

RELEASE ON PAROLE: GAMBLING WITH COMMUNITY SAFETY OR EFFECTIVE RISK MANAGEMENT?

*Katherine Belton**

Parole has been the subject of scrutiny in recent years, both due to offences that are committed by high-profile parolees, and for the perceived leniency that it provides by allowing offenders early release from imprisonment. This paper analyses the operation of parole in New Zealand with reference to the case of Reid v New Zealand Parole Board, together with a review of the Law Commission's report on sentencing and parole, and the resulting amendment to the Parole Act. It concludes that parole is an effective tool in the criminal justice system, and should certainly be retained.

I INTRODUCTION

Parole is a mechanism by which offenders are released from imprisonment before the expiry of the sentence handed down by a sentencing judge. Accordingly, the operation of parole in any criminal justice system attracts criticism from those who demand harsh and lengthy sentences for law breakers. In spite of the debate and criticism that it generates, parole is an important and long-standing feature of the criminal justice landscape in New Zealand, and as such, is unlikely to be revoked. However, recent high-profile parole cases, such as those of Graeme Burton, William Bell and Bailey Junior Kurariki, have caused a flare up of the concerns that generally surround the operation of parole. An exploration of this element of the criminal justice system is therefore called for.¹

Various facets of the criminal justice system were reformed less than a decade ago in response to a criminal justice referendum. Held in 1999, the referendum illustrated a clear public desire for harsher punishment of persistent and serious offenders. However, the resulting parole legislation did

* Submitted as part of the LLB(Hons) programme at Victoria University of Wellington.

¹ The term "criminal justice system" refers to the elements that go towards preventing and dealing with criminal behaviour and actions in society, including the Police, courts, and corrections. While these elements may not be organised in a "system" as such, the term is widely used to describe these aspects of society: see Lucia Zedner *Criminal Justice* (Oxford University Press, Oxford, 2004).

not wholly facilitate harsher or lengthier punishment. Eligibility for parole release was set (and remains for the time being) at the expiry of one-third of a determinate sentence,² where release is determined by reference to the risk that an offender poses to the safety of the community.

This paper will assess the interpretation of the parole legislation by the Parole Board (the Board) and, in concurrence with a Court of Appeal ruling on the matter, submit that the Board's interpretation and application of that legislation have been flawed. Although the interpretation and application contended for by the Board may be in line with public expectations, it is inconsistent with the Parliamentary intention behind the parole legislation, as well as the rationales of parole. However, if the parole legislation is now applied as it was intended to be, the result is an untenable situation in light of the public's desire for harsher punishment of offenders and the need for "truth in sentencing". Accordingly, it is submitted that the recent reform to the criminal justice system will satisfy the need for "truth in sentencing" and the rationales of parole, and improve the operation of the criminal justice system in New Zealand.

II PAROLE IN NEW ZEALAND

Most parole systems involve three basic elements: discretionary early release, supervision of offenders once released on parole, and recall to custody if the conditions of release are breached by an offender.³ However, it would be a "naïve assumption that parole is a universal concept that is identical in meaning and in practise wherever it is to be found."⁴ Accordingly, it must be appreciated that the role and form of parole in New Zealand is the result of our own penal and political context, and the rationales for its operation (as discussed below in part C) are somewhat exclusive to New Zealand. It is important to note that in New Zealand parole is a discretionary process, and as such there is no guarantee of release even though an offender becomes eligible for parole.

A The Parole Act 2002

The legislative scheme that governs parole in New Zealand is the Parole Act 2002 (the Act). Under this Act the Board is defined as an independent statutory body that has the function of considering which offenders are to be released on parole and to set the conditions of that release.⁵ Under the Act, decisions by the Board are not subject to an appeal process. However, section 67

2 The Parole Amendment Act 2007 has been passed, but the date of commencement of section 48 (the section that will change the eligibility for offenders seeking parole) is yet to be determined.

3 Keith Bottomley "Parole in Transition: A Comparative Study of Origins, Developments, and Prospects for the 1990s" (1990) 12 *Crime and Justice* 319, 320.

4 *Ibid.*

5 Parole Act 2002, s 109. The reform that occurred in 2007 made home detention a standalone sentence. It is no longer for the Board to decide which offenders may be released on home detention, but rather a decision for the sentencing judge.

provides that an offender who is the subject of a parole board decision may apply for a review of the decision, and judicial review also remains available to an offender as a means of review.

Parole decisions are constrained by the date at which an offender becomes eligible for parole. Until section 48 of the Parole Amendment Act 2007 (the Amendment Act) is brought into force,⁶ an offender serving a determinate sentence of more than 12 months is eligible for parole at the expiry of one-third of his or her sentence,⁷ and will continue to come before the Board every 12 months until released.⁸ Exceptions to one-third parole eligibility apply where a minimum period of imprisonment is imposed on an offender under sections 86⁹ or 89 of the Sentencing Act 2002, where an offender has a life sentence in which the non-parole period is 10 years, or where an offender is subject to a long-term notional single sentence and the non-parole period is to be determined by adding together all the non-parole periods of every sentence that makes up the notional single sentence.¹⁰

Decisions regarding the release of offenders on parole are guided by section 7 of the Act (Guiding Principles):

- (1) When making decisions about, or in any way relating to, the release of an offender, the paramount consideration for the board in every case is the safety of the community.
- (2) Other principles that must guide the Board's decisions are --
 - (a) That offenders must not be detained any longer than is consistent with the safety of the community, and that they must not be subject to release conditions or detention conditions that are more onerous, or last longer, than is consistent with the safety of the community; and

...
 - (b) That the rights of victims (as defined in s 4 of the Victim's Rights Act 2002) are upheld, and submissions by victims (as so defined) and any restorative justice outcomes are given due weight.

6 Section 48 of the Parole Amendment Act 2007 will change the eligibility date for offenders seeking release on parole to two-thirds of a determinate sentence. This aspect of the reform is discussed in more detail in Part V Reform.

7 Parole Act 2002, s 84.

8 Subject to s 21(2)(a)-(c) of the Parole Act 2002.

9 Section 86 of the Sentencing Act (that allows a court to impose a non-parole period longer than that stated in section 84 of the Parole Act 2002) is to be repealed by section 46 of the Sentencing Amendment Act 2007, as from a date appointed by Order in Council.

10 Parole Act 2002, s 84.

- (3) When any person is required under this Part to assess whether an offender poses *undue risk*, the person must consider both --
- (a) The likelihood of further offending; and
 - (b) The nature and seriousness of any likely subsequent offending.

