SUPREME COURT OF QUEENSLAND

CITATION:	*Ripi v Parole Board Queensland* [2018] QSC 205
PARTIES:	**ISAAC MATTHEW RIPI** (applicant) **v** **PAROLE BOARD QUEENSLAND** (respondent)
FILE NO:	No 2971 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	10 September 2018
DELIVERED AT:	Brisbane
HEARING DATE:	8 August 2018
JUDGE:	Davis J
ORDER:	**1. The application is dismissed.** **2. The parties will be heard on the question of costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – PROCEDURAL FAIRNESS – HEARING – NATURE OF HEARING – where the respondent refused a parole application made by the applicant – where the applicant alleged a failure to accord natural justice by the respondent not providing an opportunity to be heard by videolink – whether the respondent had failed to accord natural justice ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – RELEVANT CONSIDERATIONS – where the respondent refused a parole application made by the applicant – where the applicant contended that Ministerial guidelines were not taken into account – whether the respondent was obligated to take the guidelines into account – whether the respondent took the guidelines into account ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – UNREASONABLENESS – where the respondent refused a parole application made by the applicant – whether the decision was so unreasonable that

it lacked an evident and intelligible justification

Corrective Services Act 2006 (Qld) s 3, s 180, s 188, s 189, s 190, s 193, s 242E, s 320
Judicial Review Act 1991 (Qld) s 4, s 7, s 20, s 23

Butler v Attorney-General for the State of Queensland [2018] QSC 103, cited
Flegg v Crime and Misconduct Commission [2014] QCA 42, cited
Johnston v The Central and Northern Queensland Regional Parole Board [2018] QSC 54, distinguished
Maycock v Queensland Parole Board [2015] 1 Qd R 408, cited
Minister for Human Services and Health v Haddad (1995) 58 FCR 378, cited
Minister for Immigration and Border Protection v SZVFW [2017] FCAFC 33, cited
Minister for Immigration and Citizenship v Li (2013) 249 CLR 332, cited
Queensland Parole Board v Moore [2012] 2 Qd R 294, distinguished
Smoker v Pharmacy Restructuring Authority (1994) 53 FCR 287, cited
WB Rural Pty Ltd v Commissioner of State Revenue [2017] QSC 141

COUNSEL: The applicant appeared in person
S A McLeod for the respondent

SOLICITORS: The Crown Solicitor for the respondent

[1] The applicant, Mr Ripi, is presently serving a period of imprisonment. The respondent dismissed his application for parole. Mr Ripi seeks a statutory order of review of that decision.

Background

[2] The applicant was born on 14 December 1981 in Rotorua, New Zealand. He is a Maori man who came to Australia about 14 years ago.

[3] On 16 September 2016 in the District Court at Brisbane, Mr Ripi was sentenced in relation to a number of offences committed against two women in 2014 and 2015. It is unnecessary to record here the details of the offences. It is sufficient to note that three of the offences were rape. The offending involved considerable violence. The offences were domestic violence offences. The offences committed in 2015 were committed while Mr Ripi was on bail for the offences committed in 2014. Mr Ripi was sentenced

to seven years' imprisonment with a parole eligibility date of 19 August 2017. Because of presentence custody Mr Ripi's full time release date is 19 April 2022.

[4] On 3 May 2017 the Board received an application for parole by Mr Ripi.[1]

[5] On 10 May 2017 the Board wrote to Mr Ripi advising him that the application would be considered at its next meeting.[2] The Board considered the application at its meeting on 17 May 2017 and resolved to commission a risk assessment report. It advised Mr Ripi of that fact by letter dated 22 May 2017.[3]

[6] From 22 May to 26 June 2017 the Board took various steps investigating the strength of Mr Ripi's parole application. A risk assessment was conducted by Dr Susan Boyce who prepared a report dated 12 June 2017.[4]

[7] It is unnecessary to set out the detail of the various investigations conducted by the Board except to note that Dr Boyce's report was not favourable to Mr Ripi. Her summary of findings and recommendations included:

