IN THE HIGH COURT OF BELIZE A.D. 2023

CLAIM NO 118 of 2023

BETWEEN

MICHAEL SILVA

APPLICANT

AND

PAROLE BOARD

RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MARTHA ALEXANDER

Oral Submissions Date: June 27, 2023

Delivery date: July 17, 2023

APPEARANCES:

Ms. Sheena Pitts and Mr. Anthony Sylvestre for the Applicant

Ms. Alea Gomez and Mr. Jarvis Lou for the Respondent

DECISION

INTRODUCTION

1. This decision relates to an application for leave to apply for judicial review. The applicant is an inmate at the Belize Central Prison serving a sixteen year sentence for manslaughter. He seeks judicial review of the decision of the respondent ("the Board") to deny him parole, without giving any reasons. He contends that the proper procedures were not followed and/or not known to him when the Board denied his parole.

2. The Board opposes the application on the grounds of delay; the existence of an alternative remedy that the applicant has not utilized and that there is no arguable case with a realistic prospect of success.

3. I grant the applicant leave to apply for judicial review. He raises an arguable case, not one that is frivolous or groundless and has sufficient interest in this matter. I did not find that the alternative remedy, as suggested by the Board, of a renewed application for parole a viable route or one that will provide the necessary answers. The lawfulness of the Board's process in arriving at its decision is subject to review; it is in the interest of the public for the court to look at the procedures used by the Board to arrive at its decision.

BACKGROUND TO APPLICATION

4. The applicant states that by November, 2021 he had served eight years of his sixteen year sentence and was eligible for release on parole. He was refused parole the first time that his case went to the Board for consideration in November, 2021 without reasons being given. He knew only that he was interviewed by a Dr. Matus Torres, before the first parole hearing, but was told nothing about the doctor's report or if the Board had considered it at that hearing.

5. His case came up for reconsideration, virtually, on November 24, 2022 and, again, he was refused parole. He was not given any reasons for the refusal and was unaware of the factors considered. Being dissatisfied with the decision on November 24, 2022 and the uncertainty in which he finds himself as to the Board's procedures, the applicant seeks leave to review.

6. The applicant seeks leave to apply for the following orders:

    i. Permission to apply for judicial review for a writ of certiorari to quash the decision of the respondent made on or about November 21, 2022 to November 24, 2022 denying the applicant's release on parole.

ii. Permission to apply for judicial review for a declaration that the decision of the respondent made on or about November 21, 2022 to November 24, 2022 denying the applicant's release on parole is unreasonable, irrational and erroneous in law.

iii. Permission to apply for judicial review for an order of mandamus directing the respondent to now properly exercise its functions and/or duties under sections 4(1) and 4(3) of the Parole Act to consider the applicant's parole case for release on parole.

iv. An order for disclosure of all documents, minutes, and transcript of meetings and/or hearings of the respondent used to consider and determine the applicant's case for release on parole, including written reasons, if any.

ISSUES

7. The main issue is whether the applicant has met the threshold test to be granted leave to apply for judicial review. This gives rise to two questions: (i) whether the application is subject to any discretionary bar and (ii) whether the applicant has established an arguable case with a realistic prospect of success.

SUBMISSIONS BY PARTIES

(a) Delay

8. Ms. Pitts states that the applicant satisfies the threshold tests for leave for judicial review. He did not delay in bringing the application since the hearing was on November 24, 2022 and his initial application was filed on February 21, 2023 (i.e. within the timeframe of three months under the rules). The amended application was filed on March 20, 2023 so there was no unreasonable delay in refiling. Delay must be viewed in the context of the party who will suffer the most prejudice by the decision and how, or if, any decision will be detrimental to the good administration of justice. The court is to consider, also, if there is good reason for extending the period for the application.

