COURT FILE NO. T-2120-13

FEDERAL COURT

BETWEEN:

ROBERT LATIMER

APPLICANT

AND:

ATTORNEY GENERAL OF CANADA

RESPONDENT

RESPONDENT'S MEMORANDUM OF FACT AND LAW

INTRODUCTION

Every offender on parole in Canada is subject to a standard condition mandated by statute that they remain within the country. The Applicant applied to the Parole Board of Canada ("Board") to be permanently relieved of this condition. After assessing the Applicant's circumstances the Board found that each application to travel outside the country should be assessed on its own merits and declined his application for permanent relief. The Board's Appeal Division ("Appeal Division") subsequently affirmed that decision following a thorough review of the Board's reasoning and conclusion. The decisions of the Board and Appeal Division properly took into consideration all relevant information including the Applicant's risk of reoffending, the nature and gravity of his offence, and Board policies. As such, the application for judicial review of these decisions should be dismissed.

PART I – FACTS

Background

1. The Applicant was convicted of second degree murder, after he placed his severely disabled daughter in a vehicle in an enclosed building and left the motor running. She died from carbon monoxide poisoning.

2. The Applicant has been on full parole with special conditions since early 2010-11 23. The special conditions are that the Applicant shall not have responsibility for any individuals who are severely disabled, and the Applicant shall participate in psychological counselling.

3. In addition to these special conditions, the Applicant is subject to the mandatory statutory conditions that apply to every offender on parole, by virtue of section 133(2) of the *Corrections and Conditional Release Act* ("*CCRA*"). One of these conditions, as set out in section 161(1)(b) of the *Corrections and Conditional Release Regulations* ("*CCRR*") is that the offender must remain at all times in Canada within the territorial boundaries fixed by the parole supervisor.

4. In April of 2013, the Applicant applied to the Board requesting permanent relief from the international travel restrictions.

Decision of the Parole Board of Canada

5. The Board concluded that it was not prepared to grant the Applicant permanent relief from the condition of section 161(1)(b). They also declined to remove the special condition that the Applicant not have responsibility for any individuals with a significant disability, but did remove the special condition that he participate in psychological counselling.

Parole Board of Canada Decision, June 24, 2013
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6. The Board took into account the information submitted on the Applicant's behalf, including a letter of support, the recommendation of his case management team, and his psychologist's report. While acknowledging the Applicant's low risk of reoffending, the Board concluded each request to travel outside Canada should be considered on its own merits. The Board stated, in part:

> The Board considered the nature and gravity of your offences. You have been convicted of a very serious crime which resulted in the death of your daughter. The length of the sentence you received reflects the seriousness of your offence. File information indicates that your risk factors are very limited due to the unusual circumstances of your offence. Factors that contributed to your offence stemmed from your attitude and the personal/emotional issues you were dealing with at the time due to your daughter's illness and the years of having to watch her suffer in pain. File information indicates that your contributing factors can only be attributed to that specific circumstance. Outside of this situation you are an otherwise pro-social individual who does not condone criminal attitudes and behaviour.
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> ...
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> You request relief from the application of Section 161 (1)(b) of the *CCRR*. You would like to travel freely to other countries without having to apply for specific international travel destinations. With the removal of this condition, you would be able to apply for a regular passport and be able to purchase last minute flight and vacation deals. Currently the only form of passport available to you is a Limited validity passport. In order to obtain one, you must first receive Board approval for a specific travel itinerary. The Board decision must be attached to the application for that passport. If approved, the passport is only valid for the duration of the specific trip. The process starts over again should you decide to take another trip out of the country. In Sychuk and The Attorney General of Canada 2009 PC 105, the Court acknowledged the authority of the Board to prohibit travel out of the country by those offenders who have life sentences. The decision confirms the Board must consider the destination and the purpose of the travel and the imposition of any special conditions to reduce the risk of reoffending.

