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BARRISTERS AND SOLICITORS

January 23, 2008

By Facsimile 613-941-0543

National Parole Board – Appeal Division
410 Laurier Avenue West
Ottawa, Ont.
K1A 0R1

Re: Robert Latimer
Appeal of Decision denying Day Parole

I am retained by Mr. Robert Latimer to appeal the December 5, 2007 decision of the Panel of the National Parole Board (the "Panel") to deny his application for Day Parole (the "Decision"). I enclose an endorsed form (NPB/CNLC 32E R-00-12) initiating an appeal.

Mr. Latimer respectfully submits that the Panel's Decision is predicated on the following three errors:

1. The Panel failed to consider and take into account the reasons of the sentencing Courts, including the findings of the Supreme Court of Canada, the Saskatchewan Court of Appeal and the Saskatchewan Court of Queen's Bench, and the sentencing recommendations of both of Mr. Latimer's juries;

2. The Panel acted without jurisdiction in arriving at the factual conclusion that, contrary to all available evidence, Mr. Latimer presented a risk of reoffending while on day parole; and

3. The Panel erred in law by failing to consider the viability of a less restrictive option consistent with public safety, namely, the imposition of supervisory conditions that would prevent Mr. Latimer from taking any responsibility for a disabled or incapacitated individual while released into day parole.

Mr. Latimer is requesting immediate release by the Appeal Division on the basis that the decision under appeal cannot be supported in law, the applicable Board policies or on the basis of the information available to the Board in its review of the case, and on the basis that a delay in releasing Mr. Latimer from imprisonment would be unfair.

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PHONE: 604-694-1919 • FAX: 604-608-1919
jasongratl@jbglaw.ca

1. The Board Failed to Take the Reasons of Sentencing Courts into Consideration

In denying Mr. Latimer entry into day parole, the Panel erred by failing to take into account the stated reasons and recommendations of the sentencing judges.

Section 101(b) of the *Corrections and Conditional Release Act* ("CCRA") requires parole boards to

> take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing...

The Decision contains no indication that the parole board took into consideration the stated reasons and recommendations of the Supreme Court of Canada, the Saskatchewan Court of Appeal, the Saskatchewan Court of Queen's Bench, or the recommendations of Mr. Latimer's two juries.

In their decision in R. v. Latimer, [2001] SCC 1 (CanLII), the Supreme Court of Canada stated at paragraph 86 of its reasons that the principle of denunciation was the only sentencing principle to have application in Mr. Latimer's case. "In this case", wrote the Court, "the sentencing principles of rehabilitation, specific deterrence and protection are **not** triggered for consideration" [emphasis added].

After indicating that Mr. Latimer is not being sentenced in order to promote the rehabilitation of his character or deter him from committing offences in the future or to protect the public, the Supreme Court of Canada proceeds to indicate that the principle of denunciation plays an important role in Mr. Latimer's case. The principle of denunciation was described as follows:

> The objective of denunciation mandates that a sentence should communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law [emphasis in original].

Although it has a role at sentencing, the objective of denunciation plays no part in the consideration of whether Mr. Latimer should be granted day parole. The determination of whether parole of any form should be granted is limited under s.102 of the CCRA to an assessment of the offender's potential for reoffending and the offender's potential for safe reintegration into society. And the Supreme Court of Canada indicates that those considerations are not raised in relation to Mr. Latimer.

The Saskatchewan Court of Appeal makes the same point with even greater force. In their 1994 decision to grant Mr. Latimer bail pending appeal, the Court of Appeal makes the following statement in relation to whether Mr. Latimer's continued detention is in the

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public interest:

> The requirement involves consideration of much more than public safety. Although public safety is always a consideration, there is no suggestion that Mr. Latimer is now a danger to society or likely to commit acts of violence if released. He had no previous criminal record, and apart from this conviction he has lead an exemplary life without violence or lawless behaviour.
>
> *R. v. Latimer*, 1994 CanLII 4639 (Sask.C.A.) at p.4

Similar comments were again made by the Saskatchewan Court of Appeal in dissent in the substantive appeal heard in 1997. Writing in relation to the issue of whether Mr. Latimer qualified for a constitutional exemption to the mandatory minimum period of 10 years ineligibility for parole, the dissenting Justice wrote:

