SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Obed,* 2021 NSSC 213

Date: 20210625
Docket: CRH. No. 481369
Registry: Halifax

Between:

Her Majesty the Queen

v.

Sem Paul Obed

Restriction on Publication: per ss. 486.4 and 486.5 of the Criminal Code

Judge: The Honourable Justice Robert W. Wright

Heard: February 16-19 and 22, April 6, 2021 in Halifax, Nova Scotia

Final Submissions: June 3, 2021
Written Decision: June 25, 2021

Counsel: Crown Counsel: Sean McCarroll and Carla Ball
Defence Counsel: Brad Sarson

Wright, J.

INTRODUCTION

[1] On January 23, 2020 Sem Paul Obed entered guilty pleas to four counts in the Indictment under which he was charged, namely,

(1) Break and enter of the residence of JK and committing therein the offence of aggravated sexual assault, contrary to s.348(1)(b) of the Criminal Code;

(2) An attempt to choke or suffocate JK by applying direct hand pressure to her neck, with the intent to enable himself to commit the offence of aggravated sexual assault, contrary to s.246(a) of the Criminal Code;

(3) Aggravated sexual assault in wounding JK in committing the sexual assault, contrary to s.273(1) of the Criminal Code; and

(4) Breach of a condition of a recognizance that he abstain from the consumption, purchase and possession of alcohol and drugs, contrary to s.811 of the Criminal Code.

[2] As part of the sentencing process, the court, at the behest of the Crown, ordered a s.752.1 remand of the offender for an assessment to be performed by an expert psychiatrist for use in an application to be made under s.753 (a dangerous offender designation) or s.753.1 (a long term offender designation) under Part XXIV of the Criminal Code. That lead to the preparation and filing of a comprehensive risk assessment report authored by Dr. Grainne Neilson dated August 18, 2020.

[3] Based on that report, the Crown has proceeded with an application to have Mr. Obed declared a dangerous offender, advocating for an indeterminate sentence of imprisonment for the commission of these offences (herein collectively referred to as "the predicate offences"). Mr. Obed is presently 50 years of age and is of Inuk descent.

FACTS UNDERLYING THE PREDICATE OFFENCES

[4] On the morning of June 1, 2018 the victim was awakened in her bed by the blankets being ripped away by Mr. Obed who was completely unknown to her. He stood over her bedside completely naked, except for a baseball hat on his head and pair of sneakers on his feet. He stood there with a clenched fist and told her to shut up and not to scream and that he was going to hurt her.

[5] The victim shared an upper flat with Mr. Obed's niece, who happened to be out of the province at the time. The victim was therefore home alone when Mr. Obed broke in. Why he chose to break into his niece's place of residence that particular day, from whom he had become alienated a year prior, is unknown. He has acknowledged to Dr. Neilson that he does not know what his intent was in going to his niece's house; only that he knew there was someone living with his niece who he had never met.

[6] What followed for over an hour was one of the most horrific sexual assaults ever to come before this court. In evidence is a lengthy Agreed Statement of Facts which describes in sordid detail the violence and degradation inflicted by Mr. Obed on the victim. Rather than fill six pages with this excruciating detail, I opt instead to paraphrase these events in summary form.

[7] The victim first tried to fight off Mr. Obed and a struggle ensued, during which he punched her five or six times in the head near her left eye. To stop her from struggling, he then began to strangle her with both hands around her neck. At some point the victim fell to the floor between her bed and the wall with Mr. Obed falling down on top of her, whereupon he pulled off her sleepwear and pinned her there on the floor.

[8] Mr. Obed then committed a series of sexual assaults against the victim, beginning with vaginal penetration with his finger and rubbing his penis on her body. That evolved into vaginal penetration with his penis, vaginal penetration with a dildo, fellatio and forced swallowing of ejaculate, and acts of cunnilingus and analingus. Mr. Obed also inflicted a number of other acts of physical violence upon the victim including grabbing her by the hair to drag her around the apartment and banging her head against the floor several times, and biting her on the nipples and jawline. Throughout the ordeal, Mr. Obed also made several

obscene and degrading comments to the victim, repeating that she better make him come and forcing her to say that she was a slut.

[9] At some point, the victim stopped resisting Mr. Obed to try to get through the ordeal and to get him to leave. He eventually agreed to do so but first made some bizarre comments. After his last act of sexual assault, he asked the victim if she wanted to be his girlfriend and if she wanted to come over to his house later. As he was leaving, he also said that if she wanted his number, that she could get it from his niece and be able to call him. He then left the residence through the back door.

[10] The victim was left with a number of physical injuries from the assaults which were detailed in the SANE report. The victim required six stitches to close a laceration on her left eyebrow but beyond that, she had numerous bruises and abrasions all over her body, a number of bite marks, and her left eye had both a petechia/bruise above it and was bloodshot.

[11] After Mr. Obed left, the victim immediately called her ex-boyfriend to come over and help her. She then called 911 and the police arrived soon thereafter. The victim was then taken to hospital for treatment of her injuries, including a SANE exam.

[12] It did not take the police long to ascertain Mr. Obed's identity (where he had revealed that he was the uncle of the victim's roommate) and the police arrested him that afternoon at his Fairview apartment. Subsequent DNA testing of various swabs confirmed Mr. Obed's identity as the perpetrator of the attack. He was charged with the predicate offences the next day and has been on remand ever since.

[13] In the sentencing of Mr. Obed, a dangerous offender ("DO") hearing got underway in the week of February 16, 2021 during which the Crown called four witnesses. A second week was set aside in April for the purpose of hearing defence evidence but in the end, none was called.

<u>ISSUES ON SENTENCING</u>

[14] The issues now to be decided by the Court can be framed as follows:

(1) Should Mr. Obed be designated a dangerous offender under any of the statutory criteria set out in ss.753(1)(a)(i), 753(1)(a)(ii), 753(1)(a)(iii) or 753(1)(b)?

(2) If so, should the Court exercise its discretion under s.753(4) to impose:

(a) an indeterminate sentence, or

(b) a sentence for the predicate offences pled guilty to, plus a long term supervision order ("LTSO") for a period that does not exceed 10 years, or

(c) a straight determinate sentence for the predicate offences to which he has pled guilty.

LEGAL FRAMEWORK AND PRINCIPLES

[15] The statutory dangerous offender regime set out in the Criminal Code is conveniently summarized in the recent decision of the Supreme Court of Canada in **R. v. Boutilier**, [2017] S.C.J. No. 64. It reads as follows (at paras. 13-20):

> 13. The dangerous offender scheme is designed as a "two-stage" process.
>
> 14. Section 753(1) lists the statutory requirements that must be met before a court can designate an offender as dangerous ("designation stage"):
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>> 753 (1) On application made under this Part after an assessment report is filed under subsection 752.1(2), the court shall find the offender to be a dangerous offender if it is satisfied
>>
>>> (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing
>>>
>>> (i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,
>>>
>>> (ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or
>>>
>>> (iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint; or
>>>
>>> (b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any

> sexual matter including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

15. Subsections (4) and (4.1) of s. 753 relate to the sentencing of a dangerous offender ("penalty stage"):

(4) If the court finds an offender to be a dangerous offender, it shall

> (a) impose a sentence of detention in a penitentiary for an indeterminate period;
> (b) impose a sentence for the offence for which the offender has been convicted -- which must be a minimum punishment of imprisonment for a term of two years -- and order that the offender be subject to long-term supervision for a period that does not exceed 10 years; or
> (c) impose a sentence for the offence for which the offender has been convicted.
> (4.1) The court shall impose a sentence of detention in a penitentiary for an indeterminate period unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under paragraph (4)(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.

16. Section 753(1) contemplates two categories of dangerousness: (a) dangerousness resulting from violent behaviour (as in Mr. Boutilier's case), and (b) dangerousness ensuing from sexual behaviour. Only the former category is at issue in this appeal.

