SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v. Beattie* [2006] QSC 322
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v.** **KEITH ALBERT BEATTIE** (respondent)
FILE NO:	BS 4963 of 2006
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	26 October 2006
DELIVERED AT:	Brisbane
HEARING DATE:	2 October 2006
JUDGE:	Helman J.
CATCHWORDS:	CRIMINAL LAW – PROBATION, PAROLE, RELEASE ON LICENCE AND REMISSIONS – QUEENSLAND – *Dangerous Prisoners (Sexual Offenders) Act* 2003 – application by Attorney-General for an order pursuant to s 13(5)(a) of the Act that the respondent be detained for an indefinite term or alternatively under s 13(5)(b) that the respondent be released on conditions – whether the applicant a serious danger to the community – where an unacceptable risk exists that the applicant will commit an offence of a sexual nature against children *Dangerous Prisoners (Sexual Offenders) Act* 2003 s 13 *Attorney-General (Qld) v. Francis* [2006] Q.C.A. 324, cited
COUNSEL:	Mr B.H. Mumford for the applicant Mr R. East for the respondent
SOLICITORS:	Mr C.W. Lohe, Crown Solicitor, for the applicant Legal Aid Queensland for the respondent

[1] In an originating application filed on 15 June 2006 the applicant applied to the court for an order pursuant to s. 8(2)(a) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 that the respondent, a prisoner at the Wolston Correctional Centre, undergo examinations by two psychiatrists named by the court who were to prepare independent reports in accordance with s. 11 of the Act. That order was made by Wilson J. on 7 July 2006, and the respondent has undergone examinations by

Drs Basil James and Ian Colls who prepared reports dated 21 August 2006 and 12 September 2006 respectively. Professor Barry Nurcombe, psychiatrist, had prepared a report dated 20 November 2005. Professor Nurcombe interviewed the respondent on 18 November 2005 and Drs James and Colls on 7 August 2006 and 25 August 2006 respectively. Professor Nurcombe and Drs James and Colls gave oral evidence at the hearing of the application.

[2] Section 5(1) of the Act provides that the Attorney-General may apply to the court for an order or orders under s. 8 (preliminary hearing) and a Division 3 (final orders) order in relation to a prisoner. Prisoner, as the word is used in s. 5, is defined in s. 5(6):

> ***prisoner*** means a prisoner detained in custody who is serving a period of imprisonment for a serious sexual offence, or serving a period of imprisonment that includes a term of imprisonment for a serious sexual offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this section.

Section 2 provides that the dictionary in the schedule defines particular words used in the Act. The expression 'serious sexual offence' is defined in the schedule as follows:

> ***serious sexual offence*** means an offence of a sexual nature, whether committed in Queensland or outside Queensland –
>
> (a) involving violence; or
> (b) against children.

The respondent is serving a period of imprisonment for a serious sexual offence, the details of which I shall come to later.

[3] The applicant now seeks a final order pursuant to Division 3 (s. 13) of Part 2 of the Act: either an order pursuant to s. 13(5)(a) that the respondent be detained in custody for an indefinite term for care, control, or treatment (a continuing detention order), or, in the alternative, an order pursuant to s. 13(5)(b) that the respondent be released from custody subject to such conditions as the court considers appropriate and are stated in the order (a supervision order). Drafts of both forms of order were placed before me. The respondent will be released on 3 November 2006 if a continuing detention order is not made.

[4] Division 3 of Part 2 of the Act is as follows:

> **13 Division 3 orders**
>
> (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a ***serious danger to the community***).

(2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence –

(a) if the prisoner is released from custody; or
(b) if the prisoner is released from custody without a supervision order being made.

(3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied –

(a) by acceptable, cogent evidence; and
(b) to a high degree of probability;

that the evidence is of sufficient weight to justify the decision.

(4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following –

(a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;
(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;
(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;
(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;
(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;
(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;
(g) the prisoner's antecedents and criminal history;
(h) the risk that the prisoner will commit another serious sexual offence if released into the community;
(i) the need to protect members of the community from that risk;
(j) any other relevant matter.