9. Ms. Gomez submits, in opposition, that unreasonable delay exists in this case so permission ought to be refused. Rule 56.5 CPR provides a three month window for judicial review, and

it is crafted in mandatory terms so noncompliance is a nonstarter. The amended application was filed three months and twenty-four days after learning of the Board's decision after the hearing and on the same day it was made, without any explanation, so leave ought to be denied.[1]

10. In ***R*** v ***Strafford-on-Avon District Council, ex p Jackson***,[2] the court held that a failure to act within three months constituted undue delay, which remained '*undue*' even if the court was satisfied that there was good reason for it and extended the time limit. She states that this case dealt with Ord 53, 4(1) which is in tandem with Belize's CPR 56.5(1). Without an explanation or application to extend time, leave should be refused. It is detrimental to good administration to allow the applicant to sit on his rights and act in his own time and then seek the court's aid to correct his mistakes.

(b) Alternative remedy

11. Ms. Pitts submits that the applicant has no alternative remedy open to him. The legislation makes no provision for a right of appeal to the High Court by an offender who is dissatisfied with a decision of the Board. The legislation also does not provide for "*a collateral review*" or reconsideration of his release on license[3] by any other body or any other person. Ms. Pitts acknowledges that the applicant has a right to approach the Governor General to exercise (on advice of the Belize Advisory Council) her prerogative of mercy under section 52(1)(a) or (d) of the Belize Constitution but submits that this remedy is neither practical nor appropriate. She states that the "mercy" avenue must be viewed against the backdrop that since the Board was established, no other system has been put in place by the Governor General to address parole issues. Further, the "*mercy prerogative*" cannot be exercised independent from a collateral review of a Board decision.

[1] *Greaves-Smith* v *Public Service Commission* TT 2007 HC 37 and *Maharaj* v *Commissioner of Prisons* TT 2009 HC 180
[2] [1985] 1 WLR 1319
[3] Release on license is a release from prison on standard license which lasts for the remainder of the offender's sentence unless the conditions of the license are breached.

12. The applicant, also, cannot seek constitutional relief under section 52(1)(a) & (d) of the Belize Constitution as a form of appeal or review. He was given no reasons for the rejection of his evidence nor was he told why his rehabilitation did not satisfy the considerations of section 4(2) & (3) of the Parole Act.[4] Additionally, section 52(1)(a) & (d) will not resolve the applicant's issue of not being provided with reasons for denying him parole. Without reasons, he is left without any understanding of the Board's considerations hence his present application.

13. In answer, Ms. Gomez insists that his alternative remedy is to reapply for parole to get the orders he seeks, without court intervention. This right to re-apply, either on his own application or the motion of the Board, is an available, effective and more suitable remedy than judicial review. Counsel accepts that the existence of an alternative remedy does not always mean that the claim must fail. However, the applicant must establish why judicial review is more appropriate than the alternative remedy or be denied permission: see ***Louis Smith*** v ***DPP***.[5] The court should not usurp the functions of the appellate body provided by Parliament.

(c) Arguable case

14. Ms. Pitts states that the applicant has an arguable case with a realistic prospect of success. The Board must consider specific statutory factors and act in the interest of good administration and fairness by giving reasons. It did not. She recommends the approach to judicial review used by the CCJ in ***Guyana Geology and Mines Commission*** v ***BK International Inc.***[6] In that case, JCCJ Jamadar recognizes the constitutional underpinning of the rule of law in judicial review. JCCJ Jamadar describes this approach as, "*an integrated, context sensitive, rule of law approach to judicial review …. [which] liberates judicial review from its often stifling limitations and frees it to be applied, when justifiable.*" He explains that this is not to abandon the traditional grounds of review but to locate the common law grounds and

[4] Chapter 139:01, Revised Edition 2020
[5] [2021] JMFC Full 3
[6] [2021] CCJ 13 AJ (GY)

statutory standards within the broader concept of the rule of law. Ms. Pitts asks for a similar approach to be used in this matter.