> The appellant has no criminal record. He poses no risk to society and requires no rehabilitation. He enjoys a very healthy and wholesome reputation in the community...
>
> ... It is a fair inference and an important one to keep in mind that she was not put into her father's truck because she was disabled. She was put there because of her pain, something very different from her disability. She was put there because her father loved her too much to watch her suffer. While the killing was a purposeful one, it had its genesis in altruism and was motivated by love, mercy and compassion or a combination of those virtues, generally considered by people to be life-enhancing and affirmative...
>
> ... The actor himself was not a murderous thug, devoid of conscience, whose life has been one of violence, greed, contempt for the law and a total disrespect for human beings. On the contrary, the actor was a nurturing, caring, giving, respectful, law-abiding responsible parent of the victim.
>
> *R. v. Latimer*, 1995 CanLII 3993 (Sask.C.A.) at pp.39, 42 and 43; [the majority's approach to the issue of Mr. Latimer's motive is consistent with the approach taken by the dissenting judge, but less emphasis is placed on this factor by the majority]

The Saskatchewan Court of Queen's Bench made a similar finding of fact on a defence motion for a constitutional exemption on the basis that the mandatory minimum period of parole ineligibility represented cruel and unusual treatment:

> Not only his wife but his sisters described his love and devotion to this child. When asked about the standard of care the Latimers provided Tracy her doctor said "excellent". So the evidence does not suggest that Mr. Latimer did not do his share in caring for Tracy so far as his other responsibilities to his farm and family would allow him. He came across as a devoted family man with a loving and caring nature. Beyond that it is apparent he was well regarded in his community.

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> He has virtually no criminal record (an alcohol-related driving offence some 20 years ago) long before he married Laura. It is also clear from the ongoing history of this whole case that he is not a threat to society nor does he require any rehabilitation. In summary the evidence establishes he is a caring and responsible person and that his relationship with Tracy was that of a loving and protective parent. On the evidence it is difficult to believe that there is anything about Mr. Latimer that could be called sinister or malevolent or even unkind towards other people.
>
> *R. v. Latimer*, 1997 CanLII 11316 (Sask.Q.B.) at p.10; overturned on issues of law but factual finding sustained in *R. v. Latimer*, 1998 CanLII 12388 (Sask.C.A.)

Overall, there is judicial disagreement over whether a constitutional exemption should apply, but there is no disagreement over Mr. Latimer's likelihood to reoffend or need for rehabilitation.

Similarly, both of Mr. Latimer's juries made recommendations that support his release into day parole.

The jury that convicted Mr. Latimer at his first trial was charged with the task of making a recommendation regarding Mr. Latimer's eligibility for parole. After retiring briefly, the foreman provided their recommendation: "Your Lordship, it's unanimous that the jury would request minimum sentencing for the Accused with parole as early as possible, with your consideration".

Mr. Latimer's second jury, which convicted him of second degree murder in 1997, asked the trial judge for an opportunity to make a recommendation in relation to the sentence to be imposed. The trial judge granted the jury that opportunity, and the jury unanimously recommended that Robert Latimer be eligible for parole in one year: *R. v. Latimer*, 1998 CanLII 12388 (Sask.C.A.).

Again, s.101(b) of the CCRA provides:

> s.101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are...
>
> > (b) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender.

The National Parole Board Policy Manual, Section 2.1 requires Board members, in studying all relevant aspects of the offender's case, to review and analyse the reasons and recommendations of the sentencing judge and any other information from the trial or the sentencing hearing. The Manual, Section 2.2 – Hallmarks of Quality Decision Making – indicates that a Quality decision is documented in a way that briefly summarizes the

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members' analysis and assessment of relevant information, including risk indicators identified in the information received from the courts.

Unfortunately, the Decision makes no mention, takes no account and contains no consideration of any of the following:

1. The express finding of law by the Supreme Court of Canada that the principles of rehabilitation, specific deterrence and protection of the public do not apply to Mr. Latimer's circumstances.

2. The Saskatchewan Court of Appeal's determination that Mr. Latimer presents no risk of reoffending and does not require rehabilitation.