17. The Crown must demonstrate two elements to obtain a designation of dangerousness resulting from violent behaviour. First, the offence for which the offender has been convicted must be "a serious personal injury offence": s. 753(1)(a). This first criterion is objective. There is no room for judicial discretion, since s. 752 defines the list of serious personal injury offences.

18. Second, the offender must represent "a <u>threat</u> to the life, safety or physical or mental well-being of other persons". This second element, the requisite threat level, requires that the judge evaluate the threat posed by the offender on the basis of evidence establishing one of the following three violent patterns of conduct:

> (i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to

> other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,
>
> (ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or
>
> (iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint;

These subparagraphs are disjunctive -- they provide three standalone grounds for finding that the offender is a "threat" under s. 753(1).

19. These grounds have not changed since the enactment of the scheme in 1977. Indeed, a brief overview of the scheme's legislative history is in order.

20. The scheme was first introduced in 1977, subsequently amended in 1997, and amended again in 2008. When the scheme was enacted in 1977, it was referred to as a "two-stage" process. At the designation stage, the sentencing judge had to determine if the statutory criteria were satisfied and then had the discretion to designate the individual. At the sentencing stage, the sentencing judge had to exercise his or her discretion again to decide whether to impose an indeterminate sentence. In 1997, the scheme became a "one-stage" process. The judge had discretion to designate an offender as dangerous, but there was no discretion at the sentencing stage -- an indeterminate sentence flowed as a consequence of the designation. The current version of the scheme reverts to a "two-stage" process but removes the discretionary language from the designation stage. If a sentencing judge is satisfied that the statutory criteria have been met, the designation must follow. There is, however, some discretion remaining at the sentencing stage. Under s. 753(4.1), a sentencing judge must impose an indeterminate sentence on a designated individual *unless* he or she is satisfied that there is a reasonable expectation that a lesser measure will adequately protect the public.

[16] In **Boutilier**, the defence challenged the constitutional validity of s.753(1) and (4.1) of the Criminal Code under ss. 7 and 12 of the Charter. There is an excellent summary of the case set out in the introductory headnote which reads in part as follows:

> Section 753(1) does not preclude a sentencing judge from considering future treatment prospects before designating an offender as dangerous and therefore is not overbroad under s. 7 of the *Charter*. To obtain a designation of dangerousness resulting from violent behaviour, the Crown must demonstrate beyond a reasonable doubt, *inter alia*, that the offender represents a threat to the life, safety or physical or mental well-being of other persons. Before designating a dangerous offender, a sentencing judge must be satisfied on the evidence that the offender poses a high likelihood of harmful recidivism and that his or her conduct is intractable. Intractable conduct means behaviour that the offender is unable to surmount. Through these two criteria, Parliament requires sentencing judges to conduct a prospective assessment of dangerousness. All of the evidence adduced during a dangerous offender hearing must be considered at both the designation and penalty stages of the sentencing judge's analysis, though for the purpose of making different findings related to different legal criteria. At the designation stage, treatability informs the decision on the threat posed by an offender, whereas at the penalty stage, it helps determine the appropriate sentence to manage this threat. A prospective assessment of dangerousness ensures that only offenders who pose a tremendous future risk are designated as dangerous and face the possibility of being sentenced to an indeterminate detention ….
>
> The sentencing alternatives listed in s. 753(4) therefore encompass the entire spectrum of sentences contemplated by the *Criminal Code*. In order to properly exercise his or her discretion under s. 753(4), the sentencing judge must impose the least intrusive sentence required to achieve the primary purpose of the scheme. Nothing in the wording of s. 753(4.1) removes the obligation incumbent on a sentencing judge to consider all sentencing principles in order to choose a sentence that is fit for a specific offender. An offender's moral culpability, the seriousness of the offence, mitigating factors, and principles developed for Indigenous offenders are each part of the sentencing process under the dangerous offender scheme. Each of these considerations is relevant to deciding whether or not a lesser sentence would sufficiently protect the public….
>
> Furthermore, s. 753(4.1) does not create a presumption that indeterminate detention is the appropriate sentence -- the sentencing judge is under the obligation to conduct a thorough inquiry that considers all the evidence presented during the hearing in order to decide the fittest sentence for the offender. Under s. 753(4), a long-term offender sentence remains available for dangerous offenders who can be controlled in the community in a manner that adequately protects the public from murder or a serious personal injury offence.

[17] Beyond the case headnote and statutory scheme above quoted, there are a number of other excerpts from the decision in **Boutilier** to be highlighted. It should first be noted that the offender in **Boutilier** had been convicted of robbery

and related offences and thus the court was focused on the criteria for a dangerous offender set out in s.753(1)(a). The court did, however, refer to the criteria for such a designation under s.753(1)(b) with which we are mainly concerned in the present case, namely, dangerousness ensuing from sexual behaviour. That passage is to be found at para. 38 of the decision which reads as follows:

> Reference to the other category of dangerousness based on sexual conduct, under s. 753(1)(b), reinforces the conclusion that s. 753(1)(a) mandates a prospective assessment. This category requires, in addition to evidence of a pattern of past conduct, an independent assessment of future risk:
>
>> The offender must be shown to have failed in the past "to control his or her sexual impulses" and, in the future, that there is "a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses". [Emphasis added; citation omitted.]

[18] It should also be noted that these two categories under s.753(1)(a) and (b) respectively are not mutually exclusive. Accordingly, a sexual assault may constitute a serious personal injury offence under either subparagraph.

[19] In its reasons for judgment, the Supreme Court has emphasized that the sentencing judge must consider all retrospective and prospective evidence relating to the continuing nature of the risk, including future treatment prospects. An offender cannot be designated a dangerous offender unless the court concludes that he is a future threat after a prospective assessment of risk, which has always

required consideration of future treatment prospects. As noted earlier in the case headnote, at the designation stage, treatability informs the decision of the threat posed by an offender, whereas at the penalty stage, it helps determine the appropriate sentence to manage this threat.

[20] The Supreme Court in **Boutilier** further makes it clear, under s.753(4.1), that the sentencing judge is under the obligation to conduct a thorough inquiry into the possibility of risk control in the community in determining the fittest sentence for the offender. The court then went on (at para. 70) to adopt the framework that a sentencing judge should follow in exercising his or her discretion under s. 753(4.1), outlined in an earlier Ontario decision. That excerpt reads as follows:

> The framework a sentencing judge should adopt in exercising his or her discretion under s. 753(4.1) has been aptly explained by Justice Tuck-Jackson of the Ontario Court of Justice: *R. v. Crowe*, No. 10-10013990, March 22, 2017. First, if the court is satisfied that a conventional sentence, which may include a period of probation, if available in law, will adequately protect the public against the commission of murder or a serious personal injury offence, then that sentence must be imposed. If the court is not satisfied that this is the case, then it must proceed to a second assessment and determine whether it is satisfied that a conventional sentence of a minimum of 2 years of imprisonment, followed by a long-term supervision order for a period that does not exceed 10 years, will adequately protect the public against the commission by the offender of murder or a serious personal injury offence. If the answer is "yes", then that sentence must be imposed. If the answer is "no", then the court must proceed to the third step and impose a detention in a penitentiary for an indeterminate period of time. Section 753(4.1) reflects the fact that, just as nothing less than a sentence reducing the risk to an acceptable level is required for a dangerous offender, so too is nothing more required.

[21] In short, once the sentencing judge has exhausted the least coercive sentencing options to address the question of risk based on the evidence, indeterminate detention in a penitentiary is the last option.

[22] The Supreme Court in **Boutilier** also affirmed the principle that a sentencing judge must impose a sentence that is tailored to the specific offender and consistent with the principles of sentencing as set out in s.718 to 718.2 of the Criminal Code. It also bears repeating from the case headnote that an offender's moral culpability, the seriousness of the offence, mitigating factors, and principles developed for Indigenous offenders are each part of the sentencing process under the dangerous offender scheme. Each of these considerations is relevant to deciding whether or not a lesser sentence would sufficiently protect the public.

