Court File No.

FEDERAL COURT

Between:

KYLE CRAWLEY

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act,* *RSC 1985, c F-7*

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (*place where Federal Court of Appeal (or Federal Court) ordinarily sits*).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(*February 29 , 2024*)

Issued by: (*Registry Officer*)

90 Sparks St

Ottawa, On

K1A0H9

TO: National Parole Board

410 Laurier Ave W

Ottawa, ON

K1A0R1

Attorney General of Canada

284 Wellington St

Ottawa, On

K1A0H8

Application

This is an application for judicial review pursuant to s. 18.1 of the *Federal Courts Act,* RSC 1985, c F-7, for a decision from the National Parole Board, by letter dated February 9, 2024 under his file 321527F. K. Gowanlock imposed several special conditions on Mr. Crawleys long term offender such as ;

- Reside in a specific place (Reside at a CRF approved by CSC
- Internet Restriction
- No contact with children ; ie- not to be in the presence of any children under the age of majority

The applicant makes application for:

1. An order setting aside the decision of the National Parole Board dated February 9, 2024 that the applicant must reside at a specific place.

2. An order changing the decision of the National Parole Board to vary the wording of internet restriction and no contact with children condition as they infringe on Mr. Crawleys section 7 rights.

The grounds for the application are:

1. The applicant , Kyle Crawley (Mr. Crawley is a self represented applicant and a 36 year old male and is a first-time federal offender serving a sentence of 2 years and 6 months plus a 10-year Long Term Supervision Order for Fail to Comply with Probation Order (x13), Fail to Comply with Prohibition Order Under Section 161(1), (x22) and Luring a Child Under 16 (x2).

2. Mr. Crawley and his assistant submitted written submissions to the parole board prior to the LTSO parole board decision in light of the residency term, as well as provided Mr. Crawleys decision from the court of his changed internet restriction order.

3. Unfortunately, the Board did not, in any way, address Mr. Crawleys extensive written submissions. This violated Mr. Crawley's right to be heard, which is a failure to observe a principle of fundamental justice (CCRA s. 147(1)(a)), an error of law (CCRA s. 147(1)(b)), and a breach of Board policy (CCRA s. 147(1)(c)). In addition, imposed wording of internet restriction and wording of no contact with children is a violation of Mr Crawley's section 7 charter of rights.

4. Aside from the issue of not addressing Mr. Crawleys submissions in its written decision, it is questionable whether the Board even read the submissions, because the Board makes several unfounded and inaccurate statements in the decision that were directly contradicted by the submissions and the evidence provided to the Board prior to the decision. (CCRA s. 147(1)(d)), which is also a breach of Board policy (CCRA s. 147(1)(c)).

5. As a result of all of this, the Board's decision was not justified, intelligible, and transparent, which is an error of law (CCRA s. 147(1)(b)) and, again, a breach of Board policy (CCRA s.147(1)(c)).

The Board's decision is not justified, intelligible, and transparent and is unreasonable.

6. In Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65, the Supreme Court of Canada confirmed that administrative decisions must be "justified, intelligible, and transparent" (at para 86). The Court outlined, at para 102: the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived". .... Reasons that "simply repeat statutory language, summarise arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgement"

7. A decision is unreasonable if, read holistically, the reasons fail to reveal a rational chain of analysis or reveal the decision was based on an irrational analysis (para 103). The level of reasons required depends on many factors, including the impacts on the affected individual, at paras 133, 135:

...Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood. Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of facts and law.

8. Decisions affecting the conditions of an inmate's release, particularly where those conditions include residency (which is a deprivation of liberty the inmate would have been entitled to in the absence of such a condition) have particularly significant consequences on the life, liberty, dignity and livelihood of offenders. Since the decisions of the Parole Board have greater impacts than the decisions of most other boards and tribunals which are subject to the Vavilov framework, inmates should be entitled to the highest level of justification in decisions affecting their liberty. The Board Member's reasons in this case do not meet the level of justification required in the circumstances.