3. The Saskatchewan Court of Queen's Bench finding of fact that Mr. Latimer presents no threat to society and does not require rehabilitation.

4. The recommendation of Mr. Latimer's first jury that he should be eligible for parole as early as possible.

5. The recommendation of Mr. Latimer's second jury that he should be eligible for parole after one year.

It is respectfully suggested that the Board erred by failing to comply with the mandatory requirement that it take into consideration the stated reasons and recommendations of the sentencing judge and other critical information from the trials and sentencing hearings. In this sense, the Decision violates the mandatory provision set out in s.101(b) of the CCRA and fails to adhere to Board Policy and thereby contains an error of law that establishes the jurisdiction of the Appeal Division to deal with this matter under s.147(4)(c) or s.147(4)(d).

2. There is No Risk of Mr. Latimer Reoffending while on Day Parole

The Panel erred by arriving at the factual conclusion, contrary to all the evidence, that there is a risk that Mr. Latimer would reoffend if he were granted day parole. To arrive at a factual conclusion in the absence of supporting evidence is both patently unreasonable and constitutes an administrative action without jurisdiction contrary to s.147(1)(e) of the CCRA.

The Panel's denial of day parole is predicated on the factual conclusion that Mr. Latimer's lack of insight into his index offence is a reflection of a hidden propensity to commit further crimes which in turn demonstrates a risk of reoffending and a risk that Mr. Latimer will breach the conditions of his parole.

None of the evidence before the Board demonstrated the existence of any general propensity on Mr. Latimer's part to commit criminal offences. Mr. Latimer's index offence, ending the life of his daughter Tracy, was described as a "situational" offence. And the evidence was that there was an extremely low risk that Mr. Latimer would be

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confronted with that situation while admitted to day parole.

In anticipation of Mr. Latimer's application for day parole, he was subjected to a battery of psychological tests, the results of which are set out in the Psychological/Psychiatric Assessment Report of a psychologist, Dr. Bruce Monkhouse, dated March 16, 2007. The report sets out the results of the tests as follows:

> Psychopathology Checklist Revised
>
> The PCL-R combines historical data and clinical impressions to derive a judgment of a person's antisocial tendencies. Scores on the PCL-R have been found to be related to recidivism, including violent recidivism. Mr. Latimer's total score falls indicates a low risk for violent recidivism. Mr. Latimer's Factor 1 score (selfish and callous use of others) and his Factor 2 score (chronically unstable and antisocial lifestyle) also indicates a low risk as compared to the general inmate population.
>
> Violence Risk Appraisal Guide
>
> Mr. Latimer's total score on the VRAG places him in the 2nd of nine categories and indicates a moderate risk for violent recidivism. Statistical probability of re-offending is estimated at 8 percent within 7 years and 10 percent within 10 years post release.
>
> Sir Scale
>
> Mr. Latimer's SIR score is +21 indicating 4 out of 5 offenders will not commit an indictable offence post release...
>
> CONCLUSIONS
>
> The results of the risk assessment indicate that Mr. Latimer is currently a low risk in terms of general as well as violent re-offending.

Dr. Monkhouse expressed some concern about a highly localized increased risk in his March 16, 2007 report:

> In my opinion, if Mr. Latimer was to find himself once again in a position where he was responsible for a severely disabled person, particularly a son or daughter, I believe his risk for acting out increases significantly.

However, Dr. Monkhouse immediately qualified even this expression of concern with the following words:

> In light of the unique circumstances of the index offence, i.e., the victim being a severely disabled child, I believe it is unlikely that Mr. Latimer will commit another violence offence if he is granted a conditional release.

