SUPREME COURT OF QUEENSLAND

CITATION:	*Harrod v Queensland Parole Board* [2010] QSC 85
PARTIES:	**MARTIN HARROD** (applicant) **v** **QUEENSLAND PAROLE BOARD** (respondent)
FILE NO/S:	SC No 10014 of 09
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	30 March 2010
DELIVERED AT:	Brisbane
HEARING DATE:	9 December 2009
JUDGE:	P Lyons J
ORDER:	**Application dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – GENERALLY – where the respondent had refused to release the applicant on parole – where there was a history of sexual offences but where the sentence in respect of which parole was sought was not for a sexual offence - whether the respondent improperly exercised its power by taking into account irrelevant considerations – whether the respondent improperly exercised its power by failing to take relevant considerations into account – whether the respondent improperly exercised its power by rigidly applying a policy without giving any weight to the merits of the case *Judicial Review Act* 1991 (Qld), s 20(20)(e), s 23 *Corrective Services Act* 2006 (Qld), s 3 *Minister Administering Crown Lands Act v Illawarra Local Aboriginal Land Council* (2009) 168 LGERA 71; [2009] NSWCA 289, cited *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, applied *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24; [1986] HCA 40, cited *Saville v Health Care Complaints Commission* [2006]

NSWCA 298, applied
Stewart v Southern Queensland Regional Parole Board [2009] QSC 332, cited

COUNSEL: The applicant appeared on his own behalf
S McLeod for the respondent

SOLICITORS: The applicant appeared on his own behalf
Crown Solicitor for the respondent

[1] The applicant is serving a sentence of imprisonment for life as a result of his conviction on a charge of murder to which he pleaded guilty. The sentence was imposed on 23 August 1988. On 17 July 2009 the respondent refused an application by the applicant to be released on parole. The applicant has applied under s 20 of the *Judicial Review Act* 1991 (Qld) (*JR Act*) for an order quashing or setting aside that decision.

Earlier offences

[2] The applicant has a history of offending in both New South Wales and Queensland. It extends back to 1977. A number of the offences committed in New South Wales may be described as property offences. Others are related to driving a motor vehicle. With one exception, they could be considered to be relatively minor. The exception was a conviction on 29 September 1980 on counts of attempted rape and indecent assault resulting in prison sentences, the more significant being for a term of six years.

[3] The applicant's criminal history in Queensland commences in February 1988 with an offence of driving a motor vehicle whilst under the influence of liquor. On 16 June 1988, the applicant was convicted of unlawfully using a motor vehicle on 4 February 1988, and sentenced to a term of six months' imprisonment.

Offence of murder

[4] This offence (*the current offence*) was committed on 1 April 1988. The victim was a woman of 89 years of age. She was found with three stab wounds to the base of the neck. The submissions of the prosecutor stated that when the victim was found, her briefs had been pulled down and were hanging off her right ankle. Subsequent medical examination identified the cause of the death as the three stab wounds; but a laceration to the internal vaginal area was also recorded. A report based on a consideration of the blood splashes found in the victim's bedroom expressed the opinion that the victim had been lying in bed on her left side when she was stabbed, and that she was then dragged from the bed to the floor, and lay there face down and bleeding.

[5] The applicant provided a record of interview, on the basis of which he pleaded guilty. He admitted to breaking into the victim's house. He said that he heard a noise while he was looking for property to steal, and panicked. He grabbed a knife and stabbed the deceased three times. He said that he was under the influence of drugs and alcohol. He denied any sexual involvement with the deceased. He disputed the conclusions based on blood splash patterns.

[6] Although the sentencing judge, responding to these submissions, noted that the plea of guilty involved an admission on each element of the offence, his sentencing remarks were made on the basis of the applicant's version of events.

Subsequent offending and history

[7] On 16 June 1988, the applicant was convicted of another offence of unlawfully using a motor vehicle, this time on 14 May 1988, and he was sentenced to a term of one year and ten months' imprisonment.

[8] On 6 January 1989 the applicant was convicted of two charges of assault occasioning bodily harm committed on 4 December 1988, for each of which he was sentenced to a term of three months' imprisonment, the sentences to be served cumulatively. On 27 September 1997 he was convicted of possessing dangerous drugs on 3 August of that year, and sentenced to a term of imprisonment for three months. That is the applicant's last recorded offence.