> "20.7 Overall, given the contextual / dynamic nature of risk, it is my opinion that at this stage Mr Ripi presents with a need for ongoing intervention aimed at his offending behaviour. In particular it was considered that Mr Ripi requires intervention aimed at his interpersonal violence due to the nature of his offences and the occurrence of these within the context of intimate partner violence. It is my understanding that the 'Cognitive Self-Change Program' is offered to offenders with a history of violent offences.
>
> 20.8 Although Mr Ripi has a history of sexual offences as index offences, these offences were considered an extension of his physically violent behaviour towards the victims involved and were thought to stem from his attitudes supportive of violence towards women (i.e. hostility, mistrust and jealousy). While it is possible that components of his sexual violence could be addressed in sexual offender treatment programs, these would be better accommodated for in a program aimed at interpersonal violence in general. It is envisaged that this type of program would address similar themes that develop insight and awareness of individual's dynamic risk factors (i.e. development of hostility to others, attitudes supportive of violence) and strengthen their protective factors.

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1 Affidavit of Taylor Mobbs, filed 16 May 2018, CFI 10, exhibits at 1–14.

2 At 15.

3 At 17.

4 At 172.

> 20.9. It is considered that Mr Ripi would benefit from completing the above program (Cognitive Self-Change) prior to his release under parole conditions. This is highlighted as a concern as he is to be deported to New Zealand and may not be placed into an appropriate program that addresses IPV[5] or general violence within the community setting, thus essentially he would remain untreated for his offending behaviour."[6]

[8] At the meeting of the Board of 21 June 2017 Mr Ripi's application was considered. A preliminary view was formed that Mr Ripi's application ought to be refused.

[9] On 26 June 2017 the Board wrote to Mr Ripi advising of the outcome of the meeting of 21 June 2017 and setting out in detail the factors which led the Board to a preliminary view that he was an unacceptable risk of offending if released.[7] The letter enclosed copies of the documents considered by the Board although there were some redactions. No complaint is made by Mr Ripi about that. The letter concluded with the following paragraphs:

> "Before a final decision is made, you are invited to send the Board any further written submissions you wish to make and/or to provide any further supporting documents. Those submissions and/or documents should address the issues raised in this letter; and should be sent within 14 days of the date on which you receive this letter. If you need an extension of time to prepare your submissions, please write to the Board within the 14 day period explaining why you need extra time and giving an indication of how much extra time you will need.
>
> You are not under any obligation to make more submissions but if you do not do so, the Board will make a final decision about your application based on the information it already has. When a final decision has been made you will be told in writing what it is."[8]

[10] On 12 July 2017 Mr Ripi wrote to the Board requesting further time to make submissions.[9] That request was granted.[10] On 4 August 2017 detailed written submissions, with enclosures, were sent by Mr Ripi to the Board.[11]

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5 Obviously a reference to interpersonal violence.

6 Mobbs' exhibits at 191–192.

7 At 19.

8 At 20.

9 At 22.

10 At 23.

11 At 25.

[11] On 20 September 2017 the Board sat again and considered Mr Ripi's application. Again the Board formed a preliminary view that the application ought to be refused. Mr Ripi wrote to the Board in September and October 2017 seeking news of progress.[12] It took the Board until 22 November 2017 to write again to Mr Ripi. On that day it wrote telling Mr Ripi of the preliminary view that had been formed, enclosing further documents that the Board had relied upon, and setting out the reasons for the Board forming the preliminary view that it did.[13]

[12] Two passages in the letter of 22 November 2017 are of some significance given the current grounds of review. The first is as follows:

> "Your application for a parole order and all documents provided by Queensland Corrective Services were considered by the Parole Board Queensland (the Board) at its meeting on 20 September 2017. The Board apologises for the delay in providing this correspondence and is willing to discuss the delay and any matters you wish to raise in relation to the contents of the letter by video-link if you wish."[14]

[13] Later in the same document is the following:

