SUPREME COURT OF QUEENSLAND

CITATION:	*Boyy v Parole Board Queensland* [2018] QSC 175
PARTIES:	**BRENTON WILLIAM-ALFRED BOYY** (Applicant) **v** **PAROLE BOARD QUEENSLAND** (Respondent)
FILE NO/S:	BS No 814 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application for an order of statutory review
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	3 August 2018
DELIVERED AT:	Brisbane
HEARING DATE:	18 July 2018
JUDGE:	Burns J
ORDER:	**The order of the court is that the application be dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – RELEVANT CONSIDERATIONS – where the respondent decided to decline the applicant's parole application – where the applicant seeks a statutory order of review of that decision pursuant to s 20 of the *Judicial Review Act* 1991 (Qld) – whether the making of the decision was an improper exercise of the power conferred on the respondent by s 217 of the *Corrective Services Act* 2006 (Qld) – whether the respondent failed to take relevant considerations into account when making the decision *Corrective Services Act* 2006 (Qld), s 3(1), s 180, s 192, s 193(1)(a), s 216, s 217, s 221, s 227, s 230, s 242E, s 243, s 245 *Judicial Review Act* 1991 (Qld), s 20, s 23 *Penalties and Sentences Act* 1992 (Qld), s 159A, s 160B, s 160C, s 161B *Supreme Court of Queensland Act* 1991 (Qld), s 90(1) *Attorney-General (NSW) v Quin* (1990) 170 CLR 1, cited *Calanca v Queensland Parole Board* [2013] QSC 294, cited *Calanca v Queensland Parole Board* [2017] 1 Qd R 1, cited *Gough v Southern Queensland Regional Parole Board* [2008]

QSC 222, discussed
McGrane v Queensland State Parole Board [2010] QSC 209, discussed
Minister for Aboriginal Affairs & Anor v Peko-Wallsend Ltd & Ors (1986) 162 CLR 24, followed
Queensland Parole Board v Moore [2012] 2 Qd R 294, considered
Wall v Central and Northern Queensland Regional Parole Board [2013] QSC 129, followed

COUNSEL: The applicant appeared on his own behalf
M J Woodford for the respondent

SOLICITORS: The applicant appeared on his own behalf
Crown Solicitor for the respondent

[1] The applicant prisoner applied to the respondent Board for release on parole, but his application was refused. By this application, he seeks a statutory order of review of that decision pursuant to s 20 of the *Judicial Review Act* 1991 (Qld). He complains that the making of the decision was an improper exercise of the power conferred on the Board by s 217 of the *Corrective Services Act* 2006 (Qld) because, he contends, the Board failed to take relevant considerations into account.[1]

Background

[2] The applicant is 30 years of age. On 26 September 2016, he pleaded guilty in the District Court in Brisbane to one count of grievous bodily harm and two counts of serious assault. The indictment reflected two episodes of violence perpetrated against three separate victims. The first involved a complete stranger who was walking down a city street when attacked by the applicant. The sentencing judge, her Honour Judge Clare SC, described what occurred:

> "It was gratuitous and vicious. You punched him in the mouth. The force was so powerful it knocked out not just his front teeth but the bone in which they grew. You broke his upper and lower jaw. He lost a lot of blood and suffered a serious facial deformity. And then you started choking him. Security officers had to pull you away and you fled. You were drunk and high. You had become angry after hotels had refused you entry and your partner had argued with you. To use your own words, you were in "terminator mode" – an irrational rage that resulted in the attack …"[2]

[3] The second episode occurred when the applicant was in custody on remand. On that occasion, he reacted to directions given to him by two prison officers by punching one in the head and the other in the face before throwing a container of food at them.

[4] By the time of sentence, the applicant had accumulated an extensive criminal history in

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1 *Judicial Review Act* 1991 (Qld), ss 20(2)(e), 23(a) and 23(b). Other grounds of review were advanced by the applicant but, for the reasons later expressed (at [41] to [44]), they were either not developed in submissions or were not supported by the material before the court.

2 Affidavit of Menaka Wickramasinghe filed on 16 March 2018, Ex MW-31, p 2.

New South Wales, including several convictions for violence. As to this, and his background more generally, Clare SC DCJ made these remarks:

> "You have pleaded guilty to all offences and expressed remorse. Your plan is to return to New South Wales where your family live. At the time of the grievous bodily harm you were 27 years old and on parole with a substantial record for anti-social conduct. The history includes violence against people as well as property. Since you were a young fellow, Courts have warned you to control your anger.
>
> [Your counsel] has explained that you were the victim of violence. You had the disadvantage of a terrible childhood. But you have had opportunities for help over time, with various court orders designed to support your rehabilitation and development. There is a repetitive history against partners, against strangers and against law enforcement, that is, police, corrective services and judicial officers. Many periods of imprisonment and counselling have not deterred you. The subsequent reoffending in remand custody confirms the need for strong personal deterrence. At this time, you represent a danger to anyone who comes into contact with you.
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> You cannot be sentenced again for the previous offences. Today's sentence must be proportionate to what you did [and] not inflated by your past. The punishment can only be [for] the new crimes. But within those parameters community protection is of fundamental importance. Your own personal ambitions assume less significance than the need for deterrence, punishment and community denunciation."[3]

[5] Her Honour considered whether a declaration should be made pursuant to s 161B of the *Penalties and Sentences Act* 1992 (Qld) that the applicant's conviction for grievous bodily harm was a serious violent offence. Although declining to do so, her Honour observed:

> "The circumstances of the present grievous bodily harm do constitute serious violence however I am not persuaded to exercise the discretion here. You are entitled to some credit for the plea of guilty."[4]

[6] Her Honour then turned to a submission made by the applicant's counsel that "certainty of release" should be provided "through a partially suspended sentence", but determined that:

> "[C]ommunity safety weighs in favour of review and supervision under a parole order rather than a suspended sentence.
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> …
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> … An eligibility date will allow release at an appropriate time when assessed by the parole authorities."[5]

[7] The applicant was sentenced to five years' imprisonment for the offence of grievous bodily harm. For the two offences of serious assault, concurrent terms of three months' imprisonment were imposed, although it was ordered that they be served cumulatively on the sentence imposed for the grievous bodily harm. In consequence, a total sentence

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3 Ibid, pp 2-3.
4 Ibid, p 3.
5 Ibid.

of five years and three months was imposed and a declaration of pre-sentence custody (332 days) was made pursuant to s 159A of the *Penalties and Sentences Act*. The date on which the applicant would be eligible for parole was fixed as 30 July 2017, such an order being made pursuant to s 160C of the *Penalties and Sentences Act*. His fulltime release date is 29 January 2021.