(5) If the court is satisfied as required under subsection (1), the court may order –

(a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (***continuing detention order***); or

(b) that the prisoner be released from custody subject to the conditions it considers appropriate that are stated in the order (***supervision order***).

(6) In deciding whether to make an order under subsection (5)(a) or (b), the paramount consideration is to be the need to ensure adequate protection of the community.

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1).

[5] The evidence before me shows that the respondent was born at Kurri Kurri near Newcastle in New South Wales on 4 February 1942. His parents were happily married. He has two younger brothers. His mother died when he was fourteen years old. When he was seventeen years old his father remarried. He hated his stepmother. Beginning when the respondent was fourteen years old, shortly after his mother's death, he was sexually abused by a man who was a friend of his father. The man's abuse continued for about three years, approximately once or twice a week, and ceased only when the respondent moved to Newcastle to take up an apprenticeship. The man raped him on several occasions. The respondent told neither his brothers nor his father. The respondent attended the Kurri Kurri Primary and Secondary Schools, and completed the intermediate certificate course. He was an above-average student. He failed no grades, had no history of learning disability, and required no remedial teaching. He had a good relationship with his teachers and peers and was never suspended or expelled from school. At the age of eighteen years he joined the Air Force but left after three months because he disliked the discipline. When not in prison he has worked as an apprentice fitter and turner, process worker, detailer and salesman in a car yard, storeman, and railway worker (porter, shunter, and guard). He was injured in a motor vehicle accident in 1988 in which his right femur was fractured. As a result he was in hospital for about a month and did not work after that, living on unemployment benefits. He suffered from angina pectoris which resulted in conditions rectified by an operation in 2000. Some years later tumours were removed from his bladder. He claims lack of sex drive since the tumours were removed. Since June 1999 he has been employed in the prison kitchen.

[6] The respondent first came before a court on 20 January 1960 when he was before the Newcastle Children's Court charged with illegal use of a motor vehicle and being an unlicensed driver. After that his criminal history shows that from time to time from 1960 to 1977 he was before courts of petty sessions in New South Wales (Singleton, Wallsend, Ryde, Newtown, Liverpool, Manly, and Bankstown) on various charges of offences of dishonesty and traffic offences.

[7] On 29 September 1978 the respondent was first before a court on charges of sexual misconduct. He failed to appear before the Sydney District Court on two counts of indecently assaulting a male person and a count of assault with intent to commit buggery. There were two complainants, boys aged five years. It was ordered that a bench warrant for his arrest issue.

[8] The respondent first appeared before a court in Queensland on 25 February 1984 when he appeared before the Brisbane Magistrates Court charged with being an unlicensed driver.

[9] On 18 May 1984 the respondent came before the Brisbane District Court charged in relation to an act of gross indecency with a male person, a boy, and was placed on probation for two years.

[10] In 1986 and 1987 the respondent was before Magistrates Courts in Queensland (Brisbane on 19 March 1986 and 11 October 1986; Wynnum on 3 August 1987) on further traffic charges.

[11] On 14 February 1989 the respondent was before the Prahran Magistrates Court in Victoria on a charge of indecent assault and was sentenced to imprisonment for one month. The sentence was suspended for twelve months and he was extradited to Queensland on 16 February 1989.

[12] On 2 June 1989 the respondent pleaded guilty before the Brisbane District Court to one count of indecently dealing with a boy under the age of fourteen years, two counts of carnal knowledge against the order of nature, and one count of indecently dealing with a boy under the age of seventeen years. There were two boys involved, one aged twelve years and the other sixteen years. On each charge he was sentenced to imprisonment for two years and four months and it was recommended that he be considered for parole after serving ten months. In respect of the first charge it was recommended that he receive psychiatric or other medical treatment to assist with his 'sexual problem'.

