

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220502

Docket: A-116-21

Citation: 2022 FCA 74

Ottawa, Ontario, May 2, 2022

**CORAM: GLEASON J.A.
RIVOALEN J.A.
MONAGHAN J.A.**

BETWEEN:

N.C.

Appellant

and

PAROLE BOARD OF CANADA

Respondent

JUDGMENT

UPON THE APPEAL filed by the appellant of the judgment of the Federal Court dated March 26, 2021 (2021 FC 269) (*per* Ahmed, J.) (the Federal Court Judgment) dismissing the application for judicial review of a decision of the Parole Board of Canada rendered on February 25, 2020 (Reference number: 5005807) (the Parole Board Decision), with costs fixed in the amount of \$1000.00;

AND UPON reading the Notice of Appeal, the Memorandum of Fact and Law filed by the appellant and the Memorandum of Fact and Law filed by the respondent;

AND UPON noting the written consent of the parties by their respective solicitors to set aside the costs award set out in paragraph 2 of the Federal Court Judgment;

AND UPON noting the written consent of the parties by their respective solicitors to vary the Federal Court Judgment to include a confidentiality order pursuant to Rule 151 of the *Federal Courts Rules*, S.O.R./98-106 (the Rules), to include anonymizing the style of cause in the Federal Court, and to treat as confidential any information in the Federal Court record which could serve to disclose the identity of the victim of the offence that led to the Parole Board Decision;

AND UPON hearing from the parties regarding the format of this Judgment during the hearing convened via video conference on April 27, 2022;

AND UPON considering the publication ban issued in November 2018 by the Ontario Court of Justice in the underlying criminal proceedings;

AND UPON considering the test for issuing a confidentiality order articulated by the Supreme Court in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522 [*Sierra Club*] and the three core prerequisites for discretionary limits on presumptive court openness articulated by the Supreme Court in *Sherman Estate v. Donovan*, 2021 SCC 25, 458 DLR (4th) 361;

AND UPON being satisfied that the appellant has demonstrated that the information he seeks to keep confidential meets the *Sierra Club* test because it is necessary to prevent a serious risk to an important interest and the salutary benefits of the order outweighs its effects on the public interest in open and accessible court proceedings;

AND UPON being satisfied that the parties require time to identify as confidential and redact those portions of the materials they respectively filed in the Federal Court Registry in File T-722-20 and in the Federal Court of Appeal Registry in File A-116-21;

AND UPON noting that the appellant is no longer advancing his third ground of appeal, that being that the Parole Board Decision is unreasonable;

AND UPON being satisfied that the Federal Court erred in making a lump sum award of costs in the absence of any submissions from the parties on the issue;

THIS COURT ORDERS THAT:

1. The appeal is allowed in part.
2. The appeal of paragraph 1 of the Federal Court Judgment in File T-722-20 is discontinued, without costs.
3. Paragraph 2 of the Federal Court Judgment is set aside.
4. The Federal Court Judgment is varied to order that any information in the Federal Court's Record which could serve to disclose the identity of the victim of the offence that led to the Parole Board Decision shall be treated as confidential. The terms of the confidentiality order shall continue in this Court.
5. The Federal Court's Judgment is further varied to:
 - (a) grant an order sealing the entire Federal Court's Record in file T-722-20 for a period of forty (40) days from the date of this Judgment; and

- (b) amend the style of cause to anonymize the applicant's name to N.C.
6. An order sealing the entire Federal Court of Appeal's Record in file A-116-21 is granted for a period of forty (40) days from the date of this Judgment.
 7. The style of cause in this Court is amended to anonymize the appellant's name to N.C.
 8. Within thirty (30) days of the date of this Judgment, the parties shall:
 - (a) file with this Court and with the Federal Court a public version of the documents each party filed with the respective Court from which all confidential material has been redacted or removed in file T-722-20 and file A-116-21;
 - (b) file with this Court a proposed redacted version of all documents issued by the Federal Court in file T-722-20 (inclusive of its Reasons for Judgment) and by this Court in file A-116-21;
 - (c) advise this Court of any materials that can remain on public file in file T-722-20 and in file A-116-21 without redaction; and
 - (d) advise this Court of the materials which should be permanently removed from the public file, placed in a sealed envelope, retained separately and clearly marked as confidential in accordance with Rule 152 of the Rules in file T-722-20 and in file A-116-21 in accordance with the confidentiality order issued in paragraph 4 of this Judgment.

9. Forthwith upon receipt by the Registry of the materials to be filed by the parties and, in any event, by no later than thirty one (31) days from the date of this Judgment, the Registry shall forward to this panel of this Court the materials filed with this Court pursuant to paragraph 8 of this Judgment to allow for the issuance of any further order required to amend the documents issued by the Federal Court and this Court.

10. There shall be no costs of this appeal.

“Mary J.L. Gleason”

J.A.

“MR”

“KASM”