SUPREME COURT OF QUEENSLAND

CITATION:	*Hollinshead v The Central & Northern Queensland Regional Parole Board* [2010] QSC 103
PARTIES:	**PETER MICHAEL HOLLINSHEAD** (applicant) **v** **THE CENTRAL & NORTHERN QUEENSLAND REGIONAL PAROLE BOARD** (respondent)
FILE NO:	BS 2656 of 2009
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	12 April 2010
DELIVERED AT:	Brisbane
HEARING DATE:	5 January 2010
JUDGE:	Daubney J
ORDER:	**1. The application is refused.** **2. There is no order as to costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – APPLYING POLICY AND MERITS OF THE CASE – where the applicant was sentenced to three years imprisonment for a number of sexual offences committed against children – where the applicant made an application for statutory order of review of a decision of the respondent to refuse the applicant's application for parole – where the applicant argued that the respondent had acted in accordance with a policy to refuse parole because he was a sex offender and had not completed a recommended program – whether the respondent made its decision based on a policy without regard to the merits of the case ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – IRRELEVANT CONSIDERATIONS – where the applicant argues that the respondent placed excessive and undue weight upon the issue of the gravity of the offence – whether the respondent took irrelevant considerations into account ADMINISTRATIVE LAW – JUDICIAL REVIEW –

GROUNDS OF REVIEW – RELEVANT CONSIDERATIONS – where the applicant argued that the respondent did not give sufficient weight to the material supporting his application for parole namely the possibility that a course could be undertaken in the community – whether the respondent failed to take relevant considerations into account

Corrective Services Act 2006 (Qld), s 3(1), s 227(2)

Judicial Review Act 1991 (Qld), s 20(2)(f), s 23(b), s 32

DAR v The Queensland Parole Board [2009] QSC 399, distinguished
Gough v Southern Queensland Regional Parole Board [2008] QSC 222, cited
Morales v South Queensland Regional Parole Board, unreported, White J, Supreme Court of Queensland, 3 August 2007, cited

COUNSEL: PE Nolan for the applicant
KA Mellifont for the respondent

SOLICITORS: Shannon Donaldson Province Lawyers for the applicant
Crown Solicitor for the respondent

[1] This is an application for a statutory order of review of the decision by the respondent parole board on 27 May 2009 to refuse the applicant's application for parole.

[2] The grounds advanced in the applicant's amended application were stated as follows:

> "1. The Board has placed excessive and undue weight upon the issue of gravity of the offence. Gravity was a matter for the Judge in fixing the sentence and not a matter which the Board is permitted to revisit and re-evaluate for the purposes of whether or not to grant parole and this is an error of law pursuant to the *Judicial Review Act* s.20(2)(f).
>
> 2. The Board has not exercised its powers properly in that it has elevated the non-attending by the Applicant of the intervention program to a mandatory requirement. Furthermore, the Board did not consider or investigate properly the possibility that the course could be conducted outside the prison system under the guidance of a parole officer and there was a duty to consider that possibility in the circumstances pursuant to the *Judicial Review Act* s.23(b).
>
> 3. The Board has not addressed the critical question of whether the Applicant is an unacceptable risk to the community to re-offend but has circumvented the question by placing all of its emphasis upon the Applicant's non-attendance at a course pursuant to *Judicial Review Act* s.22 ss.(2)(f).
>
> 4. The Board did not consider the applicant's application for parole pursuant to the *Judicial Review Act* s.23(b) as being of any relevance for the non-attendance of that course and in all the circumstances the decision is wrong in law."

[3] On the hearing of the application, the scope of the applicant's complaints were considerably narrowed with the assistance of counsel who appeared for the applicant. The central submission on behalf of the applicant before me was that the Board erred in the weight it placed on the fact that the applicant had not completed a particular recommended course.

Background

[4] On 14 December 2007, the applicant was sentenced to three years imprisonment for the offences of indecent treatment of children under the age of 16, indecent treatment of a child under the age of 16 (indecent films), indecent treatment of a child under 16 (taking photographs), unlawful carnal knowledge and making and possessing child exploitation material. The complainants were sisters, one aged 12-13 years and the other aged 11-12 years. It was ordered that the applicant be eligible for release on parole from 20 November 2008.

[5] On 11 August 2008, the applicant made his first application to the respondent for release on parole.