The primary consideration for a release decision is whether the Board is satisfied on reasonable grounds that the offender will not pose an undue risk to the safety of the community. On a plain reading of the Act it is clear that parole should only be granted where an offender does not pose an undue risk to the safety of the community, while the risk is assessed by reference to the likelihood of further offending, as well as the nature and seriousness of any such subsequent offending.

B "Community Safety"

Community safety is the overriding consideration for the Board in considering the release of an offender on parole. However, nowhere in the Act is the phrase defined. Unfortunately, there is no definitive statement of what community safety entails because it can mean different things to different people at different stages of their lives.¹¹ It could include keeping the community safe from various dangerous factors including domestic abuse, drug abuse, road safety, and fire safety.¹² In relation to parole, "community safety" ought to involve some form of risk minimisation regarding a community's right to live without fear of crime, given that parole allows offenders back into the community from which they were initially removed in the interests of safety. On another note, a recent decision has found that the meaning of the word "community" should be given a wide interpretation so as to include any community to which an offender could be removed.¹³

The right of a community to live free of crime is important, and is reflected in the fact that a prime function of the criminal law is to protect the community from crime.¹⁴ Therefore, ensuring that community safety is upheld is an important objective for the Board to achieve, or attempt to achieve. Yet there is little guidance for the Board in ensuring that it is upheld. The guiding principles in section 7 of the Act require that, in considering the release of an offender, the Board must not detain an offender longer than is consistent with the safety of the community, nor impose conditions that are more onerous than is required for community safety. This latter legislative directive suggests that, in making release decisions, the Board needs to weigh community safety

11 Threads of Success: A Study of Community Safety Partnerships in Scotland www.scotland.gov.uk (accessed 7 August 2007).

12 Ibid.

13 *Iona Vaalele v The New Zealand Parole Board* (22 May 2007) HC CHCH CIV-2006-409-002815.

14 Geoffrey G Hall *Sentencing Law and Practice* (Lexis Nexis, Wellington, 2004) para 1.3.1.

with other factors (keeping in mind however that, community safety remains the paramount consideration).

C The Rationales for Parole

The Law Commission has identified two rationales for the operation of parole in New Zealand. These are the factors that justify the inclusion of parole within the New Zealand criminal justice system, and further, are the factors that must necessarily be weighed against the interests of community safety when a release decision is made. First, and implicit in its nature, is the fact that parole serves to mitigate the social and fiscal costs of severe sentences by allowing offenders to be released at an earlier date.¹⁵ Second, and explicit in section 7 of the Act, parole acts as a mechanism to manage sentences, with an aim of reducing the risk of recidivism.¹⁶ Parole is said to reduce the risk of recidivism because it provides both an incentive for offenders to participate in rehabilitation programs while in prison, and a method of identifying high-risk offenders (which then allows the Board to either keep those offenders in prison for a greater portion of their sentence, or supervise them more closely upon their release into the community).¹⁷

D Parole and Sentencing

Before going on to consider how parole has functioned under the Act, the interaction of parole with sentencing needs to be explored. New Zealand, like other jurisdictions, has developed its criminal justice system in a piecemeal fashion over many years, which has somewhat concealed the fact that sentencing and parole are closely related and interdependent.¹⁸ Looking at the interaction of the sentencing and parole legislation confirms this.

A prime function of the sentencing and parole legislation is the protection of the community from crime,¹⁹ a concern of both the sentencing judge and the Board. However a judge operating under the Sentencing Act 2002 and a parole board operating under the Act have very different modes of achieving community safety: one through confinement, the other through release (albeit controlled). By its very nature as a release mechanism, parole transfers a substantial amount of

15 New Zealand Law Commission *Sentencing Guidelines and Parole Reform* (NZLC R94, Wellington, 2006) para 124 [*Sentencing Guidelines*].

16 *Ibid.*

17 *Ibid.*

18 D A Thomas "Parole and Sentencing" in D A Thomas (ed) *Parole: Its Implications for the Criminal Justice and Penal Systems: Papers Presented to the Cropwood Round-Table Conference* (Cambridge University Institute of Criminology, Cambridge, 1974) 45, 45.

19 Hall, above n 14, para 1.3.1.

power from the court to the Board, making it clear that while these two aspects of the criminal justice system are closely connected, they are often at cross purposes.²⁰

The Sentencing Act states the various aims of punishment that should be sought beyond community safety. The aims include retribution, deterrence, incapacitation, compensation and rehabilitation.²¹ A sentencing judge is faced with a difficult task because the aims of punishment have no order of importance²² and they often conflict: what may be the best rehabilitation may not deter, and what may be the best deterrent may be disproportionate retribution.²³ Accordingly, the extent to which any aim is given prominence will depend on the nature and circumstances of the offender's crime.²⁴

Although the sentencing decision is complex, increasing guidance is available to judges for determining the purposes of punishment that should be adopted for particular types of offences.²⁵ In comparison, there is sparse guidance for parole decisions. Beyond the undefined phrase of "community safety", the Act does not specify particular aims for the Board to achieve in its release decisions. The result is that, rather unintentionally, the Board may undermine the purposes of an offender's sentence when it grants parole to an offender. It is from this interaction with the sentencing process that parole attracts the criticism of diminishing "truth in sentencing".

The "truth in sentencing" criticism (or catch-cry as the case may be) refers to "a desire to improve the delivery of proportionate punishments and which emphasises stability and predictability in the criminal justice system."²⁶ In New Zealand the term has also become synonymous with a desire for harsher sentencing.²⁷ "Truth in sentencing" is an important objective to achieve, or endeavour to achieve, because without it, the credibility and of confidence in the criminal justice system are undermined.²⁸ The public perception of criminal justice is undermined when a high sentence is handed down, but an offender could be released after only a small portion of it is served.

20 Jean-Paul Brodeur "The Attrition of Parole" (1990) 32 Canadian Journal of Criminology 503, 507.

21 Sentencing Act 2002, s 7.

22 Sentencing Act 2002, s 7(2).

23 Andrew Von Hirsch and Kathleen Hanrahan *The Question of Parole: Retention, Reform or Abolition* (Ballinger Publishing Company, Cambridge, 1979) 14.

24 Hon Bruce Robertson (ed) *Adams on Criminal Law* (loose leaf, Brookers, Wellington, Sentencing Act 2002) para SA7.05 (last updated 10 June 2008).

25 Hall, above n 14, para 1.3.

26 R Gregory Dunaway and Peter B Wood "Consequences of Truth-In-Sentencing: The Mississippi Case" (2003) 5 *Punishment and Society* 139, 140.