[13] On 20 April 1990 Dr Patrick Edwards, psychiatrist, interviewed the respondent in connexion with an application for parole. Dr Edwards provided a report dated 10 May 1990 to the Brisbane Regional Community Corrections Board in which he recorded that the respondent functioned in the normal range of intelligence and that there was no evidence of psychiatric illness. Dr Edwards's conclusions were as follows:

> These offences were not the results of any form of psychiatric illness. I believe he is exaggerating any intoxication factor that may have been present at the relevant time.
>
> It is my opinion that Mr Beattie has not been honest with anyone concerning these matters and he continues to deny that he has a considerable sexual interest in young boys. In my opinion, he is a homosexual paedophile. He informed me that he does not believe he has a sexual deviation problem and following from this, he informed me that he does not believe he is in need of treatment. He believes he can control his sexual impulses. This may well be so. I am not aware of anything that would lead me to the conclusion that he is incapable of controlling his sexual impulses. He simply chooses not to exercise control because his deviant sexual behaviour provides the gratification he desires.
>
> While he continues to use denial and rationalization concerning his deviant sexual behaviour he will continue to be a difficult if not

> impossible person to treat, particularly given the quality of existing assessment and treatment facilities for sex offenders in Brisbane. He is clearly unmotivated to change. He has never used force or threats in relation to deviant sexual behaviour with his victims. In my opinion, he is not a substantial risk for causing physical harm to any future victims should this behaviour recur. In certain respects, it is difficult to make a prediction in relation to the risk of re-offending in his case. I don't believe I have an honest and accurate account of his deviant sexual behaviour from him. We know he has three lots of convictions for sex offences of this type and I think the likelihood is that he has engaged in this type of behaviour on more occasions than the number of convictions would indicate. In his untreated and uncontrolled state, he has to be regarded as a substantial risk for re-offending in the same way. I think he is only likely to come into a treatment situation by learning the hard way i.e. by further re-offending and custodial sentences. In my view, he cannot be considered as a suitable person to be granted parole.

[14] In 1993 the respondent was fined in a Local Court in New South Wales (Mullumbimby) on further traffic charges.

[15] On 10 February 1994 the respondent was before the Lismore District Court on the two counts of indecent assault on a male person and the count of assault with intent to commit buggery that had been before the Sydney District Court in September 1978. On each count he was sentenced to a minimum term of imprisonment of eighteen months to date from 27 November 1993 with an additional term of eighteen months release subject to supervision for psychiatric and medical treatment.

[16] On 19 January 1994 Mr Allan Andreasen, consulting clinical psychologist, had interviewed the respondent, who was then in custody at the Grafton Correctional Centre awaiting sentencing on the charges to which I have just referred. Mr Andreasen provided a report dated 25 January 1994 to the Legal Aid Commission of New South Wales. The respondent gave Mr Andreasen an account of his involvement in the motor vehicle accident in 1988 and of his having undertaken Bible studies, talked to chaplains, and had a 'continuing relationship' with a Pastor Mastapha of the Uniting Church at New Farm. Mr Andreasen recorded the following conclusions and recommendations:

> He claims that he has had no sexual relationships with anyone since the motor vehicle accident and cannot foresee any return of his sexuality. There appears to be nothing substantial or convincing in this man's account of his bible studies and talks to ministers as a basis for the apparent decline and cessation of his sexuality and I should estimate that his sexual orientation remains as it was. In my view it is much more likely that residual brain damage from the closed head injuries sustained in the accident is the basis for the decline in sexual motivation and the capacity to drink alcohol. He claims he has had considerable counselling and is not in need of any more and I would agree with this, particularly in the light of his limited capacity and orientation for insight. The fact that this man has spent some two years in custody for subsequent related charges

> and that any benefit or rehabilitation potential associated with imprisonment would have already happened may be relevant to the court's deliberations on sentencing for these prior offences. In this regard any need for the further protection of society may well better be served by a longer period of probationary supervision rather than a shorter period of further imprisonment and it may well be that Pastor Mastapha of the Uniting Church at New Farm would be willing to take some responsibility for Mr Beattie in this regard.

[17] In 1995 the respondent was before the Brisbane Magistrates Court on two occasions: on 22 June he was convicted of a bail offence and fined, and on 28 June he was convicted of a breach of a probation order imposed for traffic offences and sentenced to imprisonment for three months.