The parole application

[8] Prior to 30 March 2017, the applicant successfully applied for the transfer of any parole order to New South Wales. The decision approving this transfer was made on that date by the New South Wales authorities, and Queensland Corrective Services were advised of the approval on the following day.[6]

[9] The applicant had earlier completed an application for parole pursuant to s 180 of the *Corrective Services Act*. It is dated 30 January 2017, but was not received by the Board until 11 April 2017. In support of his application, the applicant submitted a Relapse Prevention and Management Plan and made reference to opinions expressed by a psychologist, Ms Tatjana Jokic.

[10] Ms Jokic is based in Sydney. The applicant was initially referred to her for clinical assessment for the purposes of a court report for a hearing in November 2013. She was subsequently retained by or on behalf of the applicant to prepare a report to support his application for parole and she did so on 30 January 2017.[7] Her report was received by the Board on 10 February 2017. In it, she expressed the opinion that the applicant is "unable to transition into the community without intensive treatment and [a] post release program to assist him".[8] After noting that the applicant has a "long history of behavioural difficulties", she concluded that he would "benefit from therapy to further assist him with … behaviour modification".[9] She made these recommendations:

> "This report supports [the applicant] moving back to New South Wales in order to be close to his support networks. [The applicant], from my understanding has a number of strong supports that will assist him with seeking assistance that he requires as well as supporting him once released. [The applicant], as notice above, would benefit from therapeutic intervention and I am happy to meet with [the applicant] to re-assess his current needs and provide the relevant therapy as required. In addition, [the applicant] is able to gain assistance re-connecting with local service providers and community supports in New South Wales, providing him with a greater opportunity for positive treatment outcomes noted above.
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> It was and still is recommended that [the applicant] be referred to a Psychologist to formally assess his current mental health status and to begin therapeutic intervention based on the in-depth psychological assessment. [The applicant] appears to require assistance with his thought processing; decision making and the ability to seek alternate resolutions to situations. From all the information read and discussed, it appears that [the applicant] has the ability to be rehabilitated and to teach him the skills to reduce the impulsivity; to address the anger and to address his past behaviour relating to domestic violence. However, this needs to be under a

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6 *Wickramasinghe*, Ex MW-27.
7 *Wickramasinghe*, Ex MW-24.
8 Ibid, p 1.
9 Ibid, p 2.

> strict court ordered regime. [The applicant], himself, states that this is the only structure (and requests that it be in place for up to five years) that will allow him to truly rehabilitate.
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> He requires assistance to learn effective methods of dealing with his emotions and to participate in a court ordered therapeutic program. He would benefit from a lengthy and graduated prison release program where he was initially an inpatient of a therapeutic program, followed by being an outpatient and being responsible for achieving program goals in order to address the above mentioned diagnosis.
>
> [The applicant] has not gained any benefit from his current and past incarceration. If anything, it has added to his anger and inability to behave appropriately. …"[10]

[11] The Board first considered the application at its meeting on 24 April 2017. The approval for the transfer of the applicant's parole to New South Wales was noted, but the Board decided to defer consideration of the application pending an assessment of the applicant's treatment needs and the investigation of an alleged disciplinary breach that occurred on 17 March 2017 concerning the location of contraband in his cell.

[12] In the event, nothing turned on the alleged disciplinary breach but it is necessary to say something at this juncture about the assessment of the applicant's treatment needs.

[13] It will be recalled that the applicant was sentenced on 26 September 2016. After commencing his sentence of imprisonment, his treatment needs were assessed. In this regard, a Rehabilitation Needs Assessment completed on 5 October 2016 identified that, although the applicant was noted to display a propensity to violence, he did not then meet the criteria for participation in the Cognitive Self Change Program (**CSCP**).[11] However, by the time a report was prepared for the Board on 4 April 2017 (by a panel of three persons attached to the Woodford Correctional Centre as well as a probation and parole officer from the Caboolture District Office of Corrective Services), a senior psychologist with "Offender Development"[12] had advised that there was "currently a case conference pending for this prisoner to identify further intervention needs".[13]

[14] It is not clear what prompted the scheduling of a case conference to identify the applicant's further treatment needs, although it is possible that this was triggered by the provision of Ms Jokic's report. Equally, it is possible that it came about because of the looming parole eligibility date. In any event, a case conference did take place and, on 30 May 2017, the secretary to the Board was advised that the case conference panel (comprised of staff from Offender Rehabilitation and Management Services and the Woodford Correctional Centre) had determined that the applicant should be "waitlisted for [the] CSCP".[14]

[15] Earlier that month (7 May 2017), the applicant forwarded further submissions to the

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10 Ibid, pp 2-3.

11 *Wickramasinghe*, Ex MW-25, p 4. The CSCP is a "high intensity cognitive-behavioural intervention that aims to reduce violent and general offending in high-risk adult offenders": See affidavit of the applicant filed on 23 January 2018, Ex D-7.

12 Ibid.

13 Ibid.

14 *Wickramasinghe*, Ex MW-21, p 1.

Board and these were received on 11 May 2017. At its meeting on 7 June 2017, the Board considered the application along with the supporting material and submissions. Having done so, the Board formed the preliminary view that the applicant would pose an unacceptable risk to the community if he was released on parole at that time.

