offenders;

(c.1) the Service considers alternatives to custody in a penitentiary, including the alternatives referred to in sections 29 and 81;

Critère prépondérant

3.1 La protection de la société est le critère prépondérant appliqué par le Service dans le cadre du processus correctionnel.

Principes de fonctionnement

4 Le Service est guidé, dans l'exécution du mandat visé à l'article 3, par les principes suivants :

a) l'exécution de la peine tient compte de toute information pertinente dont le Service dispose, notamment les motifs et recommandations donnés par le juge qui l'a prononcée, la nature et la gravité de l'infraction, le degré de responsabilité du délinquant, les renseignements obtenus au cours du procès ou de la détermination de la peine ou fournis par les victimes, les délinquants ou d'autres éléments du système de justice pénale, ainsi que les directives ou observations de la Commission des libérations conditionnelles du Canada en ce qui touche la libération;

b) il accroît son efficacité et sa transparence par l'échange, au moment opportun, de renseignements utiles avec les victimes, les délinquants et les autres éléments du système de justice pénale ainsi que par la communication de ses directives d'orientation générale et programmes correctionnels tant aux victimes et aux délinquants qu'au public;

c) il prend les mesures qui, compte tenu de la protection de la société, des agents et des délinquants, sont les moins privatives de liberté;

(c.2) the Service ensures the effective delivery of programs to offenders, including correctional, educational, vocational training and volunteer programs, with a view to improving access to alternatives to custody in a penitentiary and to promoting rehabilitation;

(d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;

(e) the Service facilitates the involvement of members of the public in matters relating to the operations of the Service;

(f) correctional decisions are made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

(g) correctional policies, programs and practices respect gender, ethnic, cultural, religious and linguistic differences, sexual orientation and gender identity and expression, and are responsive to the special needs of women, Indigenous persons, visible minorities, persons requiring mental health care and other groups;

(h) offenders are expected to obey penitentiary rules and conditions governing temporary absences, work release, parole, statutory release and long-term supervision and to actively participate in meeting the objectives of their correctional plans, including by participating in programs designed to promote their rehabilitation and reintegration; and

(i) staff members are properly selected and trained and are given

c.1) il envisage des solutions de rechange à la mise sous garde dans un pénitencier, notamment celles prévues aux articles 29 et 81;

c.2) il assure la prestation efficace des programmes offerts aux délinquants, notamment les programmes correctionnels et les programmes d'éducation, de formation professionnelle et de bénévolat, en vue d'améliorer l'accès aux solutions de rechange à la mise sous garde dans un pénitencier et de promouvoir la réadaptation;

d) le délinquant continue à jouir des droits reconnus à tout citoyen, sauf de ceux dont la suppression ou la restriction légitime est une conséquence nécessaire de la peine qui lui est infligée;

e) il facilite la participation du public aux questions relatives à ses activités;

f) ses décisions doivent être claires et équitables, les délinquants ayant accès à des mécanismes efficaces de règlement de griefs;

g) ses directives d'orientation générale, programmes et pratiques respectent les différences ethniques, culturelles, religieuses et linguistiques, ainsi qu'entre les sexes, l'orientation sexuelle, l'identité et l'expression de genre, et tiennent compte des besoins propres aux femmes, aux Autochtones, aux minorités visibles, aux personnes nécessitant des soins de santé mentale et à d'autres groupes;

h) il est attendu que les délinquants observent les règlements pénitentiaires et les conditions d'octroi des permissions de sortir, des placements à l'extérieur, des libérations conditionnelles ou d'office et des ordonnances de surveillance de longue durée et participent activement à la

(i) appropriate career development opportunities,

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and

(iii) opportunities to participate in the development of correctional policies and programs.

réalisation des objectifs énoncés dans leur plan correctionnel, notamment les programmes favorisant leur réadaptation et leur réinsertion sociale;

i) il veille au bon recrutement et à la bonne formation de ses agents, leur offre de bonnes conditions de travail dans un milieu exempt de pratiques portant atteinte à la dignité humaine, un plan de carrière avec la possibilité de se perfectionner ainsi que l'occasion de participer à l'élaboration des directives d'orientation générale et programmes correctionnels.

Disclosure of information to victims

26 (1) At the request of a victim of an offence committed by an offender, the Commissioner

(a) shall disclose to the victim the following information about the offender:

(i) the offender's name,

(ii) the offence of which the offender was convicted and the court that convicted the offender,

(iii) the date of commencement and length of the sentence that the offender is serving, and

(iv) eligibility dates and review dates applicable to the offender under this Act in respect of temporary absences or parole;

(b) may disclose to the victim any of the following information about the offender, where in the Commissioner's opinion the interest of the victim in such disclosure clearly outweighs any invasion of the offender's privacy that could result from the disclosure:

(i) the offender's age,

Communication de renseignements à la victime

26 (1) Sur demande de la victime, le commissaire :

a) communique à celle-ci les renseignements suivants :

(i) le nom du délinquant,

(ii) l'infraction dont il a été trouvé coupable et le tribunal qui l'a condamné,

(iii) la date de début et la durée de la peine qu'il purge,

(iv) les dates d'admissibilité et d'examen applicables aux permissions de sortir ou à la libération conditionnelle;

b) peut lui communiquer tout ou partie des renseignements suivants si, à son avis, l'intérêt de la victime justifierait nettement une éventuelle violation de la vie privée du délinquant :

(i) l'âge du délinquant,

(ii) le nom et l'emplacement du pénitencier où il est détenu,

(ii) the name and location of the penitentiary in which the sentence is being served,

(ii.1) if the offender is transferred, a summary of the reasons for the transfer and the name and location of the penitentiary in which the sentence is being served,

(ii.2) if the offender is to be transferred to a minimum security institution as designated by Commissioner's Directive and it is possible to notify the victim before the transfer, a summary of the reasons for the transfer and the name and location of the institution in which the sentence is to be served,

(ii.3) the programs that were designed to address the needs of the offender and contribute to their successful reintegration into the community in which the offender is participating or has participated,

(ii.4) the serious disciplinary offences that the offender has committed,

(iii) information pertaining to the offender's correctional plan, including information regarding the offender's progress towards meeting the objectives of the plan,

(iv) the date of any hearing for the purposes of a review under section 130,

(v) that the offender has been removed from Canada under the Immigration and Refugee Protection Act before the expiration of the sentence, and

(vi) [Repealed, 2015, c. 13, s. 46]

(vii) whether the offender is in custody and, if not, the reason why the offender is not in custody;

(ii.1) en cas de transfèrement dans un autre pénitencier, le nom et l'emplacement de celui-ci et un résumé des motifs du transfèrement,

(ii.2) dans la mesure du possible, un préavis du transfèrement dans un établissement à sécurité minimale au sens des directives du commissaire, le nom et l'emplacement de l'établissement et un résumé des motifs du transfèrement,

(ii.3) les programmes visant à répondre aux besoins et à contribuer à la réinsertion sociale des délinquants auxquels le délinquant participe ou a participé,

(ii.4) les infractions disciplinaires graves qu'il a commises,

(iii) des renseignements concernant son plan correctionnel, notamment les progrès qu'il a accomplis en vue d'en atteindre les objectifs,

(iv) la date de toute audience prévue à l'égard de l'examen visé à l'article 130,

(v) son renvoi du Canada dans le cadre de la Loi sur l'immigration et la protection des réfugiés avant l'expiration de sa peine,

(vi) [Abrogé, 2015, ch. 13, art. 46]

(vii) s'il est sous garde et, le cas échéant, les raisons pour lesquelles il ne l'est pas;

c) lui communique tout ou partie des renseignements ci-après si, à son avis, cette communication n'aurait pas d'incidence négative sur la sécurité du public :

(i) la date de la mise en liberté du délinquant au titre d'une permission de sortir, d'un placement à l'extérieur ou de la libération conditionnelle ou d'office,

(c) shall disclose to the victim any of the following information about the offender, if, in the Commissioner's opinion, the disclosure would not have a negative impact on the safety of the public:

(i) the date, if any, on which the offender is to be released on temporary absence, work release, parole or statutory release,

(ii) the conditions attached to the offender's temporary absence, work release, parole or statutory release,

(iii) the destination of the offender on any temporary absence, work release, parole or statutory release, whether the offender will be in the vicinity of the victim while travelling to that destination and the reasons for any temporary absence; and

(d) shall provide the victim with access to a photograph of the offender taken on the occurrence of the earliest of any of the following — and any subsequent photograph of the offender taken by the Service — if, in the Commissioner's opinion, to do so would not have a negative impact on the safety of the public:

(i) the release of the offender on unescorted temporary absence,

(ii) the offender's work release,

(iii) the offender's release on parole, and

(iv) the offender's release by virtue of statutory release or the expiration of the sentence.

Information to be given to offenders

27 (1) Where an offender is entitled by this Part or the regulations to make representations in relation to a decision to be taken by the Service about the offender,

(ii) les conditions dont est assorti la permission de sortir, le placement à l'extérieur ou la libération conditionnelle ou d'office,

(iii) la destination du délinquant lors de sa permission de sortir et les raisons de celle-ci, sa destination lors de son placement à l'extérieur, sa libération conditionnelle ou d'office et son éventuel rapprochement de la victime, selon son itinéraire;

d) lui donne accès à une photographie du délinquant au premier des événements ci-après, ou à toute nouvelle photographie du délinquant prise par le Service par la suite, si, à son avis, cet accès n'aurait pas d'incidence négative sur la sécurité du public :

(i) la mise en liberté du délinquant lors d'une permission de sortir sans escorte,

(ii) son placement à l'extérieur,

(iii) sa libération conditionnelle,

(iv) sa libération d'office ou l'expiration de sa peine.

Communication de renseignements au délinquant

27 (1) Sous réserve du paragraphe (3), la personne ou l'organisme chargé de rendre, au nom du Service, une décision au sujet

the person or body that is to take the decision shall, subject to subsection (3), give the offender, a reasonable period before the decision is to be taken, all the information to be considered in the taking of the decision or a summary of that information.

Idem

(2) Where an offender is entitled by this Part or the regulations to be given reasons for a decision taken by the Service about the offender, the person or body that takes the decision shall, subject to subsection (3), give the offender, forthwith after the decision is taken, all the information that was considered in the taking of the decision or a summary of that information.

Purpose and Principles

Paramount consideration

100.1 The protection of society is the paramount consideration for the Board and the provincial parole boards in the determination of all cases.

Principles guiding parole boards

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

d'un délinquant doit, lorsque celui-ci a le droit en vertu de la présente partie ou des règlements de présenter des observations, lui communiquer, dans un délai raisonnable avant la prise de décision, tous les renseignements entrant en ligne de compte dans celle-ci, ou un sommaire de ceux-ci.

Idem

(2) Sous réserve du paragraphe (3), cette personne ou cet organisme doit, dès que sa décision est rendue, faire connaître au délinquant qui y a droit au titre de la présente partie ou des règlements les renseignements pris en compte dans la décision, ou un sommaire de ceux-ci.

Objet et principes

Critère prépondérant

100.1 Dans tous les cas, la protection de la société est le critère prépondérant appliqué par la Commission et les commissions provinciales.

Principes

101 La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes suivants :

a) elles doivent tenir compte de toute l'information pertinente dont elles disposent, notamment les motifs et les recommandations du juge qui a infligé la peine, la nature et la gravité de l'infraction, le degré de responsabilité du délinquant, les renseignements obtenus au cours du procès ou de la détermination de la peine et ceux qui ont été obtenus des victimes, des délinquants ou d'autres éléments du système de justice pénale, y compris les

assessments provided by correctional authorities;

(b) parole boards enhance their effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about their policies and programs to victims, offenders and the general public;

(c) parole boards make the least restrictive determinations that are consistent with the protection of society;

(d) parole boards adopt and are guided by appropriate policies and their members are provided with the training necessary to implement those policies; and

(e) offenders are provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

évaluations fournies par les autorités correctionnelles;

b) elles accroissent leur efficacité et leur transparence par l'échange, au moment opportun, de renseignements utiles avec les victimes, les délinquants et les autres éléments du système de justice pénale et par la communication de leurs directives d'orientation générale et programmes tant aux victimes et aux délinquants qu'au grand public;

c) elles prennent les décisions qui, compte tenu de la protection de la société, sont les moins privatives de liberté;

d) 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;

e) de manière à assurer l'équité et la clarté du processus, les autorités doivent donner aux délinquants les motifs des décisions, ainsi que tous autres renseignements pertinents, et la possibilité de les faire réviser.

Review Hearings

Attendance by observers

140 (4) Subject to subsections (5) and (5.1), the Board or a person designated, by name or by position, by the Chairperson of the Board shall, subject to such conditions as the Board or person considers appropriate and after taking into account the offender's views, permit a person who applies in writing therefor to attend as an observer at a hearing relating to an offender, unless the Board or person is satisfied that

(a) the hearing is likely to be disrupted or the ability of the Board to consider the

Audience

Présence des observateurs

140 (4) Sous réserve des paragraphes (5) et (5.1), la Commission, ou la personne que le président désigne nommément ou par indication de son poste, doit, aux conditions qu'elle estime indiquées et après avoir pris en compte les observations du délinquant, autoriser la personne qui en fait la demande écrite à être présente, à titre d'observateur, lors d'une audience, sauf si elle est convaincue que, selon le cas :

a) la présence de cette personne, seule ou en compagnie d'autres personnes qui ont

matter before it is likely to be adversely affected by the presence of that person or of that person in conjunction with other persons who have applied to attend the hearing;

(b) the person's presence is likely to adversely affect those who have provided information to the Board, including victims, members of a victim's family or members of the offender's family;

(c) the person's presence is likely to adversely affect an appropriate balance between that person's or the public's interest in knowing and the public's interest in the effective reintegration of the offender into society; or

(d) the security and good order of the institution in which the hearing is to be held is likely to be adversely affected by the person's presence.

Exclusion of observers

Attendance by victim or member of their family

(5.1) In determining whether to permit a victim or a member of the victim's family to attend as an observer at a hearing, the Board or its designate shall make every effort to fully understand the need of the victim and of the members of his or her family to attend the hearing and witness its proceedings. The Board or its designate shall permit a victim or a member of his or her family to attend as an observer unless satisfied that the presence of the victim or family member would result in a situation described in paragraph (4)(a), (b), (c) or (d).

Attendance not permitted

(5.2) If the Board or its designate decides under subsection (5.1) to not permit a

demandé d'assister à la même audience, nuira au déroulement de l'audience ou l'empêchera de bien évaluer la question dont elle est saisie;

b) sa présence incommodera ceux qui ont fourni des renseignements à la Commission, notamment la victime, la famille de la victime ou celle du délinquant;

c) sa présence compromettra vraisemblablement l'équilibre souhaitable entre l'intérêt de l'observateur ou du public à la communication de l'information et l'intérêt du public à la réinsertion sociale du délinquant;

d) sa présence nuira à la sécurité ou au maintien de l'ordre de l'établissement où l'audience doit se tenir.