[9] A Parole Board Assessment Report dated 12 March 2008 (*PBAR*) was provided to the respondent. It included a history of incidents and breaches. Breaches were recorded between April 1993 and July 2006. In addition, a number of incidents were recorded. Not all of them reflect adversely on the applicant, but some do. In the brief description of a number of these incidents, he is described as the perpetrator or alleged perpetrator. Seven of these incidents are identified as a positive urinalysis result, with, in some cases, a specific drug being identified. The most recent of these is in 2004. The *PBAR* nevertheless, in summarising the applicant's conduct, states that he is appropriate in his dealings with staff; and that casenotes reflect a "general high standard of behaviour".

[10] The *PBAR* also records a good employment history in prison. He was described as being "a very reliable and valuable member of the team" in the bulk stores area where he worked; and it was said he enjoyed working within the stores environment, and displayed a very positive approach toward the work.

[11] His employment in this area was terminated on 17 April 2008 on the basis that he had stolen a small quantity of toiletries (some gels and some toothpaste), which he is recorded as having admitted.

[12] The applicant has gained qualifications as a baker whilst in prison. He has not undertaken other courses related to general education.

Treatment programs

[13] The applicant has undergone a number of treatment programs whilst in prison. They include an anger management program; three programs related to substance abuse; a program entitled "Reasoning and Rehabilitation"; and a program entitled "Transitions Program".

[14] A recommendation was made that the applicant undergo the "Making Choices" program; but this was subsequently replaced by a recommendation that he undergo the "Getting Started: Preparatory Program" (*GSPP*), a program for sexual offenders. The applicant refused to undergo this program, on the basis that there was no sexual component to the offence for which he is in prison.

Other matters

[15] The applicant had applied for accommodation at the Ozcare Supported Parole Program in Brisbane, which had been approved. He also had offers of employment in bakeries and in a coffee lounge in the Brisbane area.

Professional assessments

[16] The respondent was provided with a report from a forensic psychiatrist, Dr de Leacy, dated 24 May 2007. Dr de Leacy did not diagnose any psychiatric condition. He considered that the applicant's history suggested an anti-social personality disorder, associated with poly-substance abuse and dependence. The poly-substance abuse was in remission in the controlled prison environment, but there was a potential for the applicant to relapse. He also thought the applicant had limited intelligence. He considered that the issue of the applicant's suspected sex offending was not totally resolved, although the applicant expressed remorse for the current offence. Dr de Leacy considered this to be quite superficial, and he considered that the applicant may have cognitive distortions about his actions.

[17] Dr de Leacy considered that at the time of the commission of the offence, the applicant would have fulfilled the criteria for an anti-social personality, and would have been totally unreliable and untrustworthy. Whether he had changed was open to speculation, though it was likely that some changes had taken place with imprisonment, the rehabilitation programs he had attended, and "mellowing", it was, however, likely that some residual anti-social features of his personality would remain.

[18] Dr de Leacy thought that the risk that the applicant would re-offend depended heavily on whether he relapsed into abuse of drugs and alcohol. He considered there was some risk of such a relapse.

[19] It is apparent that Dr de Leacy considered that the applicant's post-prison plans were somewhat inadequate. He thought the applicant was not prepared for parole at the time of this report. He thought the applicant would be assisted if he spent some time in open custody, and had limited leave, before he was released on parole.

[20] Dr de Leacy provided a further report dated 28 July 2008. The report recognised that the applicant had made progress since Dr de Leacy's earlier assessment. It also recognised that an increased level of post-prison support would be available to the applicant. The psychiatric diagnosis remained unchanged. His view of the applicant's remorse was essentially unchanged from that recorded in the earlier report, a fact which Dr de Leacy described as "slightly disturbing". He considered that the applicant was highly motivated not to offend, but thought he needed to be strictly monitored in relation to the use of drugs and alcohol. If he avoided abuse of the substances, Dr de Leacy thought the applicant had a low likelihood of offending in a serious manner. Nevertheless, Dr de Leacy thought that the applicant had "a reasonable chance of complying with all the conditions of parole and making a success of parole". He also noted that his earlier recommendation that the applicant progress to open custody, could not be achieved.

[21] The respondent was also provided with a report by a psychologist, Mr G Palk, dated 13 October 2008. Mr Palk considered that the applicant had minimised aspects of

the current offence, and that he blamed his history of offending on drug dependence. The applicant was of low to very low range intelligence. His empathy with and remorse for the victim of the current offence was said not be of any real depth. He had a natural inclination towards anti-social behaviour. Mr Palk thought him to be in the low risk range for future violent and sexual offences, and in the moderate range for general offending relating to property and drug use.