> The Board notes that in 2012 you applied to the Board and received permission to travel to the United Kingdom for nine days to participate in an educational event. You were unable to attend because you could not arrange all your subsequent documentation necessary from the United Kingdom for the trip. The Board notes that the process of applying to the Board for specific travel authority out of the country worked in that you were approved for out of country travel in 2012. Your travel authority was not exercised due to difficulties and delays in receiving a visa for the United Kingdom Border Services. When reviewing requests for out-of-country travel, the Board will take into account any factor that is relevant in determining whether the travel might result in an increase in the offender's risk to society. The Federal Court of Canada in Peter Collins and The Attorney General of Canada 2012 FC 268 held that the term "society" was not confined to Canada. The primary consideration of the Board is the protection of society no matter where that society is located. Normally if an offender is out of the country, the offender cannot benefit from the usual monitoring and support offered through the parole supervision process. Granting relief from the application of Section 161 (1) (b) would permit you to travel to countries with little or no ability to properly supervise you or offer you support should you require it. In addition, it is important for the Board to be aware of the purpose for the trip as it may relate to your risk of reoffending. It is the position of the Board that each application to travel outside the country be assessed on its own merits, therefore the Board is not prepared to grant you relief from the application of Section 161 (1)(b) and takes no action in that regard.
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> Parole Board of Canada Decision, June 24, 2013
> Applicant's Record – page 13

Decision of the Parole Board of Canada Appeal Division

7. On appeal, the Appeal Division upheld the Board's decision. After reviewing the Board's decision and relevant case law, the Appeal Division concluded as follows:

> In light of the above, we consider that the Board's decision is reasonable, and made in accordance with the law and Board policy. The Board clearly considered all available information, including the positive factors such as assessments related to your low risk for general or violent recidivism, reports indicating compliance with your

> special conditions while in the community, and the fact that you are considered a pro-social individual who does not condone criminal attitudes and behaviour. However, given that your request for relief from compliance with paragraph 161(1)(b) of the *CCRR* is of a general nature, it was not unreasonable for the Board to specify that it must consider the destination and purpose of your proposed travel, as it may relate to your risk of reoffending, and that each application to travel out of the county had to be assessed on its own merits.
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> NPB Appeal Decision, November 14, 2013
> Applicant's Record – page 45

PART II – ISSUES

8. The issues in this application for judicial review are:

   a. Did the Board fetter its discretion and, in doing so, fail to consider the Applicant's application to be permanently relieved of compliance with the international travel restriction in s. 161(1)(b) of the *Regulations*?

   b. Was the Board's decision unreasonable?

PART III – ARGUMENT

Standard of Review

9. The applicable standard of review in the circumstances of this case is one of reasonableness. In applying this standard, the Board and Appeal Division should be afforded considerable deference in their decision making considering the high level of expertise they must exhibit in fulfilling their mandate.

10. The Federal Court of Appeal has characterized the Appeal Division as a "hybrid" statutory creature, having both the characteristics of an appellate board and those of a reviewing tribunal. While the powers exercised by the Appeal Division are closely associated with the jurisdiction exercised on appeal, the grounds for appeal, as

enumerated in subsection 147(1) of the *CCRA*, are limited and more akin to those for judicial review.[1]

11. Where a reviewing court has an application for judicial review of the Appeal Division's decision before it, and the latter has affirmed the Board's decision, the Court is ultimately required to ensure that the Board's decision was lawful. The applicable standard of review is that of reasonableness whether the Appeal Division reversed or confirmed the Board's decision.[2]

12. The Court should be concerned with the "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."[3] There might be more than one reasonable outcome.[4]

13. This means that a decision will satisfy the reasonableness standard if its reasons provide a tenable explanation even if this explanation is not one that the reviewing Court would necessarily arrive at itself. This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, as tenable as support of the decision.[5]

14. Further, a decision based on discretion or policy is owed a degree of deference, especially where the expertise of a particular tribunal comes into play. The Courts have recognized that the Board and the Appeal Division have expertise in matters related to the administration of the *CCRA*[6] and specifically, in review of conditional release related decisions. Accordingly, the Courts have recognized that the Board and its Appeal Division have expertise in conditional release-related decisions. Hence,