[18] On 10 July 1997 the respondent was again before the Brisbane District Court where he was convicted after a trial on counts of unlawful carnal knowledge of an intellectually impaired person, permitting himself to be indecently dealt with by an intellectually impaired person, and indecently dealing with an intellectually impaired person. On the first count he was sentenced to imprisonment for four years, and on each of the remaining counts to imprisonment for twelve months. The sentences were ordered to be served concurrently, and it was declared that he had been in pre-sentence custody from 20 July 1996 for 355 days. He has remained in prison since 20 July 1996.

[19] On 30 July 1997 he was before the Brisbane District Court and he pleaded guilty to two counts of indecently dealing with a child under the age of sixteen years with circumstances of aggravation. On each charge he was sentenced to imprisonment for eighteen months. Those sentences were ordered to be served concurrently with each other and concurrently with the sentences he was then serving. It was recommended that he be placed on whatever program was available as a matter of urgency to receive psychiatric treatment.

[20] On 24 November 1997 the respondent was before the Brisbane District Court again, this time charged with maintaining an unlawful relationship of a sexual nature with a child under sixteen years with circumstances of aggravation. He pleaded guilty and sentenced to imprisonment for nine years.

[21] In prison the respondent has attended Cognitive Skills and Anger Management Programs and has completed a bible college and other, vocational, courses, but a matter of undoubted importance that arises on this application is the effect, if any, that the respondent's refusal to participate in any sexual offending treatment program should have on the outcome.

[22] In May 2000 the respondent was assessed as suitable for the Sex Offenders Treatment Program (SOTP), but he refused to participate in it. In October 2000, however, in an interview on a sentence management review, he asserted he was willing to participate in the program, but when he was again interviewed on 27 February 2001 he said he was not prepared to return to the section of the prison where the program was conducted (the secure accommodation section). In 2003 he was referred to the SOTP but had insufficient time to undertake it pending a decision concerning remission of his sentence. Remission was refused, and on

25 February 2004 he was offered a place in the program, which he declined on 16 March 2004.

[23] There are at present six programs available in custodial centres: the High Intensity Sexual Offending Program (HISOP), the Medium Intensity Sexual Offending Program (MISOP), the Indigenous High Intensity Sexual Offending Program (IHISOP), the Indigenous Medium Intensity Sexual Offending Program (IMISOP), the Sexual Offending Maintenance Program (SOMP), and the Getting Started: Preparatory Program (GS:PP). The MISOP and the SOMP will soon be available to offenders subject to community-based orders, but for offenders of moderate-high to high risk of re-offending who have not completed a program the HISOP is the most appropriate, but is available only in custodial centres.

[24] On 8 November 2005 the respondent declined an offer, made to him on that day, to attend the HISOP to begin in November or December 2005.

[25] The respondent has given a number of excuses for his not attending a treatment program in prison: his unwillingness to move to the section of the prison where the program is conducted, lack of work available to those undertaking the program, his age, the delay in providing the treatment, departure of therapists before completion of courses, lack of confidentiality, and lack of effectiveness.

[26] Professor Nurcombe described the pattern of the respondent's offences as follows:

> Mr Beattie is primarily oriented to prepubescent and pubescent males. He attracts victims by engaging them in activities of interest to boys and young men, or by offering a refuge in his home to young people who have nowhere else to go. He is not violent or coercive toward his victims except in so far as anal intercourse is concerned. He is involved predominantly in masturbatory activities and fellation. He is highly defensive about these activities denying, justifying and minimizing them. There is a dynamic connection between looking after younger boys, the death of his mother, his own history of sexual abuse, and his sexual attraction toward those he is caring for. However, he lacks empathy towards his victims and his expressed remorse for his crimes is shallow. Despite the fact that he has been in prison for ten years, he has not received appropriate treatment. Currently, he is resistant to treatment on the grounds that it has been delayed too long, he is too old for it, he does not respect the content of the program, therapists leave the program before it is completed, and the confidentiality of group members is often breached. (para. 69 of his report)

[27] Professor Nurcombe provided this summary of the risks that might attend the respondent's release and his opinion on the post-release plan:

> Mr Beattie is at low risk of violent recidivism in the future. He is at moderate to high risk of sexual recidivism. The pattern of future sexual offences is likely to repeat the pattern of the past: Mr Beattie attracts pre-pubertal and early pubertal youth by offering strays and street children refuge, and interesting them in the repair of motor vehicles or bicycles. He then seduces them into mutual

> masturbation, fellatio, and anal sexual intercourse. His capacity to resist these temptations is affected by the pathogenic ego defences of denial, minimization etc. He has received virtually no treatment for his condition. It would be risky to release him to the community before he has completed the high intensity sex offender programs. He will need counselling to convince him that such treatment would be in his best interests. (para. 88)

At paragraph 91 of his report Professor Nurcombe observed, however, that cognitive behaviour therapy for sexual or violent offenders is, at best, only mildly effective overall, i.e. – as he explained in his oral evidence – more effective than nothing but not 'markedly more effective'. Forms of treatment other than hormonal (i.e. anti-androgenic medication) are ineffective.

[28] Dr. James recorded his opinion as follows:

> Overall, taking actuarial and dynamic factors into account, **it is my opinion that the risk of Mr Beattie re-offending violently is low; and of re-offending sexually his risk is low to moderate**.
>
> Should a decision be made that Mr Beattie is released, in my opinion it would significantly reduce the risk of his re-offending if the following (supportive as well as restrictive) requirements were included in any conditions which might be imposed by the Court:
>
> That Mr Beattie should:
>
> i) be under the supervision of a Corrective Services Order;
> ii) be required to live in an approved address, not close to schools or other places where children and young persons may be gathered;
> iii) not be employed in a situation which would bring him into close contact with males under the age of sixteen;
> iv) not reside or cohabit with any person if that relationship were to involve close contact with males under the age of sixteen years;
> v) have assistance and support in attending a professional person qualified to provide him with the supportive psychotherapy (which need not be intense, but should extend over a period of at least a year, and thereafter maintain an availability of access by Mr Beattie as necessary).
> vi) abstain from alcohol and all illicit drugs. (p. 18 of his report)

[29] Section 16 of the Act provides for requirements that must be contained in a supervision order. Those requirements are of course included in the draft supervision order before me (exhibit 3). There are other requirements in the draft order that are similar to those suggested by Dr James. The draft order includes other, strict, requirements.

[30] Dr Colls found the respondent to be of low average intelligence, with no particular cognitive deficits but with relatively poor literacy skills (p. 8 of his report). The prediction of future sexual offences or violence is not a straightforward matter, Dr Colls recorded (p. 9), but his conclusion was as follows:

> I think that Mr Beattie is likely to remain at significant risk of re-offending sexually indefinitely, unless and until he has been able to be successfully engaged in psychological treatment (and/or anti-androgen therapy), and that treatment is likely to need to be long term. Even with skilled and appropriate treatment, considering his age and the entrenchment of his difficulties, he is likely to remain at some (and probably significant) risk of re-offending for years, if not indefinitely. If released, his failure to seek treatment voluntarily in the past would suggest that he will not do so unless such a condition (treatment) is mandatory. (p. 10)

[31] From the evidence of the psychiatrists and from the respondent's criminal history I conclude that the risk of the respondent's committing an offence of a sexual nature against children if he is released from custody is substantial - at least moderate but probably moderate to high. Taking into account his history and the views of the psychiatrists, including Dr Edwards, I conclude Dr James's assessment is too optimistic. It would appear to me that it is not likely that he would actively seek out children to satisfy his deviant urges, but that, when presented with an opportunity to do so, he would be inclined to satisfy those urges. The question of his age was discussed in the oral evidence by each of the psychiatrists called at the hearing and they were in agreement that the risk of re-offending by this type of offender is not eliminated with advancing years.

[32] I am satisfied that the respondent is a serious danger to the community in the absence of an order under Division 3 of Part 2 of the Act. There is an unacceptable risk, established, on my assessment, to a high degree of probability, that he will commit an offence of a sexual nature against children if he is released from custody.

[33] In reaching that conclusion I have had regard to the matters referred to in s. 13(4) of the Act.