9. First, the decision cannot be said to be properly justified because the Board did not grapple with key issues and important submissions made by Mr. Crawley and his assistant.The Board also relied on erroneous information in direct contradiction to evidence provided to it along with the written submissions. Further, the board mentions ,While your behaviour during your bail period demonstrates that you are capable of compliance on a condition release (although you did breach early on), this is a different circumstance where your guilt had not been adjudicated, Further , the board must balance your recent bail period with your prior history on community supervision..." (Parole decision dated Feb 12,2024 pg 9).

10. This questions the analysis of how the board came to the conclusion to impose a residence condition; The board did not acknowledge Mr. Crawley has even taken passes at his residence, did the board take this into consideration? Why is Mr. Crawleys extensive bail period of compliance just dismissed, further when Mr. Crawley was guilted in 2019 but was on bail until September 2021? In addition, how does Mr. Crawleys residence with his wife provide less supervision than the CRF? Further, the judge or crown did not bring forward an application to revoke Mr. Crawleys bail after he was guilted and left Mr. Crawley on bail while he was subject to a DO application? It is clear that the board mentions the bail period, but is quick to dismiss it, further if it must balance the bail period/ community supervision vs prior history where did it come to conclude residency is necessary and reasonable? How did the board conclude 365 days of residency was needed to protect society and integrate Mr. Crawley? Given that Mr. Crawley has not offended since 2016. During this, a bail period that Mr. Crawley was successful under Ms. Fidlers supervision, Mr. Crawley has

been successful in the community and also at his residence as of recent , the board suggests that Mr. Crawleys progress through programming and treatment is relatively new, however , file information suggests that Mr. Crawley has taken counselling on his own that must of had some progress to suggest Mr. Crawley has not had new offences. The board also suggests Mr. Crawley requires supervision beyond what his wife can sustain or offer, however compliance of a long bail period and that in written submissions Mr. Crawley can be monitored electronically suggests otherwise.

11. Unfortunately, the Board did not, in any way, address Mr. Crawleys extensive written submissions. This violated Mr. Crawley's right to be heard, which is a failure to observe a principle of fundamental justice (CCRA s. 147(1)(a)), an error of law (CCRA s. 147(1)(b)), and a breach of Board policy (CCRA s. 147(1)(c)).

12. Aside from the issue of not addressing Mr. Crawleys submissions in its written decision, it is questionable whether the Board even read the submissions, because the Board makes several unfounded and inaccurate statements in the decision that were directly contradicted by the submissions and the evidence provided to the Board prior to the decision. (CCRA s. 147(1)(d)), which is also a breach of Board policy (CCRA s. 147(1)(c)). As a result of all of this, the Board's decision was not justified, intelligible, and transparent,which is an error of law (CCRA s. 147(1)(b)) and, again, a breach of Board policy (CCRA s.147(1)(c)).

13. "Previously you provided written representations in which you object to the imposition of a residency condition as well as the wording of the special condition not to be near areas where children congregate. Based on your recent submission, it appears that you maintain this position" (PBC decision dated Feb 12 2024 pg 9-13)
"The board was provided with a written decision from the Ontario court of Justice without further context. This decision was dated December 13, 2023. The court denied your application to remove the internet restriction it had previously imposed" (PBC decision dated Feb 12 2024 pg 9-13)
These two statements suggest that Mr. Crawleys written submissions were not read. Mr. Crawley sent written submissions which are included in this document where he objected to the residency condition. The special condition for near areas was changed in a parole appeal in which was explained in written submissions- not challenged again. The internet restriction change was given to

the board in written submissions and in written submissions it also said , "Attached : Letter from Mr. Crawley that he has written and I have typed for him Mr. Crawleys recent change to his prohibition 161 to add to file" (Written submissions dated December 24, 2023). Further, the decision for the prohibition change was dated December 11, 2023 and nowhere does it say "denied". This again, further questions whether submissions were read in full and taken into consideration, as the order is clear that it was granted and changed.

