Federal Court  Cour fédérale

Date: 20200212

Docket: T-1039-19

Citation: 2020 FC 237

Ottawa, Ontario, February 12, 2020

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

HAYAN YASSIN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision of the Parole Board of Canada [PBC] Appeal Division [Appeal Division] affirming the PBC's decision to revoke the Applicant's statutory release pursuant to subparagraph 135(5)(a)(ii) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [*CCRA*].

II. Facts

[2] The Applicant is a 34-year-old male who was sentenced to 10 years in prison for violent sexual assaults on two university age female students who were strangers to him [Index Offences]. He was convicted of kidnapping and sexual assault in respect of one victim, and forcible confinement and sexual assault of his second victim. He approached both victims near the universities in Waterloo, Ontario. The particulars of these crimes are summarized by the PBC in its decision to revoke the Applicant's statutory release [PBC Decision]:

> In October 2010, you offered two intoxicated people a ride in your car, but after you made inappropriate sexual comments, they asked to be let out. You stopped, pushed the man out, and drove to an isolated area where you forced vaginal and anal penetration on the woman. You left her there after she feigned unconsciousness. In November 2010, you grabbed a teenage woman walking in her neighbourhood and forced her into a truck. You threatened her with a knife and a needle, and forced vaginal and anal penetration. You then took her to a coffee shop and told her to clean up. She invited you to her home, but took you to a friend's house instead and slammed the door in your face. Both these assaults took place near the local universities and both women were students. You did not receive bail. You initially denied the offences, indicating it was consensual, but later admitted to making incorrect cultural assumptions about the first woman, and assaulting the second one because you got away with the first assault.

[3] The sentencing judge described these two crimes as "prolonged, deliberate and horrific".

[4] On May 10, 2018, the Applicant was released on statutory release subject to special conditions that he reside at a Community Residential Facility [CRF], abstain from drugs and alcohol, avoid drinking establishments, avoid contact with the victims or their families, respect a

curfew and not be permitted overnight leave. The Board also imposed the following additional special conditions:

a) Pornography restriction: "Not to purchase, acquire, possess or access pornography or sexually explicit material in any form or type of media";

b) Follow treatment plan: "Follow treatment plan / program to be arranged by your parole supervisor in the areas of sexual violence, attitude and substance abuse";

c) Report relationships: "Immediately report any attempts to initiate intimate sexual and non-sexual friendships with females to your parole supervisor"; and

d) Report relationships: "Request permissions from your parole supervisor prior to using online dating websites, services or mobile device application".

[5] The Applicant was also subject to standard conditions including:

a) "On release, travel directly to your place of residence, as set out in your release certificate, and report to your parole supervisor immediately and thereafter as instructed by your parole supervisor";

b) "Obey the law and keep the peace"; and

c) "Inform your parole supervisor immediately on arrest or on being questioned by the police".

[6] As a result of several troubling events that occurred between June, 2018 and September, 2018 (outlined in detail in the PBC Decision, reproduced below), the Applicant's statutory release was suspended. Thereafter Correctional Service Canada [CSC] recommended the Applicant's release be revoked.

[7] On November 30, 2018, the PBC held a hearing to decide if the Applicant's release should be revoked. The PBC had a number of documents before it, including the Assessment for Decision dated October 11, 2018, prepared by the Applicant's parole officer, which reported the Applicant was seen visiting locations near the local Waterloo-Kitchener universities with increasing frequency, and was also seen wearing university branded pants:

> On September 19, 2018 the undersigned men with offender YASSIN at his work site in Waterloo for a supervision interview. The offender was dressed in a white t-shirt and was wearing track pants with a University of Waterloo logo. This writer found this concerning, given that university attire can only be purchased at campus bookstores and YASSIN's victims were both female university students with the offences occurring or commencing within close proximity to Wilfrid Laurier and University of Waterloo. YASSIN was asked about this attire at a later date, during the post suspension interview (see below).
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> The offender was also asked why he was wearing University of waterloo track pants during the last supervision interview and if he was attempting to misrepresent himself as a student. He denied this was his intent and said he had purchased the pants at a store in Kitchener, and that he did not even really look at the logo on them.
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> …
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> Also following the offender's post suspension interview this writer reviewed his CRF call in logs in detail from his release in May until his suspension in September. A clear pattern is noted beginning in September 2018 when the offender began regularly signing out to locations on University Avenue in Waterloo, near both the Wilfrid Laurier and University of Waterloo campuses. For the months previous (from May to August) there are only a few sign-outs to locations in this area. There are 11 separate occasions where offender YASSIN signed out to these locations for varying lengths of time between September 1 and September 17. In one particular instance on September 8, 2018, YASSIN was at Goodlife Fitness on 589 Fairway Rd S in Kitchener. At 1035 hours he called in that he is leaving Fairway Rd S in Kitchener and going to Williams Fresh Café on University Avenue in Waterloo. YASSIN is at this location for approximately 33 minutes before returning to New Directions. There is a Williams Fresh Café

located on 340 Fairway Rd S in Kitchener just down the street from Goodlife Fitness, yet the offender chose to travel all the way across Kitchener and enter Waterloo to go to the same business. This change in the offender's sign out patterns the CRF appear coincide with him obtaining his G1 driver's licence on August 24 and with university students returning to school in September. There are concerns with this information as YASSIN's sign-outs became clearly focused on locations heavily frequented by university students during the month of September. YASSIN was not frequenting these locations previously during summer months. File information notes the index offences occurred in the exact same vicinity 8 years ago, and both of his victims were female university students. YASSIN's offence cycle includes forcibly confining and sexually assaulting university aged females and it cannot be ignored that this could potentially be an indicator of a return to that offence cycle. This along with the offender's decision to wear University of Waterloo track pants remains concerning to CSC.

