Federal Court  Cour fédérale

Date: 20150629

Docket: T-1655-14

Citation: 2015 FC 806

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 29, 2015

Present: The Honourable Mr. Justice Gascon

BETWEEN:

STÉPHANE DUPPERON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] In this case, the Court has before it an application for judicial review of a decision made on May 29, 2014, by the acting Senior Deputy Commissioner (the deputy commissioner) of the Correctional Service of Canada (the CSC), in which the deputy commissioner dismissed a third-level grievance presented by the applicant Stéphane Dupperon regarding her refusal to grant him

private family visits (PFV) alone with his wife. Mr. Dupperon claimed that this decision of the deputy commissioner is not justified in regard to the applicable law and regulations, and that she did not respect procedural fairness.

[1] For the reasons that follow, the application for judicial review is dismissed.

II. Facts

[2] Mr. Dupperon is an inmate with an extensive criminal record. Since September 18, 1997, he served a third federal sentence of more than 18 years' imprisonment following various criminal charges, including armed sexual assault (4 counts), sexual assault (6 counts), breaking and entering (2 counts), robbery (4 counts), theft over $5,000 (7 counts), possession of property obtained by criminal methods valued at less than $5,000 (4 counts) and failure to comply with a probation order (4 counts).

[3] On October 22, 2009, Mr. Dupperon was paroled with residency. However, on September 7, 2010, a warrant for his arrest and the suspension of his parole was issued and enforced against Mr. Dupperon because of a new sexual assault complaint made against him. Mr. Dupperon pleaded guilty to this charge and was incarcerated at the Leclerc Institution, then was transferred to the Drummond Institution.

[4] When he was at the Leclerc Institution, Mr. Dupperon made a request to participate in the PFV program. Following this request, the CSC proceeded with a community assessment with Mr. Dupperon's wife, which was completed on March 22, 2011 (the community assessment). In

November 2011, Mr. Dupperon was refused the PFV alone with his wife, but was granted the right to participate in the program, accompanied by his wife and his parents, so that he could prove himself. Mr. Dupperon participated in six PFV with his parents and his wife at the Drummond Institution. He then made a request, at the end of March 2013, to have his first PFV alone with his wife.

[5] On April 26, 2013, Mr. Dupperon was transferred to La Macaza Institution. While there, he presented a new request to be allowed to have PFV alone with his wife. On June 6, 2013, an assessment for a decision (the assessment for a decision) was conducted by Mr. Dupperon's case management team (CMT). However, the CMT did not recommend that the PFV program be approved for Mr. Dupperon. On July 23, 2013, a psychological assessment of Mr. Dupperon was also completed based on the available data as Mr. Dupperon refused to participate in it (psychological assessment).

[6] On July 31, 2013, the members of the visit committee at La Macaza Institution issued their decision and, in accordance with the CMT's recommendation, they upheld the refusal of the PFV alone with his wife for Mr. Dupperon (the institution's decision).

[7] On August 16, 2013, Mr. Dupperon then filed a complaint against the decision of La Macaza Institution, which was rejected by the correctional manager of the penitentiary on September 26, 2013. On October 14, 2013, Mr. Dupperon filed a first level grievance challenging the decision of September 26 on the ground that it was not justified. On November 6, 2013, this first level grievance was also refused and on November 22, 2013, Mr. Dupperon filed

a final grievance (also called grievance at the third level or at the national level) to challenge the decision of November 6, 2013.

[8] On May 29, 2014, the deputy commissioner refused this final grievance, finding that the decision denying Mr. Dupperon the right to PFV alone with his wife was made in accordance with the applicable legislative framework and that Mr. Dupperon had not brought any new elements. It is this decision of the deputy commissioner that is the subject of this application for judicial review (the decision).

III. Impugned decision

[9] In the decision, the deputy commissioner noted that Mr. Dupperon was questioning the reason given for the refusal of his PFV at La Macaza Institution, i.e. that he is "too dangerous".

[10] The deputy commissioner first mentioned that there are procedures to follow to participate in the PFV program and that an assessment for a decision had been completed for this purpose by the CMT in June 2013. In this evaluation, the CMT said that it was of the view that Mr. Dupperon's wife still did not have all the required knowledge to make an informed choice in her decision to become involved in his progress. Despite Mr. Dupperon's sexual assault record, his wife knew very little or nothing of his violent past, according to the CMT. Therefore, it was determined that the degree of supervision in the PFV program would not be sufficient to manage the risk of domestic violence.