14. Furthermore, it suggests that again Mr. Crawleys submissions were not read as there is no mention of Mr. Crawley ever being at his residence for weekend passes, further it questions if written submissions were read , "File information notes you acknowledge having difficulties managing your sexual urges" (Parole decision Feb 12 2024 pg 7-13) and goes on further, "While you have indicated a willingness to take high potency sex-drive reducing medication ... this seems consistent with your pattern of behaviour that includes expressions of good intentions without the necessary follow through" (Parole decision dated Feb 12, 2024 Pg 10-13) . If written submissions were read Mr. Crawley explains how he felt in the past and how he has taken the steps to further minimise his risk. Importantly, no other programming was recommended and there have been no new sexual offences since February 2016. Further, the parole board suggests that Ms. Fidler may not be able to sustain or offer the supervision needed for Mr. Crawley, however, written submissions explained that the CRF does not provide more supervision. The CRF does not search Mr. Crawley, or his room which could question, how would the CRF know if Mr. Crawley had a device , or was accessing the internet?

15. All of this violated Mr. Crawley's right to be heard. As outlined by the Supreme Court in Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65, at paragraph 128: Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (Newfoundland Nurses, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralysing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties

may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: Baker , at para. 39. [Emphasis added.]

This passage was referenced in Farrier c Canada (Procureur general), 2020 FCA 25, in which the Federal Court of Appeal held that the PBC Appeal Division's reasons were insufficient because key issues or central arguments raised were not addressed in the decision. This case confirms that Vavilov has raised the standard for decision-makers to justify their decision—
decisions that may have previously been acceptable may not under the Vavilov regime. Mr. Crawley submits that the decision in his case is not consistent with the standards set in Vavilov.

16. The PBC Decision-Making Policy manual also requires the Board to address the offender's submissions (PBC Decision-Making Policy manual, 3rd ed, Policy 2.1 – Pre-Release Decision Making, s. 15(f)).

17. In the circumstances of this case, the Board's complete failure to address any of the submissions made by Mr. Crawley violated Mr. Crawley's right to be heard, which is a failure to observe a principle of fundamental justice, an error of law, and a breach of Board policy. A new decision is required to remedy this.

18. **The parole board decision to impose residency is based on erroneous or incomplete information**

"Your release plan is to reside with your wife... A community assessment dated October 6,2023 indicates you have been taking weekend passes with your wife at a hotel as the approval for her residence is pending. She keeps her computer locked up and password protected"

This is based on erroneous information and incomplete information as it was brought forward in written submissions, as well as in the parole office EVD (Dec 12, 2023) that Mr. Crawley has been taking weekend passes at his residence for now five months and there were no issues. The lack of further information on Mr. Crawleys release plan that was not even included in the parole board decision suggests that all information in front of the parole board past October 2023, were not taken into consideration, or even read.

This raises a question if the parole board took into consideration that Mr. Crawley has even been at his residence on weekend passes yet, or even have taken anything past October 2023 into consideration.

In Côté c Canada (Procureur général) (a judicial review of a decision of the Appeal Division of the then National Parole Board), the Federal Court stated that s. 147(1)(d) requires that the Board, before making a decision on releasing an inmate, must have all the relevant information in the inmate's file so that it can make an enlightened and fair decision (Côté c Canada (Procureur général), 1999 CarswellNat 2190 at 7). Board policy also requires the Board to consider "all relevant available information" (PBC Decision-Making Policy manual, 3rd, Policy 1.1 – Information Standards for Conditional Release Decision-Making, s. 1; Policy 2.1 – Pre-Release Decision Making, s. 1; Policy 6.1 – Release Conditions, s. 2).

19. *Term " No contact with children"- There is no objection by myself that this is fair, however, there is a least restrictive term that is used in my 161 prohibition; Not to communicate with children under 16. The issue with the parole term as it is worded as , " Not to be in the presence of any children under the age of majority and not to have any communication or contact…."*

This violates Mr. Crawleys charter right section 7; Right to life, liberty and security of the person. The way this term is written it means that Mr. Crawley must fear and stress by accidently breaching this term as presence refers to being in a certain place at a certain time. This is overbroad as it goes beyond the purpose of preventing Mr. Crawley from communication with children under the age of 18. This term can be taken differently depending on an officers view. Mr. Crawley could simply be grocery shopping and a child comes down an aisle, as well as Mr. Crawley has to fear if only one checkout is open and question whether this person is above 18 years of age and if uncertain , at this point the violation would have already occurred. Further, at the CRF location, Mr. Crawley must rely on public transit which is likely to put him in the presence of someone under the age of 18. This limits Mr. Crawleys life and liberty as he cannot apply for certain jobs, work at jobs that hire under 18 years of age, or even attend a hospital as children are easily expected to be everywhere in society. R v Heywood,