> "Before a final decision is made, you are invited to send the Board any further written submissions you wish to make and/or to provide any further supporting documents. Those submissions and/or documents should address the issues raised in this letter; and should be sent within 14 days of the date on which you receive this letter. If you need an extension of time to prepare your submissions, please write to the Board within the 14 day period explaining why you need extra time and giving an indication of how much extra time you will need.
>
> You are not under any obligation to make more submissions but if you do not do so, the Board will make a final decision about your application based on the information it already has. When a final decision has been made you will be notified in writing of that final decision."[15]

[14] Mr Ripi responded by a letter dated 29 November 2017, which seems to have been received by the Board on 4 December 2017.[16] By that letter Mr Ripi requested an extension of time to respond to the letter of 22 November. On 7 December 2017 Mr Ripi wrote and addressed some aspects of the Board's letter of 22 November 2017.[17]

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[12] At 138–139.

[13] At 132.

[14] At 132.

[15] At 136.

[16] At 140.

[17] At 141.

The Board's letter of 22 November 2017 referred to the desirability of Mr Ripi engaging in treatment to address his risk of offending. Mr Ripi submitted that he would not cope with group therapy as was suggested but had made arrangements to participate in "one on one" rehabilitation programs in New Zealand. It was contemplated that once Mr Ripi was released he would return to New Zealand either voluntarily or by deportation.

[15] In the letter of 7 December 2017 Mr Ripi did not:

(a) say that he wished to address the Board by video-link; nor

(b) say that he intended to make any further submissions beyond those made in the letter.

[16] On 8 January 2018 the Board met and decided to decline Mr Ripi's application for parole. That is the decision the subject of the application for a statutory order of review.

[17] The Board advised Mr Ripi of its decision by its letter of 15 January 2018.[18] At that point a formal statement of reasons was not provided. However, it was made clear in the letter that the Board remained of the views that it had expressed in its letter of 22 November 2017.

[18] On 25 January 2018 reasons were requested by Mr Ripi. Written reasons, dated 27 March 2018, were provided.

The application

[19] Mr Ripi filed an application for a statutory order of review under s 20 of the *Judicial Review Act* 1991 (Qld) seeking orders which would have the practical effect of setting aside the decision. There is no doubt that Mr Ripi is "a person who is aggrieved by [the decision to decline parole]".[19] There is also no doubt that the decision of the Board is a "decision of an administrative character made … under an enactment"[20] and is therefore a decision which is reviewable under Part 3 of the *Judicial Review Act*. The issue is whether Mr Ripi has substantiated grounds entitling him to relief.

[20] Mr Ripi's application is in these terms:

> "The Applicant is aggrieved by the Respondent's failure to approve my application for a parole order because :
>
> 1. The decision is unreasonable.
>
> The grounds of the application are:

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[18] At 142.

[19] *Judicial Review Act* 1991 (Qld) ss 7 and 20(1).

[20] *Judicial Review Act* 1991 (Qld) s 4; *Griffith University v Tang* (2005) 221 CLR 99. Relevantly, the enactment is the *Corrective Services Act* 2006 (Qld).

1. The denial of natural justice and procedural fairness."

[21] The application raises:

1. *Wednesbury* unreasonableness which is a ground encompassed within s 20(2)(e) of the *Judicial Review Act*;[21]

2. a breach of the rules of natural justice which is a ground identified in s 20(2)(a) of the *Judicial Review Act*.

[22] Particulars of the application were requested from Mr Ripi and were given as:

> "**2. Breach of the rules of natural justice**
>
> 2.1 The Respondent in its letter dated 22 November 2017 offered the Applicant a video linkup however that linkup never eventuated.
>
> The Respondent has failed to take into account the individual circumstances of the Applicant. The Applicant's individual personality dictates that he is unable to discuss his offences in a group setting and has therefore arranged one on one counselling to address his offending behaviour.
>
> **3. Unreasonableness**
>
> 3.1 The decision is unreasonable as the Applicant has an unblemished prison history as commented on by his sentencing judge. He has completed many programs whilst in prison. He is to be deported when released however will still be under supervision with the authorities in New Zealand. He has made arrangements for one on one counselling to address his offending behaviour."