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[1] *Cartier v Canada (Attorney General of Canada)*, 2002 FCA 384 at para. 6
[2] *Christie v. Canada (Attorney General)*, 2013 FC 38 at para. 31
[3] *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47
[4] *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59
[5] *Law Society of New Brunswick v. Ryan*, 2003 SCC 20
[6] *Sychuk v. Canada (Attorney General)*, 2009 FC 105; affirmed 2010 FCA 7;

considerable deference should be given to their fact-finding and to their application of the governing statutes and regulations to those facts.[7]

Legislative Scheme Governing Conditions on Parole

12. Subsection 133(2) of the *CCRA* establishes mandatory conditions that apply to all parolees:

> **133**(2) Subject to subsection (6), every offender released on parole, statutory release or unescorted temporary absence is subject to the conditions prescribed by the regulations.

13. The condition at issue which requires a parolee to remain at all times within Canada is found in subsection 161(1)(b) of the *CCRR*:

> **161.** (1) For the purposes of subsection 133(2) of the Act, every offender who is released on parole or statutory release is subject to the following conditions, namely, that the offender
> ...
> (*b*) remain at all times in Canada within the territorial boundaries fixed by the parole supervisor;

14. The *CCRA* grants the Board discretionary powers to relieve a parolee from this condition:

> **133**(6) The releasing authority may, in accordance with the regulations, before or after the release of an offender,
> (*a*) in respect of conditions referred to in subsection (2), relieve the offender from compliance with any such condition or vary the application to the offender of any such condition

15. On consideration of an application to relieve or vary the condition, the following purpose and principles set out in the *CCRA* are relevant:

> **100.** The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens.

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[7] *Fernandez v. Canada (Attorney General)*, 2011 FC 275 at para 20; see also *Latham v. Canada*, 2006 FC 284 at paras. 6-8.

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

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 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 decisions that are consistent with the protection of society and that are limited to only what is necessary and proportionate to the purpose of conditional release;

(*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.

105(5) Members of the Board shall exercise their functions in accordance with policies adopted pursuant to subsection 151(2).

Parole Board of Canada Policy Governing Release Conditions

16. As indicated in paragraph 101(d) and subsection 105(5) of the *CCRA*, the Board is expressly mandated to adopt policies relating to parole application reviews. To provide guidance to Board members in the exercise of their mandate under

subsection 133(6)(a) of the *CCRA*, the PBC issued in its Policy Manual, guidelines on altering conditions prescribed by the *CCRR*.

17. The provisions of the Policy Manual that address altering the condition requiring a parolee to remain at all times within Canada pursuant to subsection 161(1)(b) of the *CCRR*, is found under the **Out-Of-Country Travel** section at Chapter 7.1 paragraphs 21 to 25 of the Policy Manual which state:

> 21. Supervised offenders, with the exception of offenders on parole reduced status, are required, as a condition of release to remain at all times in Canada. Nevertheless, an offender may request that the Board authorize a temporary exemption to this condition, in order to allow the offender to travel outside of Canada.
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> 22. Normally, if an offender is out of the country, the offender cannot benefit from the usual monitoring and support offered through the parole supervision process. As a result, prior to approving any request for out-of-Canada travel, an assessment must be completed in order to determine any issues related to public safety associated with the travel.
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> 23. When reviewing requests for out-of-country travel, Board members will take into consideration any factor that is relevant in determining whether the travel might result in any increase in the offender's risk to society, including, but not limited to:
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> a. the nature of the offender's criminal history and any police opinion. Any involvement in drug trafficking or a criminal organization and any potential for such activities or involvements;
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> b. progress on current and previous releases including previous travel and the length of time on the current release;
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> c. the success of the offender's reintegration over an extended period of time;
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> d. written confirmation from authorities that the country of destination does not object to the offender visiting that country; if not available, written confirmation that the country of destination is unwilling to provide this information or written proof that the offender tried to obtain the confirmation;
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> e. information from CSC concerning the purpose and details of the travel, including the length of time the offender will be outside of

Canada and the availability of collateral contacts in the destination country;

f. the consistency of the travel with the correctional plan of the offender and any recommendation of the parole officer.

24. In their review, Board Members should also consider the appropriateness of the travel.

25. When possible, Board members should specify the period of time that the offender is permitted to travel, given that a limited validity passport will be issued further to their decision to authorize a temporary exemption to the condition to remain in Canada.