Poursuite de l'audience à huis clos

Présence d'une victime ou d'un membre de sa famille

(5.1) Lorsqu'elle détermine si une victime ou un membre de sa famille peut être présent, à titre d'observateur, lors d'une audience, la Commission ou la personne qu'elle désigne s'efforce de comprendre le besoin de la victime ou des membres de sa famille d'être présents lors de l'audience et d'en observer le déroulement. La Commission ou la personne qu'elle désigne autorise cette présence sauf si elle est convaincue que celle-ci entraînerait une situation visée aux alinéas (4)a), b), c) ou d).

Présence refusée

(5.2) Lorsque la Commission ou la personne qu'elle désigne décide, en application du paragraphe (5.1), de ne pas

victim or a member of his or her family to attend a hearing, the Board shall provide for the victim or family member to observe the hearing by any means that the Board considers appropriate.

Presentation of statements

140 (10) If they are attending a hearing as an observer,

(a) a victim may present a statement describing the harm, property damage or loss suffered by them as the result of the commission of the offence and its continuing impact on them — including any safety concerns — and commenting on the possible release of the offender; and

(b) a person referred to in subsection 142(3) may present a statement describing the harm, property damage or loss suffered by them as the result of any act of the offender in respect of which a complaint was made to the police or Crown attorney or an information laid under the Criminal Code, and its continuing impact on them — including any safety concerns — and commenting on the possible release of the offender.

Consideration of statement

(10.1) The Board shall, in deciding whether an offender should be released and what conditions might be applicable to the release, take into consideration any statement that has been presented in accordance with paragraph (10)(a) or (b).

Forms of statement

140 (11) If a victim or a person referred to in subsection 142(3) is not attending a hearing, their statement may be presented at the hearing in the form of a written

autoriser la présence d'une victime ou d'un membre de sa famille lors de l'audience, elle prend les dispositions nécessaires pour que la victime ou le membre de sa famille puisse observer le déroulement de l'audience par tout moyen que la Commission juge approprié.

Déclaration par la personne à l'audience

140 (10) Lors de l'audience à laquelle elles assistent à titre d'observateur :

a) d'une part, la victime peut présenter une déclaration à l'égard des dommages ou des pertes qu'elle a subis par suite de la perpétration de l'infraction et des répercussions que celle-ci a encore sur elle, notamment les préoccupations qu'elle a quant à sa sécurité, et à l'égard de l'éventuelle libération du délinquant;

b) d'autre part, la personne visée au paragraphe 142(3) peut présenter une déclaration à l'égard des dommages ou des pertes qu'elle a subis par suite de la conduite du délinquant — laquelle a donné lieu au dépôt d'une plainte auprès de la police ou du procureur de la Couronne ou a fait l'objet d'une dénonciation conformément au Code criminel — et des répercussions que cette conduite a encore sur elle, notamment les préoccupations qu'elle a quant à sa sécurité, et à l'égard de l'éventuelle libération du délinquant.

Déclaration — formes

140 (11) La déclaration de la victime ou de la personne visée au paragraphe 142(3), même si celle-ci n'assiste pas à l'audience, peut y être présentée sous la forme d'une

statement, which may be accompanied by an audio or video recording, or in any other form prescribed by the regulations.

déclaration écrite pouvant être accompagnée d'un enregistrement audio ou vidéo, ou sous toute autre forme prévue par règlement.

Communication of statement in writing

140 (12) A victim or a person referred to in subsection 142(3) shall, before the hearing, deliver to the Board a transcript of the statement that they plan to present under subsection (10) or (11).

Communication préalable de la transcription

140 (12) La victime et la personne visée au paragraphe 142(3) doivent, préalablement à l'audience, envoyer à la Commission la transcription de la déclaration qu'elles entendent présenter au titre des paragraphes (10) ou (11).

Audio recording

140 (13) Subject to any conditions specified by the Board, a victim, or a person referred to in subsection 142(3), is entitled, on request, after a hearing in respect of a review referred to in paragraph (1)(a) or (b), to listen to an audio recording of the hearing, other than portions of the hearing that the Board considers

(a) could reasonably be expected to jeopardize the safety of any person or reveal a source of information obtained in confidence; or

(b) should not be heard by the victim or a person referred to in subsection 142(3) because the privacy interests of any person clearly outweighs the interest of the victim or person referred to in that subsection.

Enregistrement sonore

140 (13) La victime ou la personne visée au paragraphe 142(3) a le droit, sur demande et sous réserve des conditions imposées par la Commission, une fois l'audience relative à l'examen visé aux alinéas (1)a) ou b) terminée, d'écouter l'enregistrement sonore de celle-ci, à l'exception de toute partie de l'enregistrement qui, de l'avis de la Commission :

a) risquerait vraisemblablement de mettre en danger la sécurité d'une personne ou de permettre de remonter à une source de renseignements obtenus de façon confidentielle;

b) ne devrait pas être entendue par la victime ou la personne visée au paragraphe 142(3) parce que l'intérêt de la victime ou de la personne ne justifierait nettement pas une éventuelle violation de la vie privée d'une personne.

Access to information

Accès aux renseignements

140 (14) If an observer has been present during a hearing or a victim or a person has exercised their right under subsection (13), any information or documents discussed or referred to during the hearing shall not for that reason alone be considered to be publicly available for purposes of the Access to Information Act or the Privacy Act.

Disclosure of information to victims

142 (1) At the request of a victim of an offence committed by an offender, the Chairperson

(a) shall disclose to the victim the following information about the offender:

(i) the offender's name,

(ii) the offence of which the offender was convicted and the court that convicted the offender,

(iii) the date of commencement and length of the sentence that the offender is serving, and

(iv) eligibility dates and review dates applicable to the offender under this Part in respect of unescorted temporary absences or parole; and

(b) may disclose to the victim any of the following information about the offender, where in the Chairperson's opinion the interest of the victim in the disclosure clearly outweighs any invasion of the offender's privacy that could result from the disclosure, namely,

(i) the offender's age,

(ii) the location of the penitentiary in which the sentence is being served,

140 (14) Si un observateur est présent lors d'une audience ou si la victime ou la personne visée au paragraphe 142(3) a exercé ses droits au titre du paragraphe (13), les renseignements et documents qui y sont étudiés ou communiqués ne sont pas réputés être des documents accessibles au public aux fins de la Loi sur la protection des renseignements personnels et de la Loi sur l'accès à l'information.

Communication de renseignements à la victime

142 (1) Sur demande de la victime, le président :

a) communique à celle-ci les renseignements suivants :

(i) le nom du délinquant,

(ii) l'infraction dont il a été trouvé coupable et le tribunal qui l'a condamné,

(iii) la date de début et la durée de la peine qu'il purge,

(iv) les dates d'admissibilité et d'examen applicables aux permissions de sortir sans escorte ou à la libération conditionnelle;

b) peut lui communiquer, tout ou partie des renseignements suivants si, à son avis, l'intérêt de la victime justifierait nettement une éventuelle violation de la vie privée du délinquant :

(i) l'âge du délinquant,

(ii) l'emplacement du pénitencier où il est détenu,

(iii) la date de ses permissions de sortir sans escorte, de ses permissions de sortir avec escorte approuvées par la Commission au titre du paragraphe

(iii) the date, if any, on which the offender is to be released on unescorted temporary absence, escorted temporary absence where the Board has approved the absence as required by subsection 746.1(2) of the Criminal Code, parole or statutory release,

(iv) the date of any hearing for the purposes of a review under section 130,

(v) any of the conditions attached to the offender's unescorted temporary absence, parole or statutory release and the reasons for any unescorted temporary absence,

(vi) the destination of the offender when released on unescorted temporary absence, parole or statutory release, and whether the offender will be in the vicinity of the victim while travelling to that destination,

(vii) whether the offender is in custody and, if not, the reason that the offender is not in custody,

(viii) whether or not the offender has appealed a decision of the Board under section 147, and the outcome of that appeal, and

(ix) the reason for a waiver of the right to a hearing under subsection 140(1) if the offender gives one.

746.1(2) du Code criminel, de sa libération conditionnelle ou de sa libération d'office,

(iv) la date de toute audience prévue à l'égard de l'examen visé à l'article 130,

(v) les conditions dont est assortie la permission de sortir sans escorte et les raisons de celle-ci, ainsi que les conditions de la libération conditionnelle ou d'office,

(vi) sa destination lors de sa mise en liberté et son éventuel rapprochement de la victime, selon son itinéraire,

(vii) s'il est sous garde et, le cas échéant, les raisons pour lesquelles il ne l'est pas,

(viii) si le délinquant a interjeté appel en vertu de l'article 147 et, le cas échéant, la décision rendue au titre de celui-ci,

(ix) si le délinquant a renoncé à son droit à une audience au titre du paragraphe 140(1), le motif de la renonciation, le cas échéant.

Registry of decisions

144 (1) The Board shall maintain a registry of the decisions rendered by it under this Part or under paragraph 746.1(2)(c) or (3)(c) of the Criminal Code and its reasons for those decisions.

Constitution du registre

144 (1) La Commission constitue un registre des décisions qu'elle rend sous le régime de la présente partie ou des alinéas 746.1(2)c) ou (3)c) du Code criminel et des motifs s'y rapportant.

Access to registry

(2) A person who demonstrates an interest in a case may, on written application to the Board, have access to the contents of the registry relating to that case, other than

Accès au registre

(2) Sur demande écrite à la Commission, toute personne qui démontre qu'elle a un intérêt à l'égard d'un cas particulier peut avoir accès au registre pour y consulter les

information the disclosure of which could reasonably be expected

(a) to jeopardize the safety of any person;

(b) to reveal a source of information obtained in confidence; or

(c) if released publicly, to adversely affect the reintegration of the offender into society.

Idem

(3) Subject to any conditions prescribed by the regulations, any person may have access for research purposes to the contents of the registry, other than the name of any person, information that could be used to identify any person or information the disclosure of which could jeopardize any person's safety.

Idem

(4) Notwithstanding subsection (2), where any information contained in a decision in the registry has been considered in the course of a hearing held in the presence of observers, any person may, on application in writing, have access to that information in the registry.

Copy of decision

144.1 At the request of a victim, or a person referred to in subsection 142(3), the Board shall, despite section 144, provide the victim or person with a copy of any decision rendered by it under this Part or under paragraph 746.1(2)(c) or (3)(c) of the Criminal Code in relation to the offender and its reasons for that decision, unless doing so could reasonably be expected

(a) to jeopardize the safety of any person;

renseignements qui concernent ce cas, à la condition que ne lui soient pas communiqués de renseignements dont la divulgation risquerait vraisemblablement :

a) de mettre en danger la sécurité d'une personne;

b) de permettre de remonter à une source de renseignements obtenus de façon confidentielle;

c) de nuire, s'ils sont rendus publics, à la réinsertion sociale du délinquant.

Idem

(3) Sous réserve des conditions fixées par règlement, les chercheurs peuvent consulter le registre, pourvu que soient retranchés des documents auxquels ils ont accès les noms des personnes concernées et les renseignements précis qui permettraient de les identifier ou dont la divulgation pourrait mettre en danger la sécurité d'une personne.

Accès aux documents rendus publics

(4) Par dérogation au paragraphe (2), toute personne qui en fait la demande écrite peut avoir accès aux renseignements que la Commission a étudiés lors d'une audience tenue en présence d'observateurs et qui sont compris dans sa décision versée au registre.

Copie de la décision

144.1 La Commission remet, malgré l'article 144, à la victime ou à la personne visée au paragraphe 142(3), si elles en font la demande, une copie de toute décision qu'elle a rendue sous le régime de la présente partie ou des alinéas 746.1(2)c) ou (3)c) du Code criminel à l'égard du

(b) to reveal a source of information obtained in confidence; or

(c) to prevent the successful reintegration of the offender into society.

délinquant, motifs à l'appui, sauf si cela risquerait vraisemblablement :

a) de mettre en danger la sécurité d'une personne;

b) de permettre de remonter à une source de renseignements obtenus de façon confidentielle;

c) d'empêcher la réinsertion sociale du délinquant.

ANNEX E

Parole Board of Canada | Commission des libérations conditionnelles du Canada

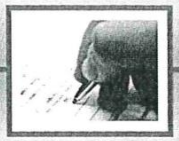
Decision-Making Policy Manual

for Board Members

Manuel des politiques décisionnelles

à l'intention des commissaires





Second Edition/Deuxième édition
No. 12 – 2018-04-18

Canada

1.3 Victims Access to Audio Recordings of Hearings

Legislative References

1. *Corrections and Conditional Release Act* (CCRA), subsections 2(1), 140(13) and (14), and 142(3).

Purpose

2. To provide guidance to Board members on authorizing the release of an audio recording of a parole hearing that has occurred on or after June 1st, 2016.

Decision-Making Criteria and Process

3. A victim who does not attend a hearing for day or full parole, including accelerated parole review, as an observer, may request to listen to an audio recording of the hearing in accordance with subsection 140(13) of the CCRA. The request can be made prior to the hearing or after the hearing. Only the audio recording of the most recent parole hearing will be accessible.

1.3 Accès des victimes aux enregistrements sonores des audiences

Références législatives

1. *Loi sur le système correctionnel et la mise en liberté sous condition* (LSCMLC), paragraphes 2(1), 140(13) et (14), et 142(3).

Objet

2. Guider les commissaires concernant l'examen des demandes présentées par une victime qui veut écouter l'enregistrement sonore d'une audience de libération conditionnelle qui a eu lieu le 1er juin 2016 ou après cette date.

Critères et processus décisionnels

3. La victime qui n'est pas présente à l'audience de semi-liberté ou de libération conditionnelle totale, y compris la procédure d'examen expéditif, à titre d'observateur, a le droit de présenter une demande pour écouter l'enregistrement sonore de l'audience en vertu du paragraphe 140(13) de la LSCMLC. La demande peut être présentée avant ou après l'audience. Seul l'enregistrement sonore de l'audience la plus récente sera accessible.

Audio Recordings of Hearings

10. The Board will make an audio recording of all hearings to provide an account of what occurred at each hearing and to allow for reviews to ensure that procedural safeguards were met.

11. Audio recordings of hearings will not include the Board members' deliberations.

Enregistrements sonores des audiences

10. La Commission procède à l'enregistrement sonore de toutes les audiences pour fournir un compte rendu de ce qui s'est passé à chacune d'elles et de permettre des examens visant à vérifier si les garanties procédurales ont été respectées.