[16] On the following day (8 June 2017), the Board wrote to the applicant to outline its concerns and to identify the factors that contributed to the formation of its preliminary view not to grant parole. The applicant was invited to make further submissions in response to those various factors. These were summarised in the Board's letter as follows:

> "You are serving a sentence of five years and three months for the crimes of grievous bodily harm, serious assault on a corrective services officer (x2). The grievous bodily harm involves an unprovoked and unjustifiable savage attack on a complete stranger. You said the offence was committed because you became angry after some hotels refused you entry.
>
> The Board was concerned to note that you were subject to a New South Wales parole order at the time of the offence; and that you have an extensive New South Wales criminal history, which includes a number of offences involving violence.
>
> Your willingness to be violent has continued since you have been in custody in that you have assaulted other prisoners, threatened staff and assaulted an officer.
>
> It has been recommended that you participate in the Cognitive Self Change Program (CSCP), which is designed to assist people to learn how to refrain from violence and avoid potentially violent situations.
>
> Indeed, the Board currently considers that you could not sensibly be said to be a suitable candidate [for] release from custody to parole, unless, at the very least, you satisfactorily complete the CSCP and any other rehabilitation program offered to you, and you behave acceptably … for a substantial period.
>
> The Board was aware of your parole eligibility date provided at the time of sentencing. However the Board is of the opinion that the Court would not have been aware of your outstanding treatment needs to address criminogenic risk factors relating to your offending and your poor institutional behaviour and conduct during incarceration."[15]

[17] On 21 June 2017, the Board received further submissions from the applicant in response to the invitation contained in its letter of 8 June. These were to be considered at its meeting on 11 July 2017 but it became apparent that a portion of it was missing from the Board's material. It was, in any event, decided to rescind the preliminary view that the Board reached on 7 June 2017 to refuse parole and to consider the application afresh. To that end, the Board resolved to request information from the Prison Mental Health Service given the concerns expressed in Ms Jokic's report to the effect that the applicant had a "long history of behaviour difficulties namely, impulsivity, aggression, and high [levels] of frustration", that he had "not gained any benefit from [his] current and past incarceration" and that his imprisonment "has added to [his] anger and inability to behave appropriately".[16] It was therefore resolved to defer making any decision regarding the application until the requested information was received and, further, until

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15 *Wickramasinghe*, Ex MW-5, pp 1-2.

16 *Wickramasinghe*, Ex MW-7, p 1.

the applicant was provided with an opportunity to make further submissions. Each of these matters was then advised to the applicant by letter dated 20 July 2017.[17]

[18] On 27 July 2017, the Board received further submissions from the applicant in response to the Board's letter a week earlier. After they were received, the Board considered the application again at its meeting on 24 August 2017. After doing so, the Board again reached a preliminary view that the applicant would pose an unacceptable risk to the community if he was released on parole.

[19] By letter dated 12 October 2017, the Board notified the applicant of the factors which led it to reach that preliminary view and, again, the applicant was invited to make further submissions by way of response. The Board referred to the feature that the applicant was subject to a parole order at the time he committed the offence of grievous bodily harm, that he had been involved in a number of serious incidents and disciplinary breaches when in custody, some of which involved violence or threats of violence, that Ms Jokic had expressed the opinions extracted earlier (at [10]), that completion of the CSCP would assist in his rehabilitation and that the Relapse Prevention Plan submitted by the applicant had a number of shortcomings. In that last-mentioned respect, the following was said:

> "The Board encourages you to provide a more robust relapse prevention plan that specifically addresses your needs and strategies. The Board notes your submission dated 24 July 2017 which included copies of completion certificates for some courses you have attended in custody and commends you for this. The Board also notes that you are planning to return to New South Wales once released to parole, and is aware that approval for transfer of your parole to that State has been granted. However, the Board would encourage you to provide in your relapse prevention plan the details of how you will engage with appropriate services and agencies in New South Wales to assist your ongoing rehabilitation needs.
>
> The Board understands that you may be in a better position to prepare [and] provide a more robust relapse prevention plan after you have successfully completed the CSCP."[18]

[20] On 1 November 2017, the Board received submissions from the applicant in response to its 12 October letter. It is, however, to be noted that the Board also received further submissions from the applicant on 5 September 2017, 20 September 2017 and 17 October 2017 as well as a further set of submissions on 16 November 2017.

The parole decision

[21] At its meeting on 16 November 2017, the Board decided to refuse the application for parole and wrote to the applicant on the same day to inform him of that outcome. Relevantly, it was stated:

> "The Board noted and considered thoroughly all your submissions provided to it. The Board determined that there was no new information provided to the Board that would alleviate the concerns as identified to you in its various letters to you dated 20 July 2017 and 12 October 2017. For the reasons set out in this letter and

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17 Ibid.

18 *Wickramasinghe*, Ex MW-9, p 4.

> its previous letter to you 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.
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> The Board considered if it should indicate whether there are any improvements or activities which would be likely to reduce the risk you currently present to the community. The Board has decided that it would not be appropriate to give such an indication.
>
> You have received all the relevant material and have had the opportunity to respond to the Board's concerns. The Board reaffirms these concerns (note any exceptions in light of the further submission).
>
> For the reasons set out in this letter and its previous letter to you 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 Board consents to you lodging a new application with the Board at any time six (6) months from the date of this decision, that being six months from 16 November 2017."[19]

[22] Subsequently, on 23 November 2017, the Board received a letter from the applicant requesting a statement of reasons and these were provided by letter dated 7 December 2017.[20]

The Statement of Reasons

[23] The statement of reasons contains a list of material considered by the Board in reaching its decision to refuse parole. It includes Ministerial Guidelines issued to the Board on 3 July 2017.[21] The various submissions and supporting material supplied by the applicant, including the report prepared by Ms Jokic on 30 January 2017 and two successive versions of the applicant's Relapse Prevention Plan (dated 30 January 2017 and 26 October 2017 respectively), also appear on the list.