15. Ms. Gomez advances that even if the discretionary bars do not apply, the applicant has no arguable case. The Board did not act ultra vires its powers but considered the requisite statutory factors under section 4(3) of the Act. The Board gave the applicant an audience where he spoke for about twenty minutes. During this address he stated that "*he is still looking for answers.*" The Board's decision was neither irrational nor unreasonable since it had sufficient grounds, on the evidence before it, to deny parole to the applicant. The materials considered included the applicant's letters requesting parole and for an audience; recommendation letters from Mr. William Dawson and Mr. Ian Peeples; letter from the applicant's parents showing proof of address; a report from the victim's mother; parole application checklist, information on inmate's rap sheet and behaviour in prison and a psychiatric evaluation report by Dr. Alejandro Matus Torres.

16. Ms. Gomez submits that the Board is not required to give reasons[7], so it cannot be faulted if it did not. It, therefore, cannot give rise to an arguable case. Ms. Pitts accepts that there is no recognised common law duty on public bodies to give reasons for decisions and the Parole Act did not codify such a duty. However, in the present case, the refusal is unfair and unreasonable. Given the overall legal framework, and the circumstances of the case, fairness requires that reasons be given rather than withheld. Ms. Pitts argues, further, that whether the applicant has an arguable case rests substantially on how arguable it is that the Board has a duty to give reasons for denying him parole in light of the legislative framework. Without reasons, the applicant would not know if relevant or irrelevant matters were taken into account in refusing him parole. It is the reasons that will reveal the process of reasoning and how the various factors are weighed against each other by the Board.

[7] *Dale Austin* v *Public Service Commission et al* [2022] JMSC Civ. 55 at page 118

17. In answer, Ms. Gomez maintains that any failure to give reasons does not invalidate or warrant the quashing of the Board's decision. In fact, she claims that the applicant was heard on November 24, 2022 and, immediately afterwards, given reasons for being denied parole. These reasons were adequate to enable him to understand why parole was refused. She did not say what those reasons were but submits that it is trite law that reasons need never be more elaborate than the nature of the case admits. The present application for judicial review, on the grounds that he was not given reasons, has no realistic prospect of success.

18. In response to the argument that recent developments in the law require public bodies to give reasons for purposes of good administration, Ms. Gomez argues that there must exist some special circumstances for reasons to be provided. The applicant has no right of appeal, so reasons will serve no useful purpose. Further, the decision of the Board is final. The applicant can re-apply for parole. Counsel relies on the case of ***Caribbean Book Distributors (1996) Ltd*** v ***The Ministry of Education et al***[8] where it was stated:

> "*While it its desirable that reasons should be given in the interest of good administration and good management if it were the general rule that the administration should give reasons for everything that it does to all those who may be affected by its decision, administration would come to a standstill. The Applicant must show that in the circumstances there was a duty to give reasons to him. That duty would arise if there were special circumstances. The Applicant has shown none and no authority has been produced to support the contention that confidential data should be given to him.*"

19. Ms. Gomez contends, further, that the applicant has not challenged the composition and/or impartiality of the Board and, in the absence of such a challenge and on the evidence before it, the hearing was fair. Moreover, a wholesome consideration of the factors shows that the Board's decision to deny parole was logical and fair. Mr. Jarvis Lou for the Board reinforces these arguments by pointing out that the "*fairness requirement in the name of good*

[8] HCA No. S 764 of 1997

administration" is a qualified and not a blanket exception. He refers to ***Ex Parte Doody***[9] as having set out the rule that a prisoner makes representation and the Secretary of State (i.e. equivalent to the Parole Board) is "obliged" to give reasons. He states that oblige here connotes a favour and not a duty or obligation. The sole discretion for parole lies with the Board. It suffices that the applicant is afforded the opportunity to make representations and not get reasons, as these are not mandatory.