[6] A Parole Board Assessment Report dated 16 October 2008 was prepared for the respondent. Amongst other things, this report detailed the applicant's progress in completing recommended interventions:

> "**4. Progress in completing recommended interventions**
>
> On 13 May 2008 Offender Hollinshead presented willingly for interviewing the purpose of completing the Sexual Offending Program Assessment at Maryborough Correctional Centre. As a result of this assessment (i.e. STATIC-99 and STABLE-2000) Offender Hollinshead was recommended to participate in the Getting Started: Preparatory Program for Sexual Offenders and the New Directions: Medium Intensity Sexual Offending Program. However, it was identified that at the time of the assessment, Offender Hollinshead presented as within the Pre-Contemplation stage of change with limited insight into his offending behaviour, and limited motivation to participate in sexual offending interventions and change his behaviour.
>
> Offender Hollinshead was offered the opportunity to commence the Getting Started: Preparatory Program on 4 August 2008 to be delivered at Wolston Correctional Centre and on 15 September 2008 to be delivered at Townsville Correctional Centre. On these occasions the offender cited his unwillingness to transfer to another centre and concern about disclosing his offences in a group environment due to concern for his victim. The offender did state that he is willing to engage in one-on-one interventions to address his offending behaviour or participate in the program if offered at Maryborough Correctional Centre. At this time the sexual offending interventions are not available at Maryborough Correctional Centre.
>
> Offender Hollinshead was offered the opportunity to participate in the Transitions Program at Maryborough Correctional Centre on 9 July 2008 to assist him in developing a comprehensive and effective release plan in preparation for his release to the community. Offender Hollinshead

declined the opportunity to participate stating that he already has the support of a friend and did not require financial assistance.

Therefore, at the time of this report Offender Hollinshead has the following interventions outstanding:

- Getting Started: Preparatory Program for Sexual Offenders,
- New Directions: Medium Intensity Sexual Offending Program, and
- Transitions Program."

[7] The Sexual Offending Program Assessment referred to in that report itself contained a number of reports and recommendations concerning the applicant, including:

"**Presentation and Responsivity**

- Offender Hollinshead willingly participated in a Sexual Offending Program Assessment (SOPA) on 13 May 2008. At the time of the interview, the purposes of the assessment, limits of confidentiality and the requirements of the offender were clearly explained at the commencement of the interview.
- The offender was polite and cooperative, and maintained appropriate eye contact throughout the assessment. His presentation was neat and his body posture was open and relaxed. His speech was logical and coherent and there was not evidence of any thought disorder. His psychomotor activity was unremarkable and he appeared orientated to person, place and time.
- Offender Hollinshead reported that he is unsure if he is willing to participate in a sexual offending program. He further stated that the judge did not deem participation in a program necessary. He expressed the belief that if he were to participate in a program it would insinuate that he has "not learnt anything" regarding his offending behaviour.
- Offender Hollinshead is currently in the Pre-Contemplation stage of Change as he has minimal insight into his offending behaviour. He presented with limited motivation to complete a sexual offending program. He also presented with a limited recognition of the need to change his past offending behaviour.
- Offender Hollinshead presented with partial denial of his offending behaviour. He reported that he did not penetrate the victim, and did not make child exploitation material for his sexual gratification."

The report then referred to the assessment instruments which had been utilised to assess the applicant's risk and intervention needs, and continued:

"**Intervention Recommendations**

- The Queensland Corrective Services' Sexual Offending Programs are based upon best practice research and methodologies in the treatment of sexual abusers which present a whole of life view for the offender, encouraging self-management, relapse prevention and new life pathways that are encouraged by the development of meaningful and fulfilling new life goals devoid of offending (Hudson, Ward, & McCormack, 1999; Marshall, 1999; Marshall, Anderson, & Fernandez, 1999; Marshall & Marshall, 2005).

- Based on the risk and intervention needs assessment outcomes identified above, it is recommended that offender Hollinshead undertake the **Getting Started: Preparatory Program** in order to prepare the offender for participation in the **New Directions: Medium Intensity Sexual Offending Program**."

[8] By letter dated 24 December 2008, the respondent advised the applicant that consideration was being given to not granting the application for parole on the basis that he may pose an unacceptable risk to the community. The letter stated, inter alia, as follows:

> "The material considered by the Board is summarised in the Parole Board Assessment Report dated 16 October 2008, a copy of which is attached.
>
> The Board regarded the following matters as standing to your favour in respect of your application:
>
> - Acceptable institutional behaviour;
> - Minimal prior criminal history, with no convictions of a like nature;
> - Previously assistance sought through a consulting Psychiatrist.
>
> After noting the relevant factors, and being aware that the Board's primary obligation is the protection of the community, the Board considered that the following issues may outweigh those matters that stand to your credit:
>
> - Outstanding treatment needs;
> - No suitable home assessment;
> - Declined to participate in the recommended programs;
> - Unable to verbalise relapse prevention plan;
> - Little remorse for victim;
> - Unwillingness to transfer to undertake the recommended programs.
>
> The Board were advised by way of a Parole Board Assessment Report dated 16 October 2008 that:
>
> *"Offender Hollinshead was offered the opportunity to commence the Getting Started: Preparatory Program on 04 August 2008 to be delivered at Wolston Correctional Centre and on 15 September 2008 to be delivered at Townsville Correctional Centre. On these occasions the offender cited his unwillingness to transfer to another centre and concern about disclosing his offences in a group environment due to concern for his victim."*
>
> The Board accepted the information contained in the Parole Board Assessment Report and strongly encourages you to participate in and complete the recommended intervention programs, even if that means transferring to another Centre. This would allow you to address your victim remorse and identify strategies, risk factors to offending behaviour and provide you with the appropriate knowledge and skills to formulate comprehensive release and relapse prevention plans. This may reassure the Board that you have reflected on the extent and seriousness of your offending behaviour and have strategies in place to minimise your risk of re-offending if released to the community. Your current plans do not provide the Board with this confidence.