[24] The statement of reasons records the Board's findings of fact: that the applicant became eligible to apply for parole on 30 July 2017; that he had gained numerous certificates of completion for courses undertaken whilst in custody; that he had been approved for transfer to New South Wales if admitted to parole; that he had demonstrated poor custodial behaviour during the time he had been in custody; that he had outstanding treatment needs; and that he posed an unacceptable risk to the community and was not a suitable candidate for parole.[22]

[25] As to the applicant's custodial behaviour, although it was noted that he had not been involved in any violent incidents since he was sentenced, the Board took the view that it was entitled to consider his custodial behaviour as a whole when assessing his risk of recidivism. The Board was concerned that the applicant was "unable to maintain acceptable behaviour in a structured environment" and, further, expressed "concerns

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19 *Wickramasinghe*, Ex MW-15, p 3.
20 *Applicant*, Ex D-1.
21 *Wickramasinghe*, Ex MW-17.
22 *Applicant*, Ex D-5.

regarding [the applicant's] ability to uphold parole conditions which the Board is entitled to impose to ensure [his] good conduct or stop [him from] committing an offence".[23]

[26] It is apparent from the statement of reasons that the Board gave careful consideration to the report prepared by Ms Jokic on 30 January 2017. In fact, the Board relied on and accepted the findings contained in that report when arriving at its decision. In that regard, it was noted that the applicant had a "long history of behavioural difficulties, namely, impulsivity, aggression, and a high level of frustration", that he had "not gained any benefit from [his] current and past incarceration, and if anything, it has added to [his] anger and inability to behave appropriately".[24] The Board recorded that the applicant had "the ability to be rehabilitated and taught the skills to reduce [his] impulsivity, to address the anger and to address [his] past behaviour relating to domestic violence …".[25]

[27] The applicant's outstanding treatment needs were then the subject of considerable focus in the statement of reasons. The Board considered the applicant's "history of violent offending"[26] as well as the sentencing remarks made by Clare SC DCJ. After doing so, the Board formed the view that the applicant had "the propensity to be violent and to date, [his] identified needs remain untreated and outstanding".[27] The Board was "not confident" that, without intervention, the applicant would not engage in violent behaviour if released into the community.[28]

[28] The Board noted that it had been recommended that the applicant complete the CSCP and considered that, in light of his outstanding treatment needs, the completion of that program was "necessary"[29] before the applicant could be considered to be a suitable candidate for parole. The Board also expressed the view that the CSCP would be "of practical assistance to [the applicant], educating [him] on how to avoid crime, violence or harmful behaviour".[30] Because the applicant had not, to that point in time, participated in the CSCP, the Board was of the opinion that the applicant's "violence offending behaviour remains unaddressed [sic]".[31] Whilst the Board accepted the submissions made by the applicant to the effect that the waitlist for the CSCP was "long", it remained of the view that the successful completion of that program was "an important step in [the applicant's] rehabilitation" because satisfactory completion of it "would give the Board confidence that [the applicant] will be a lower risk to the community".[32]

[29] So far as the applicant's Relapse Prevention Plan were concerned, the Board considered the version dated 30 January 2017 and noted that the applicant had been requested to revisit it with a view to addressing his particular needs as well as identifying adequate

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23 *Applicant*, Ex D-6.
24 Ibid.
25 *Applicant*, Ex D-7.
26 Ibid.
27 Ibid.
28 Ibid.
29 Ibid.
30 Ibid.
31 *Applicant*, Ex D-8.
32 Ibid.

strategies. It considered that the applicant might be in a better position to do so following the completion of the CSCP. It also noted that, at its meeting on 16 November 2017, the updated Relapse Prevention Plan dated 26 October 2017 was "thoroughly considered"[33] but determined that there was "no new information contained within that document which would alleviate the Board's concerns" that had been expressed in relation to the earlier version.[34] In that regard, the Board recorded that the earlier version "demonstrated minimal insight into [the applicant's] "triggers" for [his] offending and did not articulate realistic plans to mitigate [his] risk of reoffending upon release".[35]

[30] The Board recorded as a favourable feature of the application that the applicant had completed a number of courses whilst in custody, but it was not satisfied that the risk he posed to the community was "sufficiently mitigated … by the completion of [those] courses".[36]

[31] The Board considered whether conditions of parole could be imposed such that the level of risk the applicant posed to the community could be reduced to an acceptable level. As to this, the statement of reasons contains the following:

> "The Board considered your fulltime release date of 29 January 2021. The Board considered whether any conditions of parole could be imposed that would effectively mitigate the level of risk you may pose to the community, if you were released on a parole order at this time. The Board also considered the standard parole conditions that may be imposed by way of a parole order. The Board formed the view that the level of risk you pose to the community at this time, is such that it cannot be mitigated by way of standard parole conditions imposed by way of parole order. The Board was not satisfied that a sufficient level of supervision could be provided to you on a parole order. In forming this view, the Board was also conscious of the level of resources reasonably available to monitor such parole conditions and the level of monitoring that would be required in your case."[37]

[32] Lastly, the Board stated that it "did not consider it appropriate to indicate whether there are any improvements or activities which would be likely to reduce the risk" to the community.[38] It is however to be observed that, contrary to that statement, the Board did indicate that the successful completion of the CSCP was an important step in the applicant's rehabilitation and that satisfactory completion of it "would give the Board confidence that [the applicant] will be a lower risk to the community".[39] It is therefore difficult to understand why such a statement was made, although it is possible that the Board was acting under the misapprehension that it had a duty to decide whether to give such an indication and resolved not to do so beyond what it recorded regarding the desirability of the applicant completing the CSCP. The Board had such a duty under previous versions of the Ministerial Guidelines,[40] but that is no longer the case.[41]

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33 *Applicant*, Ex D-9.
34 Ibid.
35 *Applicant*, Ex D-8.
36 *Applicant*, Ex D-9.
37 Ibid.
38 *Applicant*, Ex D-10.
39 *Applicant*, Ex D-8.
40 See *Calanca v Queensland Parole Board* [2017] 1 Qd R 1, [46].
41 When the decision under review in *Calanca* was made, the operative Ministerial Guidelines were those

Subsequent developments

[33] Prior to the decision of the Board to refuse parole, the applicant commenced the CSCP at the Woodford Correctional Centre and, between 16 October 2017 and 20 February 2018, he completed the first two stages of that program. However, the applicant was unable to continue the program because he was moved from the Woodford Correctional Centre for "the security and good order of the centre".[42] He was transferred to the Maryborough Correctional Centre. An exit report recorded that, from the commencement of the program, the applicant "appeared reluctant to engage in the requirements for successful completion".[43] Although he maintained an acceptable rate of attendance, it was thought that the applicant was "difficult to engage during sessions and tutorials".[44]