27 *Sentencing Guidelines*, above n 15, para 130.

28 *Ibid.*

This frustration is set against a background of popular punitiveness in New Zealand, which further reduces confidence in the system if offenders "get off" from harsh punishment. Because of the operation of the criminal justice system under the current sentencing and parole legislation, it is the Board that can act on the "truth in sentencing" concern through its mandate of maintaining community safety. Therefore, the Board, being keenly aware of the "truth in sentencing" concern, interpreted "community safety" more widely than the Act suggested to allow conservative release decisions and to offer some form of "truth in sentencing".

Even if parole is considered a privilege not a right,²⁹ in that the offender is fortunate to be considered for release and supervision rather than remaining in prison, the severe character of imprisonment must be recognised. Among other things, it is painful to lose one's liberties, to be cut off from the pursuits important in one's life, and to be denied the company of family and friends.³⁰ As such, the justice of the process by which some remain imprisoned longer than others, which necessarily increases the severity of a sentence, deserves scrutiny.³¹ It was concern for the justice of the parole process that resulted in the case of *David Jordan Reid v New Zealand Parole Board (Reid)*.³²

III DAVID JORDAN REID V NEW ZEALAND PAROLE BOARD

Three plaintiffs, Reid, Bindon and Staples, sought to challenge the decisions of the Board in declining to grant each of their applications for home detention.³³ Release on home detention was not materially different from release on parole in that the Board, in deciding to release an offender on home detention, had to consider the same factors as if it were considering an offender's release on parole. The issue for the Court of Appeal to decide was whether the references to "safety of the community" in the Act allowed the Board to consider matters of general deterrence in its decision-making process so as to detain offenders for a larger portion of their sentence. The Court of Appeal unanimously decided that the Board should not take into account matters of general deterrence in its decision making process.

29 Parole Act 2002, s 28(1AA): In deciding whether or not 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 else in this Act or any other enactment confers such an entitlement.

30 Von Hirsch and Hanrahan, above n 23, 11.

31 Ibid. Section 22 of the New Zealand Bill of Rights Act 1990, the right not to be arbitrarily arrested or detained, may also apply here, but it is not within the scope of this paper to discuss the issue..

32 *David Jordan Reid v New Zealand Parole Board* (29 August 2006) CA 247/05 William Young P for the Court [*Reid*].

33 Before the Parole Amendment Act 2007 was passed, it was the Board that decided which offenders would be released on home detention. Home detention is now a stand alone sentence, and it is for the sentencing judge to decide if an offender should be placed on home detention.

A *What is Deterrence?*

Before discussing whether or not the phrase "safety of the community" can properly include considerations of deterrence, the concept of deterrence should first be understood. Von Hirsch³⁴ defines deterrence as the "avoidance of a given action through fear of extrinsic consequences."³⁵ Criminal deterrence (which is what we are concerned with here) is thus "the avoidance of criminal acts through fear of punishment."³⁶

Though the concept seems simple, the definition goes further yet. Deterrence has been divided into two categories: special (or individual) deterrence and general deterrence. The former targets a specific offender, generally the one before a sentencing judge (or the Board as the case may be), and seeks to prevent that individual offender from committing further criminal acts by imposing severe punishment. The latter form of deterrence targets a larger audience, those potential offenders at large. It seeks to prevent these numerous potential offenders from committing criminal acts by passing exemplary sentences on one or a few offenders, or maintaining a high level of sentences for certain types of crimes, or maintaining general sentencing levels to act as a general disincentive and reinforce social attitudes against lawbreaking.³⁷ In *Reid* the court stated that the issue involved general deterrence,³⁸ and so it is this form of deterrence that is referred to in the following discussion.

B *The Decisions of the Board*

David Jordan Reid was convicted in 2005 on charges of dangerous driving causing death, dangerous driving causing injury, failing to stop, and driving while disqualified. Reid pleaded guilty to all charges and was sentenced to 19 months' imprisonment, with leave to apply for home detention. The sentencing Judge stated that, although there was no suggestion of further offending by Reid, and nor did he represent a real risk on New Zealand roads, "the factor of general deterrence must be a real factor in the sentencing outcome".³⁹ Reid applied for home detention, but was denied

34 Andrew Von Hirsch and others *Criminal Deterrence and Sentence Severity* (Hart, Oxford, 1999) 5.

35 Ibid.

36 Ibid.

37 Andrew Ashworth *Sentencing and Penal Policy* (Weidenfeld and Nicholson, London, 1983) 20. These forms of general deterrence are labelled as short-term general deterrence, standing general deterrence, and long-term general deterrence respectively.

38 Though arguably the parole board had also been considering individual deterrence: "[It is a] question of deterrence *both to Mr Reid* and the public generally". *Reid*, above n 32, para 20 William Young P for the Court citing Parole Board decision of 3 June 2005 (emphasis added).

39 *Reid*, above n 32, para 5 William Young P for the Court.

by the Board in its decision of 3 June 2005. In considering both sections 7 and 35 of the Act, the Board stated that:⁴⁰

Undue risk is not only directed towards the question of whether a person will go on to commit an offence if granted home detention. It includes issues of the nature and seriousness of the offence and the question of deterrence both to Mr Reid and to the public generally. These issues are directly related to the safety of the community.

Sheryl Louise Bindon was charged with four offences relating to the class B drug morphine and was sentenced to six years' imprisonment. Her application for back-end home detention⁴¹ was denied in January 2005, with the Board stating that "we have to consider the seriousness of the offending and public expectations that persons serving long sentences do not get released for frivolous reasons at the very first opportunity".⁴²

In 2004 Sandra Louise Staples was sentenced to five years' imprisonment for 421 charges of fraudulently using a document with intent to defraud, and 4 charges of false accounting. The sentencing judge referred to deterrence in imposing the sentence. Staples applied for home detention in 2005. The Board rejected her application:⁴³

Our view is that quite apart from the risk, we are entitled in considering the question [of release on home detention], to look at the serious nature of the offending and also the deterrent aspect of the sentencing. ... our view is that in assessing risk we must inevitably take into account ... issues of deterrence.