…

The offender was asked about his sign out locations, specifically that while he did sign out to locations near the universities occasionally between May and August, there was a notable increase in the month of September. YASSIN replied that he was familiar with the locations in question and specifically mentioned Shawarama King, Booster Juice and Williams Café. He said anytime that he was at these locations he was with his brother, his friend Kadom, or one of his parents. This writer discussed one specific example on September 8 where the offender signed out from Goodlife in Kitchener then went to Williams Fresh Café on University Avenue in Waterloo, when a Williams location was just down the road from his gym in Kitchener. YASSIN stated that Williams was his favourite coffee shop. This writer asked why there was an increase in the frequency of his sign-outs in the month of September when university students returned to school and YASSIN explained it was because he was not working much in the month of September. However, CRY sign-out logs show that all but one of these sign-outs (September 10, 2018) to these locations in September occurred either after normal working hours during the week or on weekends.

[Emphasis added]

[8] Thereafter the PBC revoked the Applicant's statutory release finding the Applicant would present an undue risk to society if released on statutory release. The PBC Decision is as follows:

> After taking the following information into consideration, the Board has decided to revoke your statutory release.
>
> At 33, you are serving a 10-year sentence for Sexual Assault with a Weapon, Forcible Confinement, Sexual Assault Causing Bodily Harm, and Kidnap - Unlawfully Confine. The judge also imposed a lifetime weapon prohibition and a twenty-year sex offender registration.
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> In October 2010, you offered two intoxicated people a ride in your car, but after you made inappropriate sexual comments, they asked to be let out. You stopped, pushed the man out, and drove to an isolated area where you forced vaginal and anal penetration on the woman. You left her there after she feigned unconsciousness. In November 2010, you grabbed a teenage woman walking in her neighbourhood and forced her into a truck. You threatened her with a knife and a needle, and forced vaginal and anal penetration. You then took her to a coffee shop and told her to clean up. She invited you to her home, but took you to a friend's house instead and slammed the door in your face. Both these assaults took place near the local universities and both women were students. You did not receive bail. You initially denied the offences, indicating it was consensual, but later admitted to making incorrect cultural assumptions about the first woman, and assaulting the second one because you got away with the first assault.
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> You came to Canada from Iraq with your family when you were in your late teens, and became a citizen. You did not complete school, resided with your family, and experienced depression from the stress of having to support them.
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> You have no other criminal record.
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> The General Statistical Information on Recidivism risk assessment tool rated you as a low risk for reoffending in the three years following release. The specialized sex offender assessment, dated 2012, rated you as a high risk for sexual offending and the September 2016 psychological risk assessment rated you as a low-moderate risk for general and violent recidivism. The latter report noted you engage in impression management.

The Board denied day and full parole in June 2017, noting that your insight into your risk factors for sexual offending was recent and you had no suitable release plan.

You were statutorily released on May 10, 2018, and resided at a Community-based Residential Facility (CRF) in Guelph, as per your residency condition, The Board also imposed special conditions that you abstain from drugs and alcohol, avoid drinking establishments, have no contact with the victims or their families, respect a curfew, not have pornography, report your relationships and use of online dating, and follow a treatment plan. The Board did not permit overnight leave.

You began working in your brother's company, where you were given a travel pass but required to be in his presence at all times.

Within two weeks, you began pushing for having overnight leave and mentioned appealing your residency condition. Correctional Service of Canada (CSC) told you that they would consider recommending it be removed after six months of stability.

You were also put on electronic monitoring, and began the Community Maintenance Program (CMP).

In June 2018, your parole officer asked to see your phone, which contained two photos of women in minimal clothing, and links to videos about workouts that included women in minimal clothing, You described watching them for instruction, and that some things were your brother's from before he gave you his phone. There were also numerous selfies, which you explained as being for workout purposes. You were cautioned about having content that was borderline sexually explicit, and that you should obtain a new phone, or erase your brother's, as you were responsible for all content.

In August 2018, a number of problems developed. You disclosed that you had registered for a hookup website, and were instructed to delete your account. The CRF had concerns about you smoking in your room against their rules. You operated a motorcycle, without a helmet or a valid licence, after which you were confined to the CRF, and at a disciplinary meeting you explained that you weren't thinking. Your release was maintained but your parole officer reminded you that subsequent violations would likely result in suspension. You obtained your first learner's driver's licence on August 24.

You successfully completed CMP in September 2018 and the final report noted that you maintained your ability to manage your risk factors at moderate or good levels. The facilitator noted that you indicated you were lonely and had a long term plan to relocate to Iraq to find a wife where no one knew your history. Your parole officer noted that you did not appear to have developed any additional victim empathy in a subsequent conversation.

On September 20, 2018, CRF staff observed you leave the facility on foot and enter a nearby parking lot instead of being picked up by a family member as normal. Police later pulled you over while you were driving one of your brother's company trucks, and ticketed you for not having a valid licence. Your release was suspended and you were arrested.