[11] In her decision, the deputy commissioner also referred to the community assessment of March 2011 and to the psychological assessment of July 2013, which concluded, in particular, that there is a high risk of sexual recidivism and a moderate to high risk of violent recidivism for Mr. Dupperon.

[12] Furthermore, the deputy commissioner mentioned that the PFV had been approved at the Drummond Institution with Mr. Dupperon's parents, but not alone with his wife. She pointed out that, in conclusion, the analysis of the community assessment of March 2011, the psychological assessment of July 2013, the assessment for a decision of June 2013 and the institution's decision of July 2013 helped confirm that the risk posed by Mr. Dupperon could not be borne at that time. Therefore, the deputy commissioner considered that the final decision not to grant Mr. Dupperon the PFV alone with his wife was made in full compliance with the statutory framework, including the prevailing policies.

IV. Issues

[13] This application for judicial review raises two questions regarding the decision made by the deputy commissioner on May 29, 2014:

1. Did the deputy commissioner act in a way that was contrary to the law, regulations and prevailing policies by refusing Mr. Dupperon's PFV request, to the point of making her decision unreasonable?

2. Does the decision breach procedural fairness?

V. Relevant statutory provisions

[14] The relevant provisions in this dispute are provided in the *Corrections and Conditional Release Act*, SC 1992, c 20 (the Act), the *Corrections and Conditional Release Regulations*, SOR/92-620 (the Regulations) and the administrative directives issued by the CSC regarding PFV. As regards the Act, it is sufficient to reference its sections 24 and 71, which read as follows:

Accuracy, etc., of information	*Exactitude des renseignements*
24. (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.	24. (1) Le Service est tenu de veiller, dans la mesure du possible, à ce que les renseignements qu'il utilise concernant les délinquants soient à jour, exacts et complets.
…	[…]
Contacts and visits	*Rapports avec l'extérieur*
71. (1) In order to promote relationships between inmates and the community, an inmate is entitled to have reasonable contact, including visits and correspondence, with family, friends and other persons from outside the penitentiary, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons.	71. (1) Dans les limites raisonnables fixées par règlement pour assurer la sécurité de quiconque ou du pénitencier, le Service reconnaît à chaque détenu le droit, afin de favoriser ses rapports avec la collectivité, d'entretenir, dans la mesure du possible, des relations, notamment par des visites ou de la correspondance, avec sa famille, ses amis ou d'autres personnes de l'extérieur du pénitencier.
Visitors' permitted items	*Objets permis lors de visites*
(2) At each penitentiary, a conspicuous notice shall be posted at the visitor control point, listing the items that a visitor may have in possession beyond the visitor control point.	(2) Dans chaque pénitencier, un avis donnant la liste des objets que les visiteurs peuvent garder avec eux au-delà du poste de vérification doit être placé bien en vue à ce poste.
Where visitor has non-permitted item	*Possession d'objets non énumérés*
(3) Where a visitor has in possession, beyond the visitor control point, an item not listed on	(3) L'agent peut mettre fin à une visite ou la restreindre lorsque le visiteur est en possession, sans son

the notice mentioned in subsection (2) without having previously obtained the permission of a staff member, a staff member may terminate or restrict the visit.	autorisation ou celle d'un autre agent, d'un objet ne figurant pas dans la liste.

[15] As for the Regulations, the relevant provisions are found at sections 90 and 91. They read as follows:

90. (1) Every inmate shall have a reasonable opportunity to meet with a visitor without a physical barrier to personal contact unless	90. (1) Tout détenu doit, dans des limites raisonnables, avoir la possibilité de recevoir des visiteurs dans un endroit exempt de séparation qui empêche les contacts physiques, à moins que :
(a) the institutional head or a staff member designated by the institutional head believes on reasonable grounds that the barrier is necessary for the security of the penitentiary or the safety of any person; and	a) le directeur du pénitencier ou l'agent désigné par lui n'ait des motifs raisonnables de croire que la séparation est nécessaire pour la sécurité du pénitencier ou de quiconque;
(b) no less restrictive measure is available.	b) il n'existe aucune solution moins restrictive.
(2) The institutional head or a staff member designated by the institutional head may, for the purpose of protecting the security of the penitentiary or the safety of any person, authorize the visual supervision of a visiting area by a staff member or a mechanical device, and the supervision shall be carried out in the least obtrusive manner necessary in the circumstances.	(2) Afin d'assurer la sécurité du pénitencier ou de quiconque, le directeur du pénitencier ou l'agent désigné par lui peut autoriser une surveillance du secteur des visites, par un agent ou avec des moyens techniques, et cette surveillance doit se faire de la façon la moins gênante possible dans les circonstances.
(3) The Service shall ensure that every inmate can meet with the inmate's legal counsel in private interview facilities.	(3) Le Service doit veiller à ce que chaque détenu puisse s'entretenir avec son avocat dans un local assurant à l'entrevue un caractère confidentiel.
91. (1) Subject to section 93, the institutional head or a staff member designated by the institutional head may authorize the refusal or suspension of a visit to an inmate	91. (1) Sous réserve de l'article 93, le directeur du pénitencier ou l'agent désigné par lui peut autoriser l'interdiction ou la suspension d'une visite au détenu lorsqu'il a des

