



W E E N:

FEDERAL COURT

JOHN CHAIF

-and-

ATTORNEY GENERAL OF CANADA

Court File No. T-1041-21

e-document	
FEDERAL COURT COUR FÉDÉRALE	
June 28, 2021	
Jonathan Macena	
Ottawa, ONT	1

Applicant

Respondent

NOTICE OF APPLICATION
(Pursuant to section 18.1 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

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 the hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa.

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 prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where 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.

June 11, 2021

Issued by:

Jonathan Macéna

(Registry Officer)

Federal Court of Canada
90 Sparks Street, 1st Floor
Ottawa, Ontario K1A 0H9
Tel: 613-992-4238
Fax: 613-947-2141

TO: Nathalie Drouin
Deputy Attorney General of Canada
Department of Justice Canada
Civil Litigation Section
50 O'Connor, Suite 500
Ottawa, Ontario, K1A 0H8

I HEREBY CERTIFY that the above document is a true copy of
the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie confirmée
À l'original déposé au dossier de la Cour fédérale.

Filing Date June 28, 2021
Date de dépôt : _____

Dated July 6, 2021
Fait le : _____

APPLICATION

This is an application pursuant to sections 18 and 18.1 of the Federal Courts Act, R.S.C., 1985, c. F-7 for judicial review of the decision of the Parole Board of Canada (**“Board”**) Appeal Division (**“Appeal Division”**) dated February 2, 2021, affirming the September 1, 2020 decision of the Board to refuse to grant the Applicant day parole or full parole. The Applicant received the Appeal Division decision on February 21, 2021.

The Applicant makes application for:

- a) An order pursuant to section 18.1 of the *Federal Courts Act* quashing the February 2, 2021 decision of the Appeal Division and the September 3, 2020 decision of the Board, and remitting the decision to a differently constituted panel of the Board for redetermination;
- b) The costs of this application; and
- c) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

1. Sections 18 and 18.1 of the Federal Courts Act;
2. The Board decision is unreasonable in that it is not transparent, intelligible or justified;
3. The Board’s conclusion that the Applicant would present an undue risk to society if released on day parole is unreasonable since
 - a) the Board concluded that the Applicant would not pose an undue risk on unescorted temporary absences (**“UTAs”**) identical to the day parole in every respect other than duration, and
 - b) the Board gave no reasons, nor was there any evidence in the record, indicating the longer duration of day parole would increase risk, and
 - c) the Board failed to account for the evidence before it, which indicated that the proposed day parole would entail lower risk than the approved UTAs, specifically that
 - i. the Windsor Police, who had not supported the approved UTAs, had

- changed their opinion and now supported the Applicant's parole;
 - ii. the day parole application would entail less unsupervised time than the approved UTA;
 - iii. more than six additional months had elapsed with no institutional infractions since the hearing in which the Applicant's UTAs were approved; and
 - iv. the Applicant offered to subject himself to GPS monitoring while on parole and to pay for it himself.
4. The Board's conclusion that the Applicant's release would not facilitate his reintegration into society as a law-abiding citizen is unreasonable because the Board provided no reasons for this conclusion, and the conclusion is not justified by the facts;
 5. The Board decision was procedurally unfair because presiding Board Member Randy Mason had a closed mind. After having presided over the Applicant's prior Board hearing, in which the Applicant was granted UTAs, Mr. Mason's mind was made up that the Applicant must complete the UTAs before being granted parole, and Mr. Mason did not have an open mind to conduct an objective assessment based on the evidence before him;
 6. The Appeal Division decision is unreasonable because it upheld the unreasonable decision of the Board.

The application will be supported by the following material:

- a) A supporting affidavit and exhibits attached thereto; and
- b) Such further and other materials as counsel may advise and this Honourable Court may permit.

The applicant requests the Parole Board of Canada to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Board to the applicant and to the Registry:

- a) All information considered, or available for consideration, by the Board in reaching its decision of September 1, 2020, including, but not limited to, all correspondence, notes, records, memos, submissions, and assessments; and

- b) All information considered, or available for consideration, by the Appeal Division in reaching its decision of February 2, 2021, including, but not limited to, all correspondence, notes, records, memos, submissions, and assessments.

June 28, 2021

A handwritten signature in black ink, appearing to read 'NP', is written over a horizontal line.

HAMEED LAW
Barristers & Solicitors
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**Solicitor for the Applicant, John
Chaif**