[23] The particulars do not align with the grounds alleged in the application. The allegation in the first paragraph of particulars 2.1 is clearly enough a complaint raising s 20(2)(a) of the *Judicial Review Act*. However the complaint made in the second paragraph is a complaint potentially grounded in s 20(2)(e), namely a failure to take into account a relevant consideration.[22] Paragraph 3 of the particulars raises unreasonableness.

[24] An outline of submissions on the application was filed by Mr Ripi. The outline of submissions does not fit comfortably with the application and the particulars. The outline alleges that the Board denied Mr Ripi natural justice because no video-link conference was arranged between the Board and Mr Ripi. That is the ground which

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[21] The decision was an improper exercise of the power conferred by the Statute; see *Judicial Review Act* 1991 (Qld) s 23(g); *Butler v Attorney-General for the State of Queensland* [2018] QSC 103 at [18]–[19].

[22] *Judicial Review Act* 1991 (Qld) s 23(b).

appears in the first paragraph of particular 2.1. However, in his outline Mr Ripi complains that the Ministerial Guidelines were not followed. In the context of the argument advanced in the outline, that is a complaint which could be founded in s 20(2)(e)[23] as being a failure to take into account a relevant consideration. That is not a ground which appears in either the application or the particulars.

[25] No ground of unreasonableness is identified as such in the written submissions. However, complaints are made in the outline beyond the two I have already identified. Four of these are conveniently and accurately summarised in the Board's written submissions as:

> "Pursuant to this ground of challenge the applicant contends that the Board's decision is unreasonable because he has:
>
> (a) an unblemished prison history as commented on by the sentencing judge;
>
> (b) completed many programs whilst in prison;
>
> (c) will be deported when released and be under supervision by authorities in New Zealand; and
>
> (d) arrangements for the one on one counselling to address his offending behaviour have been made."

[26] Added to that list is a further complaint that Dr Boyle recommended that Mr Ripi complete the Cognitive Self-Change Program (CSCP) but access to that course had been denied. The Board has assumed that complaint is one of failure to take into account a relevant consideration. It seems to me more likely to be a particular of the unreasonableness ground but as I explain there is no substance in the complaint in any event.

[27] Mr Ripi made oral submissions. In those submissions he sought to recast some of the complaints into grounds of failing to take into account relevant considerations. No such ground appeared in the application and while Mr Ripi has no legal representation and should obviously be given some latitude, there must be limits.

[28] I intend to determine the application on the basis that Mr Ripi's grounds of review are:

(c) the natural justice ground concerning the access to the video-link;

(d) the alleged failure of the Board to follow the Guidelines; and

(e) that the decision is unreasonable, with that ground being particularised by the five factors identified in paragraphs [25] and [26]of these reasons.

The statutory context

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[23] As explained by s 23(b).

[29] The Parole Board of Queensland is created by Part 2 of the *Corrective Services Act* 2006.

[30] One of the Board's functions is to consider applications for parole. Section 180 authorises prisoners to apply for parole in certain circumstances. It provides:

> "**180 Applying for parole order etc.**
>
> (1) A prisoner may apply for a parole order if the prisoner has reached the prisoner's parole eligibility date in relation to the prisoner's period of imprisonment.
>
> (2) However, a prisoner can not apply for a parole order—
>
> (a) if a previous application for a parole order made in relation to the period of imprisonment was refused—
>
> (i) until the end of the period decided by the parole board that refused the previous application; or
>
> (ii) unless a parole board consents; or
>
> (b) if an appeal has been made to a court against the conviction or sentence to which the period of imprisonment relates—until the appeal is decided; or
>
> (c) otherwise—more than 180 days before the prisoner's parole eligibility date.
>
> (3) The application must be made—
>
> (a) in the approved form; and
>
> (b) to the parole board that may, under section 187, hear and decide the application.
>
> (4) A parole order for a prisoner may start on or after the prisoner's parole eligibility date."