THE EVIDENCE

[23] In support of its application, the Crown has entered in evidence, with the consent of defence counsel, several binders consisting of a predicate offence file, Correctional Services Canada files, Provincial jail records, previous conviction documentation and Newfoundland materials. These binders document every facet of Mr. Obed's involvement with the law since he was a youth.

[24] The Crown also called four witnesses at the sentencing hearing to give *viva voce* evidence, namely, Dr. Neilson and three persons employed by Correctional Services Canada (“CSC”). The Crown also introduced in evidence a Gladue Report which I will summarize first before summarizing the evidence of the others. This report provides some historical insight into Mr. Obed’s background and formative years.

Gladue Report

[25] The stated purpose of this report, authored by Robin Thompson, a lawyer and Gladue writer for the Mi’kmaw Legal Support Network, is generally to provide information regarding the life circumstances of Mr. Obed to assist the court in the determination of an appropriate sentence. The report was largely based on personal interviews with Mr. Obed, his sister Emily (the only family member with whom he continues to have any contact) and his CSC Case Manager, Leann Nash.

[26] The report begins with a recitation of the history of Inuit heritage and culture in the coastal communities of Labrador, dating back to the arrival of European settlers and missionaries to that area in the 18th century. The report discusses at some length the destructive assimilative polices of government that caused Aboriginal people to cease to exist as distinct legal, social, cultural, religious and

racial entities. The report also describes how government also restricted movement on traditional lands and how these programs seriously disrupted the historical and cultural organization of the northern coast that had long lasting negative consequences for resettled families. Chief amongst those were the dispossession and forced relocation of Inuit families from their traditional lands to certain coastal communities coupled with the now infamous residential school programs.

[27] Caught up in these programs were the families of Mr. Obed's parents, Paul and Henrietta Obed, whose anger, hostility and isolation from their traditional lifestyle lead to alcoholism.

[28] Mr. Obed was the second youngest of six children in the family. He was required to attend a Residential Day School which was divisive to his family. That is because Mr. Obed was schooled only in English and he lost the ability to speak with his parents who spoke their traditional Inuktitut language, thereby causing a language barrier and subsequent estrangement.

[29] According to the report, Mr. Obed was about eight years old when his home life changed because his parents began drinking heavily, which in turn spurred incidents of violence in the family home. Both Mr. Obed and his sister Emily

explained that their father was abusive to their mother, both physically and emotionally and that their mother was beaten countless times. Mr. Obed was also physically abused by his father when he was under the influence of alcohol.

[30] In addition to physical violence in the home, Mr. Obed was introduced to sex at a young age. His earliest memories included being witness to sexual acts by all members of the household. This was mostly by his parents who, in addition, both had other sexual partners. The report reads that being a witness to frequent sexual acts and violence, fueled by jealousy and alcohol, was very destabilizing for Mr. Obed, but it was also the norm in his family.

[31] Mr. Obed reported that he and his siblings were all sexually active by the time they were 13 years old, which was only a year or two after his parents separated. This was described as a very destabilizing time in Mr. Obed's life and that he did not have feelings of safety at home. The family was living in extreme poverty with little food in the house which had no structure and was very disorderly.

[32] Under these conditions, Mr. Obed began to start drinking homemade moonshine himself at age 12. His mother, with whom he was living, had become an alcoholic and Mr. Obed explained that he essentially did whatever he wanted

because there was no structure at home and because school was not a priority in the family. Indeed, he stopped going to school entirely in grade 8 and reported that he went into a downhill spiral after that.

[33] Mr. Obed reported that he committed his first sexual assault at age 14 against a woman in her early 40s. He reported that the assault was alcohol related and he was sentenced to eighteen months which he served at a Boy's home in Newfoundland. His incarceration there was a culture shock for him where he was the target for physical and emotional abuse.

[34] During his teens, Mr. Obed returned to his mother's home in Hopedale only to find that nothing had changed, there being no family structure. He fell into a life of heavy drinking and criminal activity, including offences for weapons, property damage and sexual assault.

[35] When he was 16 years old back in Hopedale, he committed aggravated sexual assault on another woman by beating her badly. He was sentenced to 18 months imprisonment, after which he never returned to Hopedale and never saw his parents again.

[36] When released at age 19, Mr. Obed stayed in St. Johns, Newfoundland where he described falling into a consistent pattern of being released and

reoffending. He continued to have multiple sexual partners and began stealing to pay for his alcohol and drugs. In 1993, he received a federal sentence for having committed another sexual assault, attempted murder and some property damage. He served that sentence in Dorchester penitentiary from 1993 to 1999 where he worked with Sarah Anala, an Inuit elder, whose evidence will be summarized later in this decision.

[37] Upon his release from Dorchester in 1999, Mr. Obed decided to move to Halifax where he lived on social assistance. For a short time, he moved to Goose Bay to stay with his sister Emily. That did not work out well and it wasn't long before Mr. Obed committed another violent offence in 2011 for which he received another federal sentence to be served in Dorchester until 2014.

[38] Upon his release in 2014, Mr. Obed returned to Halifax, first living at the Salvation Army shelter but eventually moving into a bachelor apartment in Fairview in 2016. Mr. Obed was moving furniture as a part time job to support himself. However, he continued to be a heavy drinker of alcohol up until the time he committed the predicate offences on June 1, 2018.

[39] The report describes Mr. Obed's lack of educational achievement, and by extension his lack of employment, as having been greatly impacted by attendance

at a residential school, family disintegration, family violence, alcohol and abuse. Also noted in the report is the fact that Mr. Obed has lived his entire life in poverty, that he has a great distrust of other people and has lived most of his adult life in isolation.

[40] In the Offender Profile segment of the report, there is a salient paragraph that should be highlighted which is entirely consistent with the evidence of Dr. Neilson. It reads as follows:

> Sem believes his violent behaviours are similar to those of his father, "I have a feeling I am". He admits to being "angry when drinking" and he gets "violent and aggressive". He admits to using "violence to assert control" over his victims. At the same time, he does not seem to have control over himself, "it just happens". He "feels out of control" and has a "need to dominate". Based on Sem's account, there appears to be no particular pattern or selection criteria for his victims. Sometimes he knew them and other times he did not. The attacks take place when Sem is under the influence of alcohol and unable to control his actions. As previously stated, Emily believes that violence against women was passed on to her brothers from their father. This violent behaviour was both learned and normalized within their family and community.
>
> Sem's family has been destroyed by "violence and family traumas". Emily explained that they all carry "shame, guilt and pains" from the traumas they experienced in their childhood.

[41] The author of the Gladue Report also noted that Mr. Obed expressed his desire to work on himself to address his trauma; that he knows that it is going to be hard but that he is prepared to make the effort to follow all correctional plans for programs that he is offered.

[42] The report concludes with the following summary of Gladue factors:

1. That Sem Obed is a man of Inuit descent.
2. That Sem Obed has demonstrated a willingness to address the underlying factors that contributed to the incident.
3. That there is strong support and culturally appropriate treatment available for Sem Obed, including counseling and cultural healing.
4. That Sem Obed has personally experienced the adverse impact of many factors continuing to plague Aboriginal communities since colonization, including:
    - Residential school,
    - Family deterioration,
    - Substance abuse personally and in the immediate family,
    - Violence in the family,
    - Physical and emotional abuse,
    - Sexual abuse,
    - Low income and unemployment due to lack of education,
    - Involvement with Family and Children's services,
    - Homelessness,
    - Poverty,
    - Overt and covert racism,
    - Loss of identity, culture and ancestral knowledge.