In rejecting each of the applications from Reid, Bindon and Staples, the Board cited reasons of general deterrence for the respective decisions to deny release on home detention. The Board considered that it was able to take into account considerations of general deterrence in making its decisions by relying on the *Hawkins v District Prison Board (Hawkins)* precedent.⁴⁴ Hawkins applied for parole while serving a six year sentence for fraud. The District Prisons Board (the DPB) rejected Hawkins' application, relying on section 104 of the Criminal Justice Act 1985.⁴⁵ The DPB took the view that:⁴⁶

40 Ibid, para 20 William Young P for the Court.

41 Parole Act 2002, s 33(2) (Repealed). This section provided that an offender who was subject to a long-term determinate sentence could apply to the Board for home detention at any time after the date that was 5 months before the offender's parole eligibility date, known as "back-end" home detention.

42 *Reid*, above n 32, para 25 William Young P for the Court.

43 Ibid, para 29 William Young P for the Court.

44 *Hawkins v District Prisons Board* [1995] 2 NZLR 14 (CA) [*Hawkins*].

45 Criminal Justice Act 1985, s 104. See appendix one. Criminal Justice Act 1985, s 96.

46 *Reid*, above n 32, para 11 William Young P for the Court.

the safety of the public requires [the Board] to have regard to the integrity of the deterrent aspect of the High Court sentence ... If Mr Hawkins is released after serving two years ... the Board's view is that the safety of the public will be compromised, because the deterrent component of the High Court sentence will be significantly minimised.

Further, the DPB also found that because the offending was of such magnitude "release on his first eligibility date would not reflect the nature of the offending and would undermine the general deterrent effect of the sentence".⁴⁷

Hawkins challenged the DPB's decision by way of judicial review. In the High Court Hammond J stated that he agreed with a general proposition that deterrence was irrelevant to the DPB's deliberations: "There is no warrant, whether in any abstract concept of parole, and critically, in the legislation itself, that I can identify for a Prisons Board assuming such an objective."⁴⁸ However, Hammond J did find that the DPB was able to take into account the serious nature of the offending in deciding whether to release Mr Hawkins on parole. As a result, Hammond J declined the application, stating:⁴⁹

Even if I am wrong in the foregoing and were I to remit this matter to the Board with a clear indication that it could not consider deterrence but could consider the seriousness of the offence, it is patently obvious what the result would be: a further refusal by the Board.

Hawkins appealed to the Court of Appeal. Cooke P, together with Richardson J and Casey J, dismissed the appeal. Although the High Court result was upheld, the Court of Appeal disagreed with the general proposition that deterrence considerations were irrelevant to the decision-making process of the DPB. Cooke P stated that the phrase in section 104 of the Criminal Justice Act 1985 "the need to protect the public" had been interpreted as embracing general deterrence.⁵⁰ Casey J said that he was satisfied that:⁵¹

references to public safety in the matters set out in section 96 of the Criminal Justice Act for the Board's consideration encompass those aspects of general deterrence accepted over the years by this Court as an essential component of public safety, and I must respectfully disagree with Hammond J's conclusion that such deterrence was irrelevant.

47 Ibid.

48 *Hawkins v District Prisons Board* [1995] NZAR 129, 139 (HC) Hammond J.

49 Ibid, 144 Hammond J.

50 *Hawkins*, above n 44, 17 Cooke P.

51 *Hawkins*, above n 44, 19 Casey J.

C The Court of Appeal's Decision

Ultimately in the *Reid* case, William Young P, Glazebrook J and Chambers J found in favour of the plaintiffs and essentially overruled the *Hawkins* precedent. William Young P stated that the issue to be determined was "finely balanced"⁵² in that there was a good deal to be said for the approach taken by the Board in the cases of Reid, Bindon and Staples. However, he stated that the plaintiff's arguments should be accepted, for essentially four reasons.⁵³

First, the phrase "safety of the community" most obviously refers to safety from re-offending. Second, the arguments against the applicants depend solely on the *Hawkins* precedent that was based on different, and now repealed, legislation. Third, parliamentary intention suggests that the Board, in making release decisions under the Act, was not required or sanctioned to engage in "re-sentencing", primarily because one of the goals of restructuring the parole system in 2002 was to increase the consistency of practice and decision-making.⁵⁴ Finally, the approach contended for by the plaintiffs was considered to be most consistent with legal principle.⁵⁵

IV DISCUSSION

It is clear that the Board incorporated deterrence considerations into the decision-making process as a response to concerns of both protecting community safety and upholding "truth in sentencing". In relation to the ruling in *Reid*, the Law Commission recognised that:⁵⁶

giving weight to factors other than risk is arguably a position to which the Parole Board has been driven by the long parole eligibility span, from which it might be inferred as a matter of common sense that risk should not be the sole consideration.

Adoption of the approach to include deterrence was arguably a position that the Board was "driven to".⁵⁷ Yet parole decisions that include deterrence to ensure imprisonment for a longer period of time (that necessarily increases sentence severity) are not appropriate or principled means of responding to concerns about the operation of parole under the Act. Accordingly, the Law Commission recommended a change to parole eligibility to counter this difficulty faced by the Board. The change to eligibility, as contained in the 2007 Amendment, is discussed below in Part V.

52 *Reid*, above n 32, para 32 William Young P for the Court.

53 *Ibid*, para 37 William Young P for the Court.

54 Mel Smith, Ombudsman *Investigation Into Issues Involving the Administration of Criminal Justice* (A.3(A), Office of the Ombudsman, Wellington, 2007) 22.

55 *Reid*, above n 32, para 37 William Young P for the Court.

56 *Sentencing Guidelines*, above n 15, para 133.

57 *Ibid*.

A *Deterrence is Best Left out of Parole Decisions*

1 *Deterrence does not work*

It has been well documented that general deterrence is only effective if the threat of punishment is perceived by potential offenders as being a highly likely consequence of the commission of the crime.⁵⁸ There must be certainty of detection, apprehension, and conviction.⁵⁹ Further, deterrence is a subjective notion: it is what the offender *believes* is the severity and certainty of punishment, coupled with how the offender *evaluates* the risk in terms of subjective disutilities such as financial matters or drug addiction (a factor that compounds the unfairness of using deterrence as a consideration in Bindon's case in particular).⁶⁰

There is intuitive attraction to deterrence because it is a generally valid assumption that people are rational and will change their behaviour when faced with threats of increased punishment. However, evidence has clearly illustrated that sentence severity has no discernible effect on the level of crime in society.⁶¹ Although deterrence does serve as a social control mechanism to some extent,⁶² increasing sentence severity (which the Board can do to some degree) will not affect offending levels. Rather, it is an increased risk of detection as understood by potential offenders that will. The empirical evidence cannot justify the inclusion of general deterrence in parole decisions, let alone sentencing ones.