[22] Mr Palk expressed some concern about the location of businesses where the applicant had managed to arrange employment. One was said to be close to the University of Queensland, with the result that the applicant would be exposed to students who would have access to a variety of illicit drugs. Mr Palk expressed the view that the applicant might then not be able to resist the temptation to return to drug use.

[23] Mr Palk expressed the view that in recent years the applicant seemed to have matured and to have outgrown many of his past anti-social tendencies, though this was tempered by the conduct which led to the termination of his employment. He noted that the applicant had made considerable efforts in the past four years to remain drug free and to improve himself. However, Mr Palk considered the applicant's anti-social tendencies to be fairly well ingrained. Mr Palk nevertheless expressed qualified support for the application for parole. He thought it important that the parole order should include a condition requiring the applicant to abstain from all forms of alcohol and illicit drugs, and should make provision for frequent urinalyses and breath tests, for drug and alcohol use. A strict supervision and reporting regime was recommended, as well as psychological counselling.

Contentions of the parties

[24] The applicant represented himself.

[25] The primary submission made by the applicant was that the refusal of his application was an improper exercise of the power conferred on the respondent to decide such applications. That ground is identified in s 20(2)(e) of the JR Act. The applicant relied upon a number of provisions of s 23 of that Act, which specify particular examples of an improper exercise of a statutory power.

[26] The general nature of the applicant's case is apparent from his written submissions where he contended that the respondent:

> "(a) Failed to assess the merits of the applicant's case;
> (b) Failed to fairly and reasonably assess the magnitude of risk the applicant poses to the community;
> (c) Relied on facts that are not facts;
> (d) (Took) into count a (*sic*) irrelevant considerations;
> (e) Failed to take relevant considerations into account;
> (f) Reached its decision with some other end in mind than the protection of the community;
> (g) Rigidly (applied) a policy without giving any weight to the merits of the case."

[27] The factual matters asserted by the applicant in support of his submissions may be summarised as follows:-

(a) The respondent placed great weight on the applicant's conviction (now more than 29 years ago) of sexual offences;
(b) The respondent treated the applicant as a person, who because of his current offence, is guilty of a sexual offence as identified in Schedule 1 of the *Corrective Services Act* 2006 (Qld) (CS Act), requiring treatment before his release;
(c) The respondent has unreasonably refused the application by taking into account the fact that the applicant has not completed a sexual offending rehabilitation course;
(d) The respondent has wrongly taken into account that the applicant has not admitted a sexual component to his current offence;
(e) The respondent has failed to recognise that the sentencing remarks of the sentencing judge proceeded on the basis that there was no sexual component to the current offence, and that the offence for which the applicant remains in custody is not a sexual offence;
(f) The respondent erred in proceeding on the basis that past behaviour is an indicator of future behaviour, unless actions are taken to modify his previous behaviour patterns;
(g) The respondent has taken into account assertion of breaches or incidents during his period of incarceration, rather than limiting its consideration to proven misconduct;
(h) The respondent failed to take into account the opinion of Mr Palk to the effect that a sexual offenders treatment program would be of little benefit to the applicant;
(i) The respondent failed to take into consideration the fact that the applicant, during his lengthy period of incarceration, has not had an incident, breach or conviction relating to sexual conduct;
(j) The respondent failed to take into account that an assessment made on 9 May 2006 by a psychologist assessed his risk of recidivism as low; with the consequences of general recidivism being low and the consequences of violent recidivism being moderate;
(k) The respondent failed to take into account that the applicant is prevented by a policy of Queensland Corrective Services from progressing to a low security facility, on the ground he has been convicted of a sexual offence;
(l) The respondent has rigidly applied a policy of considering every sex offender to be an unacceptable risk unless the offender has undertaken a sexual offender's treatment program.

[28] For the respondent, it is submitted that the respondent was entitled to have regard to information relating to the applicant's risk of sexual recidivism and his history of a prior sexual offence. The respondent was conscious of the sentencing judge's sentencing remarks. The respondent took into account Mr Palk's view of the utility of the sexual offender's treatment program. Overall, it was submitted on behalf of the respondent that the applicant had failed to demonstrate "any legal error" which would vitiate the respondent's decision.