where the institutional head or staff member believes on reasonable grounds	motifs raisonnables de croire :
(a) that, during the course of the visit, the inmate or visitor would	a) d'une part, que le détenu ou le visiteur risque, au cours de la visite :
(i) jeopardize the security of the penitentiary or the safety of any person, or	(i) soit de compromettre la sécurité du pénitencier ou de quiconque,
(ii) plan or commit a criminal offence; and	(ii) soit de préparer ou de commettre un acte criminel;
(b) that restrictions on the manner in which the visit takes place would not be adequate to control the risk.	b) d'autre part, que l'imposition de restrictions à la visite ne permettrait pas d'enrayer le risque.
(2) Where a refusal or suspension is authorized under subsection (1),	(2) Lorsque l'interdiction ou la suspension a été autorisée en vertu du paragraphe (1) :
(a) the refusal or suspension may continue for as long as the risk referred to in that subsection continues; and	a) elle reste en vigueur tant que subsiste le risque visé à ce paragraphe;
(b) the institutional head or staff member shall promptly inform the inmate and the visitor of the reasons for the refusal or suspension and shall give the inmate and the visitor an opportunity to make representations with respect thereto.	b) le directeur du pénitencier ou l'agent doit informer promptement le détenu et le visiteur des motifs de cette mesure et leur fournir la possibilité de présenter leurs observations à ce sujet.

[16] It is also important to note the CSC commissioner's administrative directives applicable to the PFV, Directive 770 (DC 770), and the directive that replaced it on April 14, 2014, Directive 710-8 (DC 710). These two directives specify in particular that inmates who are "at risk for family violence" (section 8 a) of Directive 710-8) are not eligible for PFV; the previous version contained at section 23 of Directive 770 was to the same effect and spoke of inmates that risked "becoming involved in family violence".

VI. Parties' submissions

[17] First, Mr. Dupperon submitted that the deputy commissioner acted contrary to the Act and the Regulations by refusing in an arbitrary and unjustified manner his PFV request. Section 71 of the Act recognizes the right of inmates to participate in family visits, while sections 90 and 91 of the Regulations explain the reasons and circumstances that authorize management of an institution to withdraw this right. According to Mr. Dupperon, although the right to visits is not absolute, case law recalls its importance for the inmate and the CSC's obligation to find alternatives if it has reasons to find that visits should not be approved for safety reasons (*Flynn v Canada (Attorney General),* 2007 FCA 356, at para 12 (*Flynn*)).

[18] Therefore, Mr. Dupperon argued that his CMT at La Macaza Institution violated his legal obligations by not suggesting any less restrictive alternatives at the time of refusing his request for PFV alone with his wife, as expressly prescribed at paragraph 90(1)(*b*) of the Regulations.

[19] Mr. Dupperon further recalled that the previous Directive 770 and the new Directive 710-8 raise the same exception to an inmate's right to be admitted to the PFV program, i.e. the risk of family violence. This exception to the PFV is also recognized in case law (*Edwards v Canada (Attorney General),* 2003 FC 1441, at paras 26-28 (*Edwards*); *Russell v Canada (Attorney General),* 2007 FC 1162, at para 19 (*Russell*)). Moreover, Mr. Dupperon stated that the assessment for a decision of June 2013 did not show that he risked becoming involved in family violence and that the decision refusing his right to PFV is not justified, considering his record.

