SUPREME COURT OF QUEENSLAND

CITATION:	*Schafferius v Queensland Community Corrections Board* [2003] QSC 409
PARTIES:	**RICKY ONDRAE SCHAFFERIUS** (Applicant) v **QUEENSLAND COMMUNITY CORRECTIONS BOARD** (Respondent)
FILE NO/S:	S. 70 of 2003
DIVISION:	Trial
PROCEEDING:	Application for judicial review
ORIGINATING COURT:	Supreme Court
DELIVERED ON:	5 December 2003
DELIVERED AT:	Townsville
HEARING DATE:	24 November 2003
JUDGES:	Cullinane J
ORDER:	**Application is dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW LEGISLATION – where applicant's parole was cancelled by a decision of respondent – whether respondent took into account irrelevant matters or failed to take account of relevant matters *Corrective Services Act* 2000 (Qld), s 150, s 151(1)(a)(ii) *Judicial Review Act* 1991 (Qld), s 23(a), s23(b), s23(f), s23(g) *Reg v Deputy Industrial Injuries Commissioner; ex parte Moorin* (1965) 1 QB 456, applied
COUNSEL:	G Lynham for the applicant D Atkinson for the respondent
SOLICITORS:	Roberts Nehmer McKee for the applicant Crown Law (Qld) for the respondent

[1] The applicant challenges by way of judicial review a decision of the respondent made on 19th November 2002 cancelling a parole order made in the applicant's favour and which had commenced on 21st December 1992.

[2] The applicant was born on 4th January 1957. He was convicted of murder on 17th June 1977 at the Supreme Court at Brisbane and sentenced to life imprisonment. He was at the time of the offence aged 18 and 20 at the time of trial and sentence.

[3] The applicant had some prior convictions including convictions for assault on a female and traffic offences.

[4] The victim was a former girlfriend who the applicant shot and killed after first abducting her and a male she was with. The victim had previously broken off the relationship with the applicant. After shooting her, he turned the gun on himself and sustained facial injuries.

[5] The applicant first made an application for release on 17th January 1984. He subsequently made applications in 1989 and 1990, and finally on 4th April 1991. He was released on parole on 21st December 1992. Whilst he was in prison he was convicted of offences relating to the cultivation of cannabis.

[6] The terms upon which he was released on parole included conditions that he abstain from violation of the law and from the consumption of alcohol.

[7] The applicant, following his release on parole, was employed in a number of different jobs in Queensland and in the Northern Territory. He returned to Queensland in the latter part of the 1990s after being in the Northern Territory for about three years.

[8] Before his release on parole, he had been placed on a leave of absence programme in early 1990. This was before he was arrested in relation to the cultivation of cannabis plants, which occurred at the Stuart Prison farm complex.

[9] On 9th October 2001, the applicant pleaded guilty to two offences (behaving in a threatening manner and obstructing police) in the Toogoolawah Magistrates Court. He was thus in breach of his parole and, because of this, the respondent took steps to suspend it under s.150 of the *Corrective Services Act*.

[10] By a letter of 25th October 2001, the respondent suspended the applicant's parole and informed the applicant that he was entitled to show cause as to why the suspension should be lifted or why the parole should not be cancelled. This letter, which is incorporated by the respondent in its reasons for making the impugned decision cancelling the parole, is set out below.

[11] In exercising its power under s.150 to cancel parole, the respondent is required to form a reasonable belief of the existence of one or more of the grounds for which the section provides. In this case, the relevant ground is that contained in s. 151(1)(a)(ii), namely that the applicant is an unreasonable risk of harm to himself or to others.

[12] In summary it can be said that the respondent appears from the reasons which it has provided to have formed its belief that there was such a risk because:

(a) The applicant on 17th September at Linville made threats of violence against persons and was in a position to carry out those threats. For reasons which appear later, this seems to be a reference to a threat to stomp on a person's head and approaching police with a baton in his hand which he failed to put on the ground when told to do so.