[34] In a letter the applicant wrote to Offender Rehabilitation and Management Services, which was received on 23 April 2018, he asked that he be allowed to complete the remainder of the CSCP. On 6 June 2018, a representative from the Offender Intervention Unit interviewed the applicant to "consider the options available to [him] to complete" the CSCP.[45] Then, in a letter from ORMS on 20 June 2018, the view was expressed that the applicant lacked "treatment readiness" and, for that reason, he was encouraged to participate in the Turning Point Program (**TPP**) as a precursor to completing the CSCP. What transpired after that is unclear on the material before the court but, as it turns out, the applicant was not required to undertake the TPP but was instead allowed back into the CSCP. On current indications, he will complete that program at some time this month.[46]

[35] As earlier mentioned, the Board consented to the applicant lodging a fresh application for parole after six months had elapsed from the date of its decision.[47] On 16 May 2018, the applicant did lodge a fresh application but, as at the date of the hearing of this application, it had not been considered by the Board.

The grounds of review

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issued on 23 August 2012. Paragraph 5.6 of those Guidelines provided that: "When an application is refused and reasons for the refusal are given, the response should also give an indication to both the prisoner and Queensland Corrective Services of the improvements or activities that would be of benefit in reducing the risks posed to the community by the prisoner." The combined effect of paragraph 5.6 and what was then s 227(1) of the *Corrective Services Act* (see now s 242E) was that the Board had a duty to decide whether to give such an indication. See *Calanca*, [46]-[47], [49]. However, the Ministerial Guidelines that applied to the decision under consideration in this case were issued on 3 July 2017 and do not contain what was previously paragraph 5.6, or anything like it. See *Wickramasinghe*, Ex MW-17.

42 Exhibit 2. Reference is made in the exit report to two incidents, but there is no further elaboration. In a letter to the applicant from the Director, Offender Rehabilitation and Management Services dated 20 June 2018 (Exhibit 3), the following is recorded:

> "It is noted that due to a range of circumstances, including breach related activity you were transferred from Woodford Correctional Centre for the good order and security of the correctional facility. This disrupted your program participation in the CSCP".

43 Ibid.

44 Ibid.

45 Exhibit 3.

46 Transcript, 1-6 and 1-7.

47 *Wickramasinghe*, Ex MW-15, p 3.

[36] According to the application filed on 23 January 2018, the grounds advanced to support a statutory order of review were stated to be:

> "Taking irrelevant considerations into account and failing to take a relevant consideration into account: that there was a (NSW) parole transfer approved and any (NSW) corrections program offered in the community, or my [psychologist's] offer may reduce the risk to the community to be acceptable if imposed [and] also that procedures that were required by law to be observed in relation to the making of the decision were not observed that the decision involved a error of law".

[37] In the affidavit sworn by the applicant in support of his application,[48] he asserted that he will not be an unacceptable risk to the community if released on parole and his parole is transferred to New South Wales. He expressed a number of reasons why that will be so, and those reasons (along with others) were later elaborated in a series of 15 points contained in an amended summary of argument filed on 16 July 2018. Otherwise, the applicant complained that the Board had a "possible conflict of interest"[49] (again, elaborated in the amended summary of argument) and referred to developments since the decision to refuse parole was made (such as his participation in the CSCP).

[38] So far as the grounds for review set out in his application are concerned, the applicant maintained in his supporting affidavit filed with the application that the Board:

> "… forgot alternatives and positives as [to] what parole conditions (NSW) could offer as approved, and my [psychologist's] offering of support in (NSW) and community courses in (NSW) if parole granted …
>
> …
>
> My supports and sponsors in (NSW) with my approved (NSW) parole transfer, and the community courses there in (NSW) and my treatment offering in report, Tatjana Jokic, my mental health my need to rehabilitate in [the] community and utilise NSW parole's services for rehabilitation at court regime expense and referrals."[50]

[39] Lastly, in written submissions prepared by the applicant on 24 January 2018,[51] he submitted that the "main focus of [his] argument" was based on a principle to be derived from the decision of the Court of Appeal in *Queensland Parole Board v Moore*[52] to the effect that it is both relevant and necessary for the Board to take into account, and weigh, the relative risks of discharging the prisoner at or towards the end of his sentence or of giving him earlier supervised release on parole.[53] In support of that argument, the applicant sought to rely on Ms Jokic's report, contending that it established he would benefit from a longer rather than shorter period of parole during which the treatment recommended in that report could be provided.

Consideration

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48 Filed on 23 January 2018.
49 *Applicant*, p 4.
50 Ibid, pp 4-5.
51 Filed on 7 February 2018. Supplemented by a further document dated 9 February 2018 and received as Exhibit 4.
52 [2012] 2 Qd R 294.
53 Ibid, [17].

[40] By s 180 of the *Corrective Services Act*, an application for parole may be made if the prisoner has reached his or her parole eligibility date in relation to the relevant period of imprisonment. However, unless the sentencing court fixes a parole release date pursuant to s 160B of the *Penalties and Sentences Act*, a prisoner has no right to release on parole. Instead, although the prisoner will have become eligible for release on parole, it is for the Board to decide whether to grant the application: *Corrective Services Act*, ss 193(1)(a) and 217(a). Indeed, when deciding whether to grant parole, the Board is not bound by the recommendation of the sentencing court or the parole eligibility date fixed by the court if the Board receives information about the prisoner that was not before the court at the time of sentencing (such as a psychologist's report obtained during the period of imprisonment) and, after considering that information, considers that the prisoner is not suitable for parole at the time recommended or fixed by the court: *Corrective Services Act*, s 192.

[41] That made clear, of the grounds identified in the application, the supporting affidavit, the written submissions and the amended summary of argument to which I have referred (at [36] to [39]), two may immediately be put to one side, namely: (1) the procedures required by law to be observed in relation to the making of the decision were not observed;[54] and (2) the decision involved an error of law.[55] Neither ground was sought to be developed beyond their inclusion in the grounds expressed in the initiating application and nor was there any support for either of them in the material.

