



Memorandum

To: NZLS, Auckland LS & Wellington LS Parole
Committees & the Law Association

From: Sir Ron Young, NZ Parole Board
Chairperson

Date: 07 May 2024

Subject: **Bias**

Many of you will be aware of the *Ratima* decision from the High Court. The Board has decided to approach the question of bias and disqualification from sitting, in the following way:

The basis of a disqualification will essentially be whether, outside of the parole process, has the Parole Board member expressed any view in any formal document, about the offender's risk of reoffending.

If the answer is yes, then the section 118 perceived bias issue will arise for my determination.

The second situation where disqualification may arise, is where a Parole Board member - for example a psychologist or psychiatrist, has previously treated an offender. If treatment has been provided by a particular Parole Board member, disqualification will arise given a perception of bias may rise.

To use an example which may best illustrate the risk issue, some of the psychiatrists on the Board will likely have written reports regarding an offender's sanity or otherwise. That report's focus will be on the question of capacity. It will not deal with future risk. Therefore, there doesn't appear to be any reason why a Parole Board member who has completed such a report, would be disqualified under section 118. If however, the psychiatrist has completed a report perhaps at the request of the offender or the request of the Crown, on

the question of risk before, at the time or subsequent to sentencing, then this is likely to result in disqualification.

The third situation that can arise relates to the imposition of a sentence preventive detention, that does require an assessment of risk. Therefore, a Panel Convener who has sentenced an offender to preventive detention or has considered preventive detention as an option but rejected it, may well be disqualified under section 118.

As you know some Panel Convener's who were/are lawyers have previously acted for particular offenders who are being considered for parole. Those lawyers have always disqualified themselves from sitting and will continue to do so.

Otherwise, it will be only on very rare occasions it seems, that a District Court judge might previously have expressed a view about future risk with regard an offender being considered for parole.

The Board is doing its best to identify potential conflicts as early as possible, sometimes months ahead, to avoid having to adjourn particular hearings when Parole Board members are disqualified.

Finally, the ultimate decision as to disqualification in each particular case is the decision of the Chairperson under a section 118(2) of the Parole Act 2002.

A handwritten signature in black ink, appearing to be 'R. Young', written in a cursive style.

Sir Ron Young

Chairperson