(b) The applicant was continuing to exhibit anger and hostility which was quite generalised, and had demonstrated little or no insight into the seriousness of the conduct which resulted in the suspension of his parole order. As well, he had a highly developed but idiosyncratic style of assessing the justice of a situation and acted accordingly whether his actions involved a breach of the law or not. These observations, which are based upon psychiatric and psychological reports, led to the finding that the respondent could not be satisfied that the events of 17th September would not occur again with a much worse outcome if the police were not able to intervene as they had on that occasion.

[13] The applicant appeared before the respondent on 1st March 2002 and forwarded letters seeking to show cause why his parole should be reinstated.

[14] The respondent has set out in a letter of 16th December 2002, upon request by the applicant for a statement of reasons, the material taken into account in reaching the decision and the reasons for the decision to cancel parole.

[15] It is desirable if I set out the reasons for the decisions in full.

> "*On 9 October 2001 you appeared in the Toogoolawah Magistrates Court where you were convicted of the offences of Misbehaviour and Obstructing Police in relation to the incident at Linville on 16 September 2001.*
>
> *You also appeared in the Kingaroy Magistrates Court on 29 October 2001 to respond to an application by your former de facto partner, Ms Joy Brooks. Ms Brooks' application was struck out when she did not appear in court herself.*
>
> *On 25 October 2001 the Board wrote to you detailing the findings that it had made in determining that it was appropriate to suspend your parole order. A copy of that letter is enclosed for your information. Those findings remain and should be read as part of this document.*
>
> *On 1 March 2002 you appeared before the Board. The Board wrote to you on 14 March 2002 detailing its findings to that time. A copy of that letter is enclosed for your information. Those findings also remain and should be read as part of this document.*
>
> *Subsequently, you completed the Anger Management Program on a one-to-one basis. However, you do not appear to have internalized the concepts of this program. Your continuing anger and hostility was noted in the last assessment unit report and the last report from a psychologist and appears to be quite generalised.*
>
> *You have demonstrated little or no insight into the seriousness of the conduct that led to your order being cancelled. You were guilty of offences involving extreme threats of violence accompanied by an obvious capacity to act on those threats. The Board has no confidence that you would not have acted on those threats and caused grievous*

injury to one or more members of the community if the police had not intervened and arrested you.

You have a highly developed but very idiosyncratic style of assessing the justice of a situation and acting accordingly - irrespective of societal or legal rules contrary to that course of action. Basically, if you do not judge something to be wrong, you will feel fully justified in doing it whatever anybody (including the law or the Board) says about it. The Board therefore has no confidence that it can rely on you to comply with the terms of a release to parole if you do not consider those terms appropriate or justified. Consequently, the Board cannot have confidence that the events of 16 September 2001 or similar would not occur again with much worse consequences if the police are unable to intervene as promptly as they did on that occasion. Therefore, the Board cancelled your order."

[16] As will be seen, the document incorporates a reference to two other communications from the respondent to the applicant. The first is a letter of 25th October 2001 setting out the findings that were made by the respondent in deciding to suspend the parole order, and the second is a letter of 14th March 2002 when the applicant appeared before the respondent to show cause why the parole should be reinstated.

[17] It is desirable also to set out the contents of each of these:-

Letter of 25th October 2001 -

"*In April 1976, you committed Assault and Aggravated Assault offences. In May 1976 you committed a murder. The victim was your former girlfriend, who you shot apparently because she declined to resume a relationship with you.*

While in custody you were involved in a number of fights. In 1989 you told a psychiatrist that you were a very violent person. You also said 'when I lose my temper I am capable of anything, I hate authority'.

In 1991 you were discovered to be growing cannabis at the Townsville Correctional Centre. You were granted Parole in December 1992. It was a condition of the Parole Order that you abstain from the consumption of alcohol. In 1994 you moved to the Northern Territory, and did not return to Queensland until 1997.