[20] Second, Mr. Dupperon submitted that the deputy commissioner's decision breaches fundamental freedoms since she did not respect procedural fairness. Mr. Dupperon first advanced

that the deputy commissioner relied on information that was not reliable or persuasive in writing her decision and, thus, breached the rules of procedural fairness. Indeed, subsection 24(1) of the Act obligates the CSC to use up to date, accurate and complete information. Furthermore, in her decision, the deputy commissioner referred to the assessment for a decision conducted in June 2013, referring to the community assessment of March 2011. Mr. Dupperon alleged that, in doing so, the deputy commissioner did not consider the more up to date information in his record showing that his wife now knows the details of his criminal past (*Tehrankari v Canada (Correctional Service)*, 2000 FCJ No. 495, at paras 41, 51 (*Tehrankari*); *Brown v Canada (Attorney General)*, 2006 FC 463, at para 28 (*Brown*)). Mr. Dupperon referred specifically here to two letters exchanged in July and August 2013 with his wife, in which they were talking about his criminal record and offences.

[21] In his oral submissions, counsel for Mr. Dupperon also mentioned that the deputy commissioner had neglected to take into account the evidence in the file relating to Mr. Dupperon's behaviour and situation before his parole in 2009 and 2010.

[22] Mr. Dupperon then added that the deputy commissioner did not sufficiently justify her decision. In Mr. Dupperon's words, the deputy commissioner's decision merely refers to the decisions on the first level grievance and the final grievance without explaining why the risk of Mr. Dupperon cannot be managed. This, according to Mr. Dupperon, does not respect the legal obligation of supporting her decision, making the decision unreasonable in one blow (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 43).

[23] In defense, the Attorney General Of Canada (the AGC) countered that section 71 of the Act regulates family visits and that paragraph 91(1)(*a*) of the Regulations authorizes the director of an institution to refuse a PFV when he or she has concerns regarding the security of the penitentiary or the safety of any person. According to the AGC, the Federal Court of Appeal clearly stated in *Flynn*, at para 12, that the provisions of the Act and the Regulations regarding the PFV do not give the inmate an absolute or strict right to contact visits, but rather a relative right within the limits considered to be reasonable.

[24] The AGC argued that the community assessment of March 2011 found that Mr. Dupperon's wife could be an asset in his progress, but that her limited knowledge regarding Mr. Dupperon's criminality was alarming, a state of affairs that the assessment for a decision had confirmed in June 2013. As for the psychological assessment of July 2013, she found that no supervision controls are sufficient to mitigate the risk posed by the inmate and that the context that Mr. Dupperon found himself in (following the new charges of sexual assault against him in 2010) could lead to a wrongful act of a sexual nature.

[25] The AGC submitted that the reply from the national level considered Mr. Dupperon's arguments and contrasted them with the facts on the record to find that it would be premature to grant him the PFV alone with his wife. According to the AGC, the deputy commissioner's decision is reasonable in that she reiterated the elements accepted in the previous assessments and recommendations to find that Mr. Dupperon should not be granted the PFV alone with his wife. The AGC also argued that there was no breach of the rules of procedural fairness.

VII. Standard of review

[26] It is well recognized that the standard of review applicable to a decision of the deputy commissioner is that of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47 (*Dunsmuir*); *McDougall v Canada (Attorney General)*, 2011 FCA 184, at para 24 (*McDougall*); *Riley v Canada (Attorney General)*, 2011 FC 1226, at para 14 (*Riley*); *Harnois v Canada (Attorney General)*, 2010 FC 1312, at para 20). The reasonableness of a decision is concerned with the existence of justification, transparency and intelligibility within the decision-making process and also with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, at para 47).

[27] In the same way, the findings of mixed fact and law made during the grievance process of the CSC and the Act are subject to the standard of reasonableness (*Yu v Canada (Attorney General)*, 2012 FC 970, at para 15; *Crawshaw v Canada (Attorney General)*, 2011 FC 133, at para 24 to 27). In this context, the Court must show deference to the deputy commissioner's decision and cannot substitute its own reasons (*Korn v Canada (Attorney General)*, 2014 FC 590, at para 14). However, it can, as required, review the file to assess the reasonableness of the decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para 15 (*Newfoundland Nurses*)).

[28] As for the determination of the compliance of the deputy commissioner's decision with the principles of procedural fairness, it is the standard of correctness that applies (*Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12, at para 43; *Hall v Canada (Attorney General)*, 2013 FC 933, at para 24; *McDougall*, at para 24, 260).

VIII. Analysis

A. ***Did the deputy commissioner act contrary to the Act, the Regulations and the directives in force?***

[29] I am of the view that, in the case before us, the deputy commissioner did not act contrary to the Act, the Regulations or the directives in place, and that the decision is reasonable. Indeed, the decision is in full compliance with the legislative and administrative framework that governs the granting of PFV in a penitentiary.