At the post-suspension interview, you described having your brother drop you off at your parents' home from work so you could change clothes and attend a program session, and that you had driven yourself to the CRF and parked in a nearby high school parking lot to hide the vehicle. You denied ever driving alone on any other occasion. Your supervisor also commented about recently noticing you wearing clothing with the logo of a local university, and you denied attempting to appear to be a student or having purchased it on campus.

During collateral contact with your brother, he described that he had not dropped you off but let you take one of the company trucks by yourself right from the work site.

Police surveillance that day noted that you had also been driving your parents' car, had attended locations you never reported to the CRF, and had driven that car from your work site to your parents' home, contrary to both you and your brothers previous explanations. The police also reported having pulled you over for speeding on September 4 and giving you a ticket on September 13. You had been properly accompanied by another driver that time, but had not reported the ticket to Correctional Service of Canada (CSC).

Additionally, a review of your CRF sign-outs revealed a new pattern developing in September, of you attending locations close to the two local university campuses, in proximity to the site of your assaults.

During a phone call for further discussion, you explained that you had attended locations near the university as it was where you had always met with your friends. You denied being in any

relationships. You also initially denied driving your parents' car, but disclosed it as the call was wrapping up.

The CMP facilitator recommended that you repeat maintenance, due to the circumstances of your suspension.

You did not provide a specific release plan, but have previously mentioned you would like to reside with your parents and continue working for your brother or open your own residential painting business. You have lost the support of the CRF. CSC also notes that your brother does not appear to be truthful with them.

CSC recommends that your release be revoked, due to your attitude of entitlement, your lack of accountability and transparency, and not abiding by traffic regulations or CRF rules.

The Board had a lengthy discussion with you today in which we reviewed your inability or unwillingness to meet expectations and follow rules. We discussed a series of incident or issues and while no one incident would necessarily lead to a revocation, the combination of actions and decisions in a variety of circumstances lead the Board to conclude that your risk has become undue.

The Board assessed your risk against the backdrop of your sexual offending that was most violent and caused lasting harm. In those crimes you demonstrated a disregard for others, an inability to control impulsive behaviour, a lack of consequential thinking and an unwarranted sense of entitlement. Your negative and difficult behaviour while on statutory release, which pales in comparison to the index crimes, is nonetheless very similar in that you continue to act impulsively, lack consequential thinking, have a disregard for the safety of others and again demonstrated an attitude of entitlement. While you took responsibility for your actions and decisions, you tended to minimize the significance of the behaviour and struggled to link it to the risk factors in your case.

Despite your successful program completion and despite numerous conversations with your community parole officer, you continue to struggle with issues of insight and understanding.

When challenged by the Board, you at times seemed to be guessing at your answers and you appeared more focused on saying what you believed the Board wanted to hear as opposed to focusing on candid and straightforward responses. Even when discussing minor issues, you tended to minimize your responsibility. You advised that things like provocative female photos on your phone were an accident or that your efforts and interest in registering with a

> "hookup" website were ill informed and you were in fact looking for a relationship and didn't understand the significance of that particular sight.
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> Your issues of driving while unlicensed and absent the brother who was supposed to be with you were compounded by your less than forthright responses to your CPO and CRF staff. You hid and then minimized your behaviour and in doing so demonstrated you were unwilling to obey the law or the special conditions of your statutory release. Your admission today, that you didn't believe you would get caught was perhaps the most honest and candid comment throughout your hearing.
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> As the Board noted throughout your hearing, the ability to be candid and transparent with those charged with your supervision were key to your success on statutory release. The violent nature of your offending warrants the closest of supervision in your case Your willingness and ability to deceive and manipulate is of great concern and in the Boards view elevates your risk to the point of being undue. As a consequence, you statutory release is revoked.
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> It is the Board's opinion that you will present an undue risk to society if released on statutory release and that your release will not contribute to the protection of society by facilitating your reintegration into society as a law-abiding citizen.

[9] The Applicant appealed the PBC Decision to the Appeal Division.

[10] On May 27, 2019, the Appeal Division affirmed the PBC Decision to revoke the Applicant's statutory release [Appeal Decision]. The Appeal Division found no ground to intervene, and concluded:

> ***Conclusion:***
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> Having reviewed the materials in this matter, the Appeal Division concludes that the Board acted reasonably in rendering its decision to revoke your statutory release. Its decision was based on information that is considered to be relevant and persuasive, you had sufficient opportunity to provide clarifications to issues posed by the Board at your hearing, and the Board did not rely on erroneous or incomplete information. Further, the Board acted

> wholly within its statutorily-defined jurisdiction in making this decision.
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> For these reasons the Appeal Division affirms the Board's decision of November 30, 2018 to revoke your statutory release.

III. Issues

[11] The only issue the Applicant submits for determination is whether the PBC Decision and Appeal Decision are reasonable.

IV. Standard of review, statutory framework and jurisprudence

A. *Standard of review*

[12] This application for judicial review was heard shortly after the Supreme Court of Canada decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, majority reasons by Chief Justice Wagner [*Vavilov*], and *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, majority reasons by Justice Rowe [*Canada Post*]. The parties made their original submissions under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] framework.

[13] I invited the parties to make submissions regarding the application of the standard of review analysis in *Vavilov*. The Court will apply the standard of review framework set out in *Vavilov* and *Canada Post*.