In 1999 you were found in possession of marijuana. The Parole Order was then amended to require you to be of good behaviour and to attend courses and counselling as directed by your Community Correctional Officer. You were also warned about the standard of conduct expected of a Parolee.

The Board has been advised that on the 17th of September this year, you threatened to stomp on the head of a person who you believed had been physically violent towards others. You appeared to be intoxicated and angry. When Police Officers arrived, you walked towards them holding a baseball bat. You were subsequently overpowered and charged with behaving in a threatening manner and obstructing police.

The Board views those apparent breaches of the Parole Order very seriously, particularly in view of the history described above. Consequently the Order has been suspended. You are not obliged to

forward submissions as to why the suspension should be lifted or as to why the Parole Order should not be cancelled, but you are entitled to do so if you wish."

And letter of 14th March 2002 -

"The Board has further considered your parole suspension in light of your interview on 1 March 2002. The Board is aware that the inmates being interviewed are often very nervous, anxious, embarrassed and tense. An interview concerning a release from custody is by its nature a stressful experience. The Board takes those factors into account in assessing your credibility, just as it takes into account your level of education and past history.

The Board in considering whether to lift your parole suspension took into account all matters in your favour and paid particular attention to the submissions made by you at your interview. However, the Board has concerns about lifting the suspension of your parole order at this stage for a number of reasons.

You are referred to the Board's letters to you of 25 October 2001 and 27 November 2001. At your interview before the Board, you were obsessed about these matters which had resulted in the suspension of your parole order (refer to the Board's letter of 25 October 2001). You displayed traits of paranoia and were clearly fixated with establishing your innocence and having all documentation concerning those matters completely removed from your file.

The matters that resulted in your suspension are very serious. The Board is concerned that your compulsion to prove your innocence and remove all documentation about the allegations from your file will adversely affect your capacity to settle in the community if the suspension is lifted. The Board is concerned about your underlying anger in relation to those matters; your admission in the interview that you may not in the future be able to resist smoking marijuana; and your refusal to accept a no contact provision with your de facto in any parole order. The Board considers that you should complete the Anger Management program and have counselling to address all of these matters. At the conclusion of your successful completion of Anger Management and counselling for those matters, the Board will obtain a detailed psychological report and then give further consideration to the lifting of your parole suspension.

The Board has made investigations about the Anger Management program and counselling for you and has asked for you to be referred for the appropriate treatment to address the above matters.

While the Board is presently unwilling to lift your suspension, no final decision has been made about it. You are not obliged to forward further written submissions in support of the lifting of your suspension but if you wish to do so, you should make those submissions within 14 days of receiving this letter. If no further submissions are received by the Board within 14 days of the receipt of this letter, then the Board will determine not to lift your suspension and will once again review your case after the successful completion of the counselling referred to above."

[18] The reference in the second of the above letters to the applicant's refusal to accept a 'no contact' provision with his former partner in any parole order appears to be

based upon what the applicant said before the respondent (a transcript of this is not amongst the material before the court), but also what was said in a letter of the applicant to the respondent dated 19th March 2002, the relevant part of which appears at page 87 of the material exhibited to the affidavit of Peter McGinnis.

[19] The applicant had been examined at the request of the respondent by a psychiatrist, Dr Atkinson, upon his return to custody. His report is dated 22nd December 2001.

[20] In this report he refers to an earlier report of a psychiatrist, Dr Edwards, who had seen the applicant in late 1989.

[21] In that report, Dr Edwards relates that the applicant told him that he wanted a rehabilitation program leading up to his placement in the community on parole as he did not want any future parole to fail. The report goes on to say that the applicant described himself as "a very violent person" and had said "When I lose my temper I'm capable of anything – I hate authority".

[22] Dr Atkinson also speaks of the applicant's intense hostility towards authority figures.