[1994] 3 S.C.R. 761, where a majority of the Court struck down section 179(1) of the Criminal Code, which made it an offence for someone convicted of certain sexual offences to be "found loitering in or near a school ground, playground, public park or bathing area". The section was found to violate Charter, specifically the section 7 (the right to life, liberty, and security of the person), as the offence was unconstitutionally overbroad and could not be saved under section 1.Justice Cory concluded that "[i]t applies without prior notice to the accused, to too many places, to too many people, for an

indefinite period with no possibility of review", and in doing so "[i]t restricts liberty far more than is necessary to accomplish its goal". This is the same situation for Mr. Crawley as this term involves Mr. Crawley being prevented from several places and children are everywhere. This term can be mirrored to Mr. Crawleys 161 order term "Not to communicate with children under the age of 16". It can be argued, Mr. Crawleys parole supervisor can give Mr. Crawley written permission, however, this would mean Mr. Crawley requires permission to go anywhere due to the overbroad and vague term. Therefore, this infringes on Mr. Crawleys liberty and life as he must live in constant fear , stress wherever he goes.

20.Mr. Crawley has had his internet 161 prohibition changed December 16, 2023 which was the same argument, where the attached prohibition change is included in this review. The issue Mr. Crawley is facing now is that the way this term is written, Mr. Crawleys parole supervisor must approve in writing any internet access and Mr. Crawleys parole supervisor will not give Mr. Crawley internet access even for job searching, or banking. The only access Mr. Crawley has been granted zoom access for counselling. This further violates Mr. Crawleys right to life and liberty as Mr. Crawley cannot function in everyday life.

Of great importance, the parole officer requires Mr. Crawleys cell phone billing that Mr. Crawley cannot access online, which is the only method, therefore, leaving Mr. Crawleys wife to send these details. This term allows internet at the discretion of Mr. Crawleys parole officer which has resulted in Mr. Crawleys rights being violated as it is overvague. Mr. Crawley asks if this term can be changed so that he can function in everyday life but also still maintain society's paramount intention to restrict Mr. Crawleys access to communicate with children under age 16.

21. The internet term is unconstitutional, overbroad and variated term can also serve the purpose of protecting children and also allow Mr. Crawley to function in day to day life.

R v. Brar 20] In her reasons for imposing such a broad s. 161(1)(d) order, the sentencing judge acknowledged the hardship the order would cause to the appellant and also noted that it would impose a limit on his employment opportunities. She did not, however, seek to tailor the order to carefully respond to Mr. Brar's specific circumstances, nor to relate the terms of the order to the type of risk Mr. Brar poses. In fairness to the sentencing judge, she did not have the benefit of the Supreme Court's decision in K.R.J.

[21] Mr. Brar's offending conduct consisted of contacting teenaged children via social

networks on the Internet for the purpose of luring them into having sexual relations with him in purported exchange for payment. A prohibition on any further contact with youth via the Internet, for any purpose, is captured by the prohibition order imposed under the former version of s. 161(1)(c). The parties agree that such an order should be put in place in substitution for the s. 161(1)(c) order imposed by the sentencing judge that has been found to be unconstitutional in K.R.J.

24] In modern life, at least some form of access to the Internet is simply unavoidable for innocent purposes such as accessing services and finding directions. In many homes the telephone operates using the Internet, rather than traditional telephone wires. Simply placing a phone call from one such residence would put the appellant in breach of the s. 161(1)(d) order. Further, as Karakatsanis J. stated in K.R.J., at para. 54, "depriving an offender under s. 161(1)(d) of access to the Internet is tantamount to severing that person from an increasingly indispensable component of everyday life". Internet is used for such commonplace activities as shopping, corresponding with friends and family, transacting business, finding employment, banking, reading the news, watching movies, attending classes and so on.