[14] As to the standard of review, in *Canada Post* Justice Rowe said that *Vavilov* sets out a revised framework for determining the applicable standard of review for administrative decisions. The starting point is a presumption that a standard of reasonableness applies. This presumption may be rebutted in certain situations, none of which apply here. Therefore, the PBC Decision and Appeal Decision are reviewable on a standard of reasonableness.

[15] In this case, because the Appeal Division affirmed the PBC Decision, judicial review requires the Court to look at the reasonableness of the underlying PBC Decision. Those reasons are entitled to considerable deference. As stated by Justice McVeigh in *Maldonado v Canada (Attorney General)*, 2019 FC 1393 at para 18 [*Maldonado*]:

> [18] Since the Appeal Division affirmed the Board's decision to detain, I am judicially reviewing the Appeal Division's decision but I should also look to the reasonableness of the Board's underlying decision in this context (*Cartier v Canada (Attorney General)*, 2002 FCA 384 at para 10). The Board and the Appeal Division are to receive "considerable deference" in their conclusions related to release from custody (*Fernandez v Canada (Attorney General), 2011 FC 275 at para 20* [*Fernandez*]).

[16] Reasonableness review is both robust and responsive to context: *Vavilov* at para 67. The required reasonableness review must respectfully look at both the decision-maker's reasoning process and the outcome: *Vavilov* at para 83. The reviewing court must put the reasons first: *Vavilov* at para 84. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. Reasonableness review also requires the court to consider whether the decision as a whole is reasonable in light of the constraints imposed by the legal and

factual context: *Vavilov* at para. 90. These elements of a reasonable decision are summarized by Justice Rowe in *Canada Post*:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100). […]
>
> [34] The analysis that follows is directed first to the internal coherence of the reasons, and then to the justification of the decision in light of the relevant facts and law. However, as *Vavilov* emphasizes, courts need not structure their analysis through these two lenses or in this order (para. 101). As *Vavilov* states, at para. 106, the framework is not intended as an invariable "checklist for conducting reasonableness review". […]

[17] The burden is on the party challenging the decision to show that it is unreasonable. Reasons must not be assessed against a standard of perfection, and, as before *Vavilov*, a reasonableness review is not a "line-by-line treasure hunt for error". To be reasonable, a decision must be based on reasoning that is both rational and logical: *Vavilov* at para 102. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. *Vavilov* instructs:

> [91] A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside: *Newfoundland Nurses*, at para. 16. The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.
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> …
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> [100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.
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> [102] To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line

> treasure hunt for error": *Irving Pulp & Paper*, at para. 54, citing *Newfoundland Nurses*, at para. 14. However, 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": *Ryan*, at para. 55; *Southam*, at para. 56.

(1) Statutory framework

[18] The guiding principles for conditional release are set out in sections 100, 100.1 and 101 of the *CCRA*. The protection of society is the paramount consideration for the PBC in the determination of all cases, according to section 100.1:

Purpose of conditional release	**Objet**
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.	**100**. La mise en liberté sous condition vise à contribuer au maintien d'une société juste, paisible et sûre en favorisant, par la prise de décisions appropriées quant au moment et aux conditions de leur mise en liberté, la réadaptation et la réinsertion sociale des délinquants en tant que citoyens respectueux des lois.
Paramount consideration	**Critère prépondérant**
100.1 The protection of society is the paramount consideration for the Board and the provincial parole boards in the determination of all cases.	**100.1** Dans tous les cas, la protection de la société est le critère prépondérant appliqué par la Commission et les commissions provinciales.

Principles guiding parole boards

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;

Principes

101 La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes suivants:

a) elles doivent tenir compte de toute l'information pertinente dont elles disposent, notamment les motifs et les recommandations du juge qui a infligé la peine, la nature et la gravité de l'infraction, le degré de responsabilité du délinquant, les renseignements obtenus au cours du procès ou de la détermination de la peine et ceux qui ont été obtenus des victimes, des délinquants ou d'autres éléments du système de justice pénale, y compris les évaluations fournies par les autorités correctionnelles;

b) elles accroissent leur efficacité et leur transparence par l'échange, au moment opportun, de renseignements utiles avec les victimes, les délinquants et les autres éléments du système de justice pénale et par la communication de leurs directives d'orientation générale et programmes tant aux victimes et aux délinquants

	qu'au grand public;
(c) parole boards make the least restrictive determinations that are consistent with the protection of society;	**c)** elles prennent les décisions qui, compte tenu de la protection de la société, sont les moins privatives de liberté;
(d) parole boards adopt and are guided by appropriate policies and their members are provided with the training necessary to implement those policies; and	**d)** elles s'inspirent des directives d'orientation générale qui leur sont remises et leurs membres doivent recevoir la formation nécessaire à la mise en oeuvre de ces directives;
(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.	**e)** de manière à assurer l'équité et la clarté du processus, les autorités doivent donner aux délinquants les motifs des décisions, ainsi que tous autres renseignements pertinents, et la possibilité de les faire réviser.