11. Les enregistrements sonores des audiences ne comprennent pas les délibérations des commissaires.

Parole Board of Canada | Commission des libérations conditionnelles du Canada

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for Board Members

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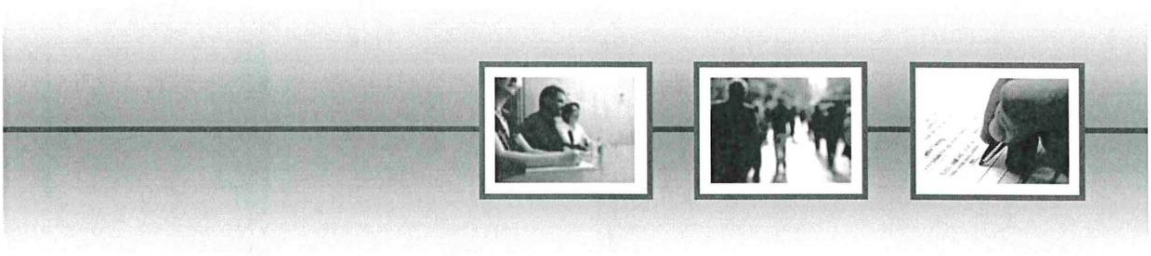
à l'intention des commissaires



Second Edition/Deuxième édition
No. 15 – 2019-06-21

Canada

1.3 Victim Requests to Listen to Audio Recordings of Hearings

Legislative References

1. *Corrections and Conditional Release Act* (CCRA), subsections 2(1), 140(13) and (14), and 142(3).

Purpose

2. To provide guidance to Board members on authorizing a victim to listen to an audio recording of a parole hearing that has occurred on or after June 1st, 2016.

Decision-Making Criteria and Process

3. A victim may request to listen to an audio recording of a day or full parole hearing, including accelerated parole review, in accordance with subsection 140(13) of the CCRA. The request can be made prior to or after the hearing.

1.3 Demandes des victimes pour écouter aux enregistrements sonores des audiences

Références législatives

1. *Loi sur le système correctionnel et la mise en liberté sous condition* (LSCMLC), paragraphes 2(1), 140(13) et (14), et 142(3).

Objet

2. Guider les commissaires concernant l'examen des demandes présentées par une victime qui veut écouter l'enregistrement sonore d'une audience de libération conditionnelle qui a eu lieu le 1er juin 2016 ou après cette date.

Critères et processus décisionnels

3. La victime peut demander d'écouter l'enregistrement sonore d'une audience de semi-liberté ou de libération conditionnelle totale, y compris la procédure d'examen expéditif, en vertu du paragraphe 140(13) de la LSCMLC. La demande peut être présentée avant ou après l'audience.

Hearing Process

9. Hearings before the Board are administrative processes in nature with no formal rules of evidence.

Audio Recordings of Hearings

10. The Board will make an audio recording of all hearings to provide an account of what occurred at each hearing and to allow for reviews to ensure that procedural safeguards were met.

11. Audio recordings of hearings will not include the Board members' deliberations.

Processus d'audience

9. Les audiences de la Commission constituent un processus de nature administrative qui n'est pas assujetti aux règles de preuve traditionnelles.

Enregistrements sonores des audiences

10. La Commission procède à l'enregistrement sonore de toutes les audiences pour fournir un compte rendu de ce qui s'est passé à chacune d'elles et de permettre des examens visant à vérifier si les garanties procédurales ont été respectées.

11. Les enregistrements sonores des audiences ne comprennent pas les délibérations des commissaires.

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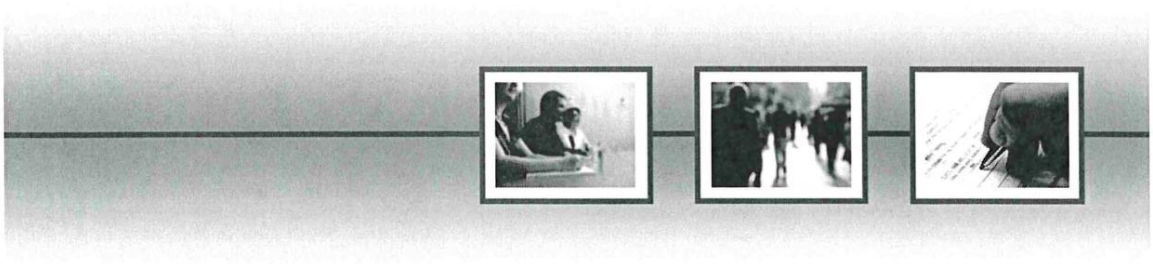
Manuel des politiques décisionnelles

à l'intention des commissaires



Second Edition/Deuxième édition
No. 16 – 2019-09-20

Canada

1.3 Victim Requests to Listen to Audio Recordings of Hearings

Legislative References

1. *Corrections and Conditional Release Act* (CCRA), subsections 2(1), 140(13) and (14), and 142(3).

Purpose

2. To provide guidance to Board members on authorizing a victim to listen to an audio recording of a parole hearing that has occurred on or after June 1st, 2016.

Decision-Making Criteria and Process

3. A victim may request to listen to an audio recording of a day or full parole hearing, including accelerated parole review, in accordance with subsection 140(13) of the CCRA. The request can be made prior to or after the hearing.

1.3 Demandes des victimes pour écouter aux enregistrements sonores des audiences

Références législatives

1. *Loi sur le système correctionnel et la mise en liberté sous condition* (LSCMLC), paragraphes 2(1), 140(13) et (14), et 142(3).

Objet

2. Guider les commissaires concernant l'examen des demandes présentées par une victime qui veut écouter l'enregistrement sonore d'une audience de libération conditionnelle qui a eu lieu le 1er juin 2016 ou après cette date.

Critères et processus décisionnels

3. La victime peut demander d'écouter l'enregistrement sonore d'une audience de semi-liberté ou de libération conditionnelle totale, y compris la procédure d'examen expéditif, en vertu du paragraphe 140(13) de la LSCMLC. La demande peut être présentée avant ou après l'audience.

Hearing Process

9. Hearings before the Board are administrative processes in nature with no formal rules of evidence.

Audio Recordings of Hearings

10. The Board will make an audio recording of all hearings to provide an account of what occurred at each hearing and to allow for reviews to ensure that procedural safeguards were met.

11. Audio recordings of hearings will not include the Board members' deliberations.

Processus d'audience

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Enregistrements sonores des audiences

10. La Commission procède à l'enregistrement sonore de toutes les audiences pour fournir un compte rendu de ce qui s'est passé à chacune d'elles et de permettre des examens visant à vérifier si les garanties procédurales ont été respectées.

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Second Edition/Deuxième édition
No. 17 – 2019-12-18

Canada

1.3 Victim Requests to Listen to Audio Recordings of Hearings

Legislative References

1. *Corrections and Conditional Release Act* (CCRA), subsections 2(1), 140(13) and (14), and 142(3).

Purpose

2. To provide guidance to Board members on authorizing a victim to listen to an audio recording of a parole hearing that has occurred on or after June 1st, 2016.

Decision-Making Criteria and Process

3. A victim may request to listen to an audio recording of a day or full parole hearing, including accelerated parole review, in accordance with subsection 140(13) of the CCRA. The request can be made prior to or after the hearing.

1.3 Demandes des victimes pour écouter aux enregistrements sonores des audiences

Références législatives

1. *Loi sur le système correctionnel et la mise en liberté sous condition* (LSCMLC), paragraphes 2(1), 140(13) et (14), et 142(3).

Objet

2. Guider les commissaires concernant l'examen des demandes présentées par une victime qui veut écouter l'enregistrement sonore d'une audience de libération conditionnelle qui a eu lieu le 1er juin 2016 ou après cette date.

Critères et processus décisionnels

3. La victime peut demander d'écouter l'enregistrement sonore d'une audience de semi-liberté ou de libération conditionnelle totale, y compris la procédure d'examen expéditif, en vertu du paragraphe 140(13) de la LSCMLC. La demande peut être présentée avant ou après l'audience.

Hearing Process

9. Hearings before the Board are administrative processes in nature with no formal rules of evidence.

Audio Recordings of Hearings

10. The Board will make an audio recording of all hearings to provide an account of what occurred at each hearing and to allow for reviews to ensure that procedural safeguards were met.

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Second Edition/Deuxième édition
No. 18 – 2020-09-22

Canada

1.3 Victim Requests to Listen to Audio Recordings of Hearings

Legislative References

1. *Corrections and Conditional Release Act* (CCRA), subsections 2(1), 140(13) and (14), and 142(3).

Purpose

2. To provide guidance to Board members on authorizing a victim to listen to an audio recording of a parole hearing that has occurred on or after June 1st, 2016.

Decision-Making Criteria and Process

3. A victim may request to listen to an audio recording of a day or full parole hearing, including accelerated parole review, in accordance with subsection 140(13) of the CCRA. The request can be made prior to or after the hearing.

1.3 Demandes des victimes pour écouter aux enregistrements sonores des audiences

Références législatives

1. *Loi sur le système correctionnel et la mise en liberté sous condition* (LSCMLC), paragraphes 2(1), 140(13) et (14), et 142(3).

Objet

2. Guider les commissaires concernant l'examen des demandes présentées par une victime qui veut écouter l'enregistrement sonore d'une audience de libération conditionnelle qui a eu lieu le 1er juin 2016 ou après cette date.

Critères et processus décisionnels

3. La victime peut demander d'écouter l'enregistrement sonore d'une audience de semi-liberté ou de libération conditionnelle totale, y compris la procédure d'examen expéditif, en vertu du paragraphe 140(13) de la LSCMLC. La demande peut être présentée avant ou après l'audience.

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11. Les enregistrements sonores des audiences ne comprennent pas les délibérations des commissaires.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-101-18,T-102-18,T-103-18 and T-1358-12,
STYLE OF CAUSE:	KAREN FRASER, JENNIFER SWEET, NICOLE SWEET, KIM SWEET, JOHN SWEET, J. ROBERT SWEET, CHARLES SWEET, PATRICIA, CORCORAN, ANN PARKER AND TORONTO POLICE ASSOCIATION v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS,, ATTORNEY GENERAL OF CANADA, CORRECTIONAL SERVICE, CANADA, PAROLE BOARD OF CANADA AND CRAIG MUNRO
AND DOCKET:	T-465-20
STYLE OF CAUSE:	DOUG FRENCH, DONNA FRENCH AND DEBORAH MAHAFFY v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS,, ATTORNEY GENERAL OF CANADA, PAROLE BOARD OF CANADA,, AND PAUL BERNARDO
AND DOCKET:	T-1884-19
STYLE OF CAUSE:	CANADIAN BROADCASTING CORPORATION v. PAROLE BOARD OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO – BY VIDECONFERENCE ZOOM
DATE OF HEARING:	FEBRUARY 24, 2021
JUDGMENT AND REASONS:	THE HONOURABLE MADAM JUSTICE MCVEIGH
DATED:	AUGUST 4, 2021

APPEARANCES:

Tim Danson Marjan Delavar	FOR THE APPLICANTS KAREN FRASER *et al*
Iris Fischer Eric Leinveer	FOR THE APPLICANT CANADIAN BROADCASTING CORPORATION
Joel Robichard Roy Lee Jacob Pollice Benjamin Wong	FOR THE RESPONDENTS MINISTER OF PUBLIC SAFETY AND EMERGENY PREPARDESNESS *et al.*

SOLICITORS OF RECORD:

Danson Recht LLP Toronto, Ontario	FOR THE APPLICANTS KAREN FRASER *et al*
Blake, Cassels & Graydon LLP Toronto, Ontario	FOR THE APPLICANT CANADIAN BROADCASTING CORPORATION
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT MINISTER OF PUBLIC SAFETY AND EMERGENY PREPARDESNESS *et al*

Tab 6:
20210908 Ian Mackenzie *The Open Court Principle and Privacy*

The Open Court Principle and Privacy: A New Frontier?

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by Ian Mackenzie September 8 th 2021

> To make clear the necessity of privacy as a context for respect, love, friendship and trust is to bring out also why a threat to privacy seems to threaten our very integrity as persons. ...
>
> Charles Fried, "Privacy," (1968) 77:3 Yale Law Journal 475–493
>
> Article 1: Human dignity is inviolable. It must be respected and protected.
>
> Charter of Fundamental Rights of the European Union
>
> Whereas respect for the dignity of human beings, equality of women and men, and recognition of their rights and freedoms constitute the foundation of justice, liberty and peace;
> ...
>
> 4. Every person has a right to the safeguard of his dignity, honour and reputation.
>
> Quebec Charter of Human Rights and Freedoms

Courts have vigorously defended the open court principle against those seeking to prevent public access to documents, testimony and the identity of parties. However, in other legal contexts the courts have also recognized the right to privacy. In a column I wrote in 2013 about the development of new common law protections for privacy and the possible impact on the open court principle, I posed the following question:

> If the common law can evolve to address technological change, is the open court principle also open to such change?

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> ...
>
> The debate about the appropriate balance between the open access principle and privacy will continue. This is fundamentally a debate around access to justice from two different perspectives: the litigants' and society's. Does publicly identifying participants in the administrative justice system limit their access to justice? Does allowing anonymity in administrative justice proceedings result in a closed and opaque system for the public? Much more discussion needs to occur, as well as more evidence-based analysis, before we can answer these questions.

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The Supreme Court recently revisited the balance between the open court principle and privacy in *Sherman Estate v. Donovan*, 2021 SCC 25. Although the change in approach is perhaps subtle, there is some indication that the open court principle has been weakened slightly (and that privacy rights have been expanded). It is too soon to tell what the impact might be but at least some of the recent court decisions have recognized that the ground has shifted as a result of the SCC decision. In this column I will set out the Supreme Court's new refined approach to the open court principle and set out some of the potential impacts on administrative decision-makers.

The presumption in favour of open courts remains a strong one, according to the Supreme Court. However, there can be "exceptional circumstances" where competing interests justify a restriction on the open court principle. In such cases, the person seeking the restriction must first demonstrate that openness is a serious risk to a "competing interest of public importance". Then the requestor must show that the restriction is necessary to prevent the risk and that the benefits of the restriction outweigh its negative effects. This statement by the court is described as a restatement of the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 by Justice McVeigh in *Fraser v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 821.

It is in the approach to privacy interests that the court opens the door for

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closed hearings a little wider. The disclosure of highly sensitive personal information in open court proceedings can result in "an affront to the affected person's dignity". This affront to dignity is, according to the court, narrower than privacy generally and more than just a source of discomfort to an individual. Dignity, the court says, "transcends the interests of the individual and ... is a matter that concerns the society at large". This "affront to their dignity" is something that "society as a whole has a stake in protecting".

The court held that this public interest in dignity will only be seriously at risk when the personal information strikes at the "core identity" of the person (or the "biographical core" of the individual): "information so sensitive that its dissemination could be an affront to dignity that the public would not tolerate, even in service of open proceedings."

The court stated that it is not enough to simply invoke an important public interest (in this case an affront to dignity); a party requesting confidentiality must also show a serious risk to that interest, based on the facts in each case.