Evidence of Sarah Anala

[43] Ms. Anala has been employed with Correctional Service Canada for some 30 years after a distinguished career in nursing in various Labrador communities. She is an Inuit elder and liaison officer and has worked many years as part of a case management team delivering programs primarily in Dorchester penitentiary,

with a particular focus on Inuit and aboriginal offenders. She has been bestowed with a number of distinguished awards, including the Order of Canada and has an honorary Doctor of Laws from Memorial University.

[44] Ms. Anala presented as an exemplary witness of great wisdom in her field.

[45] She began her testimony by describing in general terms the CSC programs in place to address the very high needs for Inuit offenders that recognize their isolation from being so distanced from their family, community and their culture. She said that as an Inuit elder, she does healing work with an emphasis on addressing the holistic needs in order to send the offenders home as a law abiding citizen. She carries on this work on both an individual and group basis with offenders with the objective of changing offenders' behaviour.

[46] Ms. Anala has had occasion to work with Mr. Obed during two of his federal incarcerations in Dorchester penitentiary. The first incarceration was during the years 1994-1999 and the second between the years of 2012-2014.

[47] It so happens that Ms. Anala knew Mr. Obed's family and childhood history, dating back to her acquaintance with his grandparents. She said the Obed family went from a healthy family group environment to one of trauma, isolation and despair when his grandparents and their families were dislocated and dispossessed

from their home and ancestral lands by government authorities in the 1950's. That dislocation resulted in exposure to racism and poverty which she said has impacted intergenerational trauma.

[48] Ms. Anala described Mr. Obed as a smart person but that he never had a chance in life because of the poor home environment he grew up in where alcoholism, violence and sexual assaults were the norm. He was never given the opportunity to engage in higher education or to learn any trade skills as he grew up in poverty and isolation. All those factors lead to his early introduction to the criminal justice system.

[49] When Mr. Obed was first incarcerated in Dorchester in 1994, Ms. Anala said that he seemed to be engaged with her in the beginning. They had a number of one on one sessions and Mr. Obed became the leader of the Inuit group in Dorchester, the purpose of which was to address cultural needs and to provide mutual support. He also attended Inuit alcohol abuse gatherings while there.

[50] Ms. Anala went on to explain that Mr. Obed sought her help at different times but that his childhood trauma was so deeply ingrained that he feared opening the door or breaking down the walls he had built around him. She attributed that to a shame based existence because of how he grew up, how the community shunned

him and how he would be perceived and treated in society because of his criminal convictions. As she put it, the walls are very high, they stay up for a long time, and behind them is a dark hole. As his release date began to approach, he began to shy away from her and was worried about going back out into society having no support network, having to endure media exposure, and lacking the necessary skills to ease his integration into society.

[51] When asked if she felt he was ready in 1999 to be released, she replied that he did a little better at that time and had a better understanding of his risk factors. He had by then completed programs in Cognitive Skills, Anger and Emotion Management, Native Substance Abuse, Aboriginal programs on substance abuse and spirituality and the intensive Sex Offender Program.

[52] Some years later, Mr. Obed was again imprisoned in Dorchester penitentiary, having been convicted of an assault causing bodily harm and breach of a probation order. Ms. Anala said that at the beginning in 2012, she held a number of meetings with Mr. Obed but that over time, he became disengaged such that their one on one sessions became sporadic. She said that Mr. Obed was going farther and farther away from his culture and was isolating himself and not engaging with anyone. She said the more she asked him questions, the more he

withdrew, being tired of being asked the same things over and over in the institution.

[53] On June 25, 2014 Ms. Anala went to Dorchester to complete an elder review on Mr. Obed leading up to his release date. She wrote that he was respectful enough to make the effort to come to her office and while there, she encouraged him to further his education and take advantage of the job opportunities available at the Muskrat Falls hydro project. The more she did this in an effort to improve his self-esteem, the more impatient and confrontational in attitude he became. He said that he didn't want to be analyzed anymore and further indicated that he was not going to go to school or look for work in the community.

[54] Ms. Anala further wrote that Mr. Obed appeared to be still angry over the first meeting he had with his parole officer in Dorchester upon admission in 2012 when it was indicated to him that he would be detained throughout his jail term notwithstanding any case planning or programming. She wrote that from that time onward, Mr. Obed decided that he would not take part in any program or other endeavours to improve his thinking, attitude or changing to better his life.

[55] Ms. Anala concluded in her report that it seemed by his own decision and choice that he had sat "warehoused" during this period of incarceration. She

concluded her report with the opinion that Mr. Obed was being released "untreated and not in balance in body, mind, spirit and emotions in his circle of wellness by his choice and still in an angry state of thinking and attitude".

[56] Ms. Anala added in cross-examination her agreement that she thinks Mr. Obed might now benefit from enrolling in a sex offender program designed for Inuit offenders that has only become available since his earlier release in 2014. She agreed that this program might present an opportunity for change, although her involvement with Mr. Obed on behalf of CSC ended with his release in 2014.

Evidence Summary of Patricia Hofland

[57] Ms. Hofland has been a parole officer with CSC since 2007 and served as institutional parole officer at Dorchester penitentiary at the time of Mr. Obed's last incarceration. He was assigned to her case load in March of 2014 whereupon she was tasked to prepare the necessary reports preparatory to Mr. Obed's detention review before the parole board. His Warrant of Committal was set to expire in August of that year.

[58] Ms. Hofland confirmed in her evidence that Mr. Obed did not complete any programs while incarcerated between 2012 and 2014. She said he was offered it early on in his sentence but that he refused to participate and that the institution

could not force him to do so. Mr. Obed indicated to her that he didn’t want to start a program if he could not finish it before being released.

[59] Ms. Hofland testified that she met with Mr. Obed about 12 times on a one on one basis along with some case conferences, and tried to motivate him. When asked whether Mr. Obed ever expressed interest in enrolling in any future programming in the community after his release, she said he was vague about it. She went on to explain the efforts made to try to find links and supports for Mr. Obed in the community to which he was to be released (which was Halifax). After his release, she was to have no more involvement in his case.

[60] When writing her report to address Mr. Obed’s detention review and to make a recommendation to the parole board (under date of May 6, 2014), Ms. Hofland wrote that Mr. Obed was currently assessed with a low reintegration potential as well as low levels of accountability and motivation and that as such, he was deemed to not be engaged in meeting the objectives of his Correctional Plan. She noted that during the past year, Mr. Obed had refused to participate in correctional programming, which very negatively affected his case insomuch as he had not addressed any of his risk factors which contributed to his detention. She noted continuing concerns regarding Mr. Obed’s insight into his behavioural patterns and understanding of his risk factors and offence cycle, given the lack of

program participation during his sentence. She also noted that programming in the areas of substance abuse, sexual offending and emotions management had proven to be ineffective and unsuccessful in keeping Mr. Obed crime and violence-free.

[61] Ms. Hofland concluded her report with a recommendation that Mr. Obed's detention order be confirmed because there were reasonable grounds to continue to believe that he was likely to commit an offence causing serious harm or death to another person before the expiration of his sentence. He was accordingly released on the expiration of his Warrant of Committal in August of 2014.

Evidence Summary of Robin Gay

[62] The last Crown witness called was Robin Gay who has been employed with CSC for some 20 years and is currently a Community Parole Officer in Dartmouth. Her duties include the supervision of Dangerous Offenders, Long Term Offenders, and offenders who are on statutory release. She is involved with risk management and assisting with reintegration of offenders into the community.

[63] Ms. Gay was asked to explain the different practical ramifications in the risk management and reintegration of Dangerous Offenders given an indeterminate sentence versus Long Term Offenders. The main points of her evidence to be recounted are that Dangerous Offenders serving an indeterminate sentence will

only be granted conditional release if their risk is ultimately assessed to be manageable by the CSC and the National Parole Board. Such offenders can apply for parole (there is an automatic review after seven years and then every two years thereafter) but they must be able to prove that they are able to be safely managed in the community. In other words, they must earn their release through successful programming of a high intensity level, the demonstration of insight into their offences, and the development of coping mechanisms to control their behaviour under a safe release plan. Their risk level is re-evaluated by CSC throughout.