[29] It is convenient to refer specifically to the applicant's grounds based on the taking into account of irrelevant considerations, and the failure to take relevant considerations into account, before dealing with the other matters relied upon by the applicant.

Relevant and irrelevant considerations

[30] It is now well established that the ground of failure to take into account a relevant consideration is only made out if the consideration is one which the decision-maker is bound to take into account; and such considerations are determined by the construction of the statute conferring the decision-making power.[1] Equally, to demonstrate that a decision is beyond power because the decision-maker took into account an irrelevant consideration, it is necessary to show that the statute which conferred the decision-making power forbade the decision-maker from taking that consideration into account.[2]

[31] The respondent's decision was made under ss 187 and 193 of the *Corrective Services Act* 2006 (Qld) (*CS Act*). The CS Act confers on the respondent a general discretion to grant or refuse the applicant's application for parole. It does not expressly identify matters which must or must not be taken into account in exercising that discretion.[3] In such a case, the matters which must or must not be taken into account are determined by "implication from the subject-matter, scope and purpose of the Act".[4] Obviously, regard may be had to the stated purpose of the Act, said to be "community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders".[5] Nevertheless, that statement is immediately followed by a statement that the Act "recognises that every member of society has certain basic human entitlements, and that, for this reason, an offender's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded".

[32] I should first note that in a number of cases where the applicant contends that the respondent did not take into account a matter, or that the respondent wrongly took a matter into account, I do not accept the factual contention of the applicant. I shall discuss the factual contentions later. However, in my view, the matters on which the applicant relies as constituting relevant considerations which were not taken into account cannot, as a matter of construction of the CS Act, be identified as matters which the Act required the respondent to take into account. Nor can the matters which the applicant contends were wrongly taken into account be identified, as a matter of construction of the CS Act, as matters that the respondent was prohibited from taking into account. For example, I can see no basis in the CS Act for an implied prohibition that the respondent consider the applicant's previous offences, including sexual offences, even though they occurred a long time ago; or the records of incidents and breaches, even if contested by the applicant. Nor, as a matter of construction of the CS Act, must every psychological report furnished in relation to the applicant be considered by the respondent.

[33] However, a matter may "lie so far beyond the purpose of (the decision-maker's) functions as to be legally irrelevant".[6] It may perhaps be said of such a consideration that, as a matter of construction, it is one which the decision-maker is

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1 *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24, 39.

2 Aronson, Dyer and Groves *Judicial Review of Administrative Action* (4th ed) p 282; *Saville v Health Care Complaints Commission* [2006] NSWCA 298 [57].

3 *Stewart v Southern Queensland Regional Parole Board* [2009] QSC 332 at [32].

4 *Peko-Wallsend Ltd* at 39-40.

5 See s 3.

6 *Saville* at [58]; see also *Minister Administering Crown Lands Act v Illawarra Local Aboriginal Land Council* (2009) 168 LGERA 71 at [40].

prohibited from considering. It may also be said that, to consider it would be irrational in the *Wednesbury*[7] sense, that is, to proceed on the basis of that consideration would be something that no rational decision-maker would do. It may also be said that some matters placed before the respondent might be so obviously significant to its decision that a failure to consider them might demonstrate that the decision was made in bad faith; or that the decision was an abuse of power, because it was not a genuine exercise of the discretion conferred on the respondent.[8]

[34] In my view, the matters on which the applicant relies can ultimately be tested by reference to the question whether the respondent's decision was irrational in the *Wednesbury* sense; or whether, notwithstanding the form of the decision or the statement of reasons provided to the applicant, the respondent has, in fact, failed to exercise the discretion conferred on it.

[35] The applicant's contentions make it necessary to give some consideration to the respondent's Statement of Reasons (*SOR*).

Statement of Reasons

[36] The SOR is contained in a letter to the applicant dated 13 August 2009. It commenced with a list of documents which it was said the respondent considered. Amongst the documents identified are the documents previously mentioned, and a number of submissions by or on behalf of the applicant.

[37] The SOR then referred to the Ministerial Guidelines, including the statement that "a Parole Board should give the highest priority to the safety of the community." The SOR stated that the respondent had independently exercised its discretion notwithstanding the Guidelines.