Disclosure order

20. The applicant seeks an order for disclosure of all documents and/or materials considered in determining his case for release. Ms. Pitts submits that this order goes to the heart of the matter complained about and the issue to be resolved in a substantive hearing. Moreover, the requested documents are subject to specific disclosure and are directly relevant to the case at hand. The applicant also seeks disclosure of the virtual hearing, its transcript, the secretary's minutes of any off-virtual platform deliberations and any written reasons, as these are vital in discerning whether he has any basis for a challenge.

21. The applicant is entitled to disclosure, as the statutory regime allows the Board to have materials before it for its consideration. Counsel asks, also, that the Board be made to bear the nominal cost associated with the request.

THE THRESHOLD TEST

22. There is no dispute that the test to apply for judicial review is low with the applicant being required to show only that he has an arguable case with a realistic prospect of success. The court must satisfy itself that there is no discretionary bar of delay or alternative remedy that applies to the case. ***Satnarine Sharma*** v ***Carla Browne-Antoine***[10] frames the test thus:

[9] *Regina* v *Secretary of State for the Home Department, Ex parte Doody*
[10] [2006] UKPC 57

"*(4) The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: … But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application.*"

23. The Privy Council in ***Sharma*** went on to pin the arguability limb on the seriousness of the allegation and the strength or quality of the evidence required to prove the allegation on the balance of probabilities.[11] It states, "*It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to 'justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen.'*"[12]

ANALYSIS

24. The Board has an exclusive function, where it exercises extensive parole powers, with full statutory underpinning.[13] It is a public body, with ministerial control exercised over its operations. The public law dimension of the Board is not contested by its counsel, given the Board's function of determining the release of prisoners on license into the Belizean society. The decisions of the Board directly affect the public as well as the inmates over whose cases it deliberates. Its functions are reviewable in the public interest and under the rule of law, which requires public bodies to act in accordance with fairness.

25. This matter is the first of its kind in Belize that seeks to review the process for the grant or refusal of parole on license of prisoners in Belize. The focus of a judicial review claim is on the nature of the functions being performed and not the body performing it. Rule 56.3 CPR

[11] *R(N)* v *Mental Health Review Tribunal (Northern Region)* [2006] QB 468, para. 62
[12] *Matalulu* v *Director of Public Prosecutions* [2003] 4 LRC 712, 733
[13] The Parole Act, sections 3 & 4

requires a person who seeks to review a decision of a public body to first obtain permission, if certain criteria are satisfied.

Whether the applicant has sufficient interest

26. Rule 56.2 (1) CPR requires an applicant to have *sufficient interest* in the subject matter of the application. The applicant does have sufficient interest in this matter as he is a person who is directly and adversely affected by the refusal of his parole without providing reasons. He qualifies under rule 56.2(2)(a) to seek leave to review the procedures used to arrive at the decision. The Board does not contest the applicant's *interest* to apply for judicial review.

Whether there is an alternative remedy

27. I find that there is *no viable* or *adequate* alternative remedy open to the applicant to seek redress. The onus is on the applicant to show why he has not pursued an alternative remedy, if available, but seeks a remedy of last resort. The applicant claims that he has appeared before the Board but its process, including the weighting and balancing of the statutory factors, remains unclear. In his first affidavit, he states, "*The denial of release on parole by the Parole Board in November, 2022 has me questioning what more can an offender like me do to show that I am fully rehabilitated and ready for re-integration in society, as is the rationale for a parole scheme.*"[14] He claims that he does not understand what factors militated against or favoured his release, as he got no reasons for his refusal. Prior to filing the application, he requested reasons and got no response so he is clueless as to why his rehabilitation has not satisfied the statutory factors in section 4(2) & (3).