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The Correctional Plan Progress Report dated September 21, 2007, concurs with Dr. Monkhouse's assessment. It describes the risk of reoffending as follows:

> A Psychiatric Risk Assessment was completed by Dr. M. Mela on 2001-10-05, within which a statement appears that "there is no risk from non-compliance in the future" with regard to Mr. LATIMER. This opinion is echoed in Dr. Monkhouse's Psychological Risk Assessment of 2007-03-19. Both doctors opine that Mr. LATIMER's risk to offend is LOW, specifically due to the nature of the offence and the isolated issues of his severely handicapped daughter, and the remote likelihood of Mr. LATIMER being in a similar situation in the future...
>
> ... REINTEGRATION POTENTIAL
>
> There is no change in this area. Mr. LATIMER remains appropriately assessed with a HIGH reintegration potential, indicating a low risk to public safety. There are no victim concerns in this case. Mr. LATIMER's victim was his severely handicapped daughter, who was suffering from an extremely rare form of cerebral palsy...
>
> There are no outstanding risk factors requiring intervention in this case... ... The Case Management Team at William Head Institution is supportive of a Day Parole release for Mr. LATIMER, as he does not present any risk for violence in the future. His offence has been assessed by professionals as being situational and that he would not actively involve himself in violence otherwise. It must also be noted that Mr. LATIMER does not believe that his offence was violent, as he was trying to help his daughter and this has been recognized as his way of coping with the situation. The writer believes that this is a reasonable reaction, particularly from a psychological point of view, and should not be considered as him minimizing his involvement.

A further report dated October 23, 2007, which was prepared by Mr. Latimer's Case Management Team at Corrections Canada, agrees that "it is not likely that he will be in the same position that allowed him the opportunity to commit this offence".

The oral evidence at the hearing before the Board was to the same effect. Mr. Latimer's Parole Officer at William Head Institution, Diane Murray, testified before the Board at the hearing. She was specifically asked by a Board member about the situational risk associated with Mr. Latimer's release into day parole. Their exchange was as follows:

> Board Member: One of the reports that was produced, actually in two separate psychological assessments, they did speak to a situation when they thought that his risk would escalate. Can you talk about whether that is something that has been explored with Mr. Latimer?
>
> Ms. Murray: You're speaking of whether he would be put in the same position of having a handicapped child or individual under his care?

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Board Member: [affirmative murmur]

Ms. Murray: Yes, that has been considered. The likelihood of that happening is going to be low. And supervision would require him to report anything like that. There's no likelihood. No immediate family members are in that position at this point so the risk of that happening is incredibly minimal.

Recording of Proceedings: 5:45

Mr. Latimer's situation is quite simply not comparable to that of a car thief or a burglar or drug trafficker, who would be presented with routine temptation in the form of cars or houses or profits from potential transactions if released into day parole. In cases involving a significant likelihood of routine temptation, an expression of regret or desire to unmake the past can be reflective of a desire to change and a commitment to fight temptation if released into parole.

The analogy to ordinary cases involving routine temptation is simply unavailable in Mr. Latimer's case. Tracy Latimer suffered from birth from a convulsive form of cerebral palsy that required her to take high doses of anti-seizure medication. Pharmaceutical conflicts with the anti-seizure medication prevented Mr. Latimer from administering Tracy any form of pain medication stronger than regular strength Tylenol. Tracy spent her life in constantly increasing agony.

The reality is that Mr. Latimer, as a parent, saw himself as forced to select one of two horrible and impossible outcomes: one choice was to end the life of his daughter; the other choice was to consign his daughter to unremitting and unspeakable agony. The Law's declaration that the choice he made was wrong and should be denounced as a crime does not detract from the tragedy of the situation.

There is no indication in any of the materials before the Board that Mr. Latimer is an activist for or enthusiast of euthanasia or assisted suicide. There is no indication that he would actively seek to put himself into a position of responsibility for severely disabled or medically vulnerable individuals.

The index offence did not involve precipitous action. Robert Latimer provided 13 years of excellent and compassionate medical care to his daughter, watching her endure multiple daily seizures, operations involving the severing of critical muscle groups, the insertion of metal rods in her spine to mechanically counteract severe scoliosis.

Mr. Latimer's index offence has three features make it unlikely that he would encounter a similar situation:

(a) The victim was a close relative – Mr. Latimer's daughter;

(b) The care-giving relationship was of long duration – 13 years; and

(c) The prospect of controlling or mitigating the pain of the victim was very

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limited.

The Decision demonstrates that the Board was unwilling to treat Mr. Latimer's case as one involving a situation that Mr. Latimer was unlikely to confront while released into day parole.