[38] The SOR then recorded in summary the applicant's criminal history. It set out the remarks of the sentencing judge, which, as has been noted, were consistent with the applicant's account of the offence. It summarised the applicant's behaviour whilst in prison, some matters being referred to as "breaching prison discipline" and others as "being negatively recorded". Substance abuse was recorded up to 2004, though reference was made to the fact that the applicant had previously completed programs to address such conduct.

[39] The SOR made reference to the applicant's good employment record, but also noted the incident resulting in the termination of his employment.

[40] The SOR recorded that the applicant had "outstanding program recommendations to address (his) criminogenic needs", and in particular, the applicant's refusal to participate in the GSPP. It also referred to an assessment of the applicant's prospects of re-offending, dated 3 July 2009, which assessed him as being at high risk of sexual recidivism, based on the Static-99 test). (A submission was made by the applicant to the respondent on 16 July 2009 in relation to this test.)

[41] The reports of Dr de Leacy were then referred to. The applicant's account of the current offence to Dr de Leacy was summarised. The summary of this report states

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7 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223.

8 Compare *Khan v Minister for Immigration and Ethnic Affairs* [1987] FCA 457; cited in *Stewart v Southern Queensland Regional Parole Board* [2009] QSC 332 at [38].

that Dr de Leacy considered the applicant's version to be inconsistent with forensic evidence. It also recorded the comment by Dr de Leacy that "there had been a trend of 'gradual escalation' in the seriousness of (the applicant's) offending over time." Parts of Dr de Leacy's conclusions were then referred to.

[42] Reference was then made to Dr de Leacy's report of 28 July 2008. The summary stated that Dr de Leacy considered it "difficult to predict the likelihood of (the applicant's) re-offending"; but that Dr de Leacy considered that the applicant "was motivated not to re-offend". From Dr de Leacy's conclusions, the passage which repeated his conclusion in his earlier report was recorded in the SOR, together with some other negative comments about the applicant. However, no mention was made of Dr de Leacy's view about the appropriateness of release on parole for the applicant.

[43] Reference was then made to Mr Palk's report. One matter specifically noted was the termination of the applicant's employment for stealing some items. Reference was made to the fact that the applicant had completed a number of rehabilitation programs, and Mr Palk's view that "due to (the applicant's) limited intellectual ability and (the applicant's) resistance to doing this program it would be of little benefit to (him)". Limitations on the applicant's post-prison plans, noted by Mr Palk, were referred to. Mr Palk referred to the results of testing which identified a moderate probability that the applicant would re-offend within 7 years, that the applicant would commit further sex offences following his release. However, other assessments place the applicant in the 'low-moderate' range of risk of sexual re-offending. Drugs and alcohol in particular are identified as likely to increase the risk. Mr Palk thought that the applicant's proposed employment might expose him to such a risk.

[44] Reference was then made to the submissions made on or on behalf of the applicant, which referred to his post-prison plans, his work history, the period for which he has been free of drugs and his behaviour has been appropriate, the low risk associated with his proposed employment, and Mr Palk's comments on the inappropriateness of the GSPP for the applicant. Also recorded was a statement that the more recent report from Dr de Leacy, and Mr Palk's report, had both made an overall recommendation for the applicant's release subject to strict parole conditions.

[45] The respondent's reasons are then set out in detail. Reliance was placed on what was described as "a consistent pattern of offending" since 1977 through to 1997. The respondent referred to research showing that "past behaviour is an indicator of future behaviour unless actions are taken to modify behaviour". Specific reference was made to the remarks of the sentencing judge. The absence of a recorded breach since 2004 was recognised, as was the period for which the applicant had demonstrated that he remained free of drugs. The stealing incident at the applicant's place of employment in prison was mentioned. Mr Palk's comments on the applicant's proposed post-prison employment was discussed, the respondent concluding that this was not considered relevant to the respondent's decision. The respondent expressed concerns about the applicant's previous conviction for sexual offences, the observations in the professional assessments about the overall circumstances attending the current offence, and the recommended supervision needs in the case of parole. They expressed the view that successful completion of recommended programs would increase his confidence in the applicant's ability to manage himself in the community.

[46] In the specific discussion of Mr Palk's views about the appropriateness of the GSPP, the respondent considered that participation in the program would not be inconsistent with the applicant's view relating to previous sexual offending; and that programs would be available for persons who were assessed as being at a low level of intellectual or social function. It considered that participation in such a program would assist the applicant to avoid offending in the future. Some concern was expressed relating to the applicant's "variable responses" to programs undertaken, duress, drug and alcohol abuse.