[19] Paragraph 107(1)(b) of the *CCRA* grants the PBC "exclusive jurisdiction and absolute discretion" to terminate or revoke the statutory release of an offender such as the Applicant:

Jurisdiction of Board	**Compétence**
107 (1) Subject to this Act, the Prisons and Reformatories Act, the International Transfer of Offenders Act, the National Defence Act, the Crimes Against Humanity and War Crimes Act and the Criminal Code, the Board has exclusive jurisdiction and absolute discretion	**107 (1)** Sous réserve de la présente loi, de la Loi sur les prisons et les maisons de correction, de la Loi sur le transfèrement international des délinquants, de la Loi sur la défense nationale, de la Loi sur les crimes contre l'humanité et les crimes de guerre et du Code criminel, la Commission a toute compétence et latitude pour :

…	…
(b) to terminate or to revoke the parole or statutory release of an offender, whether or not the offender is in custody under a warrant of apprehension issued as a result of the suspension of the parole or statutory release;	**b)** mettre fin à la libération conditionnelle ou d'office, ou la révoquer que le délinquant soit ou non sous garde en exécution d'un mandat d'arrêt délivré à la suite de la suspension de sa libération conditionnelle ou d'office;
…	…

[20] If the PBC is satisfied an offender on statutory release will present an undue risk to society, the PBC must ["shall"] revoke statutory release pursuant to paragraph 135(5)(a)(ii) of the *CCRA*:

Review by Board — sentence of two years or more	**Examen par la Commission : peine d'au moins deux ans**
(5) The Board shall, on the referral to it of the case of an offender who is serving a sentence of two years or more, review the case and — within the period prescribed by the regulations unless, at the offender's request, the review is adjourned by the Board or is postponed by a member of the Board or by a person designated by the Chairperson by name or position —	**(5)** Une fois saisie du dossier du délinquant qui purge une peine de deux ans ou plus, la Commission examine le dossier et, au cours de la période prévue par règlement, sauf si, à la demande du délinquant, elle lui accorde un ajournement ou un membre de la Commission ou la personne que le président désigne nommément ou par indication de son poste reporte l'examen:
(a) if the Board is satisfied that the offender will, by reoffending before the expiration of their sentence according to law, present an undue risk to society,	**a)** si elle est convaincue qu'une récidive de la part du délinquant avant l'expiration légale de la peine qu'il purge présentera un risque inacceptable pour la société:

…	…
(ii) revoke it in any other case;	**(ii)** elle la révoque dans le cas contraire;

B. *Prior jurisprudence on the role of the PBC*

[21] The Supreme Court in *Vavilov* instructs that "cases that dictated how to conduct reasonableness review…will often continue to provide insight, but should be used carefully to ensure that their application is aligned in principle with these reasons" (para 43).

[22] Jurisprudence prior to *Vavilov* requires this Court to give considerable deference to the PBC: *Ouellette v Canada (Attorney General)*, 2013 FCA 54, reasons for judgment by Mainville JA at paras 69-71; *Maldonado* at para 18.

[23] In my respectful view, the call for considerable deference is "aligned in principle" with the proposition in *Vavilov* that reasonable review requires the reviewing court to give respectful attention to a decision-maker's demonstrated expertise:

> [93] An administrative decision maker may demonstrate through its reasons that a given decision was made by bringing that institutional expertise and experience to bear: see *Dunsmuir*, at para. 49. In conducting reasonableness review, judges should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons. Respectful attention to a decision maker's demonstrated expertise may reveal to a reviewing court that an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime and represents a reasonable approach given the consequences and the operational impact of the decision. This demonstrated experience and expertise may also explain why a given issue is treated in less detail.

[24] Moreover, the Supreme Court of Canada explains in *Mooring v Canada (National Parole Board)*, 1996 CanLII 254 (SCC), [1996] 1 SCR 75 at para 26, that the PBC plays an inquisitorial role and all reliable information is to be considered by the PBC provided it has not been obtained improperly. Given its needs, resources and expertise, the PBC must be given some latitude, within some legal parameters, as to how it guarantees the reliability of information. This may include confronting the offender with allegations at the hearing: *R c Zarzour*, 2000 CanLII 16726, [2000] FCJ No 2070 (FCA), per Létourneau JA at para 38, as was done in the present case.

V. Analysis

A. *Factual and legal constraints*

[25] While the Applicant challenged both the reasoning process and the outcome of the PBC Decision, many submissions addressed the outcome of the case. This aspect of *Vavilov* entails determining whether the PBC Decision is reasonable in light of the legal and factual constraints. In summary in this respect, I have concluded the PBC's reasons are justified by the legal and factual constraints, being the relevant law and the record before the PBC. The PBC's conclusion that the Applicant presented an undue risk was based on numerous concerns, incidents and issues, and was therefore reasonable. The following are my reasons in this respect.

[26] The Applicant, both in his memorandum and in oral argument, challenged a large number of considerations before the PBC, and conducted a very extensive critique of the PBC Decision

in terms of the legal and factual constraints the PBC faced. The following are some concerns excerpted from the Applicant's memorandum, followed by the Court's comment.

[27] The Applicant relies on *Korn v Canada (Attorney General)*, 2014 FC 590, per Locke J (as he then was) at para 20 [*Korn*] for the proposition that revocation must be based on a risk the Applicant will reoffend criminally, and submits that none of the factors relied on by the PBC actually implicated a risk to re-offend criminally. I agree with *Korn* that there must be a risk of reoffending; however, I disagree with the Applicant's application to the present case.