Beyond the empirical arguments, deterrence has been attacked on grounds of principle and morality. Ashworth questions whether an extra portion of a person's liberty should be sacrificed in the hope of deterring several others,⁶³ an objection expressed in the Kantian maxim that states a person should be treated as an end in themselves, and never as a means. However, the Kantian principle should not be treated as a binding rule,⁶⁴ as societies often treat people in ways designed to promote the good of society at the expense of the individual, examples being military conscription and quarantine regulations.⁶⁵

58 Von Hirsch, Ashworth and Hall unequivocally accept this point.

59 Hall, above n 14, para 1.3.3.

60 Von Hirsch *Criminal Deterrence and Sentence Severity*, above n 34, 6.

61 Andrew Ashworth *Sentencing and Criminal Justice* (Cambridge University Press, Cambridge, 2005) 76. Sometimes known as marginal deterrence: Von Hirsch, *ibid*, 5.

62 Hall, above n 14, para 1.3.3.

63 Ashworth *Sentencing and Criminal Justice*, above n 37, 78.

64 Johannes Andenaes "The Morality of Deterrence" in Andrew Von Hirsch and Hyman Gross (eds) *Sentencing* (Oxford University Press, Oxford, 1981) 191, 191.

65 *Ibid*.

It is reasonable that a sentencing judge can take into account general deterrence where society allows it, as is the case in New Zealand. Parliament, as the representative of society, has expressly provided for this aim of punishment to be utilised in the sentencing process, the implication being that it is appropriate in this forum to employ some individuals as the means to increase the overall social benefit. However, without an express warrant to utilise such a contested aim of punishment, the Board should be wary of using general deterrence as justification for detaining offenders for a larger portion of their sentence.

2 *Statutory interpretation*

The arguments above illustrate that general deterrence should not be included in parole decisions. However, there are further arguments supporting this proposition that are specific to New Zealand. Section 7 of the Act states that the overriding factor for the Board to consider is safety of the community, where the offender should not be released if they pose an undue risk to the safety of the community. Although "safety of the community" is a wide phrase, and could encompass general deterrence, to do so seems to strain the meaning of the phrase when one looks to the subsequent direction for the Board in assessing risk to community safety: it is to be based on the likelihood of any future offending and the nature and seriousness of any such offending. "Risk" should be confined to the risk of recidivism of an offender, which if correct, means that "safety of the community" was not intended to be interpreted as widely as the Board contended.

Though a generous interpretation of community safety is not unreasonable given that doing so does not necessarily undermine the explicit rationale of parole as a mechanism for risk identification and management, the risk posed by an offender cannot be properly identified when the Board looks to factors unrelated to the risk of recidivism. In the same vein, it is illogical to use general deterrence to consider the likelihood of whether an offender in question is likely to reoffend, or to assess what form any future offending may take. Further, section 15 of the Act states that the Board is able to set conditions for an offender's release beyond the standard release conditions⁶⁶ to ensure that re-integration is carried out in a way that best reduces the risk of recidivism. Considerations of general deterrence, intended to affect potential offenders, cannot have any influence on how an individual offender is to be reintegrated into the community.

As well as the provisions in the parole legislation, those in the Sentencing Act also indicate that general deterrence should not be incorporated into parole decisions. Deterrence is included in section 7 (Purposes of Punishment), such that, when an offender is sentenced, the judge has taken into account considerations of deterrence. If the sentencing judge considers the need for a significant deterrent component to be imposed, a minimum period of imprisonment can be imposed under section 86 of the Sentencing Act. If a minimum period of imprisonment is not imposed, it is somewhat implicit that the judge considered the standard parole eligibility date was sufficient for

66 Parole Act 2002, s 14.

deterrent purposes.⁶⁷ If the Board then considers deterrence in the release decision, to do so amounts to an exercise in resentencing because the Board is assuming the role of a second appellate tribunal within the sentencing system.⁶⁸ The parole process should not amount to a "sentence-correcting method".⁶⁹ This method would undoubtedly upset the relativities between offences and offenders established at the sentencing stage,⁷⁰ which are important for ensuring consistency in sentences.

3 *Parole is distinct from sentencing*

In light of the statutory interpretation discussed above, it is reasonable to conclude that deterrence was not included in the Board's mandate because parole serves a separate and distinct function from sentencing, where deterrence is explicitly included. Parole presumes that most (if not all) offenders eligible will be released before the expiry of their sentence. This presumption is illustrated in the rationales of parole as identified above: if the Board relies on deterrence to detain an offender for a greater portion of their sentence, the social and fiscal costs of the sentence will not be mitigated. Furthermore, reintegration into society could not be appropriately managed if an offender was detained for the entire sentence and then abruptly released into the community with no supervision at all upon expiry of the sentence.

Parole by its very nature cannot generally deter in any case, even if deterrence did in fact "work". Parole is discretionary and based first and foremost on the risk posed by an individual offender to the safety of the community in terms of reoffending. While sentencing takes into account the circumstances of the crime, parole relies on personal characteristics of the offender such as race, gender, socio-economic status and employment history to determine risk, factors which are by and large irrelevant in sentencing.⁷¹ If parole release is determined by risk-assessment based on an offender's personal characteristics, potential offenders cannot realistically be deterred by an adverse parole decision on an individual offender because the potential offenders will either not have those same personal characteristics, or if they do, cannot change or adjust them anyway.

Nonetheless, if potential offenders are to be deterred by parole decisions, the parole decisions must be publicised. Currently, parole is a closed system, and is likely to stay that way. Though high-profile parole decisions are publicly available in New Zealand⁷² it seems that these decisions are not

67 *Sentencing Guidelines*, above n 15, para 134.

68 Thomas "Parole and Sentencing" above n 18, 49.

69 Bottomley, above n 3, 335.

70 *Sentencing Guidelines*, above n 15, para 134.

71 Brodeur, above n 20, 507.

72 These decisions are available from the Parole Board website www.paroleboard.govt.nz (accessed 22 August 2007).

made available to inform potential offenders of the severity of sentences, but rather to allow public scrutiny of the Board's decisions. As the Court stated in *Reid*, deterrence is better addressed by a sentencing judge rather than a parole board because offenders are sentenced in public, with full reasons given, as well as the availability of appellate rights which if utilised result in a further public and reasoned decision.⁷³ Though an offender can apply for an internal or judicial review of a parole decision, neither mechanism is entirely suitable for "reviewing decisions based on considerations of deterrence and particularly in terms of ensuring a reasonable measure of parity of treatment between offenders of similar culpability."⁷⁴

B Ramifications of Reid

In light of these arguments it is plain that the *Reid* decision is the right one. The result accords with the rationales of parole and specifically the language of the Act. However, the ramifications of the *Reid* decision are significant for the operation of parole under the Act.

