NEW ZEALAND
PAROLE BOARD

IN THE MATTER of Section 67 of the Parole Act 2002

AND

IN THE MATTER of an application for a review by Scott WATSON

Date of Hearing:	**6 December 2016**
Date of Reserved Decision:	**13 December 2016**
Date Application Received:	**20 December 2016**
Date of Preliminary Consideration of Review:	**28 February 2017**
Date of Final Review Decision:	**24 March 2017**

REVIEW DECISION OF ALAN RITCHIE – PANEL CONVENOR

Parole Act 2002

References in this decision to the Act or to sections are (unless otherwise stated) references to the Parole Act 2002 or to sections of that Act.

Background

1. The background is as set out in the preliminary consideration of this review but is repeated here so that all necessary information is contained within this one completed review decision.

2. Scott Watson, 45, is serving a life sentence for the murder of two people.

3. There is a minimum prison security classification and the RoC*RoI is .50584.

4. The hearing on 6 December 2016 was expressed to be for the consideration of the dual issues of parole and postponement.

5. In its decision, the Board outlined its role in some detail. In paragraph 37, it noted that in order for Mr Watson to be a realistic candidate for parole he needed to demonstrate that his risk had been reduced. It said static risk factors could not change but that it was possible for an offender to work on dynamic risk factors and, over time, reduce risk to a point where it was no longer undue. It noted that it was not necessary for an offender to admit guilt in order to do so.

6. The Board said it was clear that Mr Watson had considerably more work to do before no longer posing an undue risk and parole was declined.

7. The Board endorsed recommendations of psychologists that Mr Watson needed intensive treatment to mitigate the assessed very high risk of re-offending. The Board said whether that treatment was delivered in a group-based setting or individually was for Mr Watson and the Department to discuss and plan. The Board thought that irrespective of the approach taken, at best there would likely be several years of treatment required followed by a period of testing of treatment gains across different settings and time before release on parole could be a realistic possibility.

8. In those circumstances the Board decided that a four-year postponement order would be appropriate and said Mr Watson's next hearing for the consideration of parole would be held before 6 December 2020.

9. The Board noted Mr Watson's right, under section 27(6), to apply for an earlier hearing if he believed there had been a significant change in circumstances.

Grounds for Review

10. The available grounds are set out in section 67(3).

11. They are that the Board, in reaching its decision:

    (a) failed to comply with the procedures set out in the Act and any regulations made under it; or

    (b) made an error of law; or

    (c) failed to comply with a policy of the Board developed under section 109(2)(a), which resulted in unfairness to the offender; or

    (d) based its decision on erroneous or irrelevant information that was material to the decision reached; or

    (e) acted without jurisdiction.

Grounds Advanced

12. Mr Watson has said:

"The NZPB breaches section 67 of the NZ Parole Act within all points raised here within."

13. He is then true to that introductory indication by raising various points including:

A – A risk assessment being "flawed, erroneous and irrelevant" but nevertheless relied on by other psychologists.

B – A risk assessment being subject to review and therefore, "none of its content can be legally referred to but it has been repeatedly by psychologists and now by the New Zealand Parole Board (NZPB), wrongfully. Directly breaching section 67 of the Parole Act."

C – Psychological reasoning is "erroneous and flawed."

D – The Parole Assessment Report refers to a person who was born in Addington, Australia. It follows that reports referred to in it, e.g. that of the psychologist, Zoe Wilton, clearly belong to the person who was born in Addington, Australia. The report is therefore "wrong and erroneous."

E – The comments of a Principal Corrections Officer (Mr Brown) are "false, erroneous and misleading, being his own personal manipulation. The NZPB being a New Zealand Court, Mr Brown has perjured himself."

F – He had no option but to take his own initiative to meet the "directions" issued by the Board in 2015 and the Board was misinformed on those directions.

G – His own submissions were ignored by the Board.

H – "One panel member, Dr Skipworth, stated clearly and repeatedly, that if I did not admit to the index offence, and be treated for it, I will never be released from prison."

14. While it is somewhat difficult to discern precisely, it is probably reasonable to conclude that no reliance has been placed by Mr Watson on section 67(3)(a), (c) or (e). That leaves the issues of error of law (section 67(3)(b)) and erroneous or irrelevant information (section 67(3)(d)).

15. This review will proceed on the basis of discussion of those grounds by reference to the points set out in paragraph 13 A-H above.