[64] By contrast, a dangerous offender with a determinate sentence followed by a long term supervision order will have a statutory release date at which time release will be granted regardless of the assessment of their risk management (unless their detention is justified on public safety grounds). Similarly, they are released into the community on an LTSO upon warrant expiry, regardless of the assessment of their level of risk management.

[65] A second practical distinction noted by this witness is that a dangerous offender with an indeterminate sentence, who has been released into the community, is effectively on parole. Accordingly, CSC can ask the Parole Board to revoke parole if the offender's risk level has been elevated, even if no special condition has been breached.

[66] By contrast, once a long term offender has completed serving his sentence, revocation is not an option even if the offender's risk level is considered to have become elevated. As Ms. Gay put it, offenders know that at the end of ten years, they are done without any further CSC involvement. She noted that CSC has more options available to it in risk management for the safety of the community when a Dangerous Offender has been given an indeterminate sentence as opposed to an LTSO.

Evidence of Dr. Neilson

[67] The evidence of greatest significance for purposes of this sentencing was provided by Dr. Grainne Neilson. She is a forensic psychiatrist and was qualified by the court (with consent of defence counsel) to give opinion evidence in the following area of expertise:

> Psychiatry, including but not limited to, the practice of forensic psychiatry, the diagnosis, assessment, and treatment of mental disorders, including the addictions and paraphilic disorders the diagnosis and classification of violent and sexually violent offenders, the identification of clinical patterns of violent and sexually violent behaviour, the assessment of risk for future violence, including sexually violent recidivism, the treatment and management of violent and sexually violent offenders, the ability to manage the risk of violent offenders in the community, and the nature and the nature and degree of psychological harm caused by violent and sexually violent offenders to their victims.

[68] Dr. Neilson provided to the court a 50 page comprehensive risk assessment report that she prepared for Mr. Obed, on which she expanded in over two days of

court testimony. The report itself is divided into five parts which are outlined as follows:

> Part I contains a review of Mr. Obed’s life history, encompassing family background and upbringing, adult adjustment, education, employment, mental health, substance use, relationship/sexual history, and medical history.
>
> Part II reviews Mr. Obed’s antisocial/violence history, institutional adjustment, community supervision, past treatment interventions.
>
> Part III contains the clinical presentation during the assessment, and the diagnostic findings.
>
> Part IV reviews the risk assessment instruments and their application to Mr. Obed's case.
>
> Part V reviews the report conclusions as they relate to clinical issues that may be of relevance in the current proceedings.

[69] Without labouring through the entire report, it would be more expeditious to reproduce Part V setting out the report conclusions. This section of the report does not lend itself to paraphrasing and although quite lengthy, it is therefore reproduced here in full.

[70] Part V – Report Conclusions

> Clinical considerations related to Mr. Obed and LTO/DO application:
>
> 1) What is the level of risk that Mr. Obed poses to the safety of the public?
>
> In arriving at a professional judgment concerning Mr. Obed’s risk of violent recidivism I have considered several risk assessment instruments that weigh both static and dynamic factors for the risk of future violence, and relevant case-specific factors. I note that all of these instruments have been deemed to be appropriate for use with Indigenous populations, but have not been validated specifically in Inuit populations. The actuarial risk assessment tools I have employed demonstrate at least moderate predictive accuracy. The structured professional judgement tool has allowed the consideration of some of the dynamic risk to help to identify treatment targets.

Where relevant, I have tried to incorporate cultural factors. Based on this comprehensive risk assessment, it is my opinion that Mr. Obed poses a **very high** risk of re-offending in a sexually violent manner and a **moderately high risk** of reoffending in a violent manner (that may or may not include sexual violence, although may nevertheless have a sexual motivation). With his criminal history it is easily seen that he represents a serious and alarming risk for sexual and general violence. In my opinion, based on his past history there is a substantial risk that future sexual violence will involve serious physical and psychological harm.

2) What clinical patterns of violence does Mr. Obed demonstrate?

There is an extensive body of law surrounding the issue of what constitutes a "pattern" in law. From a purely clinical perspective, patterns of violence are discussed in terms of the context, chronicity, diversity, and escalation:

<u>*Context*</u> refers to the aspects of the offender's life at the time of the offences (including things like relationship status, sexual functioning/outlets, employment and financial situation, residence, affective state, substances, stressors, coping style etc). This was outlined in D12 above (Sexual offending cycle). *To recap, Mr. Obed has lived a rather marginalised lifestyle throughout his life, living in boarding houses or on his own when he is in the community. His support system is minimal, and consists mostly of similarly marginalized individuals. He has maintained intermittent employment in the community, and financial stress is ever-present. He is prone to negative emotional states (despair, hopelessness, loneliness, boredom, chronic anger etc), and uses substances (mostly alcohol and cannabis) to cope with these feelings. He has difficulty forming intimate relationships and those he does form are utilitarian: he views women as objects to satisfy his emotional and sexual needs without consideration of their needs or feelings. Accompanying this is his need for power, control, and dominance. He has a high sex drive and engages in sexual fantasy that involves coercion and force, likely reflective of underlying deviant sexual preference. It appears that the motivator for his offences may be the relief of poorly managed emotional states, feeling frustrated sexually and personally, and feeling that any consequences to himself no longer matter. He does not consider consequences to his victims. The use of alcohol disinhibits him and sexual predation provides him with a sense of purpose, power, and agency that is otherwise lacking in his life. He mostly chooses his victims in an indiscriminate way, but ensures that there is some vulnerability. This means that there is a very large target victim population to which he has access. In every sexual offence there has been violence employed (plus/minus the use of weapons) and callous disregard for the victim.*

<u>*Chronicity*</u> refers to the onset, frequency, and persistence of violent or sexually violent behaviour perpetrated by an offender over the lifespan. The earlier these behaviours begin, and the more extensive an individual's history (i.e. the greater the number of prior arrests and convictions) the greater their potential for future violent recidivism.

Mr. Obed's youth criminal record starts at age 13 and cites numerous convictions including aggravated assault, assault, sexual assault, escape lawful custody, break and enter, theft and property damage.

Mr. Obed's adult criminal record starts at age 19 and similarly reveals charges and convictions for a variety of violent, sexually violent, and non-violent offences. In addition to the index offences, other violent offences include: assault, and assault with a weapon (1990, age 19); sexual assault (1993, age 22); assault, and aggravated assault (1993 age 22); attempted murder (1993, age 23); sexual assault (2006, age 35); assault causing bodily harm (2012, age 41). He has been charged, but not convicted, for other sexually violent acts.

Non-violent offences include thefts, trespass by night, mischief, break and enter, break and enter with intent, and possession of a weapon. His criminal record also reveals supervision failures, including escape lawful custody, and numerous failures to comply.

<u>*Diversity*</u> refers to multiple types of violence perpetrated by a person typically defined according to victim characteristics, and nature of the violence (i.e. multiple types of sexual offenses; multiple types of force/coercion used; multiple victim variables in terms of age/sex/acquaintanceship). Offenders with diverse offense histories are at increased risk for re-offending, due to the wide choice of victim variables and circumstances available to them. Diversity is a risk marker that likely reflects the presence of sexual deviation, as well as attitudes that support of condone sexual violence. It is probably associated with the likelihood, frequency and imminence of future sexual violence; it may also prevent forecasting the specific nature and severity of any future sexual violence.