[42] The remaining grounds were to the effect that the making of the decision was an improper exercise of the power conferred on the Board by s 217 of the *Corrective Services Act* because, it was argued, the Board acted on irrelevant considerations and/or failed to take relevant considerations into account. In that regard, and like the grounds just considered (in [41]), the applicant failed to identify any irrelevant considerations that were taken into account by the Board. Instead, the main thrust of his argument was that the matters extracted above (at [36] and [38]) were relevant to the decision whether to grant or refuse parole but, despite that, were not taken into account by the Board.[56]

[43] It is also to be observed that much of the applicant's argument, and a not insignificant part of the material, went to the merits of the Board's decision. But, as the court attempted to explain to the applicant during the course of the hearing,[57] it is not permissible in a proceeding such as this for the court to engage in a merits review. The scope and purpose of proceedings under the *Judicial Review Act* is to ensure that powers are exercised for the purposes for which they were conferred and in the manner in which they were intended to be exercised. It is the extent of the power and the legality of its exercise to which judicial review is directed.[58] As such, it is "no part of the court's role to second-guess decisions of the Board made regularly under its charter".[59] As Mason J stated in *Minister for Aboriginal Affairs & Anor v Peko-Wallsend Ltd & Ors*:[60]

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54 See *Judicial Review Act*, s 20(2)(b).
55 See *Judicial Review Act*, s 20(2)(f).
56 Transcript, 1-8.
57 Transcript, 1-15.
58 *Attorney-General (NSW) v Quin* (1990) 170 CLR 1, 35-36.
59 *Wall v Central and Northern Queensland Regional Parole Board* [2013] QSC 129, [16].
60 (1986) 162 CLR 24.

> "The limited role of a court reviewing the exercise of an administrative discretion must constantly be borne in mind. It is not the function of the court to substitute its own decision for that of the administrator by exercising a discretion which the legislature has vested in the administrator. Its role is to set limits on the exercise of that discretion, and a decision made within those boundaries cannot be impugned."[61]

[44] So, too, is it useful to record that a great deal of the material and submissions relied on by the applicant concerned events after the date on which the decision under challenge was made. Evidence of facts occurring after the decision is not generally admissible in a proceeding such as this, the parties being limited to the material that was before the decision-maker. The admission of such evidence would risk drawing the court into an impermissible review of the merits of the decision but, even were that not the case, where the ground of review is that the decision was an improper exercise of the power conferred on the Board in the sense that relevant considerations were ignored, it almost goes without saying that such a criticism is incapable of being levelled at the Board in the case of any facts that were not in existence when the decision was made.

[45] The discretion conferred on the Board by s 193(1)(a) of the *Corrective Services Act* to grant or refuse an application for parole is a broad one, unconstrained by any statutory prescription. The question whether a consideration is relevant or irrelevant in the sense in which those terms are used in ss 23(a) and 23(b) of the *Judicial Review Act* depends upon the proper construction of the statute conferring the power to make the decision, that is to say, the *Corrective Services Act*. To the point, a consideration will be irrelevant within the meaning of s 23(a) only if, on the proper construction of the *Corrective Services Act*, the decision-maker is precluded from taking that consideration into account. Likewise, a consideration will be a relevant consideration within the meaning of s 23(b) only if, on the proper construction of the *Corrective Services Act*, the decision-maker is bound to take it into account.[62] Precisely what matters the decision-maker is bound to take into account will fall to be identified from the statute conferring the power, either expressly or by implication from "the subject-matter, scope and purpose of the Act".[63]

[46] Parole is an integral part of the overall regime under the *Corrective Services Act*, the purpose of which is "community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders".[64] It follows that, to the extent that a particular consideration is relevant to that statutory purpose, the Board is bound to take it into account. Thus, by way of example, a consideration that impacts, one way or the other, on the rehabilitation of the offender will be a relevant consideration which the Board must take into consideration in the exercise of the power conferred on it to either grant or refuse parole.[65] Likewise, where the Ministerial Guidelines prescribe factors to

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61 Ibid, 40-41.

62 See *Minister for Aboriginal Affairs & Anor v Peko-Wallsend Ltd & Ors* (1986) 162 CLR 24, 39-41.

63 Ibid, 40.

64 *Corrective Services Act*, s 3(1).

65 And see *Calanca v Queensland Parole Board* [2013] QSC 294 where Margaret Wilson J said (at [31] – [34]):

> "There are several inter-related factors at play in the determination of an application for parole.

which the Board should have regard, as they do in this case,[66] each of those factors (where relevant) must also be taken into account.[67] In all such cases, however, it is a matter for the Board to decide what weight is to be given to the consideration in question.

[47] I turn now to the specific matters relied on by the applicant.

[48] I deal first with the matters extracted above (at [36] and [38]). They are to the effect that the Board failed to take into consideration that: (1) the transfer of the applicant's parole (if granted) to New South Wales had been approved; (2) conditions could be imposed on his parole to progress his rehabilitation in New South Wales, whether through community courses or otherwise; and (3) his rehabilitation in the community would be further supported by Ms Jokic as well as his other "supports and sponsors". Even the most cursory examination of the statement of reasons reveals that each of these matters was taken into account by the Board when considering the application for parole. The Board was well aware that the interstate transfer of the applicant's parole had been approved and it gave particular attention to the question whether conditions of parole could be imposed in New South Wales that would mitigate the level of risk that the Board believed the applicant posed to the community. In this regard, the applicant was requested in earlier correspondence from the Board to provide an updated Relapse Prevention Plan and, although he did so, he failed to provide any meaningful detail regarding how he proposed to engage with services and agencies in New South Wales to assist with his ongoing rehabilitation. Of course, what the applicant did provide was Ms Jokic's report and it does constitute something of a roadmap for the provision of assistance to the applicant if released on parole in that State. Amongst other things, Ms Jokic brought to the Board's attention the existence of "a number of strong supports" who would be in position to assist the applicant, her willingness to meet with the applicant to "re-assess his current needs and provide the relevant therapy as required" and his capacity to "gain assistance re-connecting with local service providers and community supports in New South Wales".[68] The desirability of referral to a psychologist for assessment and "therapeutic intervention" was highlighted in the report, as was Ms Jokic's opinion that the applicant is capable of being rehabilitated and

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> Parole involves serving the balance of a term of imprisonment in the community, subject to supervision, and with the prospect of having to return to custody in the event of further offending or other breach of the conditions of the parole. Where an offender is serving a fixed term of imprisonment, parole can effectively be a form of graduated release. That cannot be so where a prisoner has no prospect of full-time release because he is serving a sentence of life imprisonment.
>
> A parole board has to assess what effect a prisoner's release on parole would have on community safety and crime prevention, both at the time of his release and in the future. Rehabilitation of an offender is a means of attaining community safety and crime prevention. The extent of a prisoner's progress towards rehabilitation whilst in custody may be some indication of how he will perform if released on parole.
>
> The orderly management of prisons is another means of attaining community safety and crime prevention. The principled determination of parole applications in accordance with a regime that is fair to prisoners is conducive to good behaviour by persons in custody, as well as to their rehabilitation."