Consideration – Paragraph 13 A (section 67(3)(d))

16. The Board was well aware of Mr Watson being, as it said, "highly critical" of assessments by psychologist, Ms Richards, and the subsequent reports of psychologists Ms Wilton and Mr Carlyon. It had (on 28 June 2016) acceded to a request by Mr Watson's counsel for an adjournment so that there could be an independent psychological assessment. As noted in the Board's December 2016 decision, no such assessment had been forthcoming. There had been a series of psychological counselling sessions with a private practitioner, a Mr Nielson, from whom a report was provided at the hearing.

17. The Board, in its decision, carefully outlined the nature of Mr Nielson's report including its comments on treatment and recommendations for further treatment or management. The Board noted the relevance of Mr Nielson's references to reports by Ms Wilton and Ms Richards and his comments that:

"Given that these estimates of risk were made on the basis of evidence-based practice using a combination of actuarial measures and clinical data the writer considers the estimates to be valid."

18. And:

"It is likely that as Mr Watson, over time, gains proficiency in the skills he has been introduced to in this current course of treatment his overall risk of re-offending will be reduced with a number of dynamic risk factors having been addressed."

19. It is important for Mr Watson to understand that to succeed with a review based on section 67(3)(d), he must not only establish that information before the Board was erroneous or irrelevant but that the Board based its decision on such information that was material to the decision reached.

20. It is not necessary for the purposes of this review to assess each assertion of error or irrelevancy made by Mr Watson. The Board was well aware of his views and criticism, not only in his own oral and written submissions but in the submissions of counsel.

21. The Board is well used to assessing material presented at hearings and giving such weight to it as it sees fit. The essential question on review, therefore, is not just whether there was erroneous or irrelevant information but whether the Board based its decision on such information in a material way.

22. In this case the Board reached its decision in what appears to have been a careful and structured manner. Part of its assessment relied on the views of Mr Watson's own psychologist, Mr Nielson. The outcome was neatly encapsulated in paragraph 37 of the

decision from which it is simply not possible to conclude that there was any breach of section 67(3)(d).

Consideration – Paragraph 13 B (section 67(3)(b) and (d))

23. On this point Mr Watson has provided a comprehensive critical analysis of Ms Richards' psychological report and, at least by implication, the reliance he says was placed on it by Ms Wilton and Mr Carlyon.

24. In his concluding comments on this aspect, Mr Watson has said:

"... the psychologist has created and perpetrated a mindset to create a document that would support such confusion with the New Zealand Parole board and the Department of Corrections so as to impede the decision-making process in the assessment of the subject's perceived risk to the safety of the community. The cumulative effect of this being that in the eyes of an independent observer the process has been one that has been irretrievably and unduly influenced by manifest bias."

"This cannot sit with The NZPB and nor ignorance of the facts be a defence to uphold a clear breach of the NZ Parole Act, the materials used, directly being the foundations of the decision reached and those materials wrong, as very clearly shown with facts attached."

25. As noted in relation to paragraph 13 A, the Board was well aware of, and mindful in its decision, of Mr Watson's criticism of the Richards and other psychological reports. It is inappropriate for this review to attempt any dissection of the points made by Mr Watson. The Board was well-equipped and able to make its own assessment.

26. Nor is there any basis on which this review could uphold Mr Watson's point that the Board was wrong as a matter of law to refer to the Richards report (and the reliance placed on it by Ms Wilton and Mr Carlyon). The Board is entitled (and, indeed, required by section 7(2)(c)) to consider all relevant information available to it.

Consideration – Paragraph 13 C (section 67(3)(e))

27. On this aspect Mr Watson refers to his own submission to the Board to underscore what he calls:

"... the very clear erroneous nature and entrenched deceitfulness used by the Department of Corrections' psychologists."

28. Again, it is not appropriate for this review to dissect those points. The Board was well aware of them and made its own assessment.

Consideration – Paragraph 13 D (section 67(3)(d))

29. Here, Mr Watson relies on certain mistaken references to his having been born in Addington, Australia. The point does not serve him for the purposes of this review. The Board has been plainly aware of the error. It was mentioned by the Board at the hearing on 3 July 2015 (as confirmed by the audio recording).

30. Material held by the Board at the time of the hearing on 6 December 2016 notes the correct information. There is also a note (by email of 16 November 2016) to Mr Watson's father confirming that the incorrect information would not have a bearing on the hearing.

31. There is nothing to suggest that the Board was misled by the inaccuracy or, to refer again to the wording of section 67(3)(d), that it based its decision on that information. It was simply not material to the decision reached.

Consideration – Paragraph 13 E (section 67(3)(b) and (d))

32. This aspect relates to Mr Watson's criticism of the Principal Correction Officer's comments about him as erroneous, irrelevant and abusive. The criticism is, in fact, trenchant with Mr Watson describing the officer as:

"... your basic archetypal psychopath prison guard, with no response from him at the hearing itself when his deranged conduct was brought to light."