[28] Regarding breaches of provincial legislation the Applicant submitted:

> 56. None of the factors relied upon by [the PBC] to revoke the Applicant's SR implicate a risk to re-offend criminally. However, it is reasoned that collectively they do. This makes no sense.
>
> 57. The Applicant conceded he broke the law by not driving the automobiles with a licensed driver and by driving the motorcycle without proper license. However, none of the driving conduct implicated a risk to reoffend criminally.

[29] These submissions illustrate a flaw common to many of the Applicant's submissions. The Court agrees that taken individually and in isolation, the Applicant's many breaches of the *Highway Traffic Act*, RSO 1990 c H8, do not implicate a risk to reoffend criminally. The PBC did not suggest otherwise; the Applicant's submission is predicated on mischaracterizing the PBC's reasons. However, and with respect, the Applicant, by repeatedly breaking this provincial statute, undeniably breached the standard condition of his release "to obey the law and keep the peace". In addition, his unlawful conduct, in the words of the PBC, demonstrated an "inability or

unwillingness to meet expectations and follow the rules”. In my view, it was reasonable for the PBC to consider this factor and to make this finding within its analysis of undue risk.

[30] Regarding the special condition not to use dating applications without prior permission, the Applicant submits:

> 58. The Applicant signed up for a dating website while in the community. However, before using it for its intended purpose, he advised his parole officer that he had signed up. Following his disclosure and act of transparency to his parole officer, his parole officer told him not to use the dating website. There were no further issues with the website.
>
> 59. Prison authorities describe the website as a "hookup" website. However, there was no evidence of this. Perhaps the parole officer subjectively understood that it was less reputable than other dating websites. There was no reliable and persuasive evidence to say that it operated as a "hookup" website exclusively and that the Applicant ought to have known that, and the Applicant described his intended use differently.
>
> 60. The signing up was arguably not a breach of the special condition. Moreover, the signing up and subsequent disclosure could not have implicated a risk to reoffend criminally. Contrarily, the disclosure was evidence of the Applicant's commitment to transparency.

[31] With respect, the Applicant does not acknowledge that by taking - without prior permission - whatever steps were necessary for him to register himself on the Tinder dating app, the Applicant engaged in risky behaviour given a special condition of his release required him to “request permission from [his] parole supervisor prior to using online dating websites, services or mobile device applications”. Likewise taking these steps without permission risked breaching the special condition that he “immediately report any attempts to initiate intimate sexual and non-sexual friendships with females” to his parole supervisor. I do note that the PBC did not find

either was a breach. The Applicant once again mischaracterizes the reasons in suggesting the PBC considered these actions to have "implicated a risk to reoffend criminally"; the PBC made no such finding. In any event, while I agree that registering for Tinder did not necessarily on a stand alone basis implicate a risk to reoffend, in my view, the PBC was entitled to consider the Applicant's conduct and was reasonably entitled to weigh it against him; the behaviour was risky and demonstrated both a sense of entitlement and questionable judgment.

[32] Regarding the presence of sexually explicit content on his phone, the Applicant submits:

> 61. Moreover, having images of women on his phone, which border-lined a finding of sexually explicit, was not a breach of any of the Applicant's SR conditions. In Canada, one is not penalized for driving just under the speed limit or the speed limit. Most importantly, one should not lose their freedom for almost committing a crime or breaking a rule. Yet the possession of the images was used against him to revoke his SR.

[33] In this respect, his pictures were not in the record, and the PBC did not make a finding that the images breached the special condition "not to purchase, acquire, possess or access pornography or sexually explicit material in any form or type of media". That said, the Applicant should have realized that his conduct in accessing such content came very close to breaching this special condition. It was reasonable for the PBC to refer to this activity as "borderline sexually explicit". The Applicant certainly showed poor judgment. This is not a fatal flaw in the PBC's Decision as contemplated in *Vavilov* at para 102, and did not render the PBC Decision as a whole unreasonable.

[34] Regarding the Applicant's increasingly frequent visits to university areas in September 2018, and wearing university branded pants, the Applicant submits:

> 62. Wearing university apparel for work purposes was not a breach of any of the Applicant's SR conditions. Yet, even though PM Corcoran stated he would not use this particular behaviour against the Applicant, the fact that he wore said apparel for work was used against him to make findings of lack of insight and poor judgment that implicated an undue risk to re-offend. Interestingly, it is only after the Applicant was found driving without proper license that suddenly his use of said apparel implicated risk to reoffend against female University students. Arguably, neither the Board nor the parole authorities were very transparent with the Applicant on this issue.
>
> 63. What's also of particular interest about the parole authorities' noted concern about him wearing university logo-ed apparel is that there was no noted caution to not wear said apparel after he was seen wearing said apparel.
>
> 64. Going to locations near the university, where it's alleged his index offences occurred, without evidence to confirm so, was not a breach of any of the Applicant's SR conditions. Yet the fact that he went there after he signed out and disclosed to parole authorities his intention to go there was used against him to make findings of lack of insight and consequential thinking and poor judgment that implicated an undue risk to re-offend.
>
> 65. What's particularly interesting about going to locations near the University is that the Board in May 2018, when drafting the special conditions, inferentially did not have any difficulty or concern with the Applicant going to locations near the University. Moreover, the parole authorities, inferentially, did not have any difficulty or concern with the Applicant going to locations near the University when he repeatedly disclosed that he was going there with his sign-outs. It is only after he is found driving without proper license that suddenly his attendance at or near the University implicated risk to reoffend against female University students. Arguably, neither the Board or the parole authorities were very transparent with the Applicant on this issue.