[30] Section 71 of the Act describes and frames the rights of inmates to family visits. This section must be read together with sections 90 and 91 of the Regulations, which explains the reasons authorizing the management of a penitentiary to withdraw this right, and with the applicable administrative directives in this respect. Section 90 and 91 of the Regulations provide, among other things, that the right to the PFV may be prohibited or suspended to protect "the security of the penitentiary or the safety of any person". Furthermore, DC 770 and DC 710 state that inmates who present a "risk of family violence" are not eligible for PFV.

[31] Case law clearly established that the right of inmates to family visits is not absolute, but that it is rather relative and qualified (*Flynn*, at para 12; *Riley*, at para 16). Indeed, this right is more in the nature of a discretionary privilege for inmates with certain conditions. Among others, the safety of the public and the persons involved and the risk of family violence by the inmate are paramount considerations in decisions relating to granting the PFV. In *Russell*, Justice Tremblay-Lamer recalled principles in the following terms, at paras 16-20:

> 16 In determining the reasonableness of the decision at issue, it is imperative to sketch the contours of the discretion afforded in the authorization of PFVs. The discretion involved in making PFV

> determinations is set out in the Act, Commissioner's Directive (CD) 770, and Standard Operating Practice (SOP) 700-12.
>
> 17 First, in serving sentences, the Act makes it clear that one of the main purposes of the correctional system is to assist in the rehabilitation of offenders and their reintegration into the community (s.3). In furtherance of this purpose, inmates are to retain the rights and privileges of all members of society, except those that are necessarily removed or restricted as a consequence of the sentence (s.4(*e*)), while the protection of society is to remain a paramount consideration (s.4(*a*)).
>
> 18 Further, s.71(1) of the Act establishes that inmates are entitled to contact with friends and family "subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons".
>
> 19 CD 770 stipulates that all inmates are eligible for PFVs except those who are assessed as being currently at risk of becoming involved in family violence. Moreover, SOP 700-12 specifies factors which shall be considered in determining the eligibility of an inmate for PFVs. Pertinent factors include a history of violent behaviour against other persons, and if family violence has been identified as a factor in the inmate's Correction Plan but has yet to be addressed by the offender.
>
> 20 Thus, it is apparent that the rehabilitation of the offender as well as the safety of the public are primary concerns in the discretionary decision to grant PFVs. In Edwards, supra, at para. 16, Von Finckenstein J. aptly indicated the considerations involved in applying the family visit provisions of the Act:
>
> > In all of these programs the security of the public remains a paramount concern. In the case of family visits, of course, one of the concerns is the safety of persons visiting the offender
>
> Therefore, the safety of the applicant's wife must be a primary consideration.

[32] In the decision, the deputy commissioner made express reference to section 91 of the Regulations and to its elements relating to the security of the public and the persons involved, as

well as DC 710 and the risk of family violence, which is sufficient to disqualify an inmate from the PFV program.

[33] In this matter, Mr. Dupperon relied on several levels of complaints and grievances before the decision was made on May 29, 2014. The deputy commissioner stated in her decision that she reviewed the documents relevant to the grievance, such as the previous presentations by Mr. Dupperon and the corresponding answers, the applicable laws and policies, and having followed Mr. Dupperon's reasoning to dispute the refusal of his PFV requests. In this case, I am of the view that the deputy commissioner reviewed the entire file and arrived at the same conclusion as the previous decisions by relying on several factors, among them (1) the limited knowledge of Mr. Dupperon's wife of his criminal record, (2) the assessment for a decision of June 2013, (3) the psychological assessment of July 2013 and (4) the community assessment of March 2011. A review of the decision and the CSC file persuaded me that the deputy commissioner's decision flows reasonably from the facts and opinions described in the file.

[34] In her decision, the deputy commissioner first described the assessment for a decision completed by the CMT in June 2013; this assessment referred to the community assessment of March 2011 and noted that Mr. Dupperon's wife still did not have all the knowledge required and had to be informed, under supervision, of his entire criminal record to make an informed choice in her decision to invest in him. The report concluded that the [TRANSLATION] "degree of supervision exercised" in the PFV was not sufficient to manage the [TRANSLATION] "risk of domestic violence" by Mr. Dupperon at that time. The decision states that the CMT had not recommended the PFV alone with Mr. Dupperon's wife. Therefore, the deputy commissioner

noted that the institution's decision of July 2013 following the recommendation of the CMT was not to grant the PFV.