[34] As to s. 13(4)(a), Drs James and Colls diagnosed the respondent as having the disorder of sexual functioning of homosexual paedophilia. Dr. James described it as paedophilia, non-exclusive but homosexual, and Dr. Colls as paedophilia, sexually attracted to males. Dr. James concluded that the risk of the respondent's re-offending sexually is low to moderate. Dr. Colls concluded that the risk of such re-offending was significant, or, as he said in his oral evidence, 'moderate to high'. Both expressed the opinion that psychotherapy was required. It appears from the reports of both doctors that the respondent was co-operative when they interviewed him.

[35] As to s. 13(4)(b), Professor Nurcombe diagnosed the respondent as having the disorder of paedophilia, non-exclusive, primarily fixated, homosexual in type. He also diagnosed the respondent as having an avoidant personality disorder. Drs James and Colls did not make the latter diagnosis. Professor Nurcombe noted that the respondent's paedophilia is directed predominantly toward pre-adolescent and adolescent males, adding that he has also been sexually involved with an

intellectually impaired male young adult that he has engaged in homosexual activity with male adults and has had only minor involvement with adult women. Professor Nurcombe's assessment of the risk of the respondent's sexual recidivism was, as I have related, moderate to high. Dr Edwards assessed him as a homosexual paedophile not suffering from a psychiatric illness. Dr Edwards's pessimistic forecast proved to be correct, Mr Andreasen's confidence in the benefits of supervision was misplaced.

[36] As to s. 13(4)(c), the respondent's past history clearly shows that he has a propensity to commit serious sexual offences which, on the evidence of all three psychiatrists who gave oral evidence, is not eliminated with advancing years for this type of offender.

[37] As to s. 13(4)(d), there is a pattern in the respondent's offending behaviour and that pattern is accurately described by Professor Nurcombe at para. 69 of his report.

[38] As to s. 13(4)(e), the respondent has refused to participate in any sexual offending treatment program offered to prisoners. He has participated in Cognitive Skills and Anger Management Programs.

[39] As to s. 13(4)(f), there is no evidence that the respondent's participation in Cognitive Skills and Anger Management Programs has had any positive effect on the respondent's ability to resist the temptation to commit another serious sexual offence when presented with the opportunity to do so.

[40] As to s. 13(4)(g), the respondent's antecedents and criminal history show that he has persistently committed serious sexual offences.

[41] As to s.13(4)(h), I conclude on the evidence that the risk that the respondent will commit another serious sexual offence if released is at least moderate and in any event substantial.

[42] As to s. 13(4)(i), there is clearly a need to protect members of the community from the risk of the respondent's committing another serious sexual offence if released into the community, because, although I concluded that it is unlikely that the respondent would actively seek to find victims to satisfy his deviant urges, there is a high degree of probability that, if presented with the opportunity to offend, he would do so.

[43] As to s. 13(4)(j), I accept the evidence of all three psychiatrists that the tendency by this type of offender to re-offend is not eliminated with age.

[44] Bearing in mind that the intrusions of the Act on the liberty of the subject are exceptional and that that liberty should be constrained to no greater extent than is warranted by the Act (*Attorney-General (Qld) v. Francis* [2006] Q.C.A. 324 at para. 39) but also that the paramount consideration on this application is the need to ensure adequate protection of the community, I conclude that a continuing detention order should be made. There is no doubt in my view that if the respondent were to be released he would be as serious a danger to the community as he has been in the past in spite of his age. His history shows him to be a persistent offender. Any expression of remorse or willingness to try to overcome his impulses must, in the light of his history, be treated with the greatest scepticism. Dr Edwards doubted his honesty in 1990 and there is no reason to reach a different conclusion now. He has

refused to participate in the High Intensity Sexual Offending Program and so has denied himself any beneficial effects the program might have upon him; and, by doing so, has also demonstrated his unwillingness to incommode himself with a view to rehabilitation. Dr Edwards's report was remarkably prescient in concluding there was a substantial risk of his re-offending. Had the respondent successfully participated in the High Intensity Sexual Offending Program a supervision order could have been made with some confidence, but in the present state of things such an order would carry with it too great a risk to the community.

[45] I shall invite further submissions on the form of the order.