[23] Dr Atkinson also referred to the feature of the applicant's personality constituted by his tendency to "make his own judgements and decisions and to act accordingly… I perceive him rather as someone who prefers to make his own judgment about what constitutes right and proper conduct without consideration of social mores and the tendency to challenge society in a rather confrontational way". (This seems to be the basis of what appears in the last paragraph of the respondent's letter of 16th December 2002.)

[24] Whilst concluding that the applicant had intractable, untreatable personality traits which occasionally cause "boil-overs", Dr Atkinson nonetheless thought that these did not warrant long term detention in custody and that he was fit for community based release, subject to certain conditions as to residence, supervision and abstinence from drugs and alcohol.

[25] The applicant was required by the respondent to undertake an anger management programme, as will be seen from the letter of 14th March 2002.

[26] This programme was the subject of some challenge. It was conducted, it would seem, on a one-on-one basis. There is a letter from the manager of the Townsville Correctional Centre, which postdates the decision the subject of the challenge, and which is critical of some aspects of the programme.

[27] The applicant himself is highly critical, suggesting that the programme was somewhat perfunctory. There is a certificate to the effect that the applicant had successfully completed the programme and had developed an appropriate individual anger management plan.

[28] The respondent obtained a psychologist's report from one Renee McAllister, dated 7th October 2002.

[29] In relation to the anger management programme, Ms McAllister said:

> *"Documentation exists to demonstrate that Mr Schafferius has completed the anger management programme since his return to custody. The applicant said he completed the programme one on one with a correctional counsellor. He was quite disdainful about the usefulness of the programme and the method of intervention. It was not apparent to the report writer that he had gained value from the programme, or that he engaged in counselling to address the issues requested by the QCCB."*

[30] Her opinion was that the applicant had an attitude and personality profile characterised by suspiciousness, mistrust and hostility, indicating that it would be difficult to engage him in the requirements of close supervision within the community and that it is likely that any required interventions would be met by resistance and characterised by many setbacks.

[31] She thought that if the suspension of the parole order was to be lifted it should be subject to conditions as to drug and alcohol screening, close supervision with a correctional community officer and involvement in anger management and/or domestic violence programmes.

[32] She referred to his clinical profile in the following terms:

> "*Mr. Schafferius' clinical profile on the PAI presents with elevations on antisocial Features, Paranoia, Aggression, Non-support, and Treatment Rejection. His profile appeared to adequately describe both Mr. Schafferius' past history of behaviour and offending, and his current perception of events. The profile certainly indicates the cause for concern by the QCCB in deciding to suspend Mr Schafferius' parole order, as it highlighted factors that would serve to make supervision in the community difficult, as well as a potential for aggressiveness (both verbal and physical). Likewise, his view on the recent attempts to engage him in an intervention designed to facilitate his return to the community, is supported by his elevation on Treatment Rejection."*

[33] The applicant alleges that the decision to cancel parole was an improper exercise of the respondent's power in that it:

(a) took into account irrelevant considerations;

(b) failed to take into account relevant considerations;

(c) exercised its power without regard to the merits;

(d) exercised its power unreasonably; and

(e) made findings without any evidence.

[34] Particulars of these grounds have been provided.

[35] There were two matters which were relied upon particularly. One related to the events at Linville on 17th September 2001 (it seems that the reference in the letter of 16th December 2002 to 17th December 2001 is an error), and the other concerned the applicant's appearance in the Kingaroy Magistrates Court on 29th October 2001 in response to a DVO application by the applicant's former de facto wife. The complaints relating to these matters are raised in a number of different ways. The applicant pleaded guilty to an offence of Behaving in a Threatening Manner and

Obstructing Police. He was fined. The respondent had received a report from the Officer in Charge of the Moore Police dated 19th September 2000 about the events at Linville. The relevant parts of the report are:

> *"1. I would like to bring to your attention information concerning the above person who is a life parolee being handled by our office.*
>
> *2. On Monday the 17th of September 2001 at about 4.45 pm Police were advised by Peter BYRNE of the Linville Hotel that Ricky and his associate Terrence McQuade … (Spade) ... had left the hotel going to Mount Stanley Road to sort Brad out. (Brad Byrne the publican's son).*
>
> *3. Police from Moore and Kilcoy drove towards Linville and spoke to Brad's girlfriend Linda DUNN who stated that Ricky had attended at her house and was yelling and 'carrying on' there wanting to know where Brad was as he was going to stomp on his head.*
>
> *4. Police attended at a house next door to the hotel and spoke to Ricky and Spade. Ricky had his shirt off and appeared to be intoxicated and was angry about the way he believed that people in Linville had been gossiping about him saying things that were untrue. He stated that 'It all ends tonight' and was angry at the people at the hotel and the events that had been occurring there. These events had been occurring for some time and are involving alleged assaults by Peter and Bradley BYRNE including the night of the picnic races when Brad BYRNE allegedly kicked a male person Daniel ATTWELL in the head after he had been knocked down. Police were not advised of this incident at the time by staff at the hotel and later received this information third hand of this. Daniel ATTWELL did not make a complaint of assault to police and as such no police action was able to be taken. Police advised the liquor licensing department of this incident by phone and had reported previous incidents to them but no action had been taken. Ricky was angry that these events had been happening and nothing appeared to happen to Peter and Bradley BYRNE at the hotel.*
>
> *5. Police left Ricky and Spade and returned to the station, at this time it was believed that an incident may occur and police made arrangements for other police to attend to provide back-up in case it would required. Whilst police were waiting for assistance they received numerous phone calls from concerned residents in David Street Linville to advise that Ricky was walking up and down the street swearing loudly and challenging people to come out of their houses and fight him.*
>
> *6. Police were later advised that he had left the area in his vehicle and headed north on the Mount Stanley road. Police from Blackbutt, Toogoolawah and Woodford had arrived at Moore by this time and they headed towards Mount Stanley. The time was about 7.45 p.m.*
>
> *7. Police stopped at Brad Byrnes house but there was no sign of Ricky or Spade and the house had not been damaged. Police then drove*

to Spades house which is about another 2 kilometres north from Byrnes house.

8. On their arrival at Spades police were stopping near the house when they saw Ricky moving out of the darkness towards them with somethi ng in his hands over his shoulder. Police recognized it as a bat of some kind. Ricky moved towards police who called out for him to drop the bat he lowered the bat and kept walking towards them, police were still calling for him to drop the bat but he didn't. Police then used capsicum spray on Ricky. He was then arrested, handcuffed and the spray washed off him. He later stated that he thought that it was civilians from Linville coming to get him and he was dropping the bat when he was sprayed. He was angry that he had been sprayed."

[36] It was common ground between the parties that the two offences to which the applicant pleaded guilty related to conduct by the applicant towards the police. However it is apparent in the letter of the respondent of 25th October 2001 suspending the parole that it took into account the threat to stomp on the head of the person referred to in the police report.

[37] It seems clear also that this must be included in the behaviour referred to in the last two paragraphs of the letter of 16th December 2002 setting out the reasons for the decision.

[38] It is said on behalf of the applicant that the respondent insofar as it acted upon hearsay from the police about this matter took into account an irrelevant consideration or that it should have further enquired into the matter before acting upon it by seeking more information from the police or the Court at Toogoolowah. It was also suggested that the applicant should have been told of the informant's name so that he might be in a position to discredit her.

[39] Plainly the fact that the applicant had made such a threat is a relevant matter.

[40] The respondent, which is required to form a reasonable belief about one or more of the grounds provided for before it can act under s. 151, is not bound to act upon evidence which would be admissible in a court of law. See *Reg v Deputy Industrial Injuries Commissioner; ex parte Moorin* (1965) 1 QB 456 at 468.