In the final analysis, there is no evidence to support the conclusion that Mr. Latimer would be likely to confront such a situation if released into day parole. In coming to that conclusion in the absence of evidence, the Board acted without jurisdiction, contrary to s.147(1)(e) of the CCRA.

3. The Board Failed to Consider Supervisory Restrictions

Section 101(d) of the CCRA requires that Board to make the least restrictive determination consistent with the protection of society. The Board erred in law by failing to consider whether special supervisory conditions preventing Mr. Latimer from taking responsibility for a disabled or incapacitated individual would be consistent with the protection of society.

Even if it were plausible to suggest that Mr. Latimer might have responsibility for a severely disabled person while on day parole in Ottawa, the Board would be required by law to ask the obvious question of whether that risk could be controlled with a supervisory condition of his day parole. One example of a supervisory condition might be:

> Mr. Latimer is not to be found in the company of any severely disabled or medically vulnerable person, except with the written permission of his parole officer and under the supervision of two qualified physicians.

Another example might be:

> Mr. Latimer is not to be found within 50 feet of a hospital, nursing home, hospice, clinic, physician's office, treatment facility, or any other place where medical treatment is administered to medically vulnerable persons, unless he has written permission from his parole officer and unless he is under the supervision of two qualified physicians.

A third example might be:

> Mr. Latimer is not to make any decisions for or have responsibility for any person who is incapacitated or disabled or under medical treatment of any kind.

A fourth example might be:

> Mr. Latimer is to undertake and complete such counselling or psychiatric treatment as directed by his parole officer.

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The Board clearly has discretion to order that Mr. Latimer's day parole be subject to any of the above conditions, or all of them, if it concludes that such conditions are necessary or desirable to ensure public safety.

Even though supervisory conditions were not recommended by any psychiatrist, psychologist, corrections official, prison supervisor, court or jury that dealt with Mr. Latimer, the Board had an obligation under s.101(d) to consider whether supervisory conditions would sufficiently minimize the risk so as to justify day parole.

Moreover, the National Parole Board Policy Manual, Section 2.1, under the heading "Decisions and Reasons", requires each decision to contain a summary. The Policy Manual requires the summary to include "any special condition(s) the Board members deem reasonable and necessary for the protection of society and facilitating the successful reintegration into society of the offender, and the Board member's assessment and reasons for applying the condition(s)".

Unfortunately, the Decision does not comport with the Policy Manual or s.101(d) of the CCRA because it does not address the viability of special conditions to manage any risk associate with releasing Mr. Latimer into day parole. The failure to comport with s.101(d) is a error of law pursuant to s.147(1)(b) and the failure to comport with the Policy Manual is a failure to apply a Board policy pursuant to s.147(1)(c). Either error is sufficient to overturn the Decision.

It important to note that the evidence before the Board unequivocally supported the proposition that Mr. Latimer is a compliant and well-behaved individual. The evidence demonstrates that Mr. Latimer would abide by any special conditions imposed on his day parole. There is absolutely no evidence to suggest that Mr. Latimer is unwilling or unable to comply with supervisory conditions.

The record revealed that Mr. Latimer has never committed or even been suspected of a single infraction or act of disobedience in the 15 years he has been under the management of the criminal justice system. Not a single breach of bail conditions, failure to appear, prison disciplinary infraction, or hint of a problem while on escorted temporary absence.

The materials before the Board unanimously concluded that Mr. Latimer would abide by any conditions imposed on him, based on Mr. Latimer's record and pattern of compliance and on extensive interviews and questioning of Mr. Latimer by bail supervisors, psychiatrists, psychologist, parole officers and prison authorities during the 15 years that his conduct has been subject to management by the bail and corrections system.

The June 9, 2005 Assessment for Decision prepared by Mr. Latimer's Parole Officer in relation to his application for an escorted temporary absence made the following observation:

> Mr. LATIMER has not incurred any institutional charges or convictions since his incarceration. The Security Intelligence file offers no information to indicate that he is associated with any organized crime group or sub-culture activity. His

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jasongratl@jbglaw.ca

> behaviour has been assessed as consistently appropriate, as are his interactions with staff and other offenders...
>
> ... Mr. LATIMER's security classification remains appropriately assessed as MINIMUM and his risk has been assessed as being LOW for general and violent recidivism, according to psychiatric reports on file. His Reintegration Potential has been assessed as HIGH, also supporting the assessment of a low risk to public safety.