Mr. Obed's violent behavior takes varying forms:

- *physical violence toward males who he perceives as a threat;*
- *physical violence towards females (although it is likely that most of these were sexual assault attempts gone wrong; one may have been a robbery gone wrong). Victims of physical violence have included the elderly.*
- *sexual violence towards (predominantly) adult women who are strangers (or acquaintances at best) and who are vulnerable in some way (eg. being alone at night or alone in some other circumstance, being intoxicated, being unconscious/asleep, being physically diminutive). There is some evidence that he may have also had a female child victim and an adult male victim, although no convictions were entered; here too victim vulnerability was relevant.*

The circumstances of Mr. Obed's violence and sexual violence has varied. Some appears to have been instrumental violence (calculated/premeditated/means to an end) whereas some instances appear more impulsive/reactive to his life circumstances. Some sexual violence has involved the use of weapons to subdue; other instances have involved gratuitous violence such as punching or hitting and use of coercion/threats. Some sexual violence has been very intrusive, prolonged, and severe, whereas others were briefer. All incidents of sexual violence have included physical harm to the victims, quite apart from the sexual violence. Many of Mr. Obed's sexual offences seem to have occurred while under the influence of alcohol. His problems coping with stress and negative emotions including rejection/despair/hopelessness appear to have played a contributory role in his offences. Other motivations of Mr. Obed's sexual offending are difficult to discern (due to his general vagueness and statements that the offences "just happened"); however, there appears to be suggestions of paraphilic/sadistic elements (eg. some of his sexually violent offenses have involved stealing/using female

undergarments and/or gratuitous violence, power/control/domination; he acknowledged this as a source of sexual arousal).

Escalation refers to a pattern in which the acts of sexual violence perpetrated by the person become progressively more frequent, serious, or diverse over time. The trajectory of violence over time is thought to be an important consideration in terms of the nature and severity of future violence. Once offenders have demonstrated ability and willingness to commit a certain level of violence it is reasonable to assume that they may be willing to commit that level of violence again.

Mr. Obed's violent and sexually violent history is spread out over many years. His last two offenses have occurred within 2 and 4 years of community release. Taking into account Mr. Obed's periods at liberty to re-offend while in the community, clinically it appears that the frequency of his acts of violence is abating only to a modest degree. It is worth noting that during times in the community in which there has been a (relative) reduction in offending, this has largely related to Mr. Obed's perception that the notoriety of his case and the supervision of the local police rendered him unable to 'get away with' using alcohol, identified as a precipitant to offending.

In the scheme of Mr. Obed's sexually violent offending, the predicate offence was at least as intrusive and violent as the ones that preceded it, and was certainly more protracted. Therefore, while no escalation in the frequency of Mr. Obed's violence is seen, certainly the severity does not appear to be abating. This leads to the conclusion that his past pattern of sexually violent behaviour will likely continue to predict his future one.

3) What risk management strategies are required to manage Mr. Obed's risk?

From a clinical perspective, when examining risk management strategies will be required to manage an offender's risk in the community, consideration must be given to the person's treatment, monitoring and supervision needs (i.e. the 17 dynamic risk factors that have been discussed above in the VRS-SO risk assessment). The underlying premise is not difficult to deduce: the more areas that need to be actively managed, the more challenging the risk will be to manage in the community.

a) Treatment:

Community management should only be attempted after Mr. Obed has successfully demonstrated (over a sustained period of time) that he is willing to fully participate in, and demonstrate benefit from, relevant institutional treatments.

Mr. Obed will need to:

- participate in (and successfully complete) programming aimed at addressing his dynamic risk factors, including, but not limited to, participation in high intensity sex offender programing, and violent offender programming.
- undergo an assessment of his need for anti-arousal medications
- undergo an assessment of his need for medications aimed at curbing his alcohol use
- demonstrate his commitment to abstinence from substances;

- demonstrate consistent honesty, full disclosure and cooperation with the correctional supervision system.

It is worth noting that Mr. Obed has not had the benefit of the full range of Correctional Services of Canada programs and services that are designed to rehabilitate and re-integrate high risk offenders into the community (eg violent offender program). In my opinion, some programs that he has previously taken should be repeated (eg high intensity sexual offender program; substance abuse programs) as his gains were not robust, and there has been significant passage of time since they were last taken. The prescription of medications to assist with risk control (eg antiarousal medications) needs to take into consideration any contraindications and requires informed consent. Programs aimed at reducing his antisocial attitudes and behaviours and enhancing his moral and emotional reasoning (eg Cognitive Skills) may be beneficial. Individual counseling, and attention to his psychological issues (eg low self-esteem, cultural identity, proneness to negative emotional states, antisocial attitudes and values) will also be important. Treatments should aim to improve his life skills and social skills to assist him with coping with high risk situations. Vocational training may help to better structure time so that boredom is better managed. Very significant and wholesale changes need to be made and sustained by Mr. Obed in order for him to successfully manage his future risk.

The benefits of any of these treatment interventions can rapidly dissipate without ongoing maintenance and reinforcement. Thus attendance in maintenance programs over a very lengthy period is critical. In my opinion, a very intensive level of treatment effort and intervention will be required over the long term to prevent further sexual violence.

Motivation is key to sustaining effort through treatment programs and the ongoing rehabilitative process. Mr. Obed's past motivation for treatment was mostly self-serving: he was only willing to do programs if there was a direct benefit to him (eg to achieve parole). To some degree he continues to hold this transactional motivation and was reluctant to commit to any extraordinary measures to control his risk (even when he is aware of his legal jeopardy), but in general terms suggested that he was willing to participate in treatment. Mr. Obed's previous treatment refusals make it difficult to opine regarding the genuineness of his current motivation. He recognizes that he has various problem areas and says that he wants to overcome them, but the relevant behavioural changes have not yet been made. Ideally, the motivation for change in an offender who is embarking on rehabilitative programs should be heartfelt and internally driven.

In addition to motivation, other important predictors of treatment success include responsivity to treatment interventions. This encompasses factors such as the person's ability to engage with therapists, adequate cognitive capacity, and emotional stability. Additionally, unique cultural factors need to be considered when providing treatment to indigenous sexual offenders, such as lack of trust in the dominant culture, emotional numbing, and the high prevalence of depression. Where possible and appropriate, relevant cultural values, traditional

beliefs or practises should be integrated into treatment. It is notable that Mr. Obed refused to meet with the indigenous elder during his last federal incarceration.

b) Supervision and monitoring

Very close supervision and monitoring will be required over a prolonged period of time to ensure that the 17 dynamic risk variables are appropriately managed. This would need to include intensive strategies such as: regular urine drug screens and breathalyzers to ensure he has not relapsed into substance use; the use of electronic monitoring; the provision of supported housing; imposition of curfews; regular and 'spot' check-ins with parole supervisors and treatment providers. Mr. Obed's monitoring and supervision needs will be substantial: weekly meetings and phone check-ins will not suffice; even daily check-ins may be insufficient (eg. Mr. Obed may be seen by a correctional supervisor in the afternoon, then relapse into alcohol use that evening, and proceed to re-offend, all whilst under 'supervision').

The specific content of a detailed risk management plan is the purview of the Correctional Services of Canada, and will depend on his progress during the intervening time, professional resources available to him and to his parole supervisors in the community at the time, housing, circles of support, etc. Mr. Obed's community re-integration needs will require considerable coordination of service providers and service agencies (i.e. mental health/addictions/social services/cultural advisors/housing supports). The degree to which Correctional Service of Canada could provide the necessary supervision and monitoring upon any eventual release is unknown to me.

4) Is there a reasonable expectation that Mr. Obed's risk can be managed in the community?

Obviously predicting whether an individual's risk can be expected to managed at some future point in the community depends on his response to treatments that are provided to Mr. Obed in the community and the ability of CSC staff to work with him to devise a safe, suitable, and realistic plan for release. The entire relapse prevention approach to the management of high-risk behaviours is predicated on the avoidance or appropriate management of high risk situations.