This, in my view, is the critical part of the analysis – what exactly is the serious risk in disclosing the information? The court states that to preserve the integrity of the open court principle, the protection of a person's dignity should be seriously at risk only in limited cases: "Nothing here displaces the principle that covertness in court proceedings must be exceptional".

The court reiterates earlier statements from other decisions about embarrassment or distress not being sufficient to justify confidentiality. However, the court stated that there was value in leaving individuals free to restrict when, how and to what extent highly sensitive information about them is communicated to others in the public sphere, "because choosing how we present ourselves in public preserves our moral autonomy and dignity as individuals". However, this is not simply protecting their privacy for its own sake "but privacy where it coincides with the public character of the dignity interests of these individuals".

So how does a violation of privacy go beyond embarrassment or discomfort and become elevated to an attack on dignity interests? In its discussion of this question, the court has broadened the scope of privacy protection in court and other open proceedings: A252

> Violations of privacy that cause a loss of control over fundamental personal information about oneself are damaging to dignity because they erode one's ability to present aspects of oneself to others in a selective manner. Dignity, used in this context, is a social concept that involves presenting core aspects of oneself to others in a considered and controlled manner. Dignity is eroded where individuals lose control over this core identity-giving information about themselves, because a highly sensitive aspect of who they are that they did not consciously decide to share is now available to others and may shape how they are seen in public. ... [sources omitted]

The court notes that where dignity is impaired, the impact on the individual is not theoretical but could lead to real consequences, including psychological distress. The protection of the dignity interest of individuals is analogous to the physical safety interest of individuals:

> The administration of justice suffers when the operation of courts threatens physical well-being because a responsible court system is attuned to the physical harm it inflicts on individuals and works to avoid such effects. Similarly, in my view, a responsible court must be attuned and responsive to the harm it causes to other core elements of individual well-being, including individual dignity. This parallel helps to understand dignity as a more limited dimension of privacy relevant as an important public interest in the open court context.

The court states that although the open court principle results in intrusions on personal privacy "in virtually all cases", dignity is more rarely in play. The court stated that the privacy interest of dignity will only be at serious risk "where the sensitivity of the information strikes at the subject's more intimate self". A252

The court then tries to delineate what kind of information can be sealed to protect dignity:

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- when the information reveals something sensitive about them as an individual, not generic information that reveals little if anything about who they are as a person.
- intimate or personal details about an individual (the "biographical core")

The court, unfortunately for those facing requests for confidentiality orders, felt there was no need to provide a catalogue of the range of sensitive personal information that could give rise to a serious risk to a person's dignity. However, the court provided the following examples:

- stigmatized medical conditions
- stigmatized work
- sexual orientation
- subjection to sexual assault or harassment
- detailed information about family structure and work history (in some circumstances)

The court set the questions that decision makers need to answer in each request for restricting access as follows:

1. does the information reveal something intimate and personal about the individual, their lifestyle or their experiences?
2. where the information is sufficiently sensitive to strike at an individual's biographical core, is a serious risk to the interest made out "in the full factual context of the case"?

The court emphasized that this last question is a fact-specific determination but provided some general observations:

A. Courts should be sensitive to the ease of dissemination of information through information technology.

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B. It is appropriate to consider the extent to which information is already in the public domain. The fact that private information is available somewhere in the public sphere does not mean that there could not be further harm to the privacy interest by additional dissemination.

C. The seriousness of the risk is also affected by the probability of the dissemination suggested by the applicant actually occurring. This probability analysis is not a mathematical analysis but is to be determined based on the "totality of the circumstances" and balanced alongside other relevant factors.

D. Individual sensitivities alone are generally insufficient to justify a restriction on court openness where they do not rise above those inconveniences and discomforts that are inherent to court openness.

In Fraser, the issue was the release of information about two inmates, requested by the families of their victims. Justice McVeigh used the concept of dignity in denying access to these records to the families of victims:

> Although these Inmates' crimes are repugnant beyond reproach or human decency, this legislation equally applies to all inmates. I have to see the intensely intimate details of the requests by the Applicants as potentially striking at individual dignity, and thereby rebutting the presumption of the OCP [open court principle]. Not only are copies of medical records and psychological assessments asked for, but every detail of their lives since their incarceration. ...

Justice McVeigh did not agree with the families that the affront to dignity must specifically be something that society as a whole has a stake in protecting. She stated that the Supreme Court has recognized a concept of "dignity" (as opposed to simple privacy) which must be protected, and that society as a whole has a stake in protecting that dignity.

The decision in *Fraser* is also a good example of the scope of dissemination of information as a potential factor in sealing documents. Part of the argument of

the families for full disclosure of all the documents relating to the inmates was that details of those documents were discussed at the open parole hearing. In dismissing the families' request the judge did not comment on the scope of dissemination issue but it could easily have been part of her analysis. In the same way in tribunal settings, an adjudicator might seal a psychiatrist's report but allow testimony about that report in a public hearing.

In the recent decision of the BC Court of Appeal in A Lawyer v. The Law Society of British Columbia, 2021 BCCA 284, the court noted that there was support in the common law for the consideration of risk to reputation in granting a sealing and anonymization order but that the Supreme Court's decision in *Sherman Estate* had modified the law "and made the test more stringent". At issue in *A Lawyer* was the reputational harm to the lawyer, the firm, and the firm's employees. The court stated that because of the *Sherman Estate* decision "it is a live question" whether reputation is enough to constitute an important public interest. The Court of Appeal rightly characterized the new test as whether the information sought to be sealed is sufficiently sensitive and "bears on their dignity" in such a way as to displace the strong presumption in favour of the openness of court.

The Court of Appeal found that the information was sensitive personal information that would strike at the core of the persons seeking to be anonymized. In this case the information included serious allegations of dishonesty that were still under investigation by the law society. The release of the information would affect the livelihood of the applicants and other employees at the firm, particularly given that the firm's success was dependent on referrals and reputations. Of particular importance to the court was that the lawyer and the firm were still under investigation and the allegations were simply allegations at this point. The court also noted that the sealing order could be revisited later in the proceedings (presumably when the law society made actual findings).

The decisions that have followed *Sherman Estate* are not surprising in their

outcomes. Sensitive medical and counselling information (*Fraser*) and unsubstantiated allegations that go to the core of a professional reputation (*A Lawyer*) is information that has routinely been sealed or resulted in anonymization of decisions. What tribunals and courts will have to sort out is what other kinds of information strike at the "biographical core" of an individual.

As tribunals sort this out, there are a few things to keep in mind:

- The test for confidentiality has been restated and the language from the *Sierra Club* test should be replaced by the *Sherman Estate* test in tribunal decisions
- Tribunals must articulate the dignity interest at play to justify the information being sealed
- The scope of the dissemination is an important consideration, especially in light of the publication of information on the internet
- The "serious risk" assessment is a fact-based exercise and tribunals need to consider what evidence will be required to meet the test of a serious risk. Will testimony of the person requesting confidentiality be required? In certain cases, will expert evidence be required?

Sherman Estate is also a reminder to decision writers about the importance of limiting personal information contained in a decision to evidence that is relevant. In *R.F. v. J.W.*, 2021 ONCA 528, the Ontario Court of Appeal was critical of a trial judge's reasons for a number of reasons, including the setting out of many embarrassing details about the parties, as well as revealing medical and other confidential information about their children. Relying on *Sherman Estate*, the court stated: "And the inclusion of confidential information that is unnecessary to the determination of the case should be avoided".

The focus of the analysis required when balancing the serious public interest in the dignity of individuals against the important public interest of open proceedings has been shifted by the Supreme Court. What that means for the

future of confidentiality requests at the tribunal level still needs to be determined. Writing 18 years ago, former Chief Justice Beverley McLachlin highlighted the challenges decision-makers face: "If we are serious about peoples' private lives, we must preserve a modicum of privacy. Equally, if we are serious about our justice system, we must have open courts. The question is how to reconcile these dual imperatives in a fair and principled way". Although *Sherman Estate* does focus the question, it still leaves challenges to tribunal adjudicators in answering it.

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Tab 7:
20030416 Beverley McLachlin DeakinLawRw 1; (2003) 8(1)
Courts, Transparency and Public Confidence

McLachlin, Beverley --- "Courts, Transparency and Public Confidence - To the Better Administration of Justice" [2003] DeakinLawRw 1; (2003) 8(1) Deakin Law Review 1

Chief Justice of Canada. This is an edited version of the 2003 Deakin Law School Oration, delivered on 16 April 2003 at the Toorak Campus of Deakin University.

[1] Quoted in *A G (Nova Scotia) v MacIntyre* [1982] 1 SCR 175, 183 (Dickson J)

[2] *A G (Nova Scotia) v MacIntyre* [1982] 1 SCR 175.

[3] *Scott v Scott* [1913] AC 417.

[4] *Richmond Newspapers Incorporated v Virginia* [1980] USSC 154; 448 U.S. 555 (1980).

[5] *Russell v Russell* (1976) 134 CLR 495.

[6] See Claire Baylis, 'Justice Done and Justice Seen to be Done – The Public Administration of Justice' (1991) 21 *Victoria University of Wellington Law Review* 177.

[7] See *Scott v Scott* [1913] AC 417, 473 and 484 (Lord Shaw of Dunfermline); *Richmond Newspapers*

Incorporated v Virginia [1980] USSC 154; 448 US 555 (1980) 575-576 (Burger CJ); *Canadian Broadcasting Corporation v*

New Brunswick (Attorney General) [1996] 3 SCR 480, [23] (Cory J); *Re FN* [2000] 1 SCR 880, [10]; J J

Spigelman, 'Seen to be Done: The Principle of Open Justice – Part I' (2000) 74 *Australian Law Journal* 290,

293; and Baylis, above n 6, 177.

[8] 999 UNTS 171.

[9] *A G (Nova Scotia) v MacIntyre* [1982] 1 SCR 175.

[10] S D Warren and L D Brandeis, 'The Right to Privacy' (1890) 4 *Harvard Law Review* 193, 195.

[11] *Hunter v Southam Inc* [1984] 2 SCR 145, 159-160; *R. v Mills* [1999] 3 SCR 668, [62] and [77]-[87]; *Katz v United States* [1967] USSC 262; 389 US 347 (1967); See also Article 17 of the *International Covenant on Civil and Political Rights* and Article 8 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

[12] *R v Sherratt* [1991] 1 SCR 509, 523.

[13] Christopher Granger, *The Criminal Jury Trial in Canada* (2nd ed, 1996) 18-19 and 22-23.

[14] *Dagenais v Canadian Broadcasting Corporation* [1994] 3 SCR 835, 879.

[15] Ibid, 875.

[16] *R. v Pickton* [2002] BCJ No 2830.

[17] *R. v Sharpe* (1999) 169 DLR (4th) 536 (BCSC); affirmed (1999) 175 DLR (4th) 1 (BCCA); reversed [2001] 1 SCR 45.

[18] See Susan E Harding, 'Cameras and the Need for Unrestricted Electronic

Media Access to Federal Courtrooms' (1995-1996) 69 *Southern California Law Review* 827, 845. A261

[18] See *Richmond Newspapers Incorporated. v Virginia* [1980] USSC 154; 448 US 555 (1980).

[19] See *Richmond Newspapers Incorporated v Virginia* [1980] USSC 154; 448 US 555 (1980) 575-577; *Canadian Broadcasting Corporation v New Brunswick (Attorney General)* [1996] 3 SCR 480, [23]-[26]; and *Edmonton Journal v Alberta (Attorney General)* [1989] 2 SCR 1326, 1339-1340.

[20] *Canadian Broadcasting Corporation v New Brunswick (Attorney General)* [1996] 3 SCR 480, [26].

[21] *A G (Nova Scotia) v MacIntyre* [1982] 1 SCR 175,183-184; see also M Lepofsky, *Open Justice: The Constitutional Right to Attend and Speak About Criminal Proceedings* (1985) 48.

J J Spigelman, 'Seen to be Done: The Principle of Open Justice - Part II' ([2]000) 74 *Australian Law Journal* 378, 378.

[22] *Russell v Russell* (1976) 134 CLR 495, 520.

[23] Barak, 'Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy', (2002) 116 *Harvard Law Review.* 16, 162.

[24] *Russell v Russell* (1976) 134 CLR 495, 520.

[25] Spigelman, 'Seen to be Done: The Principle of Open Justice- Part II', above n 23, 378.

[26] *Scott v Scott* [1913] AC 417, 463.

[27] *R. v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256, 259.

[28] *Edmonton Journal v Alberta (Attorney General)* [1989] 2 SCR 1326 A261

1339.

[29] *United Nurses of Alberta v Alberta (Attorney General)* [1992] 1 SCR 901, 931.

[30] Spigelman, 'Seen to be Done: The Principle of Open Justice- Part II', above n 23, 380.

[31] Murray Gleeson, 'Public Confidence in the Judiciary' (2002) 76 *Australian Law Journal* 558, 558.

[32] *A G (Nova Scotia) v MacIntyre* [1982] 1 SCR 175, 186-187.

[33] *Dagenais v Canadian Broadcasting Corporation* [1994] 3 SCR 835.

[34] *R v Mentuck* [2001] 3 SCR 442; *Sierra Club of Canada v Canada (Minister of Finance)* 2002 SCC 41.

[35] *Scott v Scott* [1913] AC 417, 437.

[36] Spigelman, 'Seen to be Done: The Principles of Open Justice- Part I', above n 7, 292.

[37] *Scott v Scott* [1913] AC 417, 446.

[38] *Scott v Scott* [1913] AC 417, 437 (Viscount Haldane)

[39] See Jeremy Bentham, *Rationale of Judicial Evidence Specially Applied to English Practice*, vol I (1827) 541-542.

A378

From: **Case** chiron@henrycase.org
Subject: Re: Medallion Corporation v. Chad and Stacy - File No.: 107/22 - Status of Motion in Writing
Date: 20230515 at 1735EDT
To: Krista Young-Wells youngwells@cohenhighley.com
Cc: Div Court Schedule DivCourtSchedule@ontario.ca, Kristin A. Ley ley@cohenhighley.com, Valerie Crystal Valerie.Crystal@ontario.ca, Stacy stacy@openontario.org, Chad chad@henrycase.org

---

Dear Ms Young-Wells et al re File No. 107/22,

I'm writing at this moment with the direct question about **Ms Kristen A. Ley** and her ability to comprehend and ambulate the procedural restrictions of **Justice Matheson** declared in the utterance and re-declaration by **Donna Greson** on *March 21st, 2023 at 1109EDT* in which it was clarified that:

> *The appellant "Mr. Chad" has requested accommodation in order, as put in his email, that he and his wife not be harassed or subject to malevolent actions at their court hearing.*
>
> *Please be advised that the panel of judges conducting the hearing will ensure that it is conducted in an appropriate fashion. If you have any concerns at the hearing, you may raise them with the panel.*

Now, I'm still in recovery from the substantial trauma I inferred between **October 6, 2022 thru December 13th, 2022** but even I can recognize someone signalling to change lanes in order to incapacitate my performance and situation in the human condition. Would you **PLEASE** play appropriately, *Ms "Human Rights Lawyer"*? Please look up the term "subjugal tyranny" before your next move.