> Until you successfully complete the recommended intervention programs, the Board considers that you remain in the process of addressing your offending behaviour and minimising the risk you pose to the community.
>
> The Board acknowledges that the sentencing court fixed your parole eligibility date at 20 November 2008.
>
> The Board refers you to S.192(a)(b) of the Corrective Services Act 2006, which in part says that "the Board is not bound by the eligibility date fixed by the Court" if the Board receives information that was not before the court at the time of sentencing.
>
> After considering the all (sic) of the preceding information, the Board considers that your lack of a viable release plan and outstanding treatment needs are matters of which the court would not have been aware.
>
> The Board is minded to refuse your application at this time on the basis that it is satisfied that your release on a parole order poses an unacceptable risk to the community."

[9] On 7 January 2009, the solicitors for the applicant wrote to the respondent requesting an extension of time. On 9 January 2009, the respondent advised that the request of extension for the lodgement of further submissions to 6 February 2009 was granted.

[10] By a letter dated 13 January 2009, the applicant made further submissions to the respondent, including:

> "1. **OUTSTANDING TREATMENT NEEDS**
>
> I am more than willing to participate in any course or program that the Board sees fit to order or recommend within the community on a one on one basis. My personality is such that it would be impossible for me to successfully complete any courses with the format Queensland Corrections enforces. I assume the intent of intervention courses is to achieve results for the individual so as to ensure future possibilities of offending are minimized. Each individual is different and each case has to be judged on its merits and I believe the only way an intervention course would benefit me, and in turn the community, is for it to be completed on a one on one basis."

[11] On 5 February 2009 the respondent wrote to the applicant advising that his application for parole was refused "for the reasons outlined in the previous letter ... dated 24 December 2008".

[12] On 12 March 2009, the applicant filed an originating application seeking a statutory order of review of that decision of the Board.

[13] On 24 March 2009, Crown Law wrote to the applicant advising that, after reviewing his application and the initial decision to refuse parole, the respondent would undertake to remake its decision relating to his parole application. The Crown Law Office proposed that the applicant's application be adjourned, and put on hold pending the

respondent's new decision regarding the applicant's parole application. The parties signed a consent order to effect that arrangement.

[14] On 9 April 2009, the respondent wrote to the applicant referring to the adjournment of the application pending the new decision by the Board, and stating:

> "On this basis, your application for a parole order was considered by the Board at a meeting held on 1 April 2009. The Board acknowledged that the material considered by it contain a number of positive factors supportive of your application. However there are also some factors that work against your application being successful. Before coming to a final determination again in relation to your application, the Board again wishes to draw to your attention factors that suggest to the Board you would pose an unacceptable risk to the community and provide you with an opportunity to comment on them or present to the Board further relevant information.
>
> Enclosed with this letter are copies of the documents that the Board had before them and considered. They consist of documents numbered 1 to 118 on the file maintained by the Secretariat. Additionally the Board considered your Specialised Assessment for suitability to participate in a sexual offending program conducted on 13 May 2008 and a memorandum dated 7 July 2008 outlining the outcome of that assessment. The documents considered by the Board are enclosed with the following exception:
>
> > Folios 112-114 – Email from Crown Law to the President of the Board created for the dominant purpose of providing legal advice and for purposes of existing litigation. These documents are subject to a claim of legal professional privilege.
>
> When considering your application, the Board took into account the Guidelines issued by the Queensland Parole Board and in particular that community safety must be the highest priority. However, the Board ensured that your application was considered on its own merits.
>
> The Board was concerned that the following information and factors indicate that if released you would pose an unacceptable risk to the community:
>
> 1. You are serving a period of 3 years imprisonment. On 14 December 2007 you appeared in the Brisbane District Court and were sentenced for offences of Indecent treatment of children under 16 x 2, Indecent treatment of child under 16 (indecent film etc) x 2, Indecent treatment of child under 16 (take photograph etc) x 2, Carnal knowledge, Making child exploitation material and Possessing child exploitation material.
>
> 2. These offences were committed against two young girls who were sisters and the charges range over a period from 2001 to 2005.
>
> 3. In sentencing before the District Court, Brisbane on 14 December 2007, Judge Nase took into account your plea of guilty, the nature of the offences, the harm to the victims, your potential for rehabilitation and circumstances personal to yourself. Judge Nase also referred to the psychiatric report by Dr Curtis, his assessment of you and of your understanding of your offending behaviour.