[35] With respect, I am not persuaded the PBC acted unreasonably in considering the Applicant's increasingly frequent visits to the very university areas where he committed the two

"prolonged, deliberate and horrific" sexual assaults. One must take the PBC's findings in context: the two serious Index Offences were committed against young university age women, and took place "within close proximity to Wilfrid Laurier and the University of Waterloo". It was reasonable for the PBC to conclude the Applicant continued to "struggle with issues of insight and understanding" based on the Applicant's conduct and having considered his responses.

[36] Regarding the Applicant's lack of criminal activity in the time since his statutory release, the Applicant submits:

> 70. The facts are that the Applicant never once between May 5, 2018 and September 20, 2018 committed any action or omission that was remotely criminal in nature. Yet notwithstanding his adherence to the most important conditions of release while in the community between May 5, 2018 and September 20, 2018, he became too dangerous to remain in the community on conditions.
>
> 71. The reasoning to be inferred is that when the Applicant committed a *Highway Traffic Act* offence and tried to hide it from the parole authorities, there was an increase in the risk of him committing a violent sexual assault or some other violent criminal offence that would put the public at risk. PM Corcoran [the PBC] was not entitled to make this finding on the record before him. He also failed to consider all of the evidence in relation to the ultimate issue before him.

[37] I agree there is no indication in the record that the Applicant between May 5, 2018 and September 20, 2018 committed a criminal act or omission. This is a non-issue because the PBC made no such finding.

[38] The Applicant submits the PBC reasoned that when the Applicant committed offences under the *Highway Traffic Act* and tried to hide this from parole authorities, there was an

increase in the risk of him committing a violent sexual assault or other violent criminal offence. With respect, this argument is made out of context. The relevance of the violations of the *Highway Traffic Act* is that they demonstrated the Applicant's disrespect for the law and disregard of the standard condition "to obey the law". The Applicant's attempts at concealment illustrate dishonesty. I note the Applicant was ticketed for speeding, another breach of the rules, and that the Applicant failed to report this police interaction to his parole officer, a breach of the standard condition of his release to "inform [his] parole supervisor immediately on arrest or on being questioned by the police". With respect, it was reasonable for the PBC to consider these factors in its risk analysis.

[39] In oral argument, the Applicant took the Court to the following paragraphs in his memorandum and submitted these were not breaches of the conditions of the Applicant's statutory release:

> 20. The parole authorities stated that it could not prove that the Applicant viewed explicit cartoons on YouTube or breached his pornography restriction condition. However, they informed the Applicant there were concerns with the content of his phone: AR: Pg. 72, Pr (s). 1.
>
> 21. As well, the CRF expressed concerns about discrepancies about the time the Applicant called in and the expected travel time to him destination; asking front desk staff where they lived and struggling with maintaining boundaries: AR: Pg. 72, Pr(s). 5.

[40] Once again, the PBC did not find these were breaches. However, I am not persuaded information to this effect could not be considered by the PBC in its risk analysis. It was legitimate for the PBC to have concerns about the content of his phone given his special condition regarding pornography. Moreover, the Applicant was required to obey the rules of his

CRF and accurately report call in and travel times; any discrepancies in this respect in my view were quite relevant to his ability to live with rules. This is also true of his struggle to maintain boundaries between himself and the staff at his CRF which the PBC could consider given the Applicant was asking where CRF staff lived.

[41] More generally, in my view the Applicant's approach to the PBC Decision is inconsistent with judicial review. Judicial review must consider the reasons as a whole (holistically) and in their context (contextually): see *Canada Post* at para 31 citing *Vavilov* at para 97. Instead, the Applicant's submissions as set out above, invite the Court to proceed as if judicial review is a line-by-line treasure hunt for errors. This is contrary to the teachings in *Vavilov* at para 102.

[42] I quite agree that some factors identified by the PBC in and of themselves might not warrant revocation of statutory release; however, that is not the test. The PBC Decision must be read as a whole. This is in fact what the PBC did: it held that no one incident or issue identified in the PBC Decision would necessarily lead to revocation. However, the combination of actions and decisions led the PBC to conclude that the Applicant's risk had become undue:

> The Board had a lengthy discussion with you today in which we reviewed your inability or unwillingness to meet expectations and follow rules. We discussed a series of incident or issues and <u>while no one incident would necessarily lead to a revocation, the combination of actions and decisions in a variety of circumstances lead the Board to conclude that your risk has become undue</u>.
>
> [Emphasis added]

[43] The Respondent submits, and I agree, that it was within the PBC's discretion to determine the relative weight to give each consideration and the reliability of information contained in the written records. It is not this Court's job to reweigh the evidence examined by

the PBC on judicial review, and this cannot form the basis for it to intervene on a standard of reasonableness: *Vavilov* at para 125 and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 64.

[44] A further point should be made. The Applicant essentially submitted he was free to do as he wished while on statutory release unless constrained by a special or standard condition of release. Thus, for example, he submitted he was free to increasingly frequent the university areas where he committed the two Index Offences against university age young women, essentially because his conditions of release did not specify otherwise.