- https://henrycase.org/public-service-announcement/2023/05/15/subjugal-tyranny
- https://henrycase.org/registry/2021/02/25/medallion-corporation-notice-on-notice-of-eviction
- https://henrycase.org/registry/2023/03/09/re-medallion-corporation-vs-tenants-file-no-107_22
- https://henrycase.org/commentary/2022/07/19/sherman-estates-motion-and-motion-without-notice-2022aug12

Honestly, do you not understand the moral incompatibility of your present actions with your alleged *"Human Rights Tribunal"* and made such claims as *"Harassment isn't part of the job"*. By attacking a 5'9" disabled man for verbally protecting his wife from the verbal extortion of an allegedly disabled male "victim" towards my 4'9" wife. This complainant, on video at his door, informed the investigating officers that his criminal complaint is simply because he doesn't like the fact that my wife is legally and lawfully unable to wear a muzz.. err, face mask, because of this allegedy disabled male "victim" and his belief that everyone **MUST** wear a muzz.. err, mask in order to make him feel competent.

You would do well to converse with other **Cohen Highley** actors about the fallacy of not playing by the rules. I think that **Mark** can help enlighten you about the impropriety of your actions. And, do you really have the nerve to claim that you're well equipped to protect the disabled men and immigrant women from legal ignorance? There was a very applicable reason that Melchers left the firm, right?

> ***"Justice Matheson directs that there be a case conference to address the status of the exchange of court materials and any related scheduling issues."`***

What on earth happened to reasonability in gameplay? Honestly, I'm requesting an **IMMEDIATE** case

A263

What on earth happened to reasonability in gameplay? Honestly.. I'm requesting an **IMMEDIATE** case conference to address the status of the exchange of court materials and any related scheduling issues.

> Parties are to upload their materials to CaseLines as soon as possible. A separate bundle has been created for the in writing motion.
>
> Please advise the court once the materials have been uploaded.

To clarify, I NEED immediate assistane with the legal and lawful process of effective defence. Why? Because everyone is ignoring my statement of my suffering unlawfully before the Province of Ontario. Plese stop ignoring me as I attempted to prevent my wife from being verbally assaulted/abused by an adversely unintelligent/ignorant tenant who cannot even read the fact that our legal and lawful exemptions were specified in the elevator when he attempted to verbally abuse my partner whom albeit protected by myself (also exempt to the muzzl.. mask mandate, is actually a foot shorter than her husband and of the polite type) has created such a confabulatory cycle that we were being evicted for my actually understanding the rules and their explicitly declared exemptions.

Please confirm receipt of this communication in no more than 48-hrs by telephone to **416-841-1831** and email to **isaac@henrycase.org** such that we are reasonably able to reduce the target value of a reasonable settlement.

> Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;
>
> And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;
>
> And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

https://www.canlii.org/en/on/laws/stat/rso-1990-c-h19/latest/rso-1990-c-h19.html

Thank-you, and God Bless. Good luck on your understanding of the Rules. That is a reasonable expectation and subsequent request. Please comply.

--
Mr Isaac BonHillier, for Isaac & Maritza BonHillier
Tel: **+1 416-841-1831**

> On 20230515, at 1309EDT, Krista Young-Wells <youngwells@cohenhighley.com> wrote:
>
> Good afternoon:
>
> Further to your email of earlier today, we can advise that the Moving Party's Factum (in pdf and Word format) and Motion Record have been uploaded to Caselines in the Bundle labelled "Motion in writing May 2023".
>
> We trust that you will find the foregoing to be satisfactory. If you have any questions or

concerns regarding same, please do not hesitate to contact the undersigned or Kristin Ley directly.

Yours Truly,

<image001.png>Krista Young-Wells, Legal Assistant to Kristin A. Ley
Cohen Highley LLP Lawyers
London | Kitchener | Chatham | Sarnia | Stratford | Strathroy

One London Place, 255 Queens Avenue, 11th Floor, London, ON N6A 5R8 | t. (519) 672-9330 | f. (519) 672-5960

From: Div Court Schedule <DivCourtSchedule@ontario.ca>
Sent: Monday, May 15, 2023 10:26 AM
To: Krista Young-Wells <youngwells@cohenhighley.com>; Kristin A. Ley <ley@cohenhighley.com>; isaac@henrycase.org; chad@henrycase.org; stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>
Subject: RE: Medallion Corporation v. Isaac Bon Hillier and Maritza Ortiz- File No.: 107/22 - Status of Motion in Writing
Importance: High

Hello all,

Parties are to upload their materials to CaseLines as soon as possible. A separate bundle has been created for the in writing motion.

Please advise the court once the materials have been uploaded.

Thank you.

Best regards,
Rina Badwal

Single Judge Motions Coordinator
Divisional Court, Superior Court of Justice
Ministry of the Attorney General
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5
Phone: (416) 327-6202

From: Krista Young-Wells <youngwells@cohenhighley.com>
Sent: May 11, 2023 9:57 AM
To: Div Court Schedule <DivCourtSchedule@ontario.ca>
Cc: Kristin A. Ley <ley@cohenhighley.com>; isaac@henrycase.org; chad@henrycase.org; stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>
Subject: RE: Medallion Corporation v. Isaac Bon Hillier and Maritza Ortiz- File No.: 107/22 - Status of Motion in Writing [CHLAW-DMS.FID950690]
Importance: High

Good morning,

We did not have directions for a specific Motion date. Instead, we were following the Direction of Justice O'Brien issued February 1, 2023, which stated "If the appellants fail to perfect their appeal by February 21, 2023 as directed, the respondent may bring a motion in writing on notice to the appellants seeking to lift the stay pending appeal."

The motion date contained within our Motion in Writing, which was served and filed with the Court on March 1, 2023, listed a hearing date of "March 15, 2023, or as soon after that time as the motion could be heard", was simply based on the *Rules of Civil Procedure* which require 14 days notice to the Responding Party.

Our email of May 4, 2023, was a request for a status update on our party's Motion in Writing to Lift the Stay.

We trust that you will find the foregoing to be satisfactory. If you have any further questions or concerns regarding same, please do not hesitate to contact the undersigned or Kristin Ley directly.

Thank you,

<image001.png>Krista Young-Wells, Legal Assistant to Kristin A. Ley
Cohen Highley LLP Lawyers
London | Kitchener | Chatham | Sarnia | Stratford | Strathroy

One London Place, 255 Queens Avenue, 11th Floor, London, ON N6A 5R8 | t. (519) 672-9330 | f. (519) 672-5960

From: Div Court Schedule <DivCourtSchedule@ontario.ca>
Sent: Monday, May 8, 2023 2:14 PM
To: Krista Young-Wells <youngwells@cohenhighley.com>
Cc: Kristin A. Ley <ley@cohenhighley.com>; isaac@henrycase.org; chad@henrycase.org; stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>

stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>
Subject: RE: Medallion Corporation v. Isaac Bon Hillier and Maritza Ortiz- File No.: 107/22 - Status of Motion in Writing [CHLAW-DMS.FID950690]
Importance: High

Good afternoon,

Could you please send the court the directions which states the date the motion would take place?

Thank you.

Best regards,
Rina Badwal

Single Judge Motions Coordinator
Divisional Court, Superior Court of Justice
Ministry of the Attorney General
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5
Phone: (416) 327-6202

From: Krista Young-Wells <youngwells@cohenhighley.com>
Sent: May 4, 2023 10:52 AM
To: SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>
Cc: Kristin A. Ley <ley@cohenhighley.com>; isaac@henrycase.org; chad@henrycase.org; stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>
Subject: Medallion Corporation v. Isaac Bon Hillier and Maritza Ortiz- File No.: 107/22 - Status of Motion in Writing [CHLAW-DMS.FID950690]

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good morning:

Pursuant to the Endorsement of Justice O'Brien issued February 2, 2023, the Responding party in the Appeal, Medallion Corporation, filed with the Court a Motion in writing to Lift the Stay pending the Appeal on March 1, 2023. The motion materials were filed via the One-Key portal on March 1, 2023, and confirmed filed by Court staff on March 7, 2023. The motion was to have been heard in writing on March 15, 2023, or as soon after that time as the motion could be heard. To date, we have not received the Court's decision on the Motion. At this time, we are respectfully requesting a status update on our party's Motion to Lift the Stay.

We trust that you will find the foregoing to be satisfactory. If you have any questions or concerns regarding same, please do not hesitate to contact the undersigned or Kristin Ley

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Cohen Highley LLP Lawyers
London | Kitchener | Chatham | Sarnia | Stratford | Strathroy

One London Place, 255 Queens Avenue, 11th Floor, London, ON N6A 5R8 | t. (519) 672-9330 | f. (519) 672-5960

A385

From: **Krista Young-Wells** youngwells@cohenhighley.com
Subject: RE: Medallion Corporation v. Chad and Stacy - File No.: 107/22 - Status of Motion in Writing [CHLAW-DMS.FID950690]
Date: 20230511 at 0956EDT
To: Div Court Schedule DivCourtSchedule@ontario.ca
Cc: Kristin A. Ley ley@cohenhighley.com, chiron@henrycase.org, chad@henrycase.org, stacy@openontario.org, Crystal, Valerie (MAG) Valerie.Crystal@ontario.ca

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Thank you,

Krista Young-Wells, Legal Assistant to Kristin A. Ley
Cohen Highley LLP Lawyers
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Subject: RE: Medallion Corporation v. Chad and Stacy - File No.: 107/22 - Status of Motion in Writing [CHLAW-DMS.FID950690]
Importance: High

Good afternoon,

A270

Could you please send the court the directions which states the date the motion would take place?

Thank you.

Best regards,
Rina Badwal

Single Judge Motions Coordinator
Divisional Court, Superior Court of Justice
Ministry of the Attorney General
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5
Phone: (416) 327-6202

From: Krista Young-Wells <youngwells@cohenhighley.com>
Sent: May 4, 2023 10:52 AM
To: SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>
Cc: Kristin A. Ley <ley@cohenhighley.com>; chiron@henrycase.org; chad@henrycase.org; stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>
Subject: Medallion Corporation v. Chad and Stacy - File No.: 107/22 - Status of Motion in Writing [CHLAW-DMS.FID950690]

Good morning:

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Yours Truly,

Krista Young-Wells, Legal Assistant to Kristin A. Ley
Cohen Highley LLP Lawyers

London | Kitchener | Chatham | Sarnia | Stratford | Strathroy

One London Place, 255 Queens Avenue, 11th Floor, London, ON N6A 5R8 | t. (519) 672-9330 | f. (519) 672-5960

Mail Attachment.eml

Endorsement of Justice…23.pdf

Medallion Corporation, and David Bayles vs Chad & Stacy

A388

Chad 09 October, 2021

1. Tenancy Agreement
2. Facebook Profile
3. "Medallion accepts you are mask exempt.. you are required to observe social distancing." ("you're a dirty goy Chad, we don't want your kind here.")
4. "Cleaner Anna is permitted to deny unmasked tenants access to elevator."
   (The bare faced with robust immunity must use separate facilities)
5. Notice on Notice of Eviction for not being Stockholm'd (see 4)
6. Testimony of DAVID BAYLES
7. Chad's publications re Sherbourne Site Euthanasia Clinic
8. Halton Condominium Corporation #77 vs Vily Mitrovic and Zoran Zupanc
9. TST-55210-14 re Reasonable Apprehension
10. Breach of RTA covenant does not justify termination unless is explicitly provided
11. Degrading epithets or labels
    ("Brown Shirts" and "Nazi Collaborators")
12. Imperative to provide workplace free from harassment
    (aka, reasonably forseeable consequences)
13. Landlord Witnesses

Landlord Evidence:
Tab 1

Landlord Evidence:

A273

Tab 2

A389

Landlord Evidence:
Tab 3

Landlord Evidence:
Tab 4

Created:	**Fri 02/19/21 03:26 PM SHERBOURNE1**
Type:	**Disturbance (Activity)**
Status:	**New Unassigned Issue**
Property:	**Medallion Corporation** **565 Sherbourne Street** **Toronto, Ontario M4X 1W7**
Location:	**Elevator Lobby - Grnd FL**
Reported by:	**565 Sherbourne Street**
Address:	**565 Sherbourne Street**

Reported Detail:

On Feb 19th 2021 at 1351 hrs, the writer (**Decoyda Larsen** Paragon Protection LTD 10870627) was in the Security change room when the writer heard a loud male voice yell out the word and security quites this FUCK and a loud bang. The writer went out to check what had happen but did not notice anything. The writer radioed to the front deck who checked the cameras and found that at a few moments before the writer went out, there was a male who resembled 2709. Video and Pictures have been made.

Note: The video clip involves 565 Cleaner **Anna**.

A274

Notes:

A390

Mon 2/22/2021 9:27 AM - SHERBOURNE1
Updated Feb 22nd 2021. The writer spoke to 565 Cleaner **Anna** who reported that she was in Ele#5 with another female who got on the 2nd floor. When they got to the main floor, the female got out and 2709 attempted to get in. When he was told by the cleaner that he could not get in because he was not wearing a mask, that made him furious. **Anna** pressed the door close button and once the door was closed, she heard yelling and a loud bang on the door on the elevator but at the time, was not sure what it was. She spoke to **Bruce** once she got into P1

Mon 2/22/2021 10:52 AM - JONBAI
Email To: Roisinwebb@medallioncorp.com
Email From: Jonbai
Email Subject: Medallion Corporation - (S) Disturbance (Activity)
Email Body: Attaching Issue with Email

Landlord Evidence:
Tab 5

Landlord Evidence:
Tab 6

Reported:	**Monday, April 19. 2021, at 1605 hours**
Cleared:	**Monday, April 19. 2021, at 1608 hours**
Company:	**Paragon Protection Limited**
Client:	**Medallion Corporation**
Location:	**565 Sherbourne Street Toronto, Ontario M4X 1W7, Elevator Lobby**
Type:	**Domestic Problem**

A275

A391

Synopsis:

A known tenant was found verbally abusing an elderly man at the above location, time, and date. The known tenant was not wearing any type of PPE, however, he was seen in the elderly gentleman's personal space and very close to his face. Security arrived upon the start of the verbal abuse incident and told the known tenant to leave the premises.