> *"The psychiatric report by Dr Curtis confirms a diagnosis of paedophilia involving, he said, a personality disorder. Dr Curtis commented that you are not an actively intrusive, predatory, paedophile. While that comment does seem to be correct, his comment that your main deviation is for the most part voyeuristic cannot, of course, apply to either the bulk of the indecent treatment offences or the unlawful carnal knowledge.*
>
> *The report also confirms some aspects of denial on your part of your conduct but at the same time Dr Curtis feels you have an understanding that your conduct was wrong and the potential for rehabilitation."*

4. Judge Nase directed that a copy of the tendered report by Dr Curtis be forwarded to Queensland Corrective Services to assist in the management of you while in prison. A Parole eligibility date was set at 20 November 2008. The Board has since received and considered information that was not before the sentencing Judge.

5. On 13 May 2008 you willingly participated in a Sexual Offending Program Assessment (SOPA). The assessment determined that you represent a Moderate-Low risk of sexual recidivism and that your intervention needs in relation to your sexual offending behaviour were found to be in the High range, and included:

    - Presence of intimacy and social functional deficits;
    - Demonstrated inability to appropriately manage your sexual drive;
    - The presence of deviant sexual interests based on your offending history;
    - Attitudes supportive of entitlement to sex and coercive sexual behaviour;
    - A propensity to engage in impulsive behaviour;
    - Limited problems solving skills.

6. At interview for the SOPA, you advised that you were unsure if you were willing to participate in a sexual offending program, that the judge did not deem participation in a program as necessary and your concerns that if you were to participate in a program it would insinuate that you had not learnt anything regarding your offending behaviour.

7. As a result of the SOPA outcome you were assessed as suitable to participate in a sexual offending program. It was identified that at the time of the assessment that you presented with limited insight into your offending behaviour, and limited motivation to participate in sexual offending interventions and a limited recognition of the need to make any change to your past offending behaviour. You were recommended as suitable to participate in the Getting Started: Preparatory Program and New Directions: Medium Intensity Sexual Offending Program.

8. The Parole Board Assessment Report identifies that you were offered the opportunity to commence the Getting Started: Preparatory Program on 4 August 2008 to be delivered at the Wolston Correctional Centre and on 15 September 2008 to be delivered at the Townsville Correctional Centre. On these occasions you cited your unwillingness to transfer to another centre and your concern about disclosing your

offences in a group environment due to concern for your victim. You did state that you were willing to engage in one-on-one interventions to address your offending behaviour or participate in the program if offered at the Maryborough Correctional Centre. At that time the sexual offending interventions were not available at the Maryborough Correctional Centre. The Board notes that you are currently waitlisted for participation in the programs.

9. You were also offered the opportunity to participate in the Transitions Program at Maryborough Correctional Centre on 9 July 2008 to assist you in developing a comprehensive and effective release plan in preparation for your release to the community. You declined the opportunity to participate stating that you already had the support of a friend and did not require financial assistance.

10. At the parole panel assessment interview on 15 October 2008 it is reported that you were unable to articulate a viable relapse prevention plan, including identification of high risk situations for offending, effect avoidance strategies, protective factors, or an influential pro-social support network, You did nominate a number of personal supports in the area you proposed to live in but was unable to identify the exact nature of the support you could receive from these individuals.

11. From the interview it is recorded that you presented with an ongoing interest in your victim and stated that you still do not have the ability to say no to your victim. You acknowledged that you do not believe that you would be able to act in a different manner if placed in a similar situation again. The interview panel were of the view that when challenged on these issues, you were unable to cite how the victim might have been affected by your actions and that you demonstrated minimal remorse for your actions.

12. The Parole Board Assessment Report details the interview panel's view that it was evident during the interview that your cognitions surrounding your offending had not changed considerably since the completion of the Sexual Offending Programs Assessment in May 2008 and that you continued to present with high needs in regards to sexual offending intervention.

13. Within your application for a parole order received on 13 August 2008, you had advised of your willingness to participate in any course or program within the Community that the Board sees fit to order or recommend. Your application for a parole order provided a relapse prevention plan setting out a number of high risk situations and triggers as well as listing avoidance skills.

14. The Board encouraged you to participate in and complete the recommended intervention programs, even if that meant transferring to another Centre. The Board was of the view that this would allow you to address victim remorse and identify strategies, risk factors to offending behaviour and provide you with the appropriate knowledge and skills to formulate comprehensive release and relapse prevention plans. The Board was of the view that your current plans did not provide the Board with this confidence and that until you successfully complete the recommended intervention programs, the Board

considered that you remain in the process of addressing your offending behaviour and minimising the risk you pose to the community.

15. The Board considered your submission of 13 January 2008 in which you addressed those issues raised by the Board. You re-confirmed your willingness to participate in any course or program that the Board sees fit to order or recommend within the community on a one on one basis. You are of the view that it would be impossible for you to successfully complete any intervention courses in the structure utilised by Queensland Corrective Services and that due to your personality, one on one intervention in the community is the only way an intervention course would benefit you. You also feel that the reliance of the Board on your inability to verbally articulate your relapse presentation plan at interview should be considered on the basis that you are a person who finds it extremely difficult to verbalise, particularly with people you are not close to. The remainder of your submission deals with legal argument and citations from previous Court proceedings that you feel are of relevance to the Board's considerations. The Board also notes that approval had been given for your participation in the Ozcare Supported Parole Accommodation program at South Brisbane.