[35] Then the deputy commissioner mentioned in her decision that Mr. Dupperon complained to La Macaza Institution following the institution's decision refusing the PFV. In the justification rejecting Mr. Dupperon's complaint, dated September 26, 2013, it was explained that Mr. Dupperon allegedly stated to his parole officer, if he was convicted of sexual assault for the complaint made against him in 2010, his risk of suicide would increase. The deputy commissioner added that it was also noted that the psychological assessment of July 2013 had found that Mr. Dupperon was at high risk of sexual recidivism and moderate to high recidivism of violence. It was thus considered premature to grant him the PFV alone with his wife since the risk was not considered to be [TRANSLATION] "acceptable".

[36] The deputy commissioner also described the fact that, if the PFV had been agreed upon with Mr. Dupperon's parents and his wife for the Drummond Institution, they had not been for Mr. Dupperon alone with his wife.

[37] In the decision, the deputy commissioner finally discussed the first level grievance filed by Mr. Dupperon in October 2013, which was also refused, and the fact that Mr. Dupperon had been advised that a request for PFV with his parents and his wife could also be made and considered. Then, the decision specifically referred to section 91 of the Regulations, which allowed the institutional head to refuse the visits of an inmate when he risks, during the visit, to compromise the security of the penitentiary or the safety of any person. The decision refusing

Mr. Dupperon's first level grievance effectively specified that refusal of the request was based on the safety risk that Mr. Dupperon posed at the time, in the fall of 2013.

[38] In the decision, the deputy commissioner summarized the progress of the grievance in the various stages of the CSC process, the main thrust of Mr. Dupperon's submissions and the various reasons that led the correctional authorities to refuse Mr. Dupperon's request. It is clear from the decision that the concerns regarding Mr. Dupperon's risk of family violence and the safety of the public and Mr. Dupperon's wife emerged from all the documents noted by the decision-maker.

[39] Mr. Dupperon emphasized that he was entitled to six PFV with his parents and his wife at the Drummond Institution and that, since these visits went well, he should have been admitted to the PFV program alone with his wife. In his oral submissions before the Court, counsel for Mr. Dupperon argued that the CSC had, in a sense, promised Mr. Dupperon that, if everything went well in the PFV with his parents, he would be entitled to PFV alone with his wife. I do not agree with this interpretation. When considered as a whole, the documents on file indicate only that the Drummond Institution had intended to authorize Mr. Dupperon's PFV with his wife if everything went well with his parents and his wife. In my view, there is no evidence indicating convincingly that this authorization had been effectively granted by the correctional authorities before the transfer of Mr. Dupperon to La Macaza Institution and that the PFV alone with his wife could be considered to be approved. In addition, it was reasonable that La Macaza Institution reviewed in detail Mr. Dupperon's file following his transfer and then determined that

he could pose a risk to his wife since she was not fully aware of his criminal dynamic and that the new charges could destabilize him if he received dangerous offender status.

[40] The decisions cited by counsel for Mr. Dupperon in support of his positions may also be distinguished from this matter. Therefore, in *Edwards*, the inmate was not convicted of a sexual offence in the past and had never been considered to be a person at risk to commit family violence, contrary to Mr. Dupperon's case where his prior convictions for sexual offences influenced the decision of the deputy commissioner and the correctional authorities who refused his PFV request. It was also established in *Russell* that the directive applicable to the PFV provided that "all inmates are eligible for PFVs except those who are assessed as being currently at risk of becoming involved in family violence" (at para 19). Moreover, in this case, Mr. Dupperon was already convicted of such acts of violence.

[41] Incidentally, contrary to what Mr. Dupperon advanced in his submissions, in the deputy commissioner's decision there are direct references to the risk of family violence by Mr. Dupperon, an element expressly recognized by DC 710 and DC 770 to render an inmate ineligible for PFV. Indeed, the assessment for a decision of June 2013 and the psychological assessment of July 2013 explicitly note this risk.

[42] Furthermore, it is important to recall that the Act imposes on the CSC to seek a balance between the positive and negative factors contained in the inmate's file, so as to weigh the interests and the rights of the inmates with the interests and safety of the public. The obligation to protect the public, including that of people involved in the PFV, is paramount. I find that these

principles of proportionality and seeking balance between Mr. Dupperon's interests and the protection of society (specifically of Mr. Dupperon's wife regarding the PFV request) have duly been respected by the deputy commissioner in the decision, all in accordance with the requirement of the Act and the CSC's mandate.