Narrative:

On Monday, April 19. 2021, at 1605 hours, Site Security Supervisor (SS), **JONATHAN BAILEY** #11170455, Paragon Protection Limited (PPL), and Team Leader (TL), **BRANDON MARAVILLA** #11107239, PPL were traveling to the change room located at 565 Sherbourne Street, Toronto, Ontario M4X 1W7, Elevator Lobby to perform their shift change. Upon arriving at the elevator lobby, the writer overheard loud yelling coming from in-between the elevators. The writer saw a known tenant by the name of **CHAD W. TESTES**, 2709-565 Sherbourne Street, Toronto, Ontario M4X 1W7 in another elder gentleman's face, yelling and screaming at him with no PPE (Mask). **SS BAILEY** yelled over **Mr. CHAD W. TESTES** advised him to knock it off and to back up. **SS BAILEY** asked what was going on. **Mr. CHAD W. TESTES** reported that the elder gentleman had told him he has to wear a mask and when he was told to wear the stated mask, he got defensive and started flailing on the elder gentleman. **Mr. CHAD W. TESTES** stated multiple times that he is exempt and **SS BAILEY** informed him that it is fine that he didn't want to wear a mask, however, he should be wearing a shield at least. **SS BAILEY** asked **Mr. CHAD W. TESTES** where he was going. **Mr. CHAD W. TESTES** advised that he was leaving the building. **SS BAILEY** advised him to do so. **Mr. CHAD W. TESTES** left without issues. **SS BAILEY** and **TL MARAVILLA** spoke to the elder gentleman, to see if he was okay. The elder gentleman stated that everyone should be wearing a mask. His concern was that he is in and out of the hospital 3-4 times a week. Now that **Mr. CHAD W. TESTES** in his personal space he was even more

A276

concerned about his health. The elder gentleman walked away without saying a word as if he was in shock, frustrated, and/or angry. Nothing further to report at this time. A392

Reported:	**Thursday, April 22. 2021, at 1057 hours**
Cleared:	**Thursday, April 22. 2021, at 1101 hours**
Company:	**Paragon Protection Limited**
Client:	**Medallion Corporation**
Location:	**1209-565 Sherbourne Street Toronto, Ontario M4X 1W7 Canada, 12th Floor**
Type:	**Domestic Problems**

Audio:

Synopsis:

Security followed up with the tenant who resides and the above location to retrieve a statement about what happened on Monday, April 19. 2021 at 1605 hours. The tenant provided a statement through audio recording.

Narrative:

Mr. BAYLES stated that this incident is not the first time he has come across **Mr. CHAD W. TESTES.** For every encounter **Mr. BAYLES** has had with **Mr. CHAD W. TESTES**, he refuses to wear a mask and that it's not that **Mr. CHAD W. TESTES** forgets to wear a mask but he is being defiant to wearing a mask.

Mr. BAYLES reported that **Mr. CHAD W. TESTES** mocks him every time they run into each other and he also stated that it's not just with him but other people of 565 Sherbourne Street Toronto, Ontario M4X 1W7 Canada. Anyone seen wearing a mask, **Mr. CHAD W. TESTES** will continuously mock them and spout out subtle signs (Ed: pseudoscience) in regards to masks ruining the immune system. A277

On April 19th, 2021, while **Mr. BAYLES** was taking the elevator with **Mr. CHAD W. TESTES**, **Mr. CHAD W. TESTES** started to address his opinions towards **MR. BAYLES**. **Mr. BAYLES** stated/responded by saying *"People like you are making my life that much more difficult, in this pandemic."* At which point starting screaming at **Mr. BAYLES**.

A393

Mr. BAYLES reported that when they reached the lobby, **Mr. CHAD W. TESTES** yelled at **Mr. BAYLES** saying *"How dare you say anything to me (**Mr. CHAD W. TESTES**) and my wife, somewhere along those lines as per **Mr. BAYLES***.

MR. BAYLES was accused of openly attacking **Mr. CHAD W. TESTES** when all he was trying to get across was that **Mr. CHAD W. TESTES** and his wife aren't wearing masks and that is not fair. Thereafter **Mr. BAYLES** comment, **Mr. CHAD W. TESTES** blew up at him and at that time security intervened and demanded **Mr. CHAD W. TESTES** to back up and to knock it off.
Mr. BAYLES expressed his concern about **Mr. CHAD W. TESTES** about him being temperamental and that whenever they do run into each other, **Mr. CHAD W. TESTES** may continue his vulgar actions.

Mr. BAYLES advised that he has not seen **Mr. CHAD W. TESTES** since April 19th, 2021. **SS BAILEY** gave **MR. BAYLES** his business card and should he ever feel unsafe or be near **Mr. CHAD W. TESTES** to give security a call and they will help deescalate the situation.

Nothing further to report at this time.

Landlord Evidence:
Tab 7

Landlord Evidence:

A278

Tab 8

A394

Landlord Evidence:
Tab 9

Landlord Evidence:
Tab 10

Landlord Evidence:
Tab 11

Landlord Evidence:
Tab 12

Landlord Witness List

1. David Bayles, Tenant at 565 Sherbourne st
2. Anna, Cleaner ar 565 Sherbourne St
3. Roisin Webb, Property Manager at 565 Sherbourne St
4. Jonathan Bailey, Site Security at 565 Sherbourne St
5. Brandon Maravilla, Site Security at 565 Sherbourne St

Scope & Meaning or Rosa Parks & Facial Nudity A395

Chad 03 May, 2021

RESPONSE TO VEXATIOUS LITIGATION

Dear Mr Melchers,

Firstly, let's clarify some details so we're operating from the same groundwork:

1. Is your client is designated a "intensive support residence", or a "supported group living residence", pursuant the Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008?
2. Is your client designated a "home for special care" within the meaning of the Homes for Special Care Act?
3. Is your client a designate "long-term care home" within the meaning of the Long-Term Care Homes Act, 2007?
4. Is your client a "psychiatric facility" within the meaning of the Mental Health Act?
5. Is your client a "correctional institution" within the meaning of the Ministry of Correctional Services Act?
6. Or is your client in any such similar form, a designate "facility" within the scope and meaning of Health Protection and Promotion Act, R.S.O. 1990, CHAPTER H.7?

I look forward to your answer to those questions.

However, upon cursory overview, it's readily apparent that Medallion Corporation (your client) and its agents (which includes you) are eager to deploy false testimony against persons domiciled in leased residences at 565 Sherbourne St. In Para 2 of your client's statement, they admit that I am A280

"..exempt from the requirement to wear a face mask, but [have] been advised that [I am] still required to adhere to other COVID-19-related protocols that are in place in the residential complex..."

A396

Yet in Para 3, your client admits to its encouraging its staff RESTRICTING MY ACCESS TO FACILITIES on account of offensive or threatening facial nudity. Your client's statement admits to its cleaner being on the elevator with another female, who exited the elevator at the lobby. The statement testifies that I attempted to use the elevator, but the agent of your client told me that "[I] could not enter the elevator with her because [I] was not wearing a mask or face covering".

After this incident, it is quite evident that I was emotionally traumatized by being treated like an inferior class of human, by not even being afforded the human right of existing in the same facility as your client's agent. So your client, rather than inquiring how I was injured and/or traumatized by its agents and how it could prevent the occurrence of such trauma in the future, made sure to serve me with an Eviction Notice by 2 security contractors who informed me that I was being recorded on the afternoon of Friday, April 30th, 2020. More trauma, right?

Any reasonable party would understand that the "separate but equal" doctrine has been thoroughly trounced since the beginning of the unravelling with Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), but I'm sure you could find other explanations such as the Separate But Equal Wiki or anything about the much lauded "Rosa Parks" precedent. I have no idea what our equivalent up here in Canada is, but I'm sure we'll find out.

You have admitted that your client is encouraging discrimination against the bare-faced, and has furthermore cited the concerns of a hypochondriac tenant as grounds to evict another tenant. Did you honestly tell your client how this is probably going to play out, especially given our well-documented history? Have you explained to your client that denying the legal and lawful activities a tenant who is not a ward of the state, or lodged at a correctional institution,

A281

psychiatric facility, or other such designate facility? It is legal and lawful to assert one's legal rights, is it not? A397

In all honesty, you should direct your client to immediately produce and disclose your alleged video footage that justifies your client treating me like a stray dog, homeless individual, or otherwise which not entitled to the lawful use of the residential facilities at 565 Sherbourne St. I'm not really surprised that your client is reckless enough to attempt to qualify its persecution and eviction of two tenants for being bare-faced peasantry with actual admissions of it violating the RTA, the ROA, the EMCPA, and well-established common-law.

There are some things you just don't do, but your client thinks it's "so smart". Smart like reducing the residential water-pressure by installing a locked device which lowers the water pressure of the shower beneath regulation minimums. Or things like denying residents the use of recreational facilities (private gym) for over a year without a corresponding reduction in rent.

Your client states that it is accepting of my exemption from the "Mandatory Face Cover Policy" (Para1) yet proceeds to qualify my eviction by the fact that I "was not wearing a mask or other face covering, and attempted to enter the elevator" and your client's agent "[s]ubstantially interfered with the Tenant's reasonable enjoyment of the residential complex for all usual purposes.."

Furthermore, your client has repeatedly encouraged the abuse, shaming, and persecution of vulnerable mask- exempt tenants from the reasonable enjoyment of their lease agreement. Your client refused to put up PROPER signage until early March of 2021. This has resulted in the abusive and aggressive denial of entry to residential facilities such as the elevator persecution of individuals unable or otherwise unwilling to make a scene and defend their legal rights.

Consequently, your client has nurtured and promulgated an environment of unreasonable fear/loathing towards the nude-faced or otherwise non- A282

compliant with the tyrannical rule of morons and brown-shirt nazis. As such, I regret to inform you that I will be counter-suing your client for its offences and abuses of the ROA, the EMCPA, the RTA, and every other Act I can dig up and make an example of your client that will loudly indicate that even rich landlord's with deep pockets who retain counsel affiliated DIRECTLY with the Law Society of Upper Canada (changed its name to LSO recently).

You can expect my Notice of Claim within 30-days, because it will probably take me time to scrounge up enough nickels and dimes to afford a reasonable lawyer, or get someone on contingency when I go after Medallion Properties for its well-document violation of tenant rights. As you are well aware, Medallion Properties has been persecuting myself and others for their exercise of facial-nudity since before the date when your client served its initial vexatious article on my person at approximately 1700EDT, on Friday October 02, 2020.

The above is worthy of note as it goes to establishing a pattern of flagrant violation of the law, bullying tenants with baseless claim founded in their own ignorance of reality. Further to the collision of contrasting realities, I draw your attention to Para 8 of your vexatious piece of toilet paper wherein your client claims that on "April 21, 2021, [I] was on an elevator with another tenant of the residential complex. [I] was not wearing a mask or other face covering and began mocking the other tenant for wearing a face mask. [I] also recited pseudoscience about masks compromising people's immune systems. The other tenant told [me] that [I] was making the other tenant's life more difficult during the pandemic. [I] then started yelling obscenities at the other tenant."

If you look at your video footage as you have submitted before the record (should be noted, if you cannot produce this at the pre-trial-hearing, you'll definitely have to worry about a Default Judgement against you) you'll see that the other tenant (who claims to be immunocompromised and fearful of dying because I don't wear a mask or other acceptable face covering denoting a willingness to submit to tyranny) approached my wife and I with the demand

that we put masks on or get off the elevator, "because it's the law".

A399

I indicated the proper signage (which I was previously threatened eviction for requesting) to the tenant where it showed that there are exemptions to the "rule of ignorance". Only then, after he blatantly refused to stop harassing my wife and I, did I begin to raise my voice more stridently, with gesticulations to assist in communicating with what evidently is a Stockholm'd retard who cannot read or readily comprehend the writing on the wall. The sign is LITERALLY posted on the wall, but your client has encouraged an atmosphere of fear and loathing towards the bare-faced.

As such, I am holding your client primary responsible, as they have been repeatedly given the option to rectify their behaviour. Your client has made it readily apparent that it is not agreeable to any resolution but a court-ordered settlement. So be it, c'est la vie; the game, it is afoot. May the best man without any apparent conflict of interest win.

--
Chad, Solutions Architect
Internet Security, Operations and Intelligence
Tel: +1 716-608-3531

CC: If I Cc'd you, it was intentional. We may or mayn't speak of it, but it was intentional to provide for every amicable resolution to Medallion Corporation's being a demonstrably repeat offender of disregarding the ROA, the EMCPA, the RTA, and well established common law.

A284

Tenant's Written Submissions

A400

Chad 11 February, 2022

On 20211012 0300EDT, I submitted my written submissions to the LTB in case the Tenant Duty Counsel was unable to appear and put my matter over until Feb.

In this email, I Cc'd both the **Landlord (George Espinola)** and their **Counsel of Record (Mark Melchers)** our further rescheduling motion and my written submissions to give them a chance to act honourably.

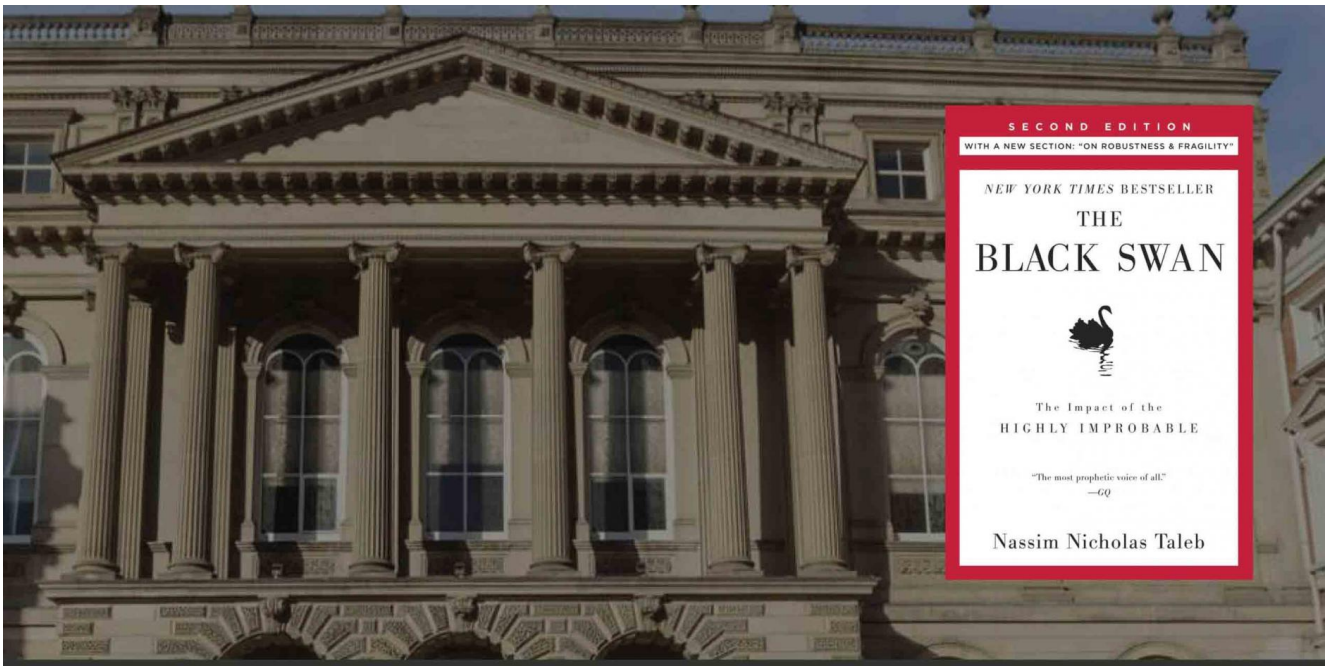
You'll note that I recently drew attention to an article entitled **Tortious Liability and Special Lawyer Protections** for obvious reasons. You'll also note that they went ahead and pushed for an Ex Parte Order under full cognisance of my motion and written submissions.