Issue I: Did the Board fetter its discretion?

18. The Respondent submits that the Board did not fetter its discretion in declining to permanently relieve the Applicant of the standard condition that he remains within Canada.

19. In the Board's decision, they concluded that each request by the Applicant to travel outside of Canada should be assessed on its own merits. The Applicant contends that this is an improper application of policy which fettered the discretion granted by the *CCRA* to the Board to grant permanent relief from the condition. The Respondent submits that while the Board was guided by its policy, there is no indication in the decision that it applied the policy blindly without considering the possibility of permanent relief. Rather, the decision reflects an application of the discretion of the Board to not grant relief after consideration of the Applicant's circumstances.

20. Where fettering of discretion is alleged, the issues is not whether the policy in question was a factor or even a determining factor in the making of a decision, but whether the decision maker treated the policy as binding or conclusive without considering other factors.

21. In assessing whether the Board fettered its discretion here, this Court must determine whether the decision was made based solely and blindly on a direction provide by Policy or whether the Board examined all of the circumstances of the case and made its decision on the basis of the circumstances as a whole in accordance with its directing statute.[8]

22. In *Thamotharem v. Canada (Minister of Citizenship and Immigration)*[9], the Federal Court of Appeal commented on the utility of policies in the decision making process of administrative tribunals. Policies may validly influence a decision maker and assist in promoting consistency so that similar cases receive the same treatment. This is particularly valuable for tribunals that exercise discretion and sit in panels.[10] However, there are limits on the appropriate use of policy:

> Nonetheless, while agencies may issue guidelines or policy statements to structure the exercise of statutory discretion in order to enhance consistency, administrative decision makers may not apply them as if they were law. Thus, a decision made solely by reference to the mandatory prescription of a guideline, despite a request to deviate from it in the light of the particular facts, may be set aside, on the ground that the decision maker's exercise of discretion was unlawfully fettered.[11] [Emphasis added]

23. The concern is that an administrative policy, which is not law, must not cut down the discretion that the law (i.e. statute or regulation) gives to a decision maker.[12]

24. Subsection 133(6)(a) uses the permissive term "may" and grants the Board wide discretion to either grant or deny a request made for relief from or variance of a mandatory condition. It does not specify whether such relief ought to be permanent or temporary.

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[8] *Gregson v. National Parole Board*, [1983] 1 F.C. 573
[9] *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 198
[10] *Thamotharem, supra* at para. 59-61
[11] *Thamotharem, supra* at para. 62
[12] *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299 at para. 60

25. This Court has previously held in *Sychuk*,[13] that the denial by the Board of a request for permanent relief from the international travel restriction in favour of case by case consideration of travel requests is in accordance with both statute and policy:

> ... In the past, the Board acted expeditiously on his request to holiday out of the country and that was because of his track record. The Board expressed its willingness to do so provided it received all the details in advance. This decision cannot, by any stretch of the imagination, be said to be unreasonable considering the requirement of the *Act* that all offenders while on parole are generally required to be under the jurisdiction of the Board; the criteria established in the Policy Manual, his personal circumstances and the particular rationale advanced by the Applicant to obtain complete liberty to travel to countries who would accept him whenever he wanted and for whatever period of time he chose without notice to anybody. Examining its statutory mandate and the Applicant's personal circumstances, including his conviction, the Board, nor the Appeal Division found this acceptable. This is why the Board wrote that, in the circumstances, it could not give a blanket permission to travel outside Canada and that it needed to know, in each case, where he wanted to travel, when, with whom, for how long and its purpose. The Applicant has failed to satisfy me how the Board or the Appeal Division erred in coming to this view. On the contrary, it seems to me the decision reached is consistent with its statutory mandate, the scheme of the *CCRA* and *Regulations*, and the Policy guidelines applicable in the matter.[14] [Emphasis added]

26. The decision in *Latimer v. Canada (Attorney General)*[15], also involving the Applicant, serves as an example of the Policy Manual fettering the discretion of the Board. It stands in contrast to the present application. In that case, the Applicant had been released on day parole but was denied a reduction of his nightly reporting requirements on the grounds that he had not met the test for "exceptional circumstances" found in Chapter 4.1 of the Policy Manual. The Court found that the focus on whether the Applicant met this test ignored statutory mandated principles such as the risk of reoffending and the goal of reintegration into society.