[43] Counsel for Mr. Dupperon also emphasized that, contrary to the explicit text of section 91 of the Regulations in this regard, the CSC (and the deputy commissioner in her decision) would not have considered the less restrictive conditions possible before refusing Mr. Dupperon's PFV alone with his wife. I do not agree. Rather, I agree with counsel for the AGC that this concern is implicit in the decision. Indeed, the decision noted that Mr. Dupperon was advised, following the refusal of his first level grievance, that he could make a PFV request with his parents and his wife, a request that had already been accepted at the Drummond Institution. I recall that section 90 of the Regulations dealing with the PFV refers to the possibility for inmates to "meet with a visitor without a physical barrier to personal contact". In Mr. Dupperon's case, the correctional authorities said no to the PFV alone with his wife, but left open the possibility of having them with his parents and his wife. I am of the view that this demonstrates a dedication to offer a less restrictive solution than a mere categorical refusal to let Mr. Dupperon have PFV. Therefore, the decision respects the requirements of section 91 of the Regulations.

[44] Therefore, I find that the analysis conducted by the deputy commissioner shows a thorough review of Mr. Dupperon's record and is completely reasonable and justified in the circumstances. The arguments advanced by Mr. Dupperon and his counsel invite the Court to give more weight to some aspects of the evidence than those considered by the deputy

commissioner in her decision. It is not the role of this Court, but rather that of the deputy commissioner, to determine the weight to give to the various evidence (*Khosa*, at para 59). After reviewing the decision, it is impossible for me to find that the deputy commissioner erred in her assessment of the facts. On the contrary, she clearly explained why Mr. Dupperon was not admitted to the PFV alone with his wife, because of the risks of family violence and the risks to his wife's safety.

[45] Therefore, given Mr. Dupperon's record of violence, the impact of the new charges of sexual assault and the various assessments on the record all together with the paramount question of public safety, which is an integral part of the statutory framework, the decision to reject Mr. Dupperon' PFV request is sufficiently reasonable and the Court must not intervene.

B. ***Does the decision breach procedural fairness?***

[46] First, Mr. Dupperon alleged that the deputy commissioner breached the principles of procedural fairness by neglecting to give adequate reasons for her decision, by ignoring some pieces of evidence and considering others that are unreliable. This would be contrary to section 24 of the Act, which obliges the CSC to use "accurate, up to date and complete" information. I cannot agree with these arguments. Rather, I am of the view that there was no breach to the rules of natural justice and procedural fairness in the treatment of Mr. Dupperon's request.

[47] Mr. Dupperon argued that the deputy commissioner allegedly did not consider his recent correspondence with his wife where he informed her of his criminal past. In his oral submissions

before this Court, counsel for Mr. Dupperon skillfully and extensively referred to the letter sent on July 18, 2013, by Mr. Dupperon to his wife, and to his reply dated August 28. He claimed that this correspondence exchange shows that Mr. Dupperon had explained his criminal record, that his wife was now aware of his criminal dynamic and that by ignoring them in the decision, the deputy commissioner breached procedural fairness.

[48] I do not agree with counsel for Mr. Dupperon in this matter. It is true that Mr. Dupperon sent a letter to his wife in July 2013 summarizing his criminal record and that the deputy commissioner's decision does not expressly refer to it. However, it is admitted that this correspondence was in the federal tribunal's possession and was indeed part of his file. Moreover, the fact that the deputy commissioner did not mention them in the decision does not mean that she did not consider or use them.

[49] It has been accepted since *Newfoundland Nurses* that the Court may, in an application for judicial review, review the file to assess whether a decision is reasonable; if the file shows that there is a reasonable basis for the decision, the Court must defer to it. As the Supreme Court pointed out in *Newfoundland Nurses,* at para 16:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion.

[50] Similarly, the Court may also fill in the gaps or omissions of a decision or draw "inferences reasonably arising and supported by the record" (*Pathmanathan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 353, at para 28).

[51] Insofar as the Court may find in the evidence a reasonable basis for the deputy commissioner's findings, it must not intervene and must allow these findings, even though the decision does not explicitly refer to the evidence in question in his decision, or analyzes it only partially (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1379, at paras 30-34). This is not a case where the deputy commissioner's reasons disregard an essential element to her decision. Rather, it is a case where the Court may, with the elements that clearly appear in the file, understand and confirm the deputy commissioner's findings on the limited knowledge of Mr. Dupperon's wife (*Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, at paras 10-11).