Should relief be granted?

[47] A number of the applicant's complaints revolve around the respondent's consideration of his history of sexual offending, and his attitude to treatment programs.

[48] The respondent relied upon the applicant's conviction for sexually related offences in 1980. This, however, should not be seen in isolation. It is a matter to be considered in the context of subsequent offending, and the assessments to which the applicant has been subject. The professional assessments raise a concern about the fundamental features of the applicant's personality, and the extent to which it has changed. They also record the need for a high level of supervision, if the applicant were released on parole, to reduce the risk that he might re-offend. In that context, I do not consider the offences for which the applicant was convicted in 1980 to be so remote that they are "legally irrelevant"; or that it was irrational for the respondent to take them into account.

[49] The SOR states that the respondent's decision was not based on any allegation that there was a sexual component to the current offence. The applicant submitted that the respondent wrongly took into account the applicant's refusal to acknowledge this component. Although there are references in the SOR to evidence which might suggest a sexual component to this offence, it seems to me that I should accept that the respondent ultimately did not take this into account. It also seems to me, with respect, the correct approach to take. The applicant points out that there is no suggestion of subsequent sexual offending. It should also be noted that the applicant pleaded guilty to the current offence, and had previously made admissions consistent with his plea. As Mr Palk points out, there is no evidence of sexual offending between 1980 and the commission of the current offence in 1988.

[50] The respondent's attitude to the applicant's refusal to participate in a sexual offenders' treatment program is not without some difficulty, particularly if it proceeded on the basis that there was no sexual component to the current offence. The applicant's refusal also enjoys the support (at least to some extent) of Mr Palk. It is consistent with the stance he takes in relation to previous sexual offending. His refusal should not, of itself, preclude him from release on parole. However, as expressed in the SOR, the respondent's attitude appears to be that, notwithstanding these matters, participation in such a program would enable the applicant to avoid future offending. Given that the applicant has in the past committed sexual offences, and given the concerns about the applicant's personality in the professional assessments, the respondent's attitude does not demonstrate the degree of irrationality identified in *Wednesbury*. I may well have reached a different conclusion if it would not in a practical sense be possible for the applicant to

undertake a treatment program while maintaining his current position in relation to his involvement in sexual offending.

[51] The applicant is correct to say the respondent has given some weight to the view that past behaviour is an indicator of future behaviour, unless action is taken to modify behaviour patterns. The applicant submits that there is research which supports the contrary view. However, that does not demonstrate that the respondent has acted irrationally or took into account a consideration which it was prohibited from considering.

[52] It is clear that the respondent was conscious of the sentencing judge's sentencing remarks. Ultimately, it proceeded on the basis that there was no sexual component to the current offence, which is consistent with those remarks.

[53] The respondent has referred to both breaches and incident contraventions recorded in respect of the applicant. It may be correct to say that it has not limited itself to proven misconduct incidents. However, my reading of the SOR indicates that the respondent has done no more than regard them for what they are. Its treatment of them is not irrational in the *Wednesbury* sense. The recorded breaches and incidents could not be regarded as "legally irrelevant".

[54] It is clear that the respondent had regard to the policy expressed in the Ministerial Guidelines. However, the SOR shows that a number of matters were taken into account. Some of them supported the respondent's decision. There is no direct evidence that the respondent's sole motivation was to give effect to the Ministerial Guidelines. In those circumstances, I am not prepared to accept that the respondent's decision is the result of the rigid application of a policy, without regards to the merits of the applicant's application.

[55] The psychologist's report of 9 May 2006 was identified as one of the documents considered by the respondent. Like a number of other documents listed in the SOR, express reference was not made to it. Given that there are more recent assessments, that is not particularly surprising. It does not follow that, notwithstanding what appears in the SOR, I should conclude that it was given no consideration whatever by the respondent. Still, less does it follow that a basis for a grant of relief has been established.

[56] It should be noted that the applicant's history records some considerable improvement in his conduct and that many factors, including the length of time he has spent in prison, the improvement in his conduct, and the arrangements he has made for a life after his release, might be thought to justify his release on parole. These proceedings, however, are not by way of a general appeal against the decision of the respondent. Those matters which are favourable to the applicant, and for which he should be commended, cannot of themselves establish a basis for granting the relief he seeks.

Conclusion

[57] In my view, the application should be dismissed.