33. Mr Watson accuses the officer of perjury before the Board and asked the Board to have "appropriate authorities" investigate and prosecute.

34. The Board was well aware (including from Mr Watson's written submissions) of the criticism. Again, the weight to be given to the competing views was a matter for the Board itself. There is nothing in any of the material to suggest any breach of section 67(1)(b) or (d).

Consideration – Paragraph 13 F (section 67(3)(d))

35. The essence of this appears to get down to what the Board said in its decision of 3 July 2015.

36. Mr Watson says the Department of Corrections "played games with the NZPB directions it made in 2015," with one consequence being that Mr Watson felt no option but to take and pay for his own initiative to consult a psychologist on a private basis.

37. The Board does not and cannot give those sorts of "directions" to the Department. It did

"If he is not able to presently undertake STURP and DTU treatment, we recommend (and endorse any decision Prison Management may make) that he engage with intensive one-to-one psychological counselling and treatment as an initial pathway towards offending focussed measures..."

38. The response to such recommendations is a matter for the Department and the Board, in December 2016 gave due consideration to developments.

39. Specifically on the question of misinformation, Mr Watson says the Board was incorrect in what it said in paragraph 24 of the December 2016 decision about individual psychological treatment having been offered a few days before the hearing. Mr Watson says the offer was confined to only three sessions limited to the discussion of options. That point was covered plainly enough at the hearing as confirmed by the audio recording. It is not possible to conclude that the Board was misinformed or that there was any breach of section 67.

Consideration – Paragraph 13 G (section 67(3)(b) and (d))

40. Mr Watson's commentary on this aspect is:

"... the NZPB completely ignores the well-presented written submission which clearly makes answer to all concerns raised within the NZPB decision document of 2016."

41. It is not possible to conclude that the Board "ignored" the submission. The question of whether it agreed with it is a separate matter for the Board's own assessment and not a matter which can assist this review.

Consideration – Paragraph 13 H (section 67(3)(b) and (d))

42. Mr Watson's commentary on this aspect is brief and direct:

"Dr Skipworth stated very clearly that I will never be released if I do not admit to the index offending and be well and truly treated for such. This breaches every principle of natural justice and the Parole Act."

43. Mr Watson appears to have misunderstood what Dr Skipworth said. After some discussion on the issue, Dr Skipworth, rather by way of summary said (as confirmed by the audio recording):

"It is not the case that the Parole Board requires people to admit to all of their offending prior to release. There are many offenders who have been released continuing to deny guilt of current convictions. However, in all cases they will have reduced their risk to a

level which is safely manageable in the community. That is something the first few sessions [with the psychologist] *will help you get some clarity about."*

44. That point is then reflected in the Board's conclusions set out in paragraph 37 of its decision – see paragraph 5 above.

45. There is no breach of section 67 arising from that point.

Conclusions

46. Mr Watson's application contains various challenges to the merits of the Board's decision but it follows from the consideration in the preceding paragraphs that he cannot succeed with this application for review. He should, perhaps, reflect on the following important Parole Board considerations:

(a) In deciding whether to release an offender on parole, the Board must bear in mind that the offender has no entitlement to be released on parole and, in particular, that neither the offender's eligibility for release on parole nor anything in the Act or in any other enactment confers such an entitlement. That is the effect of section 28(1AA).

(b) The Board may give a direction for release on parole only if it is satisfied on reasonable grounds that the offender will not pose an undue risk to the safety of the community.

(c) Implicit in this application for review is that risk is low and that a proper application of section 7 and section 28 and a proper consideration of all the material could not have led to a decision to deny parole.

(d) However, no particular information provided to the Board is determinative of release. The Board must, as required by section 7(2)(c), consider all the information available to it but the question of a direction to release is the exclusive prerogative of the Board. This point was confirmed by MacKenzie J in *Ericson v New Zealand Parole Board and the Attorney General* [2013] NZHC 1790:

> *"The weight to be given to the information which is before it is a matter for the Board."*

(e) An offender may be of the opinion that risk is low but that does not necessarily mean that risk is not undue. The Courts have held that while the test may have some elasticity, the ultimate question is whether risk is "undue" with low risk not being the same as no undue risk.

Decision

47. Mr Watson has failed to make out any of the grounds in section 67(3).

48. In accordance with section 67(5) the Board's decision following from the hearing on 6 December 2016 and issued on 13 December 2016, is confirmed.

Alan Ritchie
Panel Convenor