[31] Here, there is no doubt that Mr Ripi has reached his "prisoner's parole eligibility date". He is not precluded from applying for parole under s 180(2) and there is no complaint about the application not being in the approved form.[24] Chapter 5, Division 2, Subdivision 2 prescribes procedures for applications for parole. Sections 188-190 provide as follows:

> "**188 Submission from eligible person**
>
> (1) After receiving a prisoner's application for a parole order (other than an exceptional circumstances parole order) under

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[24] Section 180(3).

section 180, a parole board must give the chief executive written notice of the application.

(2) Within 7 days after receiving the notice, the chief executive must give each eligible person in relation to the prisoner written notice of the application.

(3) The notice given to the eligible person must be dated and advise the person that—

(a) the prisoner has applied for a parole order; and

(b) the stated parole board is about to consider whether the parole order should be made; and

(c) the person may, within 21 days after the date of the notice, make written submissions to the parole board about anything that—

(i) is relevant to the decision about making the parole order; and

(ii) was not before the court at the time of sentencing.

(4) The parole board may have regard to any submissions made to the board under subsection (3)(c).

189 Appearing before parole board

(1) A prisoner's agent may, with the parole board's leave, appear before the board to make representations in support of the prisoner's application for a parole order that may be heard and decided by the board.

(2) This section does not stop the parole board deciding an application for a parole order if the prisoner or the prisoner's agent fails to appear before the board.

(3) In this section—

appear, before the parole board, means—

(a) appear by using a contemporaneous communication link between the board and the prisoner or the prisoner's agent; or

(b) if the person appearing is a prisoner with a special need—appear personally."

190 Applying for leave to appear before parole board

(1) An application for leave to appear before a parole board must be made in the approved form to the board.

(2) The secretary of the board must tell the prisoner of—

(a) the board's decision on the application; and

(b) if the board grants the leave—the time and place at which the prisoner or the prisoner's agent may appear before the board."

[32] Section 188 refers to an "eligible person". That term is defined in the dictionary[25] by reference to s 320(1). Section 320 identifies various persons who may be interested in a prisoner's application for parole such as the victim of the prisoner's crime.

[33] It can be seen that ss 189 and 190 dispel any right of a prisoner to appear and make submissions before the Board. Appearances before the Board are only by leave. Section 189(3) authorises appearances "using a contemporaneous communication link", which would include the video-link offered here.

[34] Section 193 concerns the process for the making of a decision by the Parole Board. It is in these terms:

"**193 Decision of parole board**

(1) After receiving a prisoner's application for a parole order, the parole board must decide—

(a) to grant the application; or

(b) to refuse to grant the application.

(2) However, subject to subsection (3), the parole board may defer making a decision until it obtains any additional information it considers necessary to make the decision.

(3) The parole board must decide the application within the following period after receiving the application—

(a) for a decision deferred under subsection (2)—150 days;

(b) otherwise—120 days.

(4) The parole board may grant the application even though a parole order for the same period of imprisonment was previously cancelled.

(5) If the parole board refuses to grant the application, the board must—

(a) give the prisoner written reasons for the refusal; and

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[25] Schedule 4.

(b) if the application is for a parole order other than an exceptional circumstances parole order—decide a period of time, of not more than 6 months after the refusal, within which a further application for a parole order (other than an exceptional circumstances parole order) by the prisoner must not be made without the board's consent.

(6) If the parole board refuses to grant the application because of section 193A, the written reasons given under subsection (5)(a) must include a statement that the parole board is not satisfied the prisoner has cooperated as mentioned in section 193A(2)."

[35] The *Corrective Services Act* does not expressly prescribe how natural justice is to be afforded to a prisoner applying for parole.