16. In reconsidering your matter that Board remains concerned that your failure to participate in the recommended intervention programs has deprived you of the opportunity to gain knowledge and explore strategies that might assist you to avoid re-offending in the future. While you have sought to have your outstanding treatment needs addressed in the community, other than consenting to participate in any recommended course in the community on a one-on-one basis only, you have provided no additional plan or detail of what professional support you would obtain and how that support would be accessed. Having considered the SOPA assessment of your risk of sexual recidivism and your intervention needs, the Board does not approve your request to complete intervention programs or courses in the community. The Board continues to recommend and encourage you to participate in the recommended programs within the custodial environment.

17. The Board is still of the view that you have provided an inadequate written relapse prevention plan with simplistic prevention strategies. Your submission of 13 January 2009 did not provide any additional information that could assist the Board in this regards. In considering your plan, the Board was not convinced that you had fully understood all the factors in your sexual offending. The Board considered that you must include the high risk factors and triggers that led to your sexual offences and the protective factors, including victim empathy, which in conjunction with coping mechanisms you develop will assist you to avoid this type of offending in the future. The Board is of the view that successful completion of recommended intervention programs will provide you with the necessary knowledge and strategies to develop a more robust release and relapse prevention plan that may provide the Board with the confidence that you have minimised the risk you pose to the community.

You have the opportunity to make a written submission to the Board as to why your application for a parole order should be granted. Any submission

> must be forwarded in sufficient time to reach the Board within fourteen (14) days of your receipt of this letter. You are not under any obligation to respond however if no response is received from you the Board will proceed to determine your application on the information presently available to it at the next Board meeting, to comply with the Consent order."

[15] On 24 May 2009, the respondent received an undated letter from the applicant, in which he said:

> "In reply to your letter dated 9 April 2009 I wish to again state that I am most willing to participate in any course or program that will assist me to address my offending behaviour and that has always been my stance. I simply believe that I should complete this course with faith that it is going to be effective otherwise it a waste of time and resources for all concerned and the end result will be that I will be released at my full time discharge date in approximately 17 months time with what has been presumed by corrections to be untreated needs. I have no faith or confidence in the current system within the prison system and therefore I do not believe that I would receive the insight into my behaviour that will assist me in understanding why this all happened.
>
> I am prepared to fund the expenses of completing whatever program the Board so wishes to order within the community and I prose (sic) as a possible facilitator, Meg Perkins who is extremely experienced in these matters."

[16] On 5 June 2009, the respondent replied to the applicant:

> "At a meeting on 27 May 2009, the Board again considered your application. After careful consideration of all relevant information, both favourable and unfavourable, including your most recent letter, the Board decided to refuse your application for a parole order as it considered that you posed an unacceptable risk to the community if released. The reasons of the Board are as follows:
>
> - You are yet to participate in recommended sex offender programs therefore the Board remains of the concerned that your failure to participate in these programs has deprived you of the opportunity to gain knowledge and explore strategies that might assist you to avoid reoffending in the future;
> - The Board still does not approve your request to complete intervention programs and courses in the community therefore you are encouraged to do so while in custody;
> - You are yet to provide an adequate written relapse prevention plan therefore the Board is not convinced that you have fully understood all the factors in your sexual offending. Your plan did not address high risk factors, triggers, protective factors, victim empathy and/or coping mechanisms.
> - The Board remains of the view that successful completion of the recommended intervention programs will assist you in developing a robust, written relapse prevention plan which may provide the Board with the confidence that you have minimised the risk you pose to the community."

[17] By a letter dated 10 September 2009, the applicant's solicitors made a request pursuant to s 32(1) of the *Judicial Review Act* 1991 ("*JRA*") for the respondent to provide a statement of reasons.

[18] By a letter dated 14 October 2009, the respondent provided its reasons. The statement of reasons including a recitation of the correspondence and submissions which had passed between the parties (including in relation to the initial application for parole), the material that had been considered by the respondent, the fact that the respondent had taken into account the guidelines for Regional Parole Boards issued by the Queensland Parole Board "and in particular that community safety must be the highest priority", the findings of fact on which the respondent had proceeded, the submissions made by and on behalf of the applicant, and concluded with the following statement of reasons:

> "**The decision was made for the following reasons:**
>
> After taking into account all of the relevant factors of your case, both positive and negative, the Board declined your application for release on parole for the following reasons:
>
> 1. The Board considers as a significant factor the gravity of your offending behaviour for which you have been sentenced to at least 3 years imprisonment for sexual offences committed against children.
>
> 2. The Board considered your submissions including the relapse prevention plan which you provided. The Board is still of the view that you have provided an inadequate written relapse prevention plan with simplistic prevention strategies. Your submission of 13 January 2009 did not provide any additional information that could assist the Board in this regards. In considering your plan, the Board was not convinced that you had fully understood all the factors in your sexual offending. The Board considered that you must include the high risk factors and triggers that led to your sexual offences and the protective factors, including victim empathy, which in conjunction with coping mechanisms you develop will assist you to avoid this type of offending in the future. The Board is of the view that successful completion of recommended intervention programs will provide you with the necessary knowledge and strategies to develop a more robust release and relapse prevention plan that may provide the Board with the confidence that you have minimised the risk you pose to the community.
>
> 3. The Board considered your undated submission in response to the Board's 9 April 2009 letter stating that you were willing to participate in any course or program that will assist you to address your offending behaviour within the community and that you proposed Meg Perkins as a possible facilitator. The Board noted your submission that you were willing to complete the program while in the community. However, in light of the Sexual Offending Program Assessment Report and your identified treatment needs, the Board will have greater confidence in your ability to self-regulate if released on a parole order after you have completed these programs in custody. The Board further noted that you were waitlisted for the programs and also noted that you declined to undertake the programs in August at Wolston Correctional Centre and in September at Townsville.

4. The Board noted that you are yet to participate in recommended sex offender programs therefore the Board remains concerned that your failure to participate in these programs has deprived you of the opportunity to gain knowledge and explore strategies that might assist you to avoid re-offending in the future.

Accordingly, the Board decided that you would be an unacceptable risk to the community on a parole order at this time and your application has been declined."

The Applicant's Submissions

[19] The submissions made on behalf of the applicant before me can be summarised as follows:

(a) In a case such as the present, it is necessary, if not critical, for the respondent to apply its mind to whether there is a perceptible risk that the applicant would, if released, re-offend in the same way as in the past; this requires a proper assessment, and not simply "the payment of lip service to various considerations";

(b) In this case, the issue which the respondent consistently relied on to deny parole is that the applicant has not completed a particular course. It did not look at the reasons for the course not having been completed, but took a "blinkered view that because the course has not been completed then there is a risk that the applicant will relapse into his old ways";

(c) A relapse prevention plan which had been provided by the applicant was dismissed by the respondent as inadequate, but without it having in any way conducted a proper risk analysis, or indeed any analysis of the likelihood of the applicant re-offending sexually. The respondent failed to identify the flaws of the applicant's plan, and simply concluded that, because the applicant had not completed the recommended program, then the application must fail;

(d) The respondent should have, but did not, inquire into the prospects of re-offence. There should have been an up to date psychological report to support the respondent's findings. The statement of reasons really amounts to nothing more than the proposition that the fact that the course was not completed meant that the application for parole failed.

The Offending Behaviour

[20] Before turning to consider the merits or otherwise or these submissions, it is necessary to say something about the circumstances of the offences for which the applicant was imprisoned on 14 December 2007. As I have already mentioned, there were two complainants, who were sisters. One was aged 12-13 years ("R") and the other was aged 11-12 years ("A"). The applicant was in his 50's at the time of the offending. He was 59 years old when sentenced. The applicant had struck up a friendship with the children's family in 2000 or 2001 when he was living on a property near their property.

The friendship developed to the point where he and the family visited each other. After a few months, the complainants would stay with him on his property over the weekends. He had told the complainants' mother that he had been awarded an Order of Australia for helping wayward children. The complainants' step-father started working on the property, and in 2004 their family moved into a vacant house on the applicant's property, in which they lived for about eight months until January 2005. On the occasions when the complainant children stayed overnight with the applicant, they would sleep in the same bed as him. R said that the applicant started to touch her inside her clothing after a while. One of the counts of indecent treatment was based on an act of massaging or rubbing R's vagina with his fingers. This complainant stopped visiting the property for a while. The other complainant, A, said the applicant touched her in similar ways. He also took photographs of her when she was naked, leading to the charges of making and possessing child exploitation material. The acts depicted in the photographs constituted the two indecent treatment charges constituted by the photographic material, which included pictures of:

(a) the complainant A posing completely naked with legs spread and using her hands to show her vaginal opening;

(b) the complainant child urinating outside the applicant's house; there were close up photographs of her vagina and anus;

(c) the complainant child sitting on the applicant's groin area in a simulated sexual intercourse position; his penis was visible and she was sitting just beside it;

(d) the complainant's vagina being touched with a black dildo;

(e) the complainant child posing naked holding a kitten;

(f) the applicant with his mouth and tongue close to the complainant's vagina;

(g) the complainant in a bath tub with her legs spread, taken at a resort in Surfers Paradise when the applicant took her to one of the theme parks on the Gold Coast.

[21] The complainant's breasts were visible in most of the photographs. She said that the applicant would make her smile and pose for the photographs. One of the charges of indecent treatment was based on the complainant's statement that the applicant used to put his hands down her top and touch her breasts, and there was vaginal touching both inside and outside her clothing.

[22] The charge of unlawful carnal knowledge was based on two photographs which showed the complainant without clothes positioned above the applicant with his erect penis at the entrance to her vaginal passage. The applicant denied any penetration, and the complainant did not recall any acts of penetration. The applicant nevertheless

pleaded to one count of unlawful carnal knowledge because of the photographic evidence. In relation to those photographs, the applicant told police that the complainant "just said to do it … oh well, we both [indistinct] … we were just messing around she wanted – she looked at the other photos and I said 'no you can't have sex'".