Now I have to through the bullshit of filing an **S2** and filing an additional countersuit against **Medallion Corporation**. So be it.

ONSC:DC 107/22 - Scheduling Concerns and D2 Request

A401

Chad 29 July, 2022



On: July 29, 2022 at 0448EDT
From: Chad
To: Div Court Schedule
Cc: Stacy, Chad, Mark W. Melchers, Valerie Crystal (MAG), Rina Badwal (JUD), Donna Greson (JUD), Saurabh S. Baweja (JUD)
Re: ONSCDC 107/22 — SCHEDULING – Medallion Corporation v. Chad and Stacy - SCHEDULING CONCERNS and D2 REQUEST
Pr: High

"This conference is being recorded."

Unfortunately, I may have misapprehended the scheduling issues and despite having made explicit request in my email dated July 28th, 2022 that I be accommodated and *"..a teleconference be arranged with an **Administrative***

A286

Judge *or designate for directions respecting what materials are required and how they are to be provided to the Court."* I believe that this is specifically provided for by the **Notice to The Profession** on the website at:
https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/div-ct-feb...

I am providing these **Authorities** with a somewhat loose hope that they will suffice. In any event, I'm requesting a teleconference be arranged with an **Administrative Judge** or designate for directions respecting what materials are required and how they are to be provided to the **Court**. This is per **D4.2 "Submitting Electronic Documents for Hearings"** of the **Notice to the Profession (Divisional Court) effective April 19, 2022.**

I had previously in our **1st Judicial Case Conference (Mar23)** been informed that the schedule would be malleable to ensure procedural fairness by, I believe, **Justice Corbett**. This was reiterated by **Justice Copeland** at our **2nd CC (Apr01)** and I made the express request to **Ms Badwal** on July 20th, in a phone call opened with:

"Hello. I'm calling regarding the scheduling of a motion scheduling a motion before a single Judge in 107/22."
..
"Okay one sec. Sorry because what I saw was on your Consolidated Practice Directions. It says "in the case of appeals to a Single Judge or any other other motions incidental to Appeals or Applications which this is Counsel that (I'm Self Counsel) Counsel should contact Divisional Court Office by telephone at this number (416-327-6202) to arrange a Hearing Date."
..
"I just want to schedule the ***Hearing Date*** *and then I will provide the further material incidental to it because the.. this is regarding scheduling and the fact that the the outlined timetable is unreasonable, especially considering that the* ***Hearing*** *is not until February 22nd.."*
..
"Um.. the okay.. mostly there was the ***Motion*** *on.. That's the* ***Motion*** *coming*

up on August 12th. But that's actually, although maybe if I could also schedule this.. because there's a scheduling issue, because I disagree with the timetable being that is agreed on by all parties because it doesn't match up with, It doesn't allow me appropriate time to make competent Appeal to the case because the Appeal's being heard on February 22nd and by your.. by the schedule agreed on by the Parties or mandated by the ***Parties****, it looks like they want it wrapped up by October. So I'm just trying to get some breathing room, so I can make a cogent and rational argument when it comes up.. because I haven't even gotten the* ***Sherman Estate Order*** *in place yet and that's problematic because I'm uncomfortable making further processes without safeguarding my wife and I's safety in the community."*

A403

Ms Badwal responded with:

"Okay. I see. So actually I have this currently on for the week of August the 8th because this is going to be done in a writing. So you're asking for it to be pushed back?"

I clarified that I was pretty sure I'd be okay with the current schedule for the modified **Sherman Estates publication ban**, but that I needed more time for the actual **Appeal** on Feb22. You'll note that I explicitly requested, I think, 2-3 days for the SPPA hearing, but was denied this appropriate and just accommodation I informed the Court I required in order to make competent my Process under the **SPPA**. This issue touches on the very bedrock of *Personal Autonomy and Freedom of Conscience*.

As explored by **Jaclyn Greenberg** in the Dec 22, 2013 edition of the **Ottawa Law Review**:

As stated by the **Court of Appeal for Ontario in Malette v Shulman**,

15. *"[t]he right to determine what shall be done with one's own body is a fundamental right in our society. The concepts inherent in this right are the bedrock upon which the principles of self-determination and individual autonomy are based."*

A288

16. The challenge, however, is in realizing the limitations of this right in the context of consumers whose well-being is at great risk. Here, I characterize *"at great risk"*, as when a consumer satisfies the criteria, outlined in the Mental Health Act (MHA), to be committed to a hospital involuntarily. That is, he or she is found to be suffering from a mental condition that led him or her to be a danger to himself or herself or others. A404
17. When mental health consumers satisfy the criteria to be involuntarily hospitalized, the right to refuse treatment takes on a new dimension.

..

First, history shows that unfettered professional discretion undermines a consumer's autonomy, dignity and integrity. Second, without the right to review, other rights are impossible to assert as the human rights- based jurisprudence shows. Finally, in the case of Ontario's legislation, the right to review is the most efficient means to ensure that the rationale for limiting a consumer's rights can be articulated and justified according to objective criteria.

As I explored in my email to Counsel for **Medallion Corporation** dated May 3rd, 2021 and mirrored on our sites at **Scope and Meaning or Rosa Parks and Facial Nudity** there has been a gross abuse of powers, by treating ~~an~~ 565 Sherbourne Street as it were designated a "intensive support residence", "supported group living residence", "home for special care", "long-term care home", "psychiatric facility", "correctional institution", in any such similar form a designate "facility."

As I informed **Justice Corbett** on March 23rd, I really require 2-3 days to get to the heart of this *Brown Shirt conundrum* and how our rights are being trampled by short-sighted **Corporations**. For certainty, the appropriate schedule which accommodates my ability to make full answer and defence for our Appeal from and Response to the egregious overreach is as follows:

- **Nov 14 Moving parties' materials (except factum)**
- **Nov 25 Responding Landlord's materials, LTB materials (except** A289

factum)

- **Dec 08 Moving parties' factum**
- **Jan 07 Responding Landlord's factum**
- **Jan 21 LTB factum**
- **Feb 22 Panel Appeal**

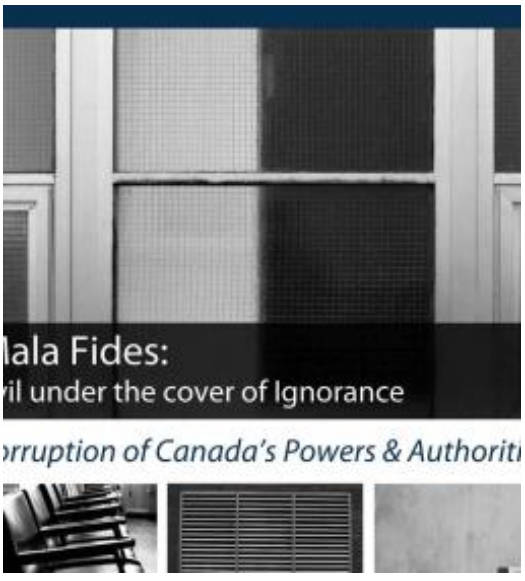
A405

In the interests of compromise, I can try to squeeze it in a full day on Feb22, but I'll need to be provided the option to spill over half a day for my closing *(I'm kinda long-winded and overly complete)*. Thank-you, and have a good weekend.

Please confirm receipt of this message.

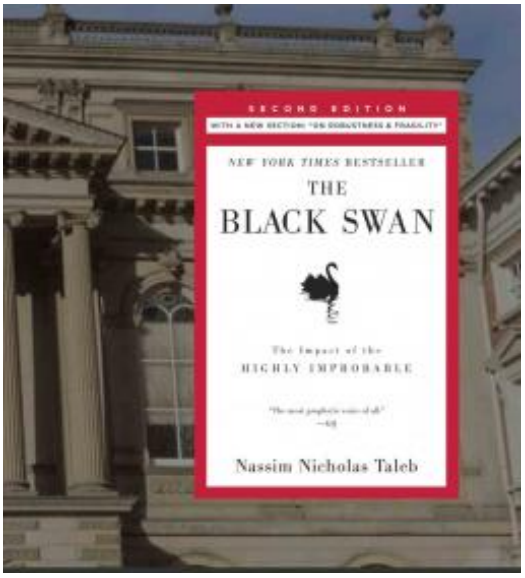
--
Chad, Chief Disinformation Officer
Covfefe Bakery + Cafe
Internet Security, Operations and Intelligence
Tel: +1 716-608-3531

You may also like

- 

- A290

A406



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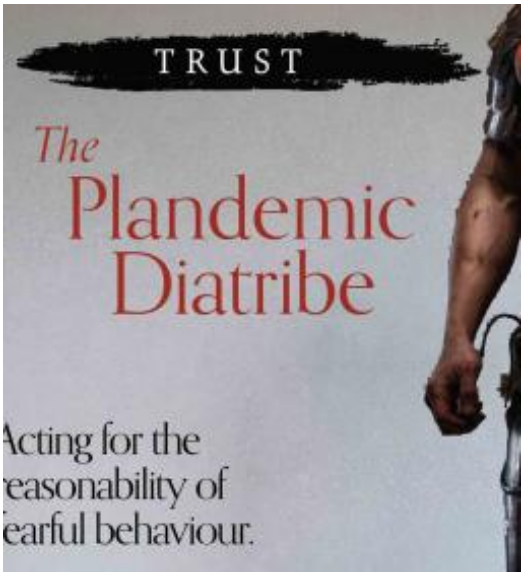

Load More

A291

RE: Medallion Corporation vs Tenants — File No.: 107/22

Henry Case 09 March, 2023

Dear parties to ONSCDC 107/22, Divisional Court Panel Coordinator et al,

I'd like to arrange appropriate accommodations with you momentarily regarding File No. 107/22 proceedings and the representation of these tenants subsequent to the male's detainment from Oct-06 thru Dec-13 at **Toronto South Detention Centre**. This detainment of the tenant has caused a severe head trauma (6+ staples, recent scar tissue on the rear left side of his skull, dizziness, and injured collar bone) which has resulted in a condition which has impacted the male tenant's ability to act in a timely fashion, while recovering from these injuries sustained in TSDC. This includes the detention facility's confiscation of, and failure to return, his precious (over $1,000) 14k gold wedding band.

We are requesting that there be appropriate accommodations, an interview with whomever is in place to provide these appropriate accommodations (such as the originally requested 3-days due to disability) regarding this male party (OTIS #1000841548) which will accommodate him and his wife in not being treated like prisoners, as the primary complaint against this tenant was for telling another tenant not to demand that the tenant put a face covering on his wife. This demand was made despite there being appropriate signage **CLEARLY INDICATING** exemptions for males and females unable to wear a muzzle such like the complainant demanded.

These tenants are reasonably requesting that this court provide accommodation for his trauma and permit the tenants to make a reasonable response without being harassed by malevolent action. Furthermore, please provide a proper printed output of the proceedings to date.

Thank-you, and please do not hesitate to speak with these Tenants (husband & wife) at 716-608-3531. Apologies for any inappropriate assumptions made in this communication. A408

PS: Please confirm receipt of this message.

--

Chad, Chief Disinformation Officer
Covfefe Bakery + Cafe
Internet Security, Operations and Intelligence
Tel: +1 716-608-3531
Email: chad@henrycase.org

A293

From: **Isaac** isaac@henrycase.org
Subject: Re: Medallion Corporation v. Chad and Stacy - File No.: 107/22 - Response to Status of Motion in Writing
Date: 20230516 at 0247EDT
To: Krista Young-Wells youngwells@cohenhighley.com
Cc: Div Court Schedule DivCourtSchedule@ontario.ca, Kristin A. Ley ley@cohenhighley.com, Valerie Crystal Valerie.Crystal@ontario.ca, Stacy stacy@openontario.org, Chad henrycase861@gmail.com, Joe J. Hoffer hoffer@cohenhighley.com, Arch Disability Lawfare intake@arch.clcj.ca
Bcc: Isaac isaac@henrycase.org, Ms Maritza Elizabeth Orozco colourific@yahoo.com, Kelly Anne Farkas kellyannewolfe@live.ca, general@arch.clcj.ca

Cc: Arch Disability Lawfare;
The Shewolf

Dear Parties to ONSDC File No. 107/22,

Incidentally, my draft Response is located on the **Covfefe Bakery** site at:

- https://henrycase.org/registry/2021/10/09/medallion-corporation-and-david-bayles-eviction-vs-chad-and-stacy

And furthermore attached as:

1. **20210503 ONSC-DC 107_22 Tenant's Written Submissions.pdf**
2. **20211009 ONSC-DC 107_22 Medallion Corporation, and David Bayles vs Chad & Stacy.pdf**
3. **20220211 ONSC-DC 107_22 Tenant's Written Submissions.pdf**
4. **20220729 ONSC-DC 107_22 Scheduling Concerns and D2 Request.pdf**
5. **20230309 ONSC-DC 107_22 Medallion Corporation vs Tenants.pdf**
6. **20230511 ONSC-DC 107_22 Medallion Corporation vs Chad & Stacy Status of Motion in Writing.pdf**
7. **20230515 ONSC-DC 107_22 Medallion Corporation vs Chad & Stacy Status of Motion in Writing.pdf**

> And this should largely affect your understanding of how I responded to the threats that **Mr BAYLES** made against my wife. Do you honestly think that what you are doing is permissible? I gave you guys notice numerous times.
>
> Furthermore, I was only served with the evidence package which the **Landlord** intends to call on one-week prior to the hearing date of **Oct12**. As per the regulation, a single week is all that's required, but I'm rather concerned at the incomplete nature of the video which Medallion is planning to use, which is only 24 seconds **AFTER** my wife was threatened and disrespected by the Complainant **DAVID BAYLES**.

Again.. My wife was threatened and VERBALLY ABUSED by Mr David BAYLES.
Furthermore, he has made a PROUD declaration to this effect.

> Oddly enough, **Mr BAYLES** claims that I was *"screaming obscenities at [him]"* and *"..spouting pseudoscience about you know, masks remove yo.. ruin your uh immune system and all that kind o*

> *pseudoscience about you know, masks remove your fun your immune system and all that kind of crap,"* while in the elevator.