"Community safety" is to be given a narrow interpretation by the Board in making release decisions. Specifically, the decision of whether to release or not should be assessed with reference only to an offender's risk of reoffending in the community. The safety of the community is unlikely to be adversely affected by the *Reid* decision because offenders who pose a risk to the community will not be released on parole.

However the *Reid* result has obvious ramifications for "truth in sentencing", which is certainly one of the principal concerns of the public. Without reform an insoluble dilemma is created for the Board because " it may mean that more [offenders] are released closer to one-third, which would increase the disjunction between the sentence and actual time served."⁷⁵ Where an offender is released at the one-third point because no risk was posed to the safety of the community, doing so would no doubt undermine four out of the five sentencing goals: retribution would be undermined by early release because the sentence would not fit the crime; rehabilitation may not yet have occurred;⁷⁶ deterrence would be undermined because the offender and the community would see this as leniency; while incapacitation is removed completely because the offender is released from incarceration. As it happens, the case of convicted rapist Peter McNamara is a perfect example of this untenable situation. The reform to the Act has not yet been enacted and so the Board has been

73 *Reid*, above n 32, para 34 William Young P for the Court.

74 *Ibid*.

75 *Sentencing Guidelines*, above n 15, para 134.

76 Although some would argue an offender can never truly rehabilitate.

forced to follow *Reid* in disregarding deterrence considerations in the decision, and consequently released Mr McNamara on parole.⁷⁷

It is possible to argue that release at one-third of the sentence may not undermine these sentencing goals because the sentence continues to be carried out in that offender is required to conform to release conditions as well as remaining subject to recall, and therefore it is only the nature of the sentence that has changed.⁷⁸ However, this is really only a semantic and technical distinction. As commentators have noted, "the perusal of any newspaper or public opinion poll would indicate ... the public cares little for the explanation that the control by the state continues even where imprisonment has not".⁷⁹ The operation of parole in this manner is unlikely to inspire public confidence in the criminal justice system.

The system as it would operate under the Act and post-*Reid* is "bark and bite sentencing, in which the judge's bark bears little relation to prison's bite".⁸⁰ Because the Board must confine reasons for declining release to risk alone, and can no longer rely on deterrence to satisfy the desire for "truth in sentencing", the need for the reform is marked. Accordingly, the Parole Amendment Act 2007 (the Amendment Act) came into force on 1 October 2007.⁸¹

V REFORM

Before the reform package was passed, the respective legislative schemes that governed the operation of the criminal justice system resulted in offenders serving more time in prison than under previous legislative schemes.⁸² Yet for victims, and the public, it appeared as though offenders did not receive harsh or lengthy sentences because of parole eligibility at just one-third of the determinate sentence. Though parole diminishes "truth in sentencing" in some form, it will always remain an important feature of the criminal justice system. As a form of early release it is highly desirable in that it is both a disciplinary tool, and more importantly, a risk management tool.⁸³ Furthermore, the discretionary nature of parole means that it can act as an incentive for rehabilitation while offenders are in custody.

77 The Board's decision to release Mr McNamara on parole was pending judicial review when this article was submitted for publication.

78 Brodeur, above n 20, 505.

79 Benzvy Miller and David P Cole "Integrating Sentencing and Parole" (1990) 32 Canadian Journal of Criminology 493, 497.

80 Ken Pease and Martin Wasik (eds) *Sentencing Reform: Guidance or Guidelines?* (Manchester University Press, Manchester, 1987) 23; Accepted in *Sentencing Guidelines*, above n 15, para 127.

81 Though some sections of the Amendment Act are yet to be brought into force.

82 *Sentencing Guidelines*, above n 15, para 129.

83 *Sentencing Guidelines*, above n 15, para 152.

Moreover, evidence has shown that it is possible to establish that parolees are, on average, less likely to be convicted than non-parolees.⁸⁴ However, it is not possible to conclusively state that parole has a beneficial effect on reducing recidivism due to the possibility of a "selection effect" which prevents the "parole effect" from operating independently.⁸⁵ In spite of the ambiguity, the fact that parole *may* have a beneficial effect weighs in favour of retaining it. Ultimately the Law Commission found that parole is worth retaining, and that its sole purpose should be reducing the risk of recidivism. However, the Commission also stated that, for effective reform of the parole system in this manner, sentencing reform must occur simultaneously with that of parole.

A *The Reform Package*

The reform package addresses those aspects of the criminal justice system that are of current concern. In addition, the reform endeavours "to arrest the sharp increase in the prison population in recent years".⁸⁶ The reform package passed through Parliament as the Criminal Justice Reform Bill 2007, and upon assent, was split into composite Acts that dealt with aspects of the criminal justice system including bail, sentencing, and parole.⁸⁷

The key change in terms of parole reform is the move from parole eligibility at one-third of a determinate sentence to two-thirds of a determinate sentence.⁸⁸ Reform that imposes a greater proportion of actual imprisonment time looks like it would contradict the express purpose of the reform to reduce the prison population. However, there will be a simultaneous change in sentencing practice, where sentence lengths are to be reduced overall so that the actual time spent in prison by an offender should be approximately the same under both regimes. Some politicians have described this as a net result of "100% of nothing"⁸⁹ given the superficial appearance of the change. Yet this approach does actually satisfy the notion of "truth in sentencing" because the actual time served in prison will correspond more closely with the sentence imposed by the sentencing judge.

To ensure that "truth in sentencing" is seen to be achieved, the Law Commission also recommended that when imposing a sentence the sentencing judge should articulate the sentence in a different way: stating in open court the total sentence and the parole component. Describing the sentence in such a way gives both the public and victims a practical understanding of the sentence in

84 Stephen Shute "Does Parole Work: The Empirical Evidence from England and Wales" (2004) 2 Ohio St J Crim L 315, 321.

85 Ibid.

86 Criminal Justice Reform Bill 2007, Explanatory Note: General Policy Statement, 1.

87 Sentencing Amendment Act 2007; Sentencing Council Act 2007, Bail Amendment Act 2007

88 Parole Amendment Act 2007, s 48.

89 Kate Wilkinson (5 December 2007) 644 NZPD 6882.

practice.⁹⁰ With the key changes now outlined, a consideration of how parole decisions will be made under the new regime can be explored.