[41] The applicant was informed of the allegation and given the opportunity to respond. He denied the allegation that he had threatened to stomp on a person's head and gave an account of the incident involving the police which suggested that he had the baton to defend himself from people who he thought were coming in vehicles which turned out to be police vehicles. He claimed that when he saw it was the police he handed the baton over (see his letter of 19th March 2002).

[42] The respondent had an account from the police which had the applicant, when seen for the first time by the police, angry and intoxicated and expressing his animosity to the person against whom the informant said he had made the threat to stomp on his head. He said in the presence of the policeman, referring to some grievances he had, "it all stops tonight".

[43] In my view the respondent was not required to conduct further investigations into the allegation having received the report that it had from the police. The police did not provide the name of the informant and presumably did so advisedly. All of the events occurred on the same day and in the same area. The applicant could not have been under any misapprehension about what was being alleged when he received the letter of 25th October 2001. The respondent gave the applicant the opportunity to respond to these allegations and in my view it was not obliged to pursue the matter beyond that and was entitled to act on the information in considering whether there were reasonable grounds for believing that the applicant posed a serious risk of harm to himself or others.

[44] This matter is, as I have said, raised in a number of different ways but in essentially the same form.

[45] One of the grounds relied upon is that there was no evidence to support these findings. There plainly was evidence as I have said even though it would not have been admissible on any trial of the applicant for an offence arising out of the making of the threat to stomp on a person's head. The applicant would therefore be faced with the provisions of s. 24 of the *Judicial Review Act*.

[46] The second matter concerns a domestic violence application made by the applicant's former de facto wife. This was dismissed when she failed to appear. Here it is said that the respondent in referring to this in the letter of 16th December 2002 under the heading "Reasons for Decision" has clearly taken it into account and thus has taken into account an irrelevant consideration given that the application had not been pursued. As will be seen the respondent related that the applicant appeared in the Kingaroy Magistrates Court and that the application was struck out because of the applicant's former de facto wife's failure to appear.

[47] Standing alone it is difficult to see what relevance this would have. There is nothing however to suggest that the respondent took into account against the applicant the substance to what his former de facto partner alleged. The only conduct on which findings against the applicant appear to have been made concern the events at Linville on 17th September 2001 (see the last two paragraphs of the letter of 16th December 2002).

[48] The bare statement that the applicant appeared on the application which was dismissed because of the failure of the complainant to appear does not take the matter any further. However the letter of 16th December 2002 has to be read with the letter of the respondent of 1st March 2002 which is incorporated into the reasons. In that letter, which followed an interview with the applicant, the respondent expressed its concerns about the applicant's underlying anger and what was said to be his obsession with the matters which had resulted in the suspension of his parole. Concern was expressed about the applicant's "refusal to accept a no contact provision with your de facto in any parole order". His refusal and the reasons for it appear in his letter to the Board of 19th March 2002.

[49] In these circumstances the reference to the DVO application and its dismissal should not be regarded as totally irrelevant to the Board's consideration of whether the applicant poses an unacceptable risk of harm either to himself or others and was

able to be considered along with the psychiatric and psychological evidence on this subject.

[50] Other matters raised under s.23(a) were:

(a) That the respondent had taken into account that the applicant had been involved in a number of fights whilst in custody (see letter of 25th October 2001). This appears to relate to what is contained in Dr Edwards' report and it was suggested that such fights had been engaged in defensively, had all been well before his release on parole and that the applicant had adapted other strategies to avoid this conduct.

In my view the respondent was entitled to consider the applicant's conduct pre-parole and this particular aspect of it was plainly relevant. Its weight was for the respondent and there is nothing to suggest that the respondent failed to consider this conduct in the context of the applicant's situation at the time as it appeared from the material before it including the report of Dr Edwards.

(b) That the applicant informed Dr Edwards that he was violent and loses his temper. The report also stated that the applicant had said that he hated authority. The same remarks apply to this ground as apply to the preceding ground. It is not possible to accept the argument that because these statements were made three years or more prior to the grant of parole, they are irrelevant to the considerations of the respondent in late 2002.