In general terms, sexual violence risk is considered to be well-managed based on a consideration of a number of factors including:

- more than 10 years have elapsed since last offence when the offender has had access to the community and there has been no evidence/suggestion of inappropriate sexual behaviour during that time
- there is no/minimal access and opportunity to anticipated victim risk groups
- there is no evidence of destabilizers (eg use of substances, negative affect, poor coping, antisocial peers etc)
- the offender has addressed his dynamic risk factors
- the offender has personally meaningful reasons not to offend (i.e. is motivated maximally internally or externally)
- protective factors are in place (appropriate supervision/monitoring; healthy sex etc.).

> Eventual control of any offender in the community is predicated on their willingness to be *fully* involved in, consistently cooperative with, and honestly engaged in, their Correctional Plan, both within the institution and post-release. This includes participating in any recommended treatment and rehabilitative efforts and engaging in an honest reporting relationship with their community correctional supervisors. Mr. Obed has a pattern of failing to abide by community supervision (or superficially abiding by conditions) that will likely continue to be problematic in the future and will doubtless cause recurrent problems with his Correctional Plan.
>
> In my opinion the likelihood of an eventual safe release into the community is very low, absent long term external controls, and strict adherence to a Correctional Plan that comprehensively addresses the 17 dynamic risk factors that are noted above. Mr. Obed is an individual who is a high risk/high needs offender who would require an intensive level of supervision and support in the community to adequately manage his risk over the long term.

[71] There are a number of insightful passages from Dr. Neilson's report that amplify the foregoing section on her conclusions and should be noted as well. The first is her assessment of the degree to which Mr. Obed demonstrates characteristics of a criminal personality. Her observations in this regard are set out at page 38 of her report as follows:

> Over the years, Mr. Obed has displayed a fair degree of comfort with the criminal lifestyle and has demonstrated a pattern of long-term antisocial behavior and involvement with a variety of criminal activities. He has numerous convictions for general criminal conduct starting at a young age and continuing into adulthood, indicative of his antisocial lifestyle orientation. His personality constellation is indicative of a person who habitually fails to conform his behavior to societal norms, is deceitful, short on empathy and remorse, is impulsive, and fails to profit from experience. While Mr. Obed does not have psychopathy, he does have many features associated with psychopathy. Elevated scores on factor 2 of the PCL-R (the lifestyle and antisocial components) as noted with Mr. Obed, are robust predictors of violent recidivism. Individuals with deeply ingrained antisocial attitudes and values, and who have antisocial associates, may have a difficult time changing who they are, how they think about themselves, who they associate with, and how they conduct themselves when making decisions about the correct course of action.

[72] In fairness, Dr. Neilson notes as well that treatment programs to address features of criminal personality are available in federal correction facilities.

[73] Later on in her report, Dr. Neilson recounts her observations regarding Mr. Obed's attitudes towards women. She recited the following comments made to her by Mr. Obed:

> Regarding Mr. Obed's attitudes towards women, (gleaned over the course of several interviews), he had very little positive to say: *"I have a hate-on for women…I seen lots of violence towards women growing up. Maybe it's genetic…I want to hurt and control them…It was something I learned over the years from my father. The way I grew up it was normal to be violent towards women….I consider them to be sexual objects….They are someone to control, do as you're told. I'm the one in charge…. I want to control that person. Do as you're told or else I'm gonna hurt you".* Mr. Obed opined that his deeply held beliefs would require that he be "*re-programmed to change my attitudes towards women"* through counselling or group sessions, adding that he would only engage in such *"if it was part of my conditions".*

[74] In another passage of her report, Dr. Neilson states that Mr. Obed holds a very low opinion of women and openly admitted hostility and disrespect towards them. He is quoted as having said that he "repeated what I saw growing up; offer them booze. Get them intoxicated. If they agree to have sex, good. If not, then force yourself on them."

[75] One historical detail from Mr. Obed's youth that Dr. Neilson found particularly disturbing was the reference in CSC files that his father forced him to go out in the community and locate victims for him and lure them back to the

home. Those files record that Mr. Obed stated he then watched as his father sexually and physically assaulted the women. Mr. Obed neither endorsed nor participated in this activity but opined that this exposure has contributed to his negative views of women. He went on to comment to Dr. Neilson that "The way I feel about them – some times I just have a hatred towards them. I see them as sex objects – just there for the sex. That's it. I guess it comes from my growing up. I saw women drunk, passed out, being beaten up by their husbands." Dr. Neilson then went on to say that these attitudes and behaviours were normalized for Mr. Obed.

[76] In another section of her report, Dr. Neilson considers whether Mr. Obed's sexual offending tends to be precipitated by similar circumstances, thus resulting in similar outcomes. She wrote as follows:

> There is a fairly clear sexual offending cycle that appears to be linked to identifiable personal factors (eg. negative emotional states such as boredom, anger, hopelessness/not caring), situational factors (eg. substance use), and interpersonal factors (eg. rejection, jealousy, anger towards women) that act as precipitants or triggers to Mr. Obed's sexual offending. Underlying this is his chronic impulsivity, sexual deviance, and negative attitude toward women including beliefs in women as sexual objects.

[77] In a related passage, Dr. Neilson expressed the following opinion:

> In my opinion, there is a clear and consistent relationship between Mr. Obed's sexual offending and his inability to manage his emotions. While Mr. Obed gives the impression

> that he is laid-back and laissez-faire, he nevertheless presents as an emotionally troubled, isolated, lonely individual who is dissatisfied with his life circumstances, but who cannot see his way clear to changing them. Negative emotional states such as feelings of jealousy, despair, loneliness, humiliation, rejection, inadequacy, or anger seem to build up and are clearly associated with his sexual offending. These emotions are typically "triggered" by the use of alcohol which disinhibits the tenuous emotional control. He responds by thinking *"to hell with you and everybody else"* and adopting a *"fuck it all attitude*" (his words) and then feels as if he has *"nothing to lose*" and "*I don't care who I hurt, including myself"*.

[78] Elsewhere in her report, Dr. Neilson expresses the opinion that Mr. Obed does not have an accurate perception of the link between his sexual offending behaviours and the contributing factors, nor an understanding about what needs to be done for relapse prevention. She added that this deficiency needs to be addressed by high intensity sexual offender programming to prevent the cycle from reoccurring. She recounted that Mr. Obed perceives that his only risk factor is alcohol and that he does not appreciate the range of other factors contributing to his behaviour. She testified that it would be a mistake to think that just controlling the use of alcohol would be sufficient. She said there were many other aspects to be brought under control, notably his attitude towards women. She also noted that Mr. Obed in his interviews did not at any point say what his motivation was in committing these sexual offences but rather said that it was something that just happened, impulsively.

[79] There are, however, a number of predictive links to violent and sexual recidivism identified by Dr. Neilson in her report as being applicable to Mr. Obed, namely:

a. Anti-social personality disorder;

b. Substance abuse (especially alcohol);

c. An unstable and chaotic family upbringing with no parental guidance;

d. Relationship problems, deviate sexual arousal and sexual compulsivity;

e. Having no support network and no specific plan for reintegration in the community; and

f. Past community supervision failures and resistance to treatment are also associated with increased risk for future violence.

[80] In the latter regard, Mr. Obed reported to Dr. Neilson that he has never had a successful period of community supervision. He readily admitted that he "goes off track" when he is not closely supervised in the community, acknowledging that "when I have no supervision, I take advantage of it". He further said that if his supervisors are not checking on me, "I'll go and see what I can get away with". Mr. Obed holds the belief that he requires more intensive and continuous supervision for a successful community release although he acknowledged that he has not always followed the conditions imposed.

[81] Mr. Obed expressed to Dr. Neilson a willingness to abide by supervision but opined that it would need to be the right kind of supervision, without making any

commitment to personal responsibility for making the supervision successful. Dr. Neilson opined that where Mr. Obed's past record of supervision is poor, it likely predicts the same in the future.