28. I do not agree with Ms. Gomez that it is appropriate that he waits another year and try again. I also do not accept her claim that he did get reasons on the same day that his parole was refused. The Board has provided no evidence of this. Indeed, the Board has refused to respond to requests for reasons and only belatedly provides as reason for its decision that the applicant is not fully rehabilitated. This reason is given by Mr. Kevin Arthurs, in the affidavit in response to the application. In that affidavit, the affiant claims that the Board's

[14] Paragraph 27 of the First Affidavit of Michael Silva

conclusion was informed by the statutory factors and the materials before it. Despite the affidavit evidence, the process itself remains unclear as most of what was considered did not weigh against the applicant save the statement of the victim's mother. It is unclear also if an updated statement from the victim's mother and an updated psychiatric report were before the Board or if these were the previous documents on file. In my view, an alternate remedy that is inadequate or ineffective, which does not provide answers to the question in issue, is not a remedy that suffices to bar this court's intervention.

29. The test of whether to allow leave or direct an applicant to an alternative remedy is whether it is *adequate*, *effective* or *sustainable*. At this stage, determining the adequacy of the alternative remedy to fully and directly resolve the issue might pose a challenge as stated by Beatson J[15]:

> "*It is clear that the existence of an alternative remedy may well be a ground for refusing the substantive application … The test of whether a claimant should be required to pursue an alternative remedy in preference to judicial review is the "adequacy", "effectiveness" and "sustainability" of that remedy: … it was said that* ***the test can be boiled down to whether "the real issue to be determined can sensibly be determined****" by the alternative procedure and in R v Newham LBC, ex p R [1995] ELR 156 at 163 that it is whether 'the alternative remedy will resolve the question at issue fully and directly.' At the permission stage it may not be possible to determine the adequacy of the alternative remedy … [to] resolve the issue fully and directly. " [Emphasis added]*

30. It is important that an alternative remedy is suitable to address the question raised, "*The adequacy of the alternative remedy to deal with the question that is raised in the given case is a vital consideration. If the alternate is not suitable or effective then there will be no bar to the applicant seeking relief by way of judicial review."*[16]

[15] *The Queen on the application of the Wetherspoon plc.* v *Guildford Borough Council* [2006] EWHC 815 para. 90
[16] *Regina ex parte Livingston Owayne Small* v *The Commissioner of Police et al* Claim No. 2003/HCV 2362

31. Having considered the test and evidence before me, it is my view that without a review of the Board's process it is likely that a parole reconsideration would suffer from the same breaches as those identified by the applicant in his application.

32. I also do not find as appropriate the *mercy prerogative* exercisable by the Governor General. This remedy is completely discretionary and, as it is a prerogative, would not be reviewable by the courts. It is also open to the applicant to seek relief under section 52(1)(a) & (d) of the Constitution, which is available to prisoners generally as a form of appeal. This alternative is also unsuitable and cannot bar the applicant from seeking relief by way of judicial review.

33. The applicant seeks an understanding of how the Board exercises its functions under the Act. In my view, if an alternate remedy is not going to resolve the question in issue fully and directly then it is not sufficient, effective or sustainable as required by the test in ***JD Wetherspoon plc (supra)***. None of the suggested remedies will provide the orders he seeks under section 5(4) & (5) of the Act without court intervention. For these reasons, I find judicial review is most suitable to address the question in issue.

Delay

34. The issue of delay in bringing the application is addressed in rule 56.5 CPR and the exercise of the court's discretion is subject to this. An applicant must bring his application promptly or within three months from the date when the grounds for making it first arose, unless good reasons are provided for extending the period.

35. The rule is mandatory and there is no ambiguity. A court must refuse relief where there is unreasonable delay in initiating an application, including judicial review. Serious consideration is given to whether the present application is characterized by undue delay, which is unexplained such as it should be refused. The applicant learned he was denied parole on the same day of the meeting, November 24, 2022. He filed his original application for leave on February, 21 2023 within time but did not serve it. An amended application was

filed and served on March 20, 2023, some three months and twenty-four days after he learned of the decision. Ms. Gomez argues that the filing date of the amended application is the relevant date.