B Parole Board Decision-Making and the Amendment Act

The Commission recommended that parole should be retained solely for the purpose of reducing the risk of recidivism. Because the decision in *Reid* is consistent with this purpose, no changes are required in regard to sections 7 and 28 of the Act. The clash between "truth in sentencing" and the rationales of parole has been removed by introducing parole eligibility at two-thirds of a determinate sentence. Eligibility at two-thirds means that the purposes of the sentence are able to be achieved, and "truth in sentencing" is achieved because the time an offender will serve corresponds more closely to the total determinate sentence. Serving two-thirds of a determinate sentence is also capable of satisfying the public's desire for harsher sentencing because it is certain that an offender will serve this lengthy portion of the sentence in custody.

The new statutory guidelines and the decision in *Reid* clearly identify that the function of the Board is to release offenders at the two-third point of a determinate sentence, except where they pose a significant risk to the safety of the community. In light of the reform it is clear to see that future parole decisions, based solely on risk of recidivism, will both uphold community safety and accord with the explicit rationale of parole. Yet some commentators may argue that this is still an inappropriate way of conducting parole decisions. Von Hirsch and Hanrahan contend that retribution, or "just deserts", is the most equitable concept of punishing because this aim best complies with the principle of proportionality between offence and punishment which they believe justice requires.⁹¹ As such, they question the moral appropriateness of making the severity of an offender's punishment depend on what he or she may do in the future, rather than on his or her past actions.

In response to this likely criticism, the new parole eligibility threshold at two-thirds of a nominal sentence means that there will be a presumption in favour of granting parole at this point, and it is therefore only in exceptional cases that sentence severity will be increased. Where sentence severity is increased this is likely to ensure that sufficient rehabilitation programmes can be undertaken by an offender, which is generally a desirable aspiration and therefore able to be justified. Further, basing the parole decision on the moral blameworthiness of the offender would no doubt defy the rationale of sentence and risk management, as well as removing the incentive to participate in rehabilitation programmes. Moreover, basing the parole decision on blameworthiness no doubt falls into the category of re-sentencing like general deterrence. Retribution will have been taken into account by the sentencing judge, and as stated above, the Board should avoid engaging in sentencing functions.

⁹⁰ *Sentencing Guidelines*, above n 15, para 178.

⁹¹ Von Hirsch and Hanrahan, above n 23, 14.

A sole focus on risk means that the Board has a narrower task, with the result being that its decisions should accord more closely with the overriding factor in the decision-making process, namely the safety of the community. However, it is widely acknowledged that risk assessment is hardly an exact science. A parole board can never be 100 per cent sure that an offender will pose no risk to the safety of the community. It begs the question, therefore, as to whether release decisions should be based solely on risk when accuracy cannot be guaranteed.

VI THE PAROLE BOARD AND RISK ASSESSMENT

Risk assessment is an integral part of the parole process, and will be even more so under the new parole regime. Recent research has suggested that assessment of risk based on statistical probabilities (actuarial risk assessment) can be relatively accurate in predicting recidivism of violent offenders.⁹² Yet issues remain as to the appropriateness of basing sentence severity on statistics that are generally unrelated to the offending, as well as to the level of accuracy that is realistically available in predicting risk.

A Are Statistics Appropriate?

1 Clinical versus actuarial assessments

Predicting recidivism can be likened to predicting the result of a horse race.⁹³ Generally a horse is predicted to win based on the odds of doing so, as derived from a consideration of the horse's history. This clinical approach is a sensible one because past behaviour is usually the most accurate predictor of future behaviour. Nevertheless it is likely that a better, more scientific, method would be to attempt to predict winners directly from theory of horse race performance indicators relating the characteristics of the horse to outcome (such as lung capacity and training method). This latter actuarial-based approach statistically calculates which horses are most likely to win based on performance indicators.

An actuarial assessment allows a greater comparison, and potentially a more accurate result, because every horse's chances of winning are based on the same criteria. The same is true for risk assessment of offenders. If every offender can be given a score of their likelihood of reoffending, then such an approach gives the most consistency across the board. Yet it is clear that lung capacity and training method are factors that cannot be applied to offenders. However, some predictors have been clearly identified the factors that contribute to an offender's propensity towards recidivism.

The Department of Corrections currently employs the use of the RoC*RoI risk assessment measure to assist in the accurate prediction of an offender's risk of conviction and likelihood of

92 Vernon L Quinsey and others *Violent Offenders: Managing and Appraising Risk* (2 ed, American Psychological Association, Washington DC, 2005).

93 *Ibid*, 44.

reimprisonment:⁹⁴ RoC is the risk of reconviction, and RoI is the risk of imprisonment. Both are actuarial measures derived from "exploiting the mathematical relationship between basic social and demographic variables, criminal history variables and future offending".⁹⁵ The measures are based on static predictors (unchangeable by effort) from criminal history information, and the combination gives an expression of the "statistical likelihood that a person will be both reconvicted in the future and sentenced to a term of imprisonment for that offence".⁹⁶

The RoC*RoI formula has been found to be very accurate,⁹⁷ and "research has shown that even simple risk scales (that is, a checklist of risk factors) invariably outperform the clinical or professional judgment of trained and experienced correctional staff when making predictions about future offending".⁹⁸ Accordingly, the RoC*RoI is also taken into account by the Board in making release decisions. Though actuarial risk assessment is becoming more reliable, it is unlikely that clinical assessment will completely drop out of the risk assessment process undertaken by the Board.

2 *The ethical use of statistics*

If the Board utilises actuarial methods for assessing the recidivism risk of offenders, the morality of deciding a person's fate based on a statistical measure needs to be considered. Von Hirsch and Hanrahan would no doubt question the morality of basing decisions of confinement on an estimate of the likelihood of an offender's recidivism (assuming such an estimate could even be made accurately).⁹⁹ It is of course true that each human being is unique and should be dealt with on a case-by-case basis, and the same is true for offenders and their propensity for reoffending. However, statistical information about groups is routinely used to make individual decisions, a prime example being the insurance industry, which is based on the idea that risks from identifiable groups can be assessed and premiums determined accordingly. Interestingly, the Carlisle Committee, set up to independently review the English parole system, reported in 1988 that a parole board should be under a *duty* to take into account statistical prediction techniques¹⁰⁰ in determining

94 Nick J Wilson *New Zealand High-Risk Offenders, Who Are They and What Are the Issues in Their Management and Treatment?* (Department of Corrections Psychological Service, Wellington, 2004).

95 Leon Bakker, James O'Malley and David Riley *Storm Warning: Statistical Models for Predicting Violence* (New Zealand Department of Corrections, Christchurch, 1998).