27. The present application is distinguishable. It is important to note that applications for parole are governed by section 102 of the *CCRA* which establishes two criteria that the Board must consider in such applications:

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[13] *Sychuk v. Canada (Attorney General)*, *supra*, Note 5.
[14] *Sychuk v. Canada (Attorney General)*, supra at para. 50
[15] *Latimer v. Canada (Attorney General)*, 2010 FC 806

> **102.** The Board or a provincial parole board may grant parole to an offender if, in its opinion,
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> *(a)* the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and
>
> *(b)* the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.

28. Subsections (a) and (b) therefore set statutorily prescribed parameters for the exercise of the Board's discretion on parole applications. A decision which focuses exclusively on "exceptional circumstances" as described in policy rather than whether these preconditions are met will constitute a fettering of that discretion.

29. This is not what occurred in the Board's decision under review by this court regarding the Applicant's request regarding the travel restriction. In declining the Applicant's request for permanent relief, the Board did not conclude that it was bound by policy, but made the following two statements which are references to factors set out in Chapter 7.1 of the Policy Manual:

- "Normally if an offender is out of the country, the offender cannot benefit from the usual monitoring and support offered through the parole supervision process."
- "In addition, it is important for the Board to be aware of the purpose for the trip as it may relate to your risk of reoffending."

30. These are the only references to the policy made by the Board in its decision. There is no indication they were regarded as immutable principles which the Board had no choice but to apply. The use of the word "normally" in a policy guideline does not

fetter discretion, but instead leaves that discretion in free operation.[16] The Applicant contends that because paragraph 21 of Chapter 7.1 of the Policy Manual states that an offender "may request that the Board authorize a temporary exemption", this implies that only a temporary exemption will be considered and that no such restriction is found in subsection 133(6)(a) of the *CCRA*. However, paragraph 19 of Chapter 7.1 makes clear that "the Board may vary the application of or relieve the offender from any condition prescribed by the *CCRR*." The Policy Manual as a whole reflects the discretion found in the *CCRA*. In any event, there is no reference in the Board's decision to paragraph 21 of the Policy Manual, nor any indication that the Board would not consider general relief from the condition in any circumstance.

31. The Board's comments referred to above were made after a full consideration of the all information before it, as well as other principles the Board was required to consider such as the nature and gravity of the offence, and the principle of protection of society. The Board applied this information in light of these principles in accordance with the CCRA, CCRR and Board Policy. The Board determined permanent relief was not appropriate with respect to the Applicant's circumstances. The Board made its decision on the basis of all of the circumstances of the Applicant's case and made its decision on the basis of its view of these circumstances as a whole. This was a proper exercise of the Board's discretion to deny a request for relief from the condition in keeping with this Court's decision in *Sychuk*.[17]

32. In review of the Board and Appeal Division decisions, it is clear that the Board did not blindly apply its Policy nor confine the exercise of its discretion by refusing to consider other factors that were legally relevant. The Board appropriately considered its Policies in the exercise of its discretion as it made an independent assessment of the circumstances of the case and was not, as suggested by the

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[16] *Maple Lodge Farms Ltd. v. Government of Canada*, [1982] 2 S.C.R. 2

[17] *Sychuk v. Canada (Attorney General)*, *supra*, Note 5.

Applicant, directed in its decision by a blind application of Policy. Whether the discretion was exercised reasonably is argued more fully below.

Issue 2: Was the Board's decision unreasonable?

33. In assessing the reasonableness of such decision, this Court must determine whether the decision by the Board falls outside of the range of possible, acceptable outcomes which are defensible in light of the facts of the case.

34. The Respondent submits that the Board's decision in is reasonable in the circumstances of this case and the decision to not permanently relieve the Applicant of the standard condition that he remain within Canada falls within this range of possible acceptable outcomes in light of the relevant information before the Board.