36. A defendant is not notified until service is effected on him. The applicant's failure to serve the initial application meant that the Board had no knowledge of the matter until the amended application was served on it. I contemplated if the delay was undue or unreasonable or the application could be saved by a good reason such that time could be extended. Ms. Pitts asks the court to consider the date when the applicant came into possession of adequate information to bring the claim. Counsel contends that the statutory test is not one of good reason for the delay but the broader test of good reason for extending the time. In this regard, she invites the court to look at the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration and the public interest.

37. I am of the view that the applicant will suffer the greater detriment should I deny the leave application. In ***Maharaj*** v ***NEC***[17] the Privy Council clarified the law on delay, by asserting that the predominant consideration, in determining if an application is sufficiently prompt or made with undue and unreasonable delay, is the presence or absence of prejudice or detriment. It then restates the caution of Lord Donaldson MR in ***R*** v ***Independent Television Commission, Ex p TV Northern Ireland Ltd***[18] that utmost promptitude is required in judicial review because, "*so many third parties are affected by the decision and are entitled to act on it unless they have clear and prompt notice that the decision is challenged.*"

38. I find that there was delay in that the amended application came outside the three month window but in the context of the present application, I can find no other justification for barring the applicant from proceeding. There is no third party affected by the leave application. The Board has given no evidence of any detriment or prejudice to it in being

[17] [2019] UKPC 5
[18] [1996] JR 60

served with an amended application outside the three month mark. The Board who was requested to provide reasons before the filing of the application had refused to do so until the leave application and even then, its "reasons" are unclear as to its process. It is assumed that if some indication was given to the applicant as to why his parole was refused in the context of his rehabilitation, the application would not have been filed. He, however, is left bareback and without an understanding as to how the statutory factors worked against him given all the evidence before the Board.

39. In my view, granting leave poses no prejudice or detriment to the Board nor is it unreasonable in the circumstances of this case. Moreover, there is no evidence that producing reasons will in any way affect the good administration of the Board's functions. Further, it is in the public interest that the Board is seen to be transparent and operating within its statutory mandate. I bear in mind that the usual test for judicial review is low and any colour of delay can be overcome by extending the time to meet the filing and service of the amended claim.

Is there an arguable case

40. I find that this is a case fit for further investigation and not one that is frivolous, hopeless or vexatious. The relevant approach for considering arguability is found in ***R*** v ***Secretary of State for the Home Department, ex p Begum***[19] which states:

> "*Permission should be granted if it was clear there was a point fit for further investigation at a substantive hearing with all such evidence as was necessary on the facts and all such argument as was necessary on law. If the judge was satisfied that there was no arguable case he should dismiss the application for permission to apply for judicial review.*"

41. The focus of the Board in arguing the absence of an arguable case meriting a fuller investigation rests on its purported compliance with all the statutory requirements for

[19] [1990] COD 107, CA

considering the applicant's parole. The Board claims that it rigidly adhered to the statutory procedure of requesting and securing information and representations (including from the applicant) to assist it with reaching a decision. It does not say how the factors[20] are weighted or balanced in light of its checklist and the applicant's evidence. It maintains only that its decision is final and it is not obliged to provide reasons. The applicant can re-apply for consideration in a year's time. Its position on not giving reasons deserves more scrutiny.

42. I considered if reasons are required and noted with interest the shifting position of the Board on whether it provided reasons. Ms. Gomez submits that the applicant was told why he was refused parole although there was no duty to give reasons. She provided no evidence to substantiate her submissions or to undermine the applicant's claim that he was not told why he was refused parole on the same day or pursuant to a written request for reasons. The only reasons provided came in the affidavit of Mr. Kevin Arthurs who said that parole was denied because the application was premature, as he was "*a high-risk offender*", had considerable time remaining on the sentence and was not fully rehabilitated. Mr. Arthurs admits that the established practice is to communicate parole decisions orally, at the end of the hearings. He gives no evidence that reasons were given to the applicant on that day. He states, only, that the Board has absolute discretion over parole decisions, so refusal to give reasons does not invalidate or nullify its decision. From his evidence, especially his failure to say if reasons were given, I assume reasons were not given. In my view, the Board's claim that it did not act ultra vires or unreasonably in making its decision is open to review.