[52] Indeed, on reading the file, I noted that no documents were introduced into evidence indicating that a discussion [TRANSLATION] "under supervision" occurred between Mr. Dupperon and his wife on his criminal dynamic, as the assessment for a decision of June 2013 had recommended. I am also of the view that it was reasonable for the deputy commissioner not to see reflected in these two letters exchanged between Mr. Dupperon and his wife of her [TRANSLATION] "thorough" knowledge of Mr. Dupperon's offences and criminal dynamic that would likely modify the previous findings made from the assessment for a decision. Indeed, in my view, the reply from Mr. Dupperon's wife rather tends to support her lack of knowledge of Mr. Dupperon's criminal past. Finally, I point out that the limited knowledge of Mr. Dupperon's

wife was only one of the several elements identified by the deputy commissioner in support of her decision.

[53] Therefore, I am of the view that in light of all the evidence in the deputy commissioner's file to support her decision not to grant Mr. Dupperon the PFV alone with his wife, the fact of not expressly referring to these two letters is not sufficient for a finding of a breach of the rules of procedural fairness or to make the decision unreasonable.

[54] Mr. Dupperon also submitted that the deputy commissioner allegedly did not consider the events and reports from the period during which Mr. Dupperon was on parole in 2009 and 2010. I note that here we are referring to documents prior to the community assessment report of March 2011 and to the assessment for a decision of June 2013 considered by the deputy commissioner. Therefore, it was clearly acceptable (and, in fact, highly accurate) that the deputy commissioner first referred to this more up to date information on Mr. Dupperon than to that of 2009 and 2010 dating from the time when Mr. Dupperon was on parole. Incidentally, Mr. Dupperon's situation has significantly changed since this period as Mr. Dupperon lost his parole after a sexual assault complaint was made against him in 2010, while he was already in a relationship with his wife.

[55] I do not see how the lack of reference to factual elements dating from 2009 and 2010 could be contrary to section 24 of the Act, which stipulates that the CSC must ensure that the "information about an offender that it uses is as accurate, up to date and complete as possible". The information preceding Mr. Dupperon's parole is certainly not "up to date" information.

Conversely, it is clear from the evidence in the file that the information on which the deputy commissioner's decision is based, either the assessment for a decision of 2013, the community assessment of 2011, the psychological assessment of 2013 and the previous decisions on the grievances, contained accurate, up to date and complete information in accordance with the requirements of section 24 of the Act (Tehrankari, at paras 41, 51).

[56] Moreover, Mr. Dupperon did not show that there were, as he claimed, false and arbitrarily maintained information about him held by the CSC and used by the deputy commissioner in the decision. Contrary to the case law cited by Mr. Dupperon under section 24 (*Tehrankari, Brown*), this is not a situation where Mr. Dupperon argued that inaccurate or prejudicial information must be corrected or withdrawn from his file.

[57] It is clear here that the deputy commissioner considered and reviewed all the information on the record and that Mr. Dupperon was able to make all the submissions that he wanted to make during the progression of his complaints and grievances. Therefore, I find that the deputy commissioner respected the principles of procedural fairness and of natural justice regarding Mr. Dupperon.

[58] Finally, it is clear to me that the deputy commissioner produced a sufficiently justified decision in the circumstances. Again, in *Newfoundland Nurses*, the Supreme Court explained that "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (at para 14). Therefore, the Court must not substitute its reasons for that of the deputy commissioner, but rather must review the content of the record to assess the reasonableness of the decision. In other words, "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 Nurses*, at para 16). The standard to be applied is reasonableness and not the perfection of the decision.

[59] I am of the view that, considered as a whole, the decision considered all the relevant factors. The decision-maker was required to mention only those on which she based her decision. Overall, the decision is supported by a tenable explanation and we can see the method of analysis by which the deputy commissioner arrived at the reasonable conclusion in question. Therefore, I did not detect any reviewable error by this Court. Rather, I find that the deputy commissioner's reasons are transparent, intelligible and reflect a review of all the evidence in the record.

IX. Conclusion

[60] For all the reasons noted above, the application for judicial review submitted by Mr. Dupperon is dismissed. However, given the context of this file, I exercise my discretion and no costs are awarded.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed;

2. No costs are awarded.

"Denis Gascon"

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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