[25] While I acknowledge, as noted by the Crown, that the court has the power to vary as. 161 order on application of the offender or prosecutor, such a variation requires a change of circumstance and imposes a significant burden on the offender. Variation of prohibition orders under s. 161(3) is not a matter of course but requires a full hearing. The fact that s. 161 orders may later be varied does not justify imposing orders that create overbroad or unreasonable restrictions on an individual's liberty.

[26] In the present case, I agree that because of the nature of the offences and Mr. Brar's conduct, the imposition of a s. 161(1)(d) order is warranted to minimize the risk Mr. Brar poses to children. Imposing strict limits on Mr. Brar's Internet use will reduce the likelihood of his offensive conduct occurring again in the future. However, given the myriad of innocent and perhaps unavoidable activities for which some Internet use may be required, the virtually unconditional prohibition on any Internet use imposed by the sentencing judge for a period of 20 years is, in my view, demonstrably unfit and unreasonable in the circumstances. I do not view a total prohibition on all Internet use other than "at employment" as being necessary to advance the objective of protecting children, nor will it meaningfully assist in preventing the conduct already captured by the order imposed under the former s. 161(1)(c). This court is reluctant to impose a prohibition so harsh as to unreasonably hinder Mr. Brar's rehabilitation

efforts and so broad as to make a breach almost inevitable with the attendant criminal consequences under s. 161(4).

[27] Further, I agree with the appellant's submissions that the sentencing judge erred in imposing a prohibition on owning or using a smart phone, tablet or any mobile device with Internet capabilities. Section 161(1)(d) permits the courts to prohibit Internet use but does not provide the court with the power to restrict ownership of such Internet capable devices. Nor should such a power be inferred.

[28] As a result, I would substitute the sentencing judge's s. 161(1)(d) order with an order which imposes restrictions on Mr. Brar's use of the Internet tailored along the lines of the order imposed in R. c. Perron. Specifically, Mr. Brar will be prohibited from accessing any illegal content and from participating in any manner in any social network, online forums or chat rooms.

C. DISPOSITION

[29] For these reasons, I would allow the sentence appeal in part and strike the prohibition order made by the sentencing judge under ss. 161(1)(c) and (d) and substitute the following:

1) Pursuant to s. 161(1)(c) of the Criminal Code, for a period of 20 years following his release from custody Mr. Brar will not use a computer system within the meaning of s. 342.1(2) for the purpose of communicating with a person under the age of 16 years, except for immediate family members.

2) Pursuant to s. 161(1)(d) of the Criminal Code, for a period of 20 years following his release from custody Mr. Brar will not use the Internet or any similar communication service

to:

a) access any content that violates the law;

b) directly or indirectly access any social media sites, social network, Internet discussion

forum or chat room, or maintain a personal profile on any such service (e.g. Facebook,

Twitter, Tinder, Instagram or any equivalent or similar service).

Mr Crawley asks that the internet term wording be changed to mirror his 161 order as the way it is written his parole officer is offering no access therefore Mr. Crawleys rights are still being violated.

Further grounds for this application include

22. The *Federal Courts Act,* RSC 1985, c F-7 , including section 18.1

23. The wording of internet restriction and communication with children conditions violate Mr. Crawleys Section 7 Charter of rights

24. The parole board failed to observe the principle of fundamental justice (CCRA s147 1a). Further, the parole board erred in law and their decision was a breach of board policy CCRA S. 147 1(C).

25. Mr. Crawleys right to be heard was violated as there is a question whether written submissions were even read.

26. The applicants application for judicial review has merit

27. The applicant wishes that the court observe the principles of Natural Justice relevant in this case to allow the applicant to be heard by the court; and

28. Such further and other grounds as the applicant may advise and this Honourable Court may permit.

The application will be supported by the following material

- The National Parole Board's decision dated February 9. 2024
- Written submissions submitted to the board prior to decision by Mr. Crawley and assistant

The applicant requests that the Parole Board send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the parole board to the applicant and to the registry:

1. Any and all records considered by the decision- maker(s).

ALL OF WHICH IS RESPECTFULLY SUBMITTED February 29, 2024

By: 

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The applicant