Mr. Latimer's Case Management Team, consisting of UM R. Cawsey, IPO D. Murray and CX-II K. Williams were consulted by Mr. Latimer's Parole Officer in preparing her report.

Similarly, a Correctional Plan Progress Report dated September 21, 2008, prepared by Mr. Latimer's Parole Officer and the Manager of Assessment Intervention states:

> Mr. LATIMER has maintained a low profile and has not incurred any institutional charges during his incarceration... Mr. LATIMER has not required interventions by management or the Security Intelligence Office and he therefore remains appropriately assessed as low in institutional adjustment...

The follow-up Assessment Report dated October 23, 2007 sends the same message with even greater clarity:

> RISK MANAGEMENT – Ottawa Parole Office completed a Community Strategy (CS) (dated 2007-10-18) addressing Mr. LATIMER's day parole and they concur with the writer's stance that he would be manageable in the community. He has been accepted for residency at House of Hope and Kirkpatrick House CRFs in Ottawa and the Community and police representatives for Ottawa also support his Day Parole to Ottawa... ... There are no high risk behaviours in Mr. LATIMER's case and it is anticipated that his behaviour will continue to be appropriate, as it has been during his incarceration and while he was on bail previously...
>
> OVERALL LEVEL OF RISK – Robert LATIMER's overall risk is assessed as being manageable for Day Parole. He has consistently demonstrated that he is able to abide by the rules and regulations within an institution. He has not come to the attention of management or the Preventive Security Officer during his incarceration, nor has he received any institutional charges, or shown any indications of aggression or violence...
>
> DISSENTING OPINION – There are no known dissenting opinions in this case.

The Community Strategy Report prepared by the Ottawa Parole Office concurs that Mr. Latimer presents no risk of non-compliance with the conditions of his parole. The Report deals with the issue in the following words:

> Should the National Parole Board grant Mr. Latimer a Day Parole release to the

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> Ottawa area, it is expected that he will abide by all of the rules and regulations of the CRF where he has been offered accommodation and support. We are not recommending any programming and we are not recommending the imposition of any Special Conditions...
>
> If any Special Conditions are imposed by the National Parole Board, Mr. Latimer will strive to adhere to them as well as the Standard Conditions of his Day Parole noted in his release certificate.
>
> It is also expected that Mr. Latimer will comply with supervision standards including regular meetings with his Parole Officer as prescribed. During his supervision meetings, it is expected that Mr. Latimer will endeavour to be open and honest so that any particular difficulties can be managed in an immediate and forthright manner.

It would be patently unreasonable to conclude in the face of such unanimous and overwhelming evidence that there is a significant risk that Mr. Latimer would fail to comply with any conditions imposed on his day parole.

The Board was required by s.101(d) of the CCRA to make the least restrictive determination consistent with the protection of society. Even if the Board had had a factual basis for concluding that Mr. Latimer presented a danger to vulnerable individuals under his responsibility, the Board erred in law in failing to consider whether special supervisory conditions could sufficiently diminish that risk.

The imposition of such Special Supervisory Conditions would control for any unexpected, unusual and highly unlikely scenario but could perhaps offer protection and comfort to the public while being less restrictive to Mr. Latimer than a continuation of his incarceration.

The Appropriate Resolution of this Case

Mr. Latimer respectfully requests his immediately release by the Appeal Division into day parole. He is indifferent as to whether special conditions are imposed on him, but submits that the material before the Appeal Division indicates that special conditions are unnecessary.

The Appeal Division is empowered under s.147(4) of the CCRA to reverse, cancel or vary the decision, or otherwise order a new review of the case by the Board. Section 147(5) provides that the Appeal Division shall not render a decision resulting in the immediate release of an offender unless it is satisfied that:

> (a) the decision appealed from cannot reasonably be supported in law, under the applicable policies of the Board, or on the basis of the information available to the Board in its review of the case; and

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(b) a delay in releasing the offender from imprisonment would be unfair.

Mr. Latimer respectfully submits that both of these conditions are satisfied.