35. The Respondent does not take issue with the Applicant's assertion that he has been fully compliant with the conditions of his parole and that he has consistently been found to pose a low risk to reoffend. The Board's decision acknowledges these facts. However, the existence of these facts does not mandate that the Board must therefore exercise its discretion to grant permanent relief from the international travel restriction. The existence of some positive consideration does not mean that the Board is required to grant the relief sought by the Applicant. The discretion of the Board must be exercised in full consideration of all of the factors mandated by the *CCRA* and not only those factors positively reflecting on the applicant and his circumstances.

36. While the protection of society is to be the paramount consideration, the Board was also statutorily required to consider all relevant information, including the nature and gravity of the offence, and to be guided by Board policies. In light of these factors and the wide discretion granted to the Board, the decision was reasonable in the circumstances.

37. As a starting point, the *CCRA* mandates that all parolees are subject to the standard conditions, including the one restricting international travel. This Court has affirmed the importance of these conditions and that subsection 133(6) is an exception to the general rule:

> The importance of the conditions imposed by subsection 133(2) of the Act and by the *Regulations* cannot be underestimated since, in passing paragraph 161(1)(*b*) of the *Regulations*, Parliament clearly expressed its wish that, as a rule, offenders on parole, even full parole, remain at all times in Canada within the territorial boundaries fixed by their supervisor. This is a major element of the parole system based on risk management. The offender always remains under the jurisdiction and supervision of the CSC through the case management team.
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> This means, therefore, as the Appeal Division clearly indicated, that even a temporary exemption from this condition is a privilege or an exception to the general rule.[18]

38. In addition, as Madam Justice Gauthier confirmed in *Tozzi*, [19] to suggest that some evidence or information before the Board should be held in higher significance than other relevant information, is to ask the Court to reassess that information and substitute that assessment for that of the Board or Appeal Division. As confirmed by Gauthier, J. given the application of the appropriate standard of review of reasonableness, this clearly is not the Court's role. [20]

39. Further, while it may also have been reasonable to grant the Applicant's request, the Board's decision was within the range of possible acceptable outcomes. Simply because a positive decision may have been reasonable, does not mean that a negative decision is unreasonable. The determining factor is whether there are facts and reasons that support the ultimate conclusion. [21]

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[18] *Tozzi v. Canada (Attorney General)*, 2007 FC 825 at para. 39-40
[19] *Tozzi v. Canada (Attorney General)*, *supra* at para. 37
[20] *Tozzi v. Canada (Attorney General)*, *supra* at para. 37
[21] *Wai v. Canada (MCI)*, 2009 FC 780 at para. 46-49

40. It also important to bear in mind the purpose and nature of the parole system, as emphasized by the Supreme Court of Canada in *R. v. M. (C.A.)*:

> ... But even though the conditions of incarceration are subject to change through a grant of parole to the offender's benefit, the offender's sentence continues in full effect. The offender remains under the strict control of the parole system, and the offender's liberty remains significantly curtailed for the full duration of the offender's numerical or life sentence. The deterrent and denunciatory purposes which animated the original sentence remain in force, notwithstanding the fact that the conditions of sentence have been modified. The goal of specific deterrence is still advanced, since the offender remains supervised to the extent and degree necessary to prevent possible crime, and since the offender remains under the shadow of re-incarceration if he or she commits another crime. As well, the goal of denunciation continues to operate, as the offender still carries the societal stigma of being a convicted offender who is serving a criminal sentence.[22] [Emphasis added]

41. There are no criteria identified in subsection 133(6) that establish a set standard that, if met by an applicant, require the Board to grant the relief. The use of the word "may" is permissive and gives the Board wide discretion to grant the relief or not. Although section 100.1 states that the protection of society is to be the paramount consideration in cases heard by the Board, it is not the only consideration. The Act goes on in section 101 to list additional principles that are to guide the Board's decisions.

42. More particularly, section 101(a) states that the Board is to take into consideration all relevant information, including the nature and gravity of the offense and information from the trial and sentencing process.