96 Available from www.corrections.govt.nz (accessed 22 August 2007).

97 Leon Bakker *Risk of Reconviction: Statistical Models Predicting Four Types of Reoffending* (Department of Corrections, Christchurch, 1999).

98 See above n 96.

99 Von Hirsch and Hanrahan, above n 23, 4.

100 Bottomley, above n 3, 353.

the release of an offender on parole.¹⁰¹ Furthermore, "trying to treat an offender as though they were unique in any true sense would mean ignoring all relevant research".¹⁰²

In spite of the reasoning in favour of using statistical information, critics need not be wary because it is unlikely that the Board will ever base release decisions solely on statistical information. Like a patient diagnosed with a disease with an 80 per cent mortality rate, other factors such as general health and diet of the individual patient will in turn contribute to the final outcome.¹⁰³ The same is true for offenders: the availability of support networks, employment prospects, and an offender's attitude among other things will contribute to the likelihood of reoffending.

B Relatively Accurate is Accurate Enough

Unfortunately, parole decisions can never be completely accurate. In deciding to decline or grant parole, the process is one that must be carried out using the best information available, yet will "always remain an assessment of future human behaviour and thus includes an element of guesswork".¹⁰⁴ However, a single focus on an offender's risk of recidivism means that the Board can be wholly attentive to the risk assessment exercise. A single focus will ensure that all of the information needed to make a reliable release decision can be before the Board. In fact, section 9 of the Amendment Act even allows hearsay evidence to come before the Board to ensure that the most fully informed decision can be made.¹⁰⁵

In relation to accuracy issues of predicting recidivism, the concept of hindsight bias must be borne in mind. This form of bias is the "erroneous belief, once an outcome is known, that it was in fact predictable all along ... [it] is akin to a perceptual illusion."¹⁰⁶ Parole boards do err on the side of caution given that predicting violent reoffending is "notoriously difficult",¹⁰⁷ but any method on which the release decision is based will be subject to limitations.

101 Quinsey, above n 92, 207.

102 Ibid.

103 Ibid.

104 Smith, above n 54, 26.

105 This provision was included in the wake of the Graeme Burton debacle. In that case there was supposed evidence of alleged assaults in prison before Burton was released, but because such evidence is hearsay (and therefore inherently unreliable), the Board did not consider it in making the decision to release. Including hearsay evidence in a parole decision may mean a fully informed decision is made, but whether the decision is the most reliable is another matter.

106 Quinsey, above n 92, 12.

107 Ibid, 44.

A singular focus on risk of recidivism does not mean the Board will act any less cautiously. In fact, because predicting risk is a difficult task, the Board is likely to be more cautious in releasing offenders. As the chairman of the Canadian parole board has stated:¹⁰⁸

Failures quite rightly receive intense media and public attention. This scrutiny serves to remind us that we will be and should be judged on the quality of each individual decision, and the effectiveness of the implementation of each decision, that we must recognise and learn from our mistakes, that we must work constantly to improve the quality of corrections and parole.

However, it must equally be borne in mind that a risk averse approach to granting parole (that lessens the chance for critical media headlines) will "condemn some offenders who would pose little risk to the community to longer terms in institutions ... and the potential for rehabilitation is lessened."¹⁰⁹ The Board clearly has a hard task ahead of it in terms of risk assessment, but the purposes for which parole is included in the criminal justice system in the first place should not be forgotten.

VII CONCLUSION

Parole is no doubt a feature of the criminal justice system in New Zealand that is here to stay. It may occasionally be a gamble to release some offenders on parole, but the reason for the use of parole in New Zealand must not be overlooked. As this article has discussed, parole can mitigate the costs of lengthy sentences and provide a valuable risk management tool. Parole and parolees will always be the subject of salacious media soundbites, but the public must appreciate that parole does in fact serve important purposes. Though the public may care little that the parole reduces the social and fiscal costs of harsh sentences, the fact that parole is able to provide a risk management tool that can help to protect community safety would surely sit well with most of the public.

Accordingly, parole is a necessary feature of the criminal justice system, even when there are critical media headlines calling for its abolition. However, the need for "truth in sentencing" is appreciated. In the context of popular punitiveness, there is a need for offenders to serve a sufficient portion of the sentence handed down to ensure the aims of sentencing are met. Public confidence in the criminal justice system requires consistency and predictability in treatment of offenders, and the operation of parole before the 2007 reform has not inspired such confidence.

The reform that has occurred will improve the operation of parole among other aspects of the criminal justice system. The change to parole eligibility will ensure that the rationales of parole are achieved, as well as upholding "truth in sentencing". Furthermore, the Board will no longer have to rely on inappropriate factors such as deterrence to uphold truth in sentencing; it will be able to focus on the sole task of managing risk to the safety of the community. It is appropriate for the Board to

108 Fred E Gibson "Renewal of Parole" (1990) 32 Canadian Journal of Criminology 487, 490.

109 Smith, above n 54, 26.

have this sole task, though it is submitted that perhaps this could be formally laid out in statute, as the practical reality means there is a tendency for the Board to be influenced by the popular punitive context in which it must operate.

APPENDIX 1 – HISTORICAL LEGISLATION**104 Matters to be considered when determining release on parole**

[1 September 1993 to 29 June 2002]

In determining, pursuant to section 97 and section 100 of this Act, whether to release an offender on parole, the Parole Board or District Prisons Board shall consider the need to protect the public or any person or class of persons who may be affected by the release of the offender, and shall also consider the following matters:

(a) Generally, the likelihood of the offender committing further offences upon his or her release:

(b) The welfare of the offender and any change in his or her attitude during the sentence:

(c) The nature of the offence:

(d) In the case of an offender who is subject to an order for recall or an offender in respect of whom a direction for return has been made under section 94(6) of this Act, the reasons for the order or direction, as the case may be:

(e) The policy directions (if any) given by the Minister under section 98 of this Act.

96 Matters to be considered

[1 October 1985 to 31 August 1993]

(1) In considering any case under section 94 or section 95 of this Act, the Parole Board or a District Prisons Board shall have regard to the following matters:

(a) The safety of the public, and of any person or any class of persons who may be affected by the release of the offender:

(b) The welfare of the offender and any change in his or her attitude during the sentence:

(c) The nature of the offence:

(d) Any representations made by the offender, whether orally or in writing, and any written submissions made by any other person on the offender's behalf:

(e) Any report made by the Superintendent of the penal institution in which the offender is detained:

(f) Any report made by any other officer or employee of the Department of Justice or the Department of Health relating to the case.

