

PAROLE

Statutory release — Judicial review wherein applicant seeking declaratory relief in respect of process, policy followed by Parole Board of Canada (Board) — Process followed by Board when applying *Corrections and Conditional Release Regulations*, SOR/92-620 (CCRR), s. 163(3) is to hear matters in the order in which they are referred to it by Correctional Service of Canada (CSC) under *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (Act), s. 135(3)(b) — Applicant contending that Board scheduling process infringed his *Canadian Charter of Rights and Freedoms*, s. 7 rights — Alleging detained for extra 27 days because Board hearing not scheduled before his recalculated statutory release date of September 15, 2017 — Applicant's statutory release suspended following altercation — New statutory release date indicated as September 15, 2017 — Applicant consenting to issuance of new statutory release date — Board hearing later re-scheduled to October 12, 2017 — Board following CSC's recommendation, deciding to cancel suspension of applicant's statutory release, issuing him reprimand — Concluding that applicant not presenting undue risk to society if released on statutory release — Whether applicant's Charter, s. 7 rights infringed by interpretation adopted by Board to process referrals from CSC in order received rather than taking into account statutory release date — Applicant failing to establish sufficient connection between requirement that decision be made "within 90 days of the date of the referral or day in which the offender is returned to custody" (CCRR, s. 163(3)), as implemented by Board scheduling process, fact that applicant not statutorily released on September 15, 2017 — Arbitrariness, overbreadth, gross disproportionality main principles of fundamental justice under Charter, s. 7 — Only necessary to deal with arbitrariness herein as applicant not making submissions in relation to other two principles — Arbitrariness requiring direct connection between purpose of law, impugned effect on individual — Nature of causal connection between government action, prejudice suffered by applicant having to be a "sufficient causal connection" — Connection having to be real, not speculative — Ongoing detention of applicant not arbitrary — Ongoing detention specific to narrowly defined category of particular offenders, i.e. those statutorily released, having their release suspended — Board reviewing, determining matter within 90-day period provided for in CCRR, s. 163(3) — CSC, Board adhering to legislated processes — Applicant not "overheld" — Released prior to his warrant expiry date, i.e. date applicant's sentence officially completed — CSC calculation of September 15, 2017 as revised statutory release date made under CCRA, s. 127(5)(a) — That calculation only applying if applicant's statutory release revoked — Since applicant's statutory release not revoked by Board, date nothing more than observation of what might have been — Board possessing exclusive jurisdiction, absolute discretion under CCRA, ss. 107(1)(b)(c) to (1) terminate or revoke statutory release; (2) cancel suspension, termination or revocation of statutory release — CSC could not bind Board to make particular determination — Board not bound by applicant's purported agreement with recommendation of CSC — Not acting arbitrarily in scheduling applicant's hearing — Applicant legally incarcerated without benefit of statutory release — No new or further deprivation of applicant's liberty interest when Board scheduling hearing in two-day window provided by applicant on September 13, 2017 — Scheduling process not causing applicant to be incarcerated for period beyond that of original sentence — Applicant not satisfying onus to prove Board scheduling process arbitrary within Charter context — Application dismissed.

HARRIS V. CANADA (ATTORNEY GENERAL) (T-1695-17, 2019 FC 1193, Elliott J., reasons for judgment dated September 20, 2019, 27 pp.)