66 *Wickramasinghe*, Ex MW-17, par 2.1.
67 *Calanca v Queensland Parole Board* [2017] 1 Qd R 1, [43].
68 *Wickramasinghe*, Ex MW-24, pp 2-3.

taught skills to reduce his impulsivity, and to address his anger and past behaviour relating to domestic violence. But, as is apparent from the statement of reasons, all of these matters were considered by the Board along with the applicant's revised Relapse Prevention Plan but, having done so, it was left unsatisfied that a sufficient level of supervision could be provided to the applicant on a parole order such that the risk he posed to the community would be reduced to an acceptable level. In forming that view, the Board was also conscious of the level of resources reasonably available to monitor the applicant's compliance with parole conditions. Plainly, the Board was concerned that the applicant was someone who had outstanding treatment needs and, based on the information available to it, considered that completion of the CSCP will be a necessary step towards addressing that concern. Given the circumstances of the subject offending, the applicant's earlier performance in custody and the opinions expressed by Ms Jokic to the effect that the applicant requires assistance (including psychological treatment), it was by no means unreasonable for the Board to form that view.

[49] In the end, the question for the Board was whether it should require the applicant to address his offending behaviour whilst in custody in Queensland (through the completion of the CSCP and such other steps as might be considered appropriate) or accede to the applicant's request that he be released to parole and receive assistance (and treatment) to the same end whilst in the community in New South Wales. It is clear from the statement of reasons that the Board squarely addressed that question and, in the course of doing so, took into account each of the matters the applicant now complains that it overlooked. Also, by doing so, the Board took into account, and weighed, the relative risks of discharging the applicant at or towards the end of his sentence or of giving him earlier supervised release on parole and, as such, it cannot be said that the error which led to success for the prisoner in *Queensland Parole Board v Moore*[69] was repeated in this case.

[50] As to the 15 points contained in an amended summary of argument filed on 16 July 2018, and adopting the same numbering:

1. The applicant's first point was procedural. The applicant contended, primarily by reference to the *Corporations Act* 2001 (Cth), that the Board could only act through its "officers and employees" and should either retain its own solicitors or represent itself, presumably by one of its members, in court. In particular, it was submitted that the Crown Solicitor could not represent the Board in this proceeding. There is no substance in these contentions. In the first place, the Board is not a corporation; it is established by s 216 of the *Corrective Services Act* and is constituted by the members who are prescribed by s 221. Furthermore, by s 230, the Board may conduct its business in any way it considers appropriate. By s 243, a legal proceeding based on, relevantly, a decision of the Board may only be started against the Board members under the name of the Board. In such a proceeding, the members who are sued in that name may appear in person or "by a lawyer": *Supreme Court of Queensland Act* 1991 (Qld), s 90(1). The Crown Solicitor is entitled to appear for the Board;

2. The applicant submitted that the standard of proof in civil cases is on the balance

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69 Supra.

of probabilities, and that is of course correct. He submitted that this was relevant to a consideration of points 14 and 15 but otherwise accepted that the onus was on him to demonstrate error;[70]

3. Relying on passages from the decision of Applegarth J in *Gough v Southern Queensland Regional Parole Board*,[71] the applicant complained that Queensland Corrective Services failed to offer him a place in the CSCP prior to his parole eligibility date (30 July 2017). In fact, he did not commence the program until 16 October 2017. In *Gough*, it was held that a proper consideration of the merits of the parole application in that case required the Board to consider the circumstances in which the prisoner had not completed a recommended program as well as the prisoner's offer to complete that program in the community as a condition of his parole, particularly in circumstances where it was a number of months after his parole eligibility date and the prisoner had been assessed as having a low risk of recidivism.[72] That is not the position here; the Board was well-aware that the applicant had been waitlisted for the CSCP and that the list was long. As just discussed (at [48] and [49]), the Board considered whether it should require the applicant to address his offending behaviour whilst in custody in Queensland or release him to parole on condition that he receive assistance (and treatment) to the same end whilst in the community in New South Wales. After weighing those separate courses, the Board decided that the latter course would result in the applicant being released at a time when his level of risk to the community was unacceptably high. That conclusion was not only open on the material, it was something that was within the sole province of the Board to decide. Although the applicant was eligible for release on parole, there was material before the Board that was not before Clare SC DCJ and, as earlier explained (at [40]), it was therefore a matter for the Board to decide whether to grant parole after taking account of all the relevant considerations. The applicant has not demonstrated that the Board failed to do so;

4. The applicant referred to the ROR (Risk of Reoffending) Score assigned to him at the commencement of his sentence. He received a relatively low score – 7, on a scale of 1 to 22. He submitted that a prisoner with an ROR Score of 16 or more is "considered to pose a higher risk of general reoffending and will require a higher level of services". However, even if that is accepted, at the case conference mentioned above (at [14]) the panel determined that the applicant should undertake the CSCP and, in that sense, decided that he had outstanding treatment needs, which conclusion the Board accepted. Whatever the risk assessment undertaken on the applicant's admission to custody was, it was overtaken by the panel's assessment of his then current needs. That is what the Board had before it and that is what it acted on;

5. For this point, the applicant complained about events subsequent to the making of the decision under challenge, namely, after he was prevented from continuing the CSCP, he was (initially) required to undertake the TPP prior to completing the balance of the CSCP. He submitted that this amounted to "moving the goal post".