Firstly, the existing law, Board policy, and available information unequivocally supports Mr. Latimer's release into day parole. Any speculative concerns regarding Mr. Latimer's potential responsibility for disabled or incapacitated individuals can be adequately addressed with the use of special supervisory conditions, if the Appeal Division considers such conditions to be desirable. There is no evidence demonstrating a risk that Mr. Latimer will refuse to comply with special supervisory conditions and much evidence demonstrating that Mr. Latimer will comply with such conditions.

Secondly, any delay in releasing Mr. Latimer from imprisonment would be unfair. According to the Supreme Court of Canada, the purpose of Mr. Latimer's incarceration was to denounce his decision to end the life of his daughter. Mr. Latimer submits that the objective of denunciation has been exhaustively accomplished.

A further period of incarceration would be of no benefit to Mr. Latimer and no benefit to society. In considering whether further incarceration would be unfair to Mr. Latimer, it should be recalled that Mr. Latimer was on bail for eight years before his second conviction and sentence was determined by the Supreme Court of Canada. It should also be recalled that Mr. Latimer's first conviction was overturned as a result of jury tampering by the prosecution, which resulted in a significant and unfair delay in the resolution of his case.

A total of 15 years have passed since Mr. Latimer ended the life of his daughter, and although the public debate about the status of his offence continues, there is no fact, policy or law that would suggest that Mr. Latimer should be denied entry into day parole. On the contrary, the incremental step of releasing Mr. Latimer into day parole is a mandatory and desirable step towards Mr. Latimer's reintegration into society.

In the alternative, Mr. Latimer requests that the Appeal Division order a new review of his case by the Board. Mr. Latimer was unrepresented before the Board and the expression of his case would likely benefit from the advocacy of an assistant.

Sincerely,

Jason B. Gratl

JBG/tim

660 – 220 CAMBIE STREET • VANCOUVER, BC • V6A 2M9
PHONE: 604-694-1919 • FAX: 604-608-1919
jasongratl@jbglaw.ca

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National Parole Board / Commission nationale des libérations conditionnelles

PROTECTED WHEN COMPLETED

FILE NO: See distribution

APPEAL OF NPB DECISION

(pursuant to section 147 of the *Corrections and Conditional Release Act*)

This form is to be completed by the offender or/and his assistant who wish to appeal a decision rendered by the National Parole Board

Appeal Division
National Parole Board
410 Laurier Ave. West
Ottawa, Ontario
K1A 0R1
Fax: (613) 941-0543

Name:	Institution:	FPS No.:
[illegible] c/o Jason Gratl	William Head	712174A

Signature	Date form completed: Year Month Day
	2008 01 23

I wish to receive my correspondence in ➲ ☑ English ☐ French

Decision(s) being appealed:	Date of decision(s): (Time limit for submitting an appeal: 2 months from date of decision(s))
Day Parole Denial December 03 2007	December 3, 2007

The law provides for an appeal that is based on one or more of the following reasons (Check appropriate boxes and specify. See reverse side for explanation of grounds for appeal):

The Board, in making its decision,

☐ a) failed to observe a principle of fundamental justice:

☑ b) made an error of law: see enclosed letter dated January 23 2008

☑ c) breached or failed to apply an NPB policy: n/a

☑ d) based its decision on erroneous or incomplete information: n/a

☑ e) acted without jurisdiction or beyond its jurisdiction, or failed to exercise its jurisdiction: n/a

In order for your appeal to be considered, you must write or type detailed reasons and attach any documents you want the Board to consider. You may use the reverse of this form.

Appeal Division members examine your case from your parole file, read what you send and listen to the tape recording of the hearing, if one is available. Neither you nor anyone who helps you with your appeal will be interviewed.

Role of the Appeal Division

The role of the Appeal Division is to ensure that the law and the Board policies are respected, that the rules of fundamental justice are adhered to and that the Board's decisions are based upon relevant and reliable information.

The Appeal Division reviews the decision-making process to confirm that it was fair and that the procedural safeguards were respected.

The Appeal Division has jurisdiction to reassess the issue of risk to reoffend and to substitute its discretion for that of the original decision makers, but only where it finds that the decision was unfounded and unsupported by the information available at the time the decision was made.