

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20180516**

**Docket: A-269-17**

**Citation: 2018 FCA 94**

**CORAM: DAWSON J.A.  
GLEASON J.A.  
WOODS J.A.**

**BETWEEN:**

**DAVID EDWARD FAIRFIELD**

**Appellant**

**and**

**PAROLE BOARD OF CANADA**

**Respondent**

Heard at Vancouver, British Columbia, on May 16, 2018.  
Judgment delivered from the Bench at Vancouver, British Columbia, on May 16, 2018.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**DAWSON J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Vancouver, British Columbia, on May 16, 2018).

**DAWSON J.A.**

[1] For thorough reasons cited as 2017 FC 836, the Federal Court dismissed the appellant's application for judicial review of a decision of the Appeal Division of the Parole Board of Canada. The Appeal Division affirmed the earlier decision of the Parole Board denying the appellant's application for day and full parole.

[2] This is an appeal from the judgment of the Federal Court.

[3] On this appeal the appellant essentially reargues points argued, and lost, before the Federal Court. In our view, the appellant has not demonstrated any basis for interfering with the judgment of the Federal Court. We reach this conclusion substantially for the reasons given by the Federal Court.

[4] We would add the following to the reasons of the Federal Court.

[5] The appellant sought a declaration that his “continued detention violates the principle of fundamental justice, is cruel or unusual, and is discriminatory and therefore violates sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms*.” We agree with the Federal Court that the appellant failed to provide a proper evidentiary foundation for his request. As the Supreme Court of Canada observed almost 30 years ago in *MacKay v. Manitoba*, [1989] 2 S.C.R. 357, at page 361:

*Charter* cases will frequently be concerned with concepts and principles that are of fundamental importance to Canadian society....

*Charter* decisions should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *Charter* and inevitably result in ill-considered opinions. The presentation of facts is not, as stated by the respondent, a mere technicality; rather, it is essential to a proper consideration of *Charter* issues ....

[6] Further, both in this Court and the Federal Court, the appellant failed to provide any reasoned analysis to support his bare assertions of *Charter* violations.

[7] Moreover, *Charter* arguments are to be raised first before the administrative decision-maker, here the Parole Board (*Garshowitz v. Canada (Attorney General)*, 2017 FCA 251, [2017] F.C.J. No. 1268, at paragraph 11). Proceeding in this fashion respects Parliament's decision that it is for the Parole Board, not for this Court, to determine all relevant legal and factual issues, including *Charter* issues. Proceeding in this fashion also facilitates the development of a full and proper evidentiary record.

[8] For these reasons, the appeal will be dismissed with costs.

"Eleanor R. Dawson"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-269-17

**STYLE OF CAUSE:** DAVID EDWARD FAIRFIELD v.  
PAROLE BOARD OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH  
COLUMBIA

**DATE OF HEARING:** MAY 16, 2018

**REASONS FOR JUDGMENT OF THE COURT BY:** DAWSON J.A.  
GLEASON J.A.  
WOODS J.A.

**DELIVERED FROM THE BENCH BY:** DAWSON J.A.

**APPEARANCES:**

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