43. The Board specifically identifies these factors in the decision on the Applicant's request:

> The Board considered the nature and gravity of your offences. You have been convicted of a very serious crime which resulted in the death of your daughter. The length of the sentence you received reflects the seriousness of your offence.

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[22] *R. v. M. (C.A.)*, [1996] 1 SCR 5 at para. 62

44. In considering the Applicant's appeal of his sentence, the Supreme Court of Canada, was clear that his mitigating circumstances did not diminish the significant nature and gravity of his offence or the importance of denouncing such actions. In assessing the gravity of the Applicant's offence of second degree murder, the Court stated:

> "...if the gravity of second degree murder is reduced in comparison to first degree murder, it cannot be denied that second degree murder is an offence accompanied by an extremely high degree of criminal culpability. In this case, therefore, the gravest possible consequences resulted from an act of the most serious and morally blameworthy intentionality. It is against this reality that we must weigh the other contextual factors, including and especially the particular circumstances of the offender and the offence.
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> ...
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> Furthermore, denunciation becomes much more important in the consideration of sentencing in cases where there is a "high degree of planning and premeditation, and where the offence and its consequences are highly publicized, [so that] like-minded individuals may well be deterred by severe sentences": *R. v. Mulvahill and Snelgrove* (1993), 21 B.C.A.C. 296, at p. 300. This is particularly so where the victim is a vulnerable person with respect to age, disability, or other similar factors.[23]

45. Section 101(a) further provides that the Board is to also take into consideration the degree of responsibility of the offender. In weighing both aggravating and mitigating circumstances of the offence, the Supreme Court of Canada considered the degree of responsibility taken by the Applicant in the commission of the offence. It when on to apply this in again assessing the overall gravity of the offence and held that the Applicants personal characteristics and the particular circumstances of the offence itself, do not displace the serious nature and gravity of the offence. In its unanimous decision, the Court stated:

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[23] *R. v. Latimer*, 2001 SCC 1 at paras. 85-86

> On the one hand, we must give due consideration to Mr. Latimer's initial attempts to conceal his actions, his lack of remorse, his position of trust, the significant degree of planning and premeditation, and Tracy's extreme vulnerability.... On the other hand, we are mindful of Mr. Latimer's good character and standing in the community, his tortured anxiety about Tracy's well-being, and his laudable perseverance as a caring and involved parent. Considered together we cannot find that the personal characteristics and particular circumstances of this case displace the serious gravity of this offence.[Emphasis added][24]

46. In addition to the nature and gravity of the offence and degree of responsibility of the offender, subsections 101(d) and 105(5) require the Board to take into consideration the Policy Manual. As indicated above, this Court in *Sychuk*,[25] upheld a decision to deny permanent relief from the international travel restriction based primarily on principles found in the Policy Manual. In that case the Court rejected the applicant's argument that the importance of supervision was disingenuous as his monitoring in Canada was light:

> This argument does not assist him. The fact his monitoring is light when in Canada is to his credit in terms of his being compliant with his condition but does not negate the fact he remains under the supervision (sic) which is not the case when outside of Canada which is the point stressed in the Policy manual and the Parole Board's need to know details on each trip taken.[26]

47. Similarly, in its decision regarding the present Applicant's request, the Board commented on the need for supervision and to know the reasons for his proposed travel. The Board was not bound by the recommendation of the Applicant's case management team in favour of his request.[27]

48. The Board took into account all relevant available information The decision made by reasonable application of policy to the Applicant's circumstances in keeping

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[24] *R. v. Latimer*, 2001 SCC 1 at paras. 85-86
[25] *Sychuk v. Canada (Attorney General)*, *supra*, Note 5.
[26] *Sychuk v. Canada (Attorney General)*, *supra.* at para. 47
[27] *Tozzi v. Canada (Attorney General)*, *supra note 16* at para. 42

with the nature and gravity of the offence and the principles underlying the Applicant's sentence. The decision by the Board and subsequent decision of the Appeal Division are reasonable as they fall within the range of possible, acceptable outcomes which are defensible in light of the facts of the case.

PART IV – ORDER SOUGHT

49. The Respondent requests that the application for judicial review be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 16th day of May, 2014.

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