

THE SENIOR MOOT 2019
IN THE SUPREME COURT OF JUSTICE
ON APPEAL FROM THE HIGH COURT OF JUSTICE

Regina (Nicola Tinara and others)

Appellants

v

The Parole Board (and another)

Respondent

Frank George Landy qualified as a chartered accountant in 1980 and practised as such until September 2007 when he was tried and convicted in the Old Bailey on seven counts of rape and indecent assault on seven different women. The rapes were committed over a period of three years on his way home from a part-time position working as a tennis coach at Bleasdale open air sports centre in Tottenham, North London.

Nicola Tinara, the lead Appellant, was the last of the victims. She is now now aged 30, and currently sustains frequent panic attacks as a result of her experience at Landy's hands. She lives with her mother in Newport on the Isle of Wight. Landy's other six victims -each of whom suffers from different forms of post-traumatic stress- reside in London. They are the remaining Appellants.

The trial judge, the Recorder of London, sentenced Landy to life imprisonment with a recommendation that he serve a minimum of ten years.

Landy served his sentence in Barkdale High Security Prison on the Isle of Wight. Two years ago Landy married his prison psychiatrist, Dr Cora O'Donnell of Western Custom University, Devon. Landy's prison treatment/files in consequence were transferred to her university colleague, Dr William Benbart who was a guest at Landy's prison wedding

Just before his wedding, Landy deleted 5,000 compressed images of women tennis players that he had collected and concealed on the prison library computer. Dr Benbart, in making his report to the Parole Board, stated that he had examined Landy and that he had concluded that his earlier psychiatric disorder was cured with the consequence that it was safe to release him. He did not mention his connection with Landy and his new wife because these factors had not influenced his conclusion on Landy

The recommended period of 10 years of Landy's sentence expired on 10 September 2017. On 29 October 2017 the Parole Board reviewed his case and concluded that it accepted Dr Benbart's opinion that it was safe to release Landy because he posed no further threat to society in general, and it noted that all but one victim lived far from the Isle of Wight and Norfolk, where Landy would be in residence with Dr O'Donnell. They stated they had no jurisdiction to consider the prospect that a chance meeting on the Isle of Wight with the lead

Appellant would, as her own doctor certified, cause further deterioration in her mental state. Landy is now aged 65.

The Parole Board, who heard Landy's case, had been appointed by the Secretary of State for Justice for a term of four years terminable solely on grounds of gross misconduct or insolvency. Members could not be reappointed more than twice. Over the last three years it had invariably followed the recommendations of Dr O'Donnell and of Dr Benbart.

The Parole Board decision has been challenged by the Appellants (who claimed locus standi as directly affected parties) by way of judicial review, seeking, amongst other things: declarations

(1) that the Board did not meet the requirements of the common law and of article 5(4) of the Convention for the Protection of Human Rights and Fundamental Freedoms for a court to have demonstrated objective independence of the executive and the parties and

(2) that Parole Board decision releasing Landy should be quashed

on the basis that:

Ground A

the decision suffered from bias or apparent bias and/or lack of appropriate independence due either to the terms of appointment of the Parole Board, its track record and/or the influence and actions of Drs Benbart and O'Donnell; and/or

Ground B

the decision of the Parole Board directing the release of the prisoner was irrational alternatively should be set aside because their conclusion is seen to be wrong on the evidence, and/or the court should conduct a sufficiently rigorous assessment of its own to ascertain the correct conclusion on the basis of that evidence.

In connection with Ground B:

Specifically, the Appellant relies on the flawed nature of the evidence before the Parole Board and/or its refusal to consider the position of the Appellants as specially affected parties, which separately or together fatally undermine the Parole Board findings that the risk Landy poses to the public has been eliminated or reduced so as to be acceptably low. It is asserted that the Parole Board has a duty to consider the risk to the lead Appellant in particular.

The Divisional Court and the Court of Appeal rejected both declaratory requests of the Appellants, holding that

1: The Appellants had not demonstrated any apparent bias or lack of independence in the terms of appointment, which contained reasonable termination provisions;

2: there was no apparent bias revealed by the reliance on the qualified expert medical evidence, whether in relation to the instant case or the track record referred to;

3: the requirement of independence from the parties was satisfied by Dr Benbart taking over from his colleague Dr O'Donnell;

4: it was beyond the remit of the Parole Board to speculate as to the chances of a meeting between the lead Appellant and Landy;

5: The Courts were not to engage with any test other than that of rationality in relation to the validity of the Parole Board decision;

6: the decision in question was not irrational.

Leave to appeal to the Supreme Court was granted by the Court of Appeal on 14 December 2018 such as to permit both declarations to be requested on the grounds raised.

Team A will be arguing for the Appellants, Nicola Tinara and others

Team B will be arguing for the Respondents, including the Parole Board

Leading Counsel on each team will consider ground of appeal (A)

Junior Counsel on each team will consider ground of appeal (B)

The competition is on an individual survivor basis for each moot, and “Team” does not imply or require that individuals in the same team work together in preparing their own submissions.

Counsel may refer to legal materials other than those identified here, but subject to the Senior Moot 2019 Rules.

The Finals will be held in the Supreme Court as advertised on **Thursday 9 May 2019**.

The Finals Judges will be:

the Rt Hon Lord Gill, retired Lord President and Lord Justice General of Scotland (Head of the Scottish Civil and Criminal systems), sitting Panel Member of the UK Supreme Court (retired 2017)

Sir Stephen Silber, Judge of the High Court of England and Wales (Queen’s Bench Division) retired 2014 and currently authorised to sit in the High Court and the Court of Appeal since retirement.

The Finals Judges do not give a judgment on the legal merits of the appeal but only on the skills etc of the competitors.

Competitors are referred to the following **possible useful sources** for their research:

Aswad Browne v The Parole Board of England & Wales [2018] EWCA Civ 2024

D v Commissioner of Police of the Metropolis (Liberty and others intervening) [2018] UKSC 11

Regina (Brooke and another) v Parole Board and another [2008] EWCA Civ 29

Regina (D and another) v Parole Board and another [2018] EWHC 694 (Admin)

Regina (Gourlay) v Parole Board [2017] EWCA Civ 1003

Regina (Hassett) v Secretary of State for Justice [2017] EWCA Civ 331

The Queen on the application of Paul Wakenshaw v Secretary of State for Justice v Parole Board of England and Wales [2018] EWHC 2089 (Admin)