[36] Section 193 does not prescribe the considerations relevant to an application. However, s 242E provides as follows:

"**242E Guidelines**

The Minister may make guidelines about policies to help the parole board in performing its functions."

[37] Guidelines have been made by the Minister. Section 1 of the Guidelines contains the guiding principles for considering parole. Section 1 provides as follows:

"**SECTION 1 - GUIDING PRINCIPLES FOR THE QUEENSLAND PAROLE BOARD**

1.1 Section 227(1) of the *Corrective Services Act* 2006 (the Act) allows the Minister to make guidelines regarding the policy to be followed by the Queensland board in performing its functions. In following these guidelines, care should be taken to ensure that decisions are made with regard to the merits of the particular prisoner's case.

1.2 When considering whether a prisoner should be granted a parole order, the highest priority for the Queensland Parole Board ('the Board') should always be the safety of the community.

1.3 The Board should consider whether there is an unacceptable risk to the community if the prisoner is released to parole; and whether the risk to the community would be greater if the prisoner does not spend a period of time on parole."

[38] The guiding principles articulated in s 1 are consistent with the purpose of the *Corrective Services Act* as stated in s 3(1):

"**3 Purpose**

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

The grounds of review

The natural justice point

[39] Mr Ripi's complaint is that in the letter of 22 November 2017 the Board offered him an opportunity to make submissions to the Board via video-link, but no arrangements were made for such a video-link by the Board before the application was dismissed. There is no substance in this complaint.

[40] Firstly, the Board is not obliged to hear Mr Ripi in person or by video-link, although the Board may do so. Secondly, Mr Ripi simply did not avail himself of the offer to make submissions via video-link. Instead of accepting the offer, Mr Ripi wrote his letter of 7 December 2017 to the Board, made further submissions in that way and did not indicate any desire to address the Board via video-link.

[41] There is no basis upon which Mr Ripi can maintain that natural justice was not afforded to him.

The complaint that the Board did not consider the Ministerial Guidelines

[42] Section 1.3 of the Guidelines provides in effect that the Board should not only consider risk to the community if parole is granted but should also consider risk to the community if parole is not granted and the prisoner is released unsupervised at his/her full time release date. The failure to consider that second aspect was fatal to the decision to refuse parole in both *Queensland Parole Board v Moore*[26] and *Johnston v The Central and Northern Queensland Regional Parole Board*.[27] Both of those decisions concerned parole decisions which were governed by the *Corrective Services Act* 2006 before its extensive amendment in 2017. Importantly, before the 2017 amendments, the Ministerial Guidelines were authorised by s 227. Section 227 was in these terms:

"**227 Guidelines**

(1) The Minister may make guidelines about the policy to be followed by the Queensland board when performing its functions."

[43] Section 227 (now repealed)[28] is in quite different terms to s 242E. Section 227 authorised the making of guidelines about policy "to be followed by the Queensland

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[26] [2012] 2 Qd R 294.

[27] [2018] QSC 54.

[28] The current s 227 relates to leaves of absence for members of the Parole Board Queensland.

board". The guidelines mandated the express consideration of the factor identified in guideline 1.3.[29] However, s 242E is not expressed in mandatory terms. The guidelines are not "to be followed" but are "to help the Parole Board".

[44] As prescribed by both the *Corrective Services Act*[30] and the Guidelines,[31] the priority of the corrective services regime, including parole, is protection of the community. The reasons provided by the Board show consideration of risk if Mr Ripi is released at this point. After reciting a number of uncontested factual matters, the Board expressed this in the reasons:

> "• As you are aware, the highest priority for the Board is the safety of the community. As mentioned above, the Board considered that releasing you when you have not addressed your outstanding treatment needs, would mean you are released when your level of risk was unacceptable[32] high.
>
> • The Board is required to assess the level of risk you present to the community (whether that be in Australia or New Zealand) and remains concerned that you are effectively an untreated sex offender who would only receive two years of supervision in New Zealand pursuant to the *Returning Offenders (Management and Information) Act* 2015 (NZ)."