[82] During the course of cross-examination, defence counsel respectfully challenged the basis for some of Dr. Neilson's opinions. She acknowledged that although this was the ninth occasion on which she had prepared a risk assessment report for a dangerous offender hearing, it was the first time involving an Indigenous offender. Dr. Neilson candidly acknowledged that biases can still exist when using clinical judgment to conduct these assessments, particularly when assessing those from other cultural backgrounds. Nevertheless, she described efforts she had made to try to limit any such cultural biases through various educational means for purposes of this report.

[83] Dr. Neilson was also challenged on the reliability of the various actuarial test results which she obtained from utilizing a number of actuarial violence risk assessment instruments. Generally speaking, all of these test results indicated that Mr. Obed is an offender in the high risk/high treatment needs category who has many causal risk factors that need to be addressed prior to any community release.

[84] Dr. Neilson readily recognized that offenders from culturally diverse populations each have their own cultural identity, traditions and histories that should be considered in a risk assessment. She acknowledged that these may not be adequately reflected in actuarial risk assessment tools. Hence, Dr. Neilson allowed that the test results may only have a moderate predictive accuracy for Indigenous and Inuit offenders.

[85] Nonetheless, Dr. Neilson did comment in her report that the current risk assessment takes into account Mr. Obed's psychological make up, his antecedents, and his future prospects in light of the current science of risk assessment in Indigenous offenders. She said that where relevant, this assessment has taken into consideration the cultural factors noted in the Gladue Report.

[86] Defence counsel also challenged Dr. Neilson's testimony that Mr. Obed lacks motivation for taking treatment programs and that is why he refused to take such treatment programs in the past. Defence counsel pointed out the references that in his interviews with both Dr. Neilson and the author of the Gladue report, he had expressed a willingness to engage in further treatment programs while incarcerated. Reliance was also made on the evidence that there is new programming now available in federal institutions that did not exist when Mr. Obed was last imprisoned, notably, a specific Inuit sex offender program. Dr.

Neilson pointed out, however, that Mr. Obed has not demonstrated having made any meaningful gains from taking institutional programming in the past.

[87] Dr. Neilson was also questioned about her comments of Mr. Obed's poor supervision record when released into the community on previous occasions. She acknowledged in her testimony that it is important to note that non-compliance with supervision for Indigenous persons may reflect the lack of availability of community support services and culturally appropriate programs, rather than a negative attitude toward intervention. In addition, she added, negative experiences such as racism may negatively impact cooperation with authorities.

[88] Overall, I found Dr. Neilson to be a credible and sound expert witness in her field. She presented her evidence in a thoughtful, straightforward and balanced manner and formed her opinions based on careful research and analysis. She candidly made concessions about the limitations of her report throughout but remained steadfast in her conclusions which were not shaken on cross-examination. She did not waiver in her opinion that Mr. Obed poses a very high risk of re-offending in a sexually violent manner and a moderately high risk of re-offending in a violent manner that may or may not include sexual violence. Dr. Neilson holds the opinion, based on past history, that there is a substantial risk that future sexual violence will involve serious physical and psychological harm.

These opinions have not been countermanded in the absence of any defence expert report.

ANALYSIS AND FINDINGS

[89] It should be recognized at the outset that while the sentencing principles set out in ss. 718-718.2 of the Criminal Code must be taken into consideration in a dangerous offender hearing, as in any other sentencing proceeding, the overriding objective is to ensure public safety. As stated in **Boutilier** (at para.106) "The predominate purpose of a dangerous offender scheme is public protection, and this must be respected in the sentencing judge's choice under s.753(4)".

[90] As outlined earlier, a dangerous offender hearing is a two stage proceeding, consisting of a designation stage followed by a penalty stage. In the first stage, the Crown bears the onus to establish that the offender meets the statutory criteria to be declared a dangerous offender. If that threshold is met, the focus then shifts to the manageability of the offender in the community and the determination of the appropriate sentence under s.753(4).

<u>Designation Stage</u>

[91] There are four statutory routes by which the Crown can achieve a dangerous offender designation. These four routes are set out in s.753(1) earlier recited. To paraphrase, the court must be satisfied that the Crown has established any one of the following:

a. A pattern of repetitive <u>or</u> aggressive behaviour such that the offender constitutes a threat to the safety of the public, OR

b. That the inability of the offender to control his sexual impulses will likely cause pain or injury to others through failure in the future to control such sexual impulses.

[92] The Crown maintains that Mr. Obed meets all four of these statutory pathways to a dangerous offender designation. The defence position is that in spite of a lengthy record for serious criminal offences, it is not conceded that Mr. Obed meets any of these statutory criteria but at the same time, the defence does not strenuously argue this point.

[93] I do not consider it necessary in this decision to engage in a lengthy dissertation on this first phase of the proceeding because it is abundantly clear, based on the evidence reviewed earlier, that Mr. Obed should be declared a dangerous offender under all four pathways. Nevertheless, I will now outline the

requirements to be met under each of these pathways which I am satisfied the Crown has succeeded in proving.

[94] I begin with the criteria set out in s.753(1)(b) which is perhaps the most direct pathway on the facts of this case. Here, the court may declare an offender to be dangerous where it is satisfied that:

a. The offender has been convicted of a serious personal injury offence (of which aggravated sexual assault is one);

b. The offender by his conduct has shown a failure to control his sexual impulses;

c. There is a present likelihood that the offender will continue to fail to control his sexual impulses in future; and

d. If the offender does so fail, he is likely to cause injury, pain or other evil to other persons through such failure to control his sexual impulses.

[95] The **Boutilier** case makes it clear that the treatability of the offender must be considered in both stages of a dangerous offender hearing, in tandem with intractability. At the designation stage, treatability informs the decision of the threat posed by an offender while intractability relates to whether the conduct can be treated. By comparison, at the penalty stage, these considerations help determine the appropriate sentence to manage this threat. It should be noted that the Supreme Court in **Boutilier** defined intractable conduct as behaviour that an offender is "unable to surmount".

[96] I also here make reference to the following passage on this topic from **R. v. Shea**, 2017 NSCA 43 (at para. 161), which reads as follows:

> In *R. v. Bragg*, 2015 BCCA 498, the relevant considerations for sentencing a dangerous offender are set out:
>
>> [55] The judge referred (at para. 154) to the three elements in *R. v. McCallum*, [2005] O.J. No. 1178 at para. 47 (and adopted in *R. v. Taylor*, 2012 ONSC 1025 at para. 356), that must be present to achieve the goal of protecting the public regarding the reduction of risk to an acceptable level:
>>
>>> (1) there must be evidence of treatability that is more than an expression of hope;
>>>
>>> (2) the evidence must indicate that the offender can be treated within a definite period of time, and
>>>
>>> (3) the evidence of treatability must be specific to that offender.

[97] All of these considerations are discussed at length in the report of Dr. Neilson (see, *inter alia*, the passage on treatment quoted at pages 33-34 of this decision). Dr. Neilson's observations and opinions, based on Mr. Obed's past history, are not encouraging that Mr. Obed's eventual risk to the community can be adequately managed simply by the availability of improved rehabilitation treatment programs in prison. He has demonstrated a lack of motivation to take these programs in the past and where he has taken these programs, he has not gained substantially from them.

[98] I recognize that Mr. Obed has stated to Dr. Neilson and Robin Thompson that he is prepared to make an effort to engage in correctional treatment plans but in the context of the evidence as a whole, that does not rise above the level of an expression of hope and mere hope is not enough. The mere possibility that an offender may benefit from future treatment is not sufficient on which to base a finding that he is likely to be manageable upon release in the community. What is lacking here is any evidence upon which the court can be assured that Mr. Obed is truly motivated and committed to internally make the deep down personal changes needed for his own good that would lead to a safe release plan.

[99] Bearing the foregoing in mind in revisiting the requirements under s.753.(1)(b), I have no hesitation in finding that Mr. Obed, by his past conduct, has shown a failure to control his sexual impulses and that if he so fails in the future (of which there is a