43. I accept that jurisprudence exists that supports the assertion that an administrative tribunal is not required to give reasons, where its governing statute or regulation does not require it to do so.***[21]*** I accept also that the absence of reasons, where there is no duty to give them, does not mean a decision is irrational. I identify with and adopt the statement that, "*The only*

[20] Section 4(3) factors included the nature and circumstances of the offence; sentence imposed and comments made by the court; safety of the public and persons likely to be affected by his release; representation of the victim's relatives; representations of the offender and persons acting on his behalf; reformation of the offender while in prison; probable circumstances of offender on release and likelihood of peaceful integration into society; likely response to supervision by the parole officer; and likelihood of re-offending or violating laws

[21] *Dale Austin* v *Public Service Commission et al* [2022] JMSC Civ. 55

significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favor of a different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision"[22]

44. In my view, a duty to give reasons can be implied where fairness and reasonableness require they be given in the context of the overall legal framework. The guiding principle for giving reasons is set out in ***ex parte Doody*** which states:

> "*The giving of reasons may be inconvenient, but I can see no ground at all why it should be against the public interest: indeed, rather the reverse. This being so, I would ask simply: Is refusal to give reasons fair? I would answer without hesitation that it is not.*"

45. Whether the duties of the Board are such that fairness will imply an obligation to give reasons or the extent of that obligation is an issue fit for further investigation at a trial. If such a duty exists in this case, it is for a trial court to determine the gravity of the failure of the Board and if and to what extent the parole decision was undermined by impropriety, unreasonableness, irrationality and procedural unfairness. This is an arguable case with a realistic prospect of success.

Disclosure

46. The applicant seeks an order for specific disclosure of all documents and materials used in considering his case. Rule 28 CPR allows for specific disclosure once the court deems such an order necessary to dispose fairly of the claim or save costs. Rule 28.6(1-3) provides that the court in making the order must consider the likely benefits of specific disclosure, financial resources of the parties and cost involved

[22] *R* v *Secretary of State for Trade and Industry ex parte Lonrho Plc.* [1989] 1 WLR 525, 539H-540B per Lord Keith

47. Under rule 28.5(5), disclosure is to be limited to documents that are "*directly relevant*" to the question in issue.[23] Disclosure is done in the interest of fairness and justice. The applicant states that the hearing was virtual, so presumably was recorded and a transcript and other documents are likely available. Specific disclosure of materials in the possession of the Board, including written reasons, will be a benefit in reviewing its process, determine how or if the Board acted in accordance with the Act and can be used to substantiate any reasons given. In judicial review proceedings, a duty of candour applies to all parties. The materials should be made available for reasonable inspection and access by the applicant, to fairly dispose of the application and save cost: see ***Dave Vacarro*** v ***Public Services Commission***.[24] I will grant the order.

DISPOSITION

48. It is ordered as follows:

i. Time is enlarged to the filing date of the amended application on March 20, 2023 for the filing of this application.
ii. Leave is granted to the applicant to apply for judicial review on the grounds in the amended application filed on March 20, 2023 within fourteen days of the date of this decision.
iii. The respondent is to provide copies of all documents, reports, minutes, transcripts of meetings or the hearing (properly redacted), used to consider and determine the applicant's case for release on parole on November 24, 2023 and written reasons, if any, in respect of the applicant.
iv. The costs of the application shall be the applicant's costs in the cause.

Justice Martha Alexander

Judge of the High Court of Belize

[23] African Strategic Investment (Holdings) Ltd et al v Christopher Paul MacDonald Main [2012] EWHC 4423 (Ch)
[24] Claim No. 730 of 2021 delivered on June 07, 2022 by Chabot J