**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 69/2017**
**[2017] NZSC 133**

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| BETWEEN | STANLEY ALLEN GILMOUR<br>Applicant |
| AND | CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS<br>Respondent |

Court: William Young, O'Regan and Ellen France JJ

Counsel: W G C Templeton and T A Chubb for Applicant
D J Perkins and M J McKillop for Respondent

Judgment: 4 September 2017

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**JUDGMENT OF THE COURT**

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**A The application for leave to appeal is dismissed.**

**B The applicant must pay the respondent costs of $2,500.**

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**REASONS**

[1] The applicant, in his then role as a probation officer in community corrections, had contributed to a draft parole assessment report (PAR) on a particular offender which was to be provided to the Parole Board under s 43(1)(c) of the Parole Act 2002. This set out his view of the offender's risk of re-offending. The offender's principal case manager (who was responsible for the final form of the PAR) disagreed with what the applicant had written and it was not included in the PAR which was submitted to the Parole Board.

[2] The applicant claims that the Department of Corrections was required to include his contribution in the PAR. This contention was rejected in the High Court[1]

[1] *Gilmour v Chief Executive of the Department of Corrections* [2016] NZHC 1352 (Ellis J).

and Court of Appeal.[2] As the respondent's submissions note, the applicant's argument is based solely on the interpretation of the Act.

[3] Section 43(1)(c) provides:

> **43 Preparation for hearings**
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> (1) When an offender is due to be released at his or her statutory release date, or to be considered by the Board for parole, the Department of Corrections must provide the Board with—
>
> …
>
> (c) in the case of an offender detained in a prison, a report by the Department of Corrections;

[4] There is a memorandum of understanding between the Department and the Parole Board as to what should be contained in the PAR which is discussed in the judgment of the Court of Appeal.[3]

[5] The applicant's challenge to the non-inclusion of his contribution in the PAR has been pitched at a high level: that the Department was required to include his contribution in the PAR. The argument, which draws primarily on the risk-assessment function of the Parole Board, is that the PAR was required to include all material known to the Department which was relevant to risk.

[6] We consider that a PAR could contain an expression of opinion as to the risk of re-offending and the premises on which that opinion is based and thus that it would have been open to the principal case manager to have included the applicant's contribution in the PAR. We are, however, also of the view that the principal case manager was entitled to form a judgment as to what should be included in the PAR. If she disagreed with the appropriateness of the applicant's contribution, she was not required to include it.

[7] The Court of Appeal concluded that the contents of the PAR are for the Department to determine and, in doing so, it is entitled to have regard to the

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2 *Gilmour v Chief Executive of the Department of Corrections* [2017] NZCA 250 (Harrison, Winkelmann and Asher JJ).

3 At [15]–[17].

memorandum of understanding. On this basis the final form and contents of a PAR involve an evaluative assessment on the part of the principal case manager. There is thus no requirement for the principal case manager to include any assessment of risk or the factual premises which underpin that assessment.[4]

[8] The point at issue is extremely narrow and we are of the view that there is insufficient scope for doubt as to the approach adopted by the Court of Appeal to warrant granting leave to appeal.

[9] Accordingly, the application for leave to appeal is dismissed. We order that the applicant pay the respondent costs of $2,500.

Solicitors:
Sellar Bone & Partners, Auckland for Applicant
Crown Law Office, Wellington for Respondent

[4] See the Court of Appeal's reasoning at [23], [35] and [37].