[23] The trial judge's sentencing remarks record the prosecutor informing the court that the applicant had attempted to deflect blame onto the complainant child stating that "it's purely and simply because she saw these photos of me and these girls that I used to go out with" and that "she just tried to sort of emulate them, and like a mug that's why I wanted to bury them because of the simple reason I knew they weren't right".

[24] The learned sentencing judge also noted that in the police interview, the applicant had made some statements that he would admit "to everything that's here", but that he did not want the children harmed in any way whatsoever.

[25] The learned sentencing judge then said:

> "You are a man who has had a good reputation in the community in which you have lived. Your father was a medical doctor and your older brother is a medical doctor. You left school at the age of 16 after a good education and after having completed some studies in agriculture. You have worked hard throughout your life, eventually buying the property at Bowenville which you conducted as a constituted farm breeding thoroughbred horses.
>
> The psychiatric report by Dr Curtis confirms a diagnosis of paedophilia involving, he said, a personality disorder. Dr Curtis commented that you are not an actively intrusive, predatory, paedophile. While that comment does seem to be correct, his comment that your main deviation is for the most part voyeuristic cannot, of course, apply to either the bulk of the indecent treatment offences or the unlawful carnal knowledge charge.
>
> The report also confirms some aspects of denial on your part of your conduct but at the same time Dr Curtis feels you have an understanding that your conduct was wrong and the potential for rehabilitation.
>
> On sentence for these offences, a plea of guilty is an important consideration. Your general background and background character and the potential for rehabilitation are also important factors in the sentence.
>
> Mr Bailey, on your behalf, made very full submissions and I take what he said into account. The objective circumstances of the offence disclose conduct that is very serious because (1) the fact the offences were committed on two girls aged 11 to 13; (2) the length of time over which your conduct was spread; (3) the nature of the conduct, the charge of unlawful carnal knowledge of a child who was aged 12 at the time is a very serious offence, even accepting there

> was not penetration into her vaginal passage; (4) the circumstance you took advantage of your friendship with the children's parents to corrupt them; (5) the harm caused to the children, and the effect on the children of the offence are set out in the two victim impact statements.
>
> Balanced against the objective seriousness of the offences are your pleas of guilty, your past good character and life, the prospects of rehabilitation and your personal circumstances generally."

[26] His Honour then pronounced the sentences, the most significant of which was the head sentence of three years on the charge of unlawful carnal knowledge.

Did the Respondent err?

[27] Turning then to consider the applicant's submissions, it is clear that the information before the respondent raised the question of the applicant's risk of reoffending if released on parole as a live and relevant issue for consideration. However, it is not the case, as was submitted by the applicant, that the respondent denied parole simply because the applicant had not completed a particular course.

[28] The statutory purpose underlying the discretion to grant or refuse parole is stated in s 3(1) of the *Corrective Services Act* 2006:

> "The purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders."

[29] When exercising its discretion to achieve that purpose, the task for the respondent involved "the assessment of risk involved in granting to a prisoner the privilege of completing part of his sentence in the community".[1] Section 227(2) of the *Corrective Services Act* 2006 allows for the making of guidelines regarding the policy to be followed by the respondent in performing its functions. The Queensland Parole Board Guidelines to a Regional Parole Board dated April 2008 are in evidence before me. Section 1.1 of those guidelines state that:

> "When considering whether a prisoner should be granted a … parole order, the highest priority for a regional parole board ("the Board") should always be the safety of the community."

[30] Section 2 of the guidelines is headed "Suitability" and states as follows:

> "2.1 If a prisoner has been convicted of a sexual offence listed in schedule one of the *Corrective Services Act 2006*, the Board **should exercise extreme caution** when determining a prisoner's suitability to be granted parole.
>
> 2.2 If the Attorney-General has made an application for an order against a prisoner under the *Dangerous Prisoners (Sexual*

[1] *Morales v South Queensland Regional Parole Board*, 3 August 2007, White J, Supreme Court of Queensland

Offenders) Act 2003, the Board should closely scrutinise the prisoner's suitability to be granted parole. The Board should obtain psychiatric reports commissioned as part of the *Dangerous Prisoners (Sexual Offenders) Act 2003* process before determining the application.

2.3 Before making a decision to grant a prisoner a parole order, the Board should **always consider the level of risk that the prisoner may pose to the community**.