*Furthermore, the brownshirts with **Medallion Corporation** are not acting reasonably. It's game-time, guys. You know I'm talkin' to you, grrl. I hope you're keepin' safe in your transition.*

> **Synopsis:**
> Security followed up with the tenant who resides and the above location to retrieve a statement about what happened on **Monday, April 19. 2021** at 1605 hours. The tenant provided a statement through audio recording.
>
> **Narrative:**
> **Mr. BAYLES** stated that this incident is not the first time he has come across **Mr. CHAD W. TESTES**. For every encounter **Mr. BAYLES** has had with **Mr. CHAD W. TESTES**, he refuses to wear a mask and that it's not that **Mr. CHAD W. TESTES** forgets to wear a mask but he is being defiant to wearing a mask.
>
> **Mr. BAYLES** reported that **Mr. CHAD W. TESTES** mocks him every time they run into each other and he also stated that it's not just with him but other people of 565 Sherbourne Street Toronto, Ontario M4X 1W7 Canada. Anyone seen wearing a mask, **Mr. CHAD W. TESTES** will continuously mock them and spout out subtle signs (Ed: pseudoscience) in regards to masks ruining the immune system.
>
> On April 19th, 2021, while **Mr. BAYLES** was taking the elevator with **Mr. CHAD W. TESTES**, **Mr. CHAD W. TESTES** started to address his opinions towards **MR. BAYLES**. **Mr. BAYLES** stated/responded by saying *"People like you are making my life that much more difficult, in this pandemic."* At which point starting screaming at **Mr. BAYLES**.
>
> **Mr. BAYLES** reported that when they reached the lobby, **Mr. CHAD W. TESTES** yelled at **Mr. BAYLES** saying "How dare you say anything to me (**Mr. CHAD W. TESTES**) and my wife" somewhere along those lines as per **Mr. BAYLES**.
>
> **MR. BAYLES** was accused of openly attacking **Mr. CHAD W. TESTES** when all he was trying to get across was that **Mr. CHAD W. TESTES** and his wife aren't wearing masks and that is not fair. Thereafter **Mr. BAYLES** comment, **Mr. CHAD W. TESTES** blew up at him and at that time security intervened and demanded **Mr. CHAD W. TESTES** to back up and to knock it off. **Mr. BAYLES** expressed his concern about **Mr. CHAD W. TESTES** about him being temperamental and that whenever they do run into each other, **Mr. CHAD W. TESTES** may continue his vulgar actions.
>
> Mr. BAYLES advised that he has not seen **Mr. CHAD W. TESTES** since April 19th, 2021. **SS BAILEY** gave **MR. BAYLES** his business card and should he ever feel unsafe or be near **Mr. CHAD W. TESTES** to give security a call and they will help deescalate the situation.

I have been hurt very significantly injured by the ***"criminal reports"*** of certain totally unknown actors such as some guy who goes by the pseudonym ***"Adam Lanza"*** as explored on the **Bakery**.

20211009
ONSC-...acy.pdf

20210503
ONSC-...ns.pdf

Tenant's Written Submissions

Chad 11 February, 2022

On 20211012 0300EDT, I submitted my written submissions to the LTB in case the Tenant Duty Counsel was unable to appear and put my matter over until Feb.

In this email, I Cc'd both the **Landlord (George Espinola)** and their **Counsel of Record (Mark Melchers)** our further rescheduling motion and my written submissions to give them a chance to act honourably.

You'll note that I recently drew attention to an article entitled **Tortious Liability and Special Lawyer Protections** for obvious reasons. You'll also note that they went ahead and pushed for an Ex Parte Order under full cognisance of my motion and written submissions.

Now I have to through the bullshit of filing an **S2** and filing an additional countersuit against **Medallion Corporation**. So be it.

20220729
ONSC-...est.pdf

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ONSC-...ing.pdf

20230515
ONSC-...ing.pdf

Enjoy the show as I deal with this very unethical adversarial move being played by **Kristin Ley** on behalf of **Medallion Corporation**. Did she learn nothing from Mark? I've been advised by unqualified statisticians that I should use 50K as a **"softball"** limit without legal action. What's your thoughts on this, **Hoffer**?

Me? I've made numerous **EXPLICIT REQUESTS** for appropriate accommodation, but all I've received back from **Cohen Highley LLP** is the allegation that I was being unreasonable by declaring to a malicious tenant that he is legally required to stop his verbal assaults against my wife. I recommend everyone who has a conscience review their actions. Why?

Because I will issue taxation upon the fees which I issue for you to pay in addition to the damages. Simple business. **Mr Bayles** has acted improperly, and **Medallion Corporation** has chosen to persecute a woman (**"Stacy"**) for her medical condition and her spiritual beliefs. Moreover, **Medallion Corporation** has attacked her husband (**"Chad"**) for having researched and developed an understanding of **Spiritual Warfare**.

Guess what|?

*Your gameplay is not **TOTALLY UNEXPECTED** because you do work for **Medallion Corporation**. **Temet Nosce.***

Temet Nosce Amicum Meum.

--
Isaac, Chief Technical Officer
Covfefe Bakery + Cafe
Internet Security, Operations and Intelligence

Internet Security, Operations and Intelligence
Tel: **+1 716-608-3531**

PS: Enjoy the show, my dear friend, KF. We've got different approaches, and I'm sure you realize the nature of these "potato head mistakes".
Tell me whenever you need help from someone who understand how lawfare can be used to nullify intransigent evil.
I've got your back, too. I hope the kids are alright. We both enjoy the gameplay, methinks. ;)

On 20230515, at 1735EDT, Isaac <isaac@henrycase.org> wrote:

Dear Ms Young-Wells et al re File No. 107/22,

I'm writing at this moment with the direct question about **Ms Kristen A. Ley** and her ability to comprehend and ambulate the procedural restrictions of **Justice Matheson** declared in the utterance and re-declaration by **Donna Greson** on *March 21st, 2023 at 1109EDT* in which it was clarified that:

> *The appellant "Mr. Chad" has requested accommodation in order, as put in his email, that he and his wife not be harassed or subject to malevolent actions at their court hearing.*
>
> *Please be advised that the panel of judges conducting the hearing will ensure that it is conducted in an appropriate fashion. If you have any concerns at the hearing, you may raise them with the panel.*

Now, I'm still in recovery from the substantial trauma I inferred between **October 6, 2022 thru December 13th, 2022** but even I can recognize someone signalling to change lanes in order to incapacitate my performance and situation in the human condition. Would you **PLEASE** play appropriately, *Ms "Human Rights Lawyer"*? Please look up the term "subjugal tyranny" before your next move.

- https://henrycase.org/public-service-announcement/2023/05/15/subjugal-tyranny
- https://henrycase.org/registry/2021/02/25/medallion-corporation-notice-on-notice-of-eviction
- https://henrycase.org/registry/2023/03/09/re-medallion-corporation-vs-tenants-file-no-107_22
- https://henrycase.org/commentary/2022/07/19/sherman-estates-motion-and-motion-without-notice-2022aug12

Honestly, do you not understand the moral incompatibility of your present actions with your alleged *"Human Rights Tribunal"* and made such claims as *"Harassment isn't part of the job"*. By attacking a 5'9" disabled man for verbally protecting his wife from the verbal extortion of an allegedly disabled male "victim" towards my 4'9" wife. This complainant, on video at his door, informed the investigating officers that his criminal complaint is simply because he doesn't like the fact that my wife is legally and lawfully unable to wear a muzz.. err, face mask, because of this allegedy disabled male "victim" and his belief that everyone **MUST** wear a muzz.. err, mask in order to make him feel competent.

You would do well to converse with other **Cohen Highley** actors about the fallacy of not playing by the rules. I think that **Mark** can help enlighten you about the impropriety of your actions. And, do you really have the nerve to claim that you're well equipped to protect the disabled men and immigrant women from legal ignorance? There was a very applicable reason that Melchers left the firm, right?

> ***"Justice Matheson directs that there be a case conference to address the status of the exchange of court materials and any related scheduling issues."`***

What on earth happened to reasonability in gameplay? Honestly.. I'm requesting an **IMMEDIATE** case conference to address the status of the exchange of court materials and any related scheduling issues.

> Parties are to upload their materials to CaseLines as soon as possible. A separate bundle has been created for the in writing motion.
>
> Please advise the court once the materials have been uploaded.

To clarify, I NEED immediate assistane with the legal and lawful process of effective defence. Why? Because everyone is ignoring my statement of my suffering unlawfully before the Province of Ontario. Plese stop ignoring me as I attempted to prevent my wife from being verbally assaulted/abused by an adversely unintelligent/ignorant tenant who cannot even read the fact that our legal and lawful exemptions were specified in the elevator when he attempted to verbally abuse my partner whom albeit protected by myself (also exempt to the muzzl.. mask mandate, is actually a foot shorter than her husband and of the polite type) has created such a confabulatory cycle that we were being evicted for my actually understanding the rules and their explicitly declared exemptions.

Please confirm receipt of this communication in no more than 48-hrs by telephone to **416-841-1831** and email to **isaac@henrycase.org** such that we are reasonably able to reduce the target value of a reasonable settlement.

> Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;
>
> And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;
>
> And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

https://www.canlii.org/en/on/laws/stat/rso-1990-c-h19/latest/rso-1990-c-h19.html

Thank-you, and God Bless. Good luck on your understanding of the Rules. That is a reasonable expectation and subsequent request. Please comply.

--
Mr Isaac BonHillier, for Isaac & Maritza BonHillier
Tel: **+1 416-841-1831**

> On 20230515, at 1309EDT, Krista Young-Wells <youngwells@cohenhighley.com> wrote:
>
> Good afternoon:

Good afternoon,

Further to your email of earlier today, we can advise that the Moving Party's Factum (in pdf and Word format) and Motion Record have been uploaded to Caselines in the Bundle labelled "Motion in writing May 2023".

We trust that you will find the foregoing to be satisfactory. If you have any questions or concerns regarding same, please do not hesitate to contact the undersigned or Kristin Ley directly.

Yours Truly,

<image001.png>Krista Young-Wells, Legal Assistant to Kristin A. Ley
Cohen Highley LLP Lawyers
London | Kitchener | Chatham | Sarnia | Stratford | Strathroy

One London Place, 255 Queens Avenue, 11th Floor, London, ON N6A 5R8 | t. (519) 672-9330 | f. (519) 672-5960

From: Div Court Schedule <DivCourtSchedule@ontario.ca>
Sent: Monday, May 15, 2023 10:26 AM
To: Krista Young-Wells <youngwells@cohenhighley.com>; Kristin A. Ley <ley@cohenhighley.com>; isaac@henrycase.org; chad@henrycase.org; stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>
Subject: RE: Medallion Corporation v. Isaac Bon Hillier and Maritza Ortiz- File No.: 107/22 - Status of Motion in Writing
Importance: High

Hello all,

Parties are to upload their materials to CaseLines as soon as possible. A separate bundle has been created for the in writing motion.

Please advise the court once the materials have been uploaded.

Thank you.

Best regards,
Rina Badwal

Single Judge Motions Coordinator
Divisional Court, Superior Court of Justice
Ministry of the Attorney General
Osgoode Hall

Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5
Phone: (416) 327-6202

From: Krista Young-Wells <youngwells@cohenhighley.com>
Sent: May 11, 2023 9:57 AM
To: Div Court Schedule <DivCourtSchedule@ontario.ca>
Cc: Kristin A. Ley <ley@cohenhighley.com>; isaac@henrycase.org; chad@henrycase.org; stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>
Subject: RE: Medallion Corporation v. Isaac Bon Hillier and Maritza Ortiz- File No.: 107/22 - Status of Motion in Writing [CHLAW-DMS.FID950690]
Importance: High

Good morning,

We did not have directions for a specific Motion date. Instead, we were following the Direction of Justice O'Brien issued February 1, 2023, which stated "If the appellants fail to perfect their appeal by February 21, 2023 as directed, the respondent may bring a motion in writing on notice to the appellants seeking to lift the stay pending appeal."

The motion date contained within our Motion in Writing, which was served and filed with the Court on March 1, 2023, listed a hearing date of "March 15, 2023, or as soon after that time as the motion could be heard", was simply based on the *Rules of Civil Procedure* which require 14 days notice to the Responding Party.

Our email of May 4, 2023, was a request for a status update on our party's Motion in Writing to Lift the Stay.

We trust that you will find the foregoing to be satisfactory. If you have any further questions or concerns regarding same, please do not hesitate to contact the undersigned or Kristin Ley directly.

Thank you,

<image001.png>Krista Young-Wells, Legal Assistant to Kristin A. Ley
Cohen Highley LLP Lawyers
London | Kitchener | Chatham | Sarnia | Stratford | Strathroy

One London Place, 255 Queens Avenue, 11th Floor, London, ON N6A 5R8 | t. (519) 672-9330 | f. (519) 672-5960

From: Div Court Schedule <DivCourtSchedule@ontario.ca>
Sent: Monday, May 8, 2023 2:14 PM
To: Krista Young-Wells <youngwells@cohenhighley.com>
Cc: Kristin A. Ley <ley@cohenhighley.com>; isaac@henrycase.org; chad@henrycase.org; stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>
Subject: RE: Medallion Corporation v. Isaac Bon Hillier and Maritza Ortiz- File No.: 107/22 - Status of Motion in Writing [CHLAW-DMS.FID950690]
Importance: High

Good afternoon,

Could you please send the court the directions which states the date the motion would take place?

Thank you.

Best regards,
Rina Badwal

Single Judge Motions Coordinator
Divisional Court, Superior Court of Justice
Ministry of the Attorney General
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5
Phone: (416) 327-6202

From: Krista Young-Wells <youngwells@cohenhighley.com>
Sent: May 4, 2023 10:52 AM
To: SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>
Cc: Kristin A. Ley <ley@cohenhighley.com>; isaac@henrycase.org; chad@henrycase.org; stacy@openontario.ca; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>
Subject: Medallion Corporation v. Isaac Bon Hillier and Maritza Ortiz- File No.: 107/22 - Status of Motion in Writing [CHLAW-DMS.FID950690]

Good morning:

Pursuant to the Endorsement of Justice O'Brien issued February 2, 2023, the Responding party in the Appeal, Medallion Corporation, filed with the Court a Motion in writing to Lift the Stay pending the Appeal on March 1, 2023. The motion materials were filed via the

One-Key portal on March 1, 2023, and confirmed filed by Court staff on March 7, 2023. The motion was to have been heard in writing on March 15, 2023, or as soon after that time as the motion could be heard. To date, we have not received the Court's decision on the Motion. At this time, we are respectfully requesting a status update on our party's Motion to Lift the Stay.

We trust that you will find the foregoing to be satisfactory. If you have any questions or concerns regarding same, please do not hesitate to contact the undersigned or Kristin Ley directly.

Yours Truly,

<image001.png>Krista Young-Wells, Legal Assistant to Kristin A. Ley
Cohen Highley LLP Lawyers
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