[45] With respect, this attitude of "entitlement" – to use the words of the PBC - was misplaced. The Applicant had been clearly, and in my view, reasonably warned by his parole officer that he was under close supervision, and that he had to be careful about where and what he did, as noted by the parole officer in the Assessment for Decision:

> Also during this interview, YASSIN was asking about when the CMT would be willing to submit for overnight leave privileges to the Parole Board of Canada, given what he viewed as some of the positive aspects of his case; such as employment and family support. This writer informed the offender he would need to have a period of time without any issues in the community. YASSIN brought up the motorcycle incident and stated he was wrong to drive with no licence or helmet, but that it was not related to risk. This writer spent some time explaining to the offender that to build credibility with those that are responsible for his supervision he needs to demonstrate he can make good decisions and abide by all of his conditions, including standard conditions of release. While the motorcycle incident may not be related to his offence cycle it was explained that it relates to his attitude toward supervision in general and willingness to abide by expectations and conditions of his release, and again that he will need to build credibility with a period of stability before he is given more freedom of movement in the community.

[46] The need for close supervision was also reasonably considered by the PBC:

> As the Board noted throughout your hearing, the ability to be candid and transparent with those charged with your supervision were key to your success on statutory release. The violent nature of your offending warrants the closest of supervision in your case. Your willingness and ability to deceive and manipulate is of great concern and in the Boards view elevates your risk to the point of being undue. As a consequence, you statutory release is revoked.
>
> [Emphasis added]

B. *Coherent and rational chain of analysis*

[47] In the previous paragraphs the Court, as mandated by *Vavilov* at para 90, assessed some of the Applicant's submissions with respect to the legal and factual constraints regarding the content of the PBC's reasons.

[48] *Vavilov* also teaches that a reviewing court must review the reasons themselves with a respectful view such that, in this case, the Court must ask if the PBC's reasons are based on an internally coherent and rational chain of analysis supporting the revocation of statutory release.

[49] In my respectful view, the PBC's reasons and reasoning process do satisfy *Vavilov* in that they are internally coherent and provide a rational chain of analysis supporting revocation. The reasons reasonably note the nature of the Index Offences. In this case, the Applicant was given a lengthy 10 year prison term for two violent sexual assaults on university students coupled with kidnapping in one case, and unlawful confinement in the other. These were labelled by the sentencing judge as "prolonged, deliberate and horrific". As reasonably noted in the PBC Decision "the violent nature" of his offences warranted "the closest of supervision."

[50] The reasons coherently summarize the information before the PBC. They reasonably and adequately cover the main areas of dispute. The PBC throughout and particularly in its concluding paragraphs, rationally and coherently draws a number of important conclusions about the Applicant and his conduct. In my view the PBC had information before it on which it was able to logically and coherently conclude – as it did – that the Applicant demonstrated an inability or unwillingness to meet expectations and follow the rules, demonstrated a disregard for others, demonstrated an inability to control impulsive behaviours, demonstrated a lack of consequential thinking, presented an unwarranted sense of entitlement, minimized his behaviour and responsibility, demonstrated a disregard for the safety of others, struggled with issues of insight and understanding, and demonstrated a willingness and ability to deceive and manipulate. The PBC, reasonably in the Court's view, concluded the Applicant's behaviour indicated his risk was elevated to the point of being undue.

[51] The Applicant's unwarranted sense of entitlement and his issues of insight and understanding, were well demonstrated by the Applicant's increasingly frequent visits to university areas, the source of the university age young women he had criminally victimized. It was reasonable for the PBC to conclude there was undue risk of reoffending based on the Applicant's poor decision-making in this connection. I am unable to find fault with these conclusions, notwithstanding the Applicant's submissions otherwise.

[52] Having reviewed the evidence, and reached these several conclusions, the PBC turned its attention to the provisions of the governing legislation, namely the *CCRA*. The PBC then made the following determinations which align rationally and logically with subparagraph 135(5)(a)(ii):

> As the Board noted throughout your hearing, the ability to be candid and transparent with those charged with your supervision were key to your success on statutory release. The violent nature of your offending warrants the closest of supervision in your case. Your willingness and ability to deceive and manipulate is of great concern and in the Boards view elevates your risk to the point of being undue. As a consequence, you statutory release is revoked.
>
> It is the Board's opinion that you will present an undue risk to society if released on statutory release and that your release will not contribute to the protection of society by facilitating your reintegration into society as a law-abiding citizen.

[53] In my respectful view, the PBC's reasoning process meets the standards required by *Vavilov*. The reasons provide a coherent and rational chain of analysis supporting the decision to revoke. With respect, I am unable to identify fundamental gaps, absurd premises, internal illogicalities or fatal flaws in the reasons. The reasons read holistically and not as a treasure hunt for errors, lead to the conclusion that the Applicant presented an undue risk to society. The reasons coherently and rationally lead directly to the decision to revoke the Applicant's statutory release.

VI. Conclusion

[54] Based on the foregoing, I am not persuaded that either the reasoning processes or the outcome of the PBC and Appeal Decisions are unreasonable. In my respectful view, the decisions are based on an internally coherent and rational chain of analysis, and are justified in relation to the facts and law that constrain the PBC and Appeal Division. With respect, I am of the view the reasons under review "add up" per *Vavilov* at para 104. Therefore, judicial review must be dismissed.

JUDGMENT in T-1039-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	HAYAN YASSIN v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
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