2.4 When deciding the level of risk that a prisoner may pose to the community, the Board should have regard to all relevant factors, including but not limited to the following –

(a) the recommendation for parole or the parole eligibility date fixed by the sentencing court;

(b) the sentencing court's recommendations or comments;

(c) the prisoner's co-operation with the authorities both in securing the conviction of others and preservation of good order within the corrections system;

(d) the prisoner's prior criminal history and any patterns of offending;

(e) the possibility of the prisoner committing further offences;

(f) any submission made to the Board by an eligible person;

(g) the prisoner's compliance with any other previous grant of community based release or resettlement leave program;

(h) if a parole order has been cancelled for reasons that relate to the safety and security of the community, the Board should be satisfied that the safety factors have been resolved;

(i) if a parole order has been cancelled because of a prisoner's unsatisfactory behaviour, the Board should not grant a further parole order to such a prisoner unless it is satisfied that the prisoner has sufficiently addressed their unsatisfactory behaviour that caused the cancellation of the parole order;

(j) whether there are any other circumstances that may increase the risk the prisoner presents to the community;

(k) any medical, psychological, behavioural or risk assessment report relating to the prisoner; and

(l) **recommended rehabilitation programs or interventions and the prisoner's progress in addressing the recommendations**." (emphasis added)

[31] The offences of which the applicant was convicted are listed in Schedule 1 of the *Corrective Services Act* 2006, and these guidelines were therefore applicable.

[32] It seems to me that, contrary to the applicant's submissions, a proper reading of the statement of reasons and the documentation which was before the respondent Board makes it clear that the respondent took into account a variety of factors in concluding that the applicant posed an unacceptable risk to the community at the time of deciding to refuse his parole application. Those factors included:

- the gravity of his offending;

- the simplistic prevention strategies in his written relapse prevention plan;

- the respondent's concern that the applicant had not fully understood all the factors in his sexual offending;

- that successful completion of recommended intervention programs would provide him with knowledge and strategies to develop a more robust release and relapse prevention plan, which might provide the Board with the confidence that he has minimised the risk he poses to the community;

- that the applicant having identified treatment needs, the Board was concerned about his ability to self-regulate if released on parole without having completed programs to address those needs;

- a concern that the applicant's failure to participate in the recommended programs had deprived him of the opportunity to gain knowledge to explore strategies to assist him to avoid reoffending in the future.

[33] This is not a case where it can in any way be said that the respondent acted blindly in accordance with some policy to refuse parole because the applicant had not completed a recommended program. Rather, in not dissimilar circumstances to those considered by Atkinson J in *DAR v The Queensland Parole Board* [2009] QSC 399, the reasons given by the Board show that this was one of the factors which was taken into account, but there were other matters which also influenced its decision making process. Not only was it appropriate for the respondent to consider this as one of the relevant factors because of the requirements of the guidelines, plain commonsense dictates that in a case of this type of offending, and with the SOPA Assessment which identified the need and reasons for the applicant to complete this program, it was completely legitimate for the respondent to form a view of the desirability of that course being completed before release into the community, having regard to the paramount priority of the safety of the community. Just as Atkinson J concluded, at [37] in *DAR*, I would say in this case that it is apparent from an examination of the material that the respondent did not act according to a rigidly enforced policy, as is submitted by the applicant, rather than according to the merits of the particular case.

[34] I observe in passing that a point of distinction, not in the applicant's favour, with *DAR* is that in the present case the applicant has in fact been offered the opportunity of completing the course in question, but for reasons stated in different ways on different occasions, has declined the opportunity to do so.

[35] The applicant's complaints about the respondent's approach to the relapse prevention plan, in my opinion, take the matter nowhere. Whilst there is no requirement at law for a prisoner to provide a relapse prevention programme,[2] the applicant voluntarily provided such a plan with his original application in 2008. However the relapse prevention plan having been provided, it was clearly appropriate for the respondent to have regard to the adequacy or otherwise of that plan when making an assessment of the risk of this individual. It is not for this court to consider the merits of the risk assessment on an application such as this. I think it clear, however, that the respondent committed no error by forming a conclusion as to the adequacy or otherwise of the relapse prevention programme offered by the applicant and taking that into account as one of the factors in assessing the overall risk which the applicant would present to the community if released on parole. In any event, I should observe that the respondent's statement of reasons, rather than summarily dismissing the applicant's relapse prevention plan, was quite detailed in its criticism of the contents of that plan, stating specifically the need for the applicant to include the high risk factors and triggers that led to his sexual offences and the protective factors, including victim empathy, which in conjunction with coping mechanisms he would develop to avoid this type of offending in the future. The applicant's criticism of the respondent's consideration of the relapse prevention plan is, in my view, thin indeed.

[36] Finally, the applicant's submission, which was not pursued orally in the hearing before me, that the respondent ought have obtained an up to date psychological report to support its findings is not maintainable. It was not incumbent on the respondent to seek an up to date psychological report; it was entitled to act on the material before it. There is no explanation as to why the applicant did not seek to place a psychological report before the respondent. In any event, this complaint goes to the merits rather than the lawfulness of the decision, and is not the proper subject of an application for a statutory order of review.

Conclusions

[37] It follows from my conclusions with respect to the arguments advanced on behalf of the applicant that I consider that there was no error of law in the respondent's decision to refuse parole, and accordingly the application for a statutory order of review should be refused.

[38] The respondent has sought its costs of the proceeding, limited to the costs incurred since the statement of reasons in October 2009. In all the circumstances, however, having regard to the overall history of the matter, I think it appropriate for there to be no order as to costs.

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[2] *Gough v Southern Queensland Regional Parole Board* [2008] QSC 222.