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70 Transcript, 1-10.
71 [2008] QSC 222, [65] to [73].
72 Ibid, [65]

For the reasons earlier stated (at [44]), this turn of events is irrelevant;

6. After referring to the Ministerial Guidelines, the applicant submitted that they do not provide that a prisoner "must complete the courses in custody to gain a parole release". Whilst that is correct, the Board was required by paragraph 2.1 of the Ministerial Guidelines to have regard to, amongst other things, any medical, psychological, behavioural or risk assessment report relevant to his application for parole and any recommended rehabilitation programs or interventions as well as the prisoner's progress in addressing those recommendations. The Board was therefore required to pay attention to the recommendation made by the panel following the case conference to the effect that the applicant undertake the CSCP. The Board was in any event entitled to take the view, as it did, that completion of the CSCP was necessary to address the applicant's outstanding treatment needs;

7. Again, the applicant referred under this point to his subsequent participation in the CSCP and submitted that his willingness to participate in intervention courses "should alter the conclusion of the Board" that he was an unacceptable risk to the community if released on parole. Like point 5, the applicant cannot rely on subsequent events to impugn the Board's decision;

8. The next point was rhetorical. The applicant asked how the completion of any course in custody or the existence of a Relapse Prevention Plan could "guarantee" to the community that a prisoner will not make "a negative choice again" whilst on parole or "in [the] distant future". The answer to that question is of course that the completion of a program such as the CSCP and the existence of a properly formulated Relapse Prevention Plan do not guarantee anything; they go to a reduction of the risk that the prisoner will reoffend and, if when combined they reduce that risk to an acceptable level, the prisoner's prospects of securing release on parole will likely be enhanced;

9. The applicant submitted that the sentencing judge did not find that he had any criminogenic needs, that he represented a danger to the community if granted parole or that there was any requirement for him to undertake any programs whilst in custody. The point was also made that her Honour did not make a serious violent offender declaration. The applicant then submitted that the Board's concerns "could be met by [him] undertaking the programs as a condition of [his] parole and by the imposition of other parole conditions" such as GPS monitoring. He referred again to *Gough v Southern Queensland Regional Parole Board*.[73] Without repeating what I have already said in point 3 about the difference between *Gough* and the case at hand, although Clare SC DCJ did not make a serious violent offender declaration, her Honour specifically remarked that the applicant represented "a danger to anyone who comes into contact" with him and that community protection was of "fundamental importance" in his case. It was not for her Honour to formulate a prescription for the applicant's rehabilitation; that was and remains a matter for Queensland Corrective Services. In any event, the Board was not satisfied that its concerns could be met by releasing the applicant on parole for transfer to New South Wales on conditions but, as already

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[73] Supra.

discussed (at [47] and [48]), that option was taken into account by the Board in the sense that it was considered but then rejected;

10. The applicant next attempted to argue that his updated Relapse Prevention Plan was adequate and that, "in recent weeks" after lodgement of his fresh application for parole, he was assessed by a "Department psychologist". I have already dealt with what the Board found to be the shortcomings in the updated Relapse Prevention Plan (at [48]) and the applicant cannot rely on a psychological assessment that was undertaken subsequent to the decision under challenge;

11. The applicant revealed that he "made written threats" to the Board earlier this year and then submitted that, if his application is successful, the court should decide his application instead of the Board because the latter would have a "conflict of interest". Because of the overall outcome of this application, it is unnecessary to further consider this point;

12. Here, the applicant complained about the Board having relied on the report prepared for the Board on 4 April 2017 by the panel of persons attached to the Woodford Correctional Centre and a probation and parole officer from the Caboolture District Office of Corrective Services.[74] He submitted that the Board's reliance on this report undermined its independence. However, the provision of such a report is expressly contemplated by s 245 of the *Corrective Services Act* and, as such, the Board was entitled to be informed by its contents;

13. The applicant relied on a passage from the decision of McMurdo J in *McGrane v Queensland State Parole Board*[75] to the effect that "[t]he public is protected by the rehabilitation of offenders as well as by their incarceration" [76] and then submitted that this could be achieved by his release on parole on conditions. Although that submission may be accepted, it is difficult to see how it assists the applicant. For the reasons already discussed (at [48] and [49]), the Board did consider whether it should release the applicant to parole on condition that he receive assistance (and treatment) whilst in New South Wales, but decided against that course;

14. As to this point, the applicant complained that the Board was "stonewalling" by insisting that this proceeding not descend into a merits review, but that was a perfectly proper position for the Board to take on the hearing of this application;

15. Lastly, the applicant referred to rules of statutory construction concerned with the avoidance of absurd interpretations. Those rules have nothing at all to do with a consideration of this application. The applicant did, however, make a submission in this context to the effect that the Board failed to liaise with the New South Wales authorities as to the rehabilitation programs and "options" available to a parolee in that State. It was not for the Board to do so, that was something for the applicant to provide in support of his application. Indeed, as already mentioned,

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74 *Wickramasinghe*, Ex MW-25.
75 [2010] QSC 209.
76 Ibid, [26].

the Board prompted the applicant to do so, but he failed to provide any further information beyond the provision of Ms Jokic's report.

[51] Like the grounds of review set out in the application, supporting argument and submissions, there is no substance in any of the points contained in the amended summary of argument.

[52] For the sake of completeness, a number of the arguments raised in the fifteen points as well as the various other submissions made by the applicant deal with the merits of the Board's decision. For example, in a submission dated 9 February 2018,[77] the applicant referred to an inability on his part to "achieve a low security classification". In considering all of these matters, either individually or collectively, the decision of the Board to refuse to grant the applicant parole is not rendered so unreasonable that no reasonable person could have so decided.[78] This ground of review was not raised by the applicant, but in the course of determining this case I have considered it.

Conclusion

[53] For these reasons, the applicant has failed to demonstrate that the decision under challenge was affected by any reviewable error.

[54] It follows that the application must be dismissed.

[55] I will hear the parties on the question of costs.

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77 Exhibit 4.

78 *Judicial Review Act*, ss 20(2)(e) and 23(g).