(c) The fact that the applicant was discovered growing cannabis in 1991. This is of course, part of the applicant's history which the Board had before it and had to consider when considering parole, as it also had to consider the fact that the applicant had been convicted of similar offences whilst on parole.

[51] It was also argued that the respondent had failed to take into account relevant circumstances (see s.23(b)).

[52] I have already referred to the fact that this ground also constituted a basis of challenge to the respondent's consideration of the events at Linville on 17th September 2001.

[53] It was also argued that the factors which had weighed in the applicant's favour when parole was granted were not taken into account. There is in my view nothing to support this contention. The fact that a matter is not mentioned does not mean that it has not been taken into account. These matters were in the material before the respondent. Indeed, as counsel for the respondent has pointed out to the applicant, the respondent in a letter of 14th March 2002 said that it had taken into account all matters in his favour and that it had paid particular attention to the submissions that he had made in the interview of 1st March 2002.

[54] The same can be said about the argument that the respondent failed to consider the circumstances surrounding the applicant's breaches of parole, his participation in charitable and community projects and his participation in and completion of work

release prior to the parole being granted. There is no substance in the claim that the respondent failed to consider these matters, all of which were referred to in the material before it. The same also applies to the parole reports concerning the applicant and his overall conduct whilst on parole which are the subject of separate complaints.

[55] Dr Atkinson's report recommended the applicant should be released subject to certain conditions. The report is dated 22nd December 2001. The respondent had this report before it and it must be taken to have considered it. It was ultimately the respondent's function to make the decision on parole. In my view there is no substance in the claim that it failed to take into account the recommendations of Dr Atkinson.

[56] It was also contended that the respondent had failed to consider that the problems which the applicant was identified as suffering from in the psychologist's report referred to earlier may have been the consequence of the psychiatric problems identified by Dr Atkinson in his report. The respondent had both of these reports as part of the material to be considered and there is nothing to suggest that it did not do so. Ultimately it does not seem to me to matter much whether the risk which the respondent believed to exist arose from such a condition or otherwise.

[57] Special mention should be made of the final ground under s.23(b).

[58] It was said that the respondent should have taken into account the deficiencies in the anger management programme. The applicant had come to Townsville from a prison in the south with a view to undergoing such a programme. According to the information before the respondent, he had completed it but the psychologist was of the view that he had not benefited from it. As already mentioned the applicant complains that the programme was inadequate. He made complaints to officers at the correctional unit itself and there is a letter from the manager of the correctional unit (after the impugned decision) critical of the programme or some aspects of it.

[59] There was nothing about any of these matters before the respondent and in my view it is not a case in which the respondent can be fixed with constructive knowledge of it. See *Videto v Minister for Immigration and Ethnic Affairs* (1985) 8FCR 167. There is no suggestion that anyone associated with the respondent or for whom the respondent is responsible withheld this information from the respondent, assuming that there is any validity in the criticisms of the programme.

[60] The respondent cannot be expected to conduct enquiries into the way in which interviews, the administration of tests, the performance of programmes etc which result in reports which are to be placed before it are carried out. There is a certificate that the programme was carried out and that a plan had been devised to cope with the applicant's anger.

[61] Whether there is any other course that the applicant might be able to pursue in relation to what he says was the failure to administer a proper anger management plan to him (something which, if true, would be a matter of obvious concern – if he is to overcome his problems he needs to be given appropriate assistance), I am not persuaded on the material that I have that it gives rise to any reviewable ground on this judicial review application.

[62] The applicant raises the same grounds relied upon under ss 23(a) and (b) in support of claims under s.23(f) (excess of power without regard to the merits) and s.23 (g) (exercising power unreasonably). There is no need to repeat what I have said about each of these grounds. What I have said about them in relation to s.23(a) and s.23(b) applies equally when s.23(f) and s.23(g) are considered.

[63] I dismiss the application.