[45] It is obvious that the Board has considered the level of supervision Mr Ripi will require when released. It was alive to the fact that at this point two years supervision under parole is insufficient. Further, as already observed Mr Ripi's full time release date is 19 April 2022.

[46] Mr Ripi's complaint that the Board has not considered the specific matter identified in Guideline 1.3 has not been made out.

The decision is unreasonable

[47] It is clear from the statement of reasons that the Board has considered each of the five matters that are the particulars of unreasonableness:

(a) The Board noted Mr Ripi's "unblemished prison history" specifically mentioning his "positive custodial behaviour, noting that you have incurred no adverse incidents or breaches of discipline as a perpetrator during your current correctional episode".

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[29] Johnston v The Central and Northern Queensland Regional Parole Board [2018] QSC 54 at [70], Maycock v Queensland Parole Board [2015] 1 Qd R 408, and see Smoker v Pharmacy Restructuring Authority (1994) 53 FCR 287, Minister for Human Services and Health v Haddad (1995) 58 FCR 378.

[30] Section 3.

[31] Guideline 1.2.

[32] Should read "unacceptably".

(b) The Board acknowledged that Mr Ripi had completed many programs whilst in prison, noting, "the Board took into account you have completed several interventions during your correctional episode including:

- Do It - Low Intensity Substance Intervention;
- Resilience; and
- Short Substance Intervention"

The Board also noted that Mr Ripi had undertaken numerous educational courses and had maintained employment in custody.

(c) The Board noted that Mr Ripi would be deported when released and as set out above was concerned that he would only receive two years' supervision in New Zealand.

(d) The Board was aware of Mr Ripi's plan for counselling in New Zealand, stating in the reasons, "the Board noted your preference to receive one on one counselling and your plan to undertake counselling in New Zealand".

(e) The Board was aware that Mr Ripi had not completed the CSCP but simply did not agree that he had been denied access to the program. The Board's finding (to which there seemed to be no challenge) was that Mr Ripi had declined a placement in the CSCP on 4 August 2017.

[48] The High Court has considered the *Wednesbury* ground on numerous occasions including *Minister for Immigration and Citizenship v Li*.[33] In *Flegg v Crime and Misconduct Commission*,[34] McMurdo P[35] referred to *Li* and expressed the test as being "whether the … decision was so unreasonable that it lacked an evident and intelligible justification when all relevant matters were considered".[36] Gotterson JA,[37] in the same case, referred to the separate reasons of French CH in *Li*[38] and held:

> "…the [*Wednesbury*] ground [is] not a vehicle for challenging a decision on the basis that the decision-maker has given insufficient or excessive consideration to some matters or has made an evaluative judgment with which the Court disagrees even though that judgment is rationally open to the decision-maker."[39]

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[33] (2013) 249 CLR 332 at [63]–[70].

[34] [2014] QCA 42.

[35] In dissent.

[36] At [3].

[37] With whom Margaret Wilson J agreed.

[38] (2013) 249 CLR 332 at [30]

[39] *Flegg* [2014] QCA 42 at [16].

[49] Similar views were expressed by Bond J in *WB Rural Pty Ltd v Commissioner of State Revenue*,[40] wherein his Honour reviewed some of the authorities including *Minister for Immigration and Border Protection v SZVFW*,[41] and in *Butler v Attorney-General for the State of Queensland*.[42]

[50] Here the decision is clearly not relevantly "unreasonable". Mr Ripi was convicted of violent sexual offences. He was sentenced to a substantial term of imprisonment. He has completed some courses of treatment but not others. A risk assessment performed by a qualified psychologist has raised matters of concern. The approach of the Board to the assessment of risk appears logical and well-reasoned.

[51] The ground is not made out.

Conclusions

[52] None of the grounds pressed by Mr Ripi have been made out.

[53] The application ought to be dismissed.

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

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[40] [2017] QSC 141 at [64]–[65].

[41] [2017] FCAFC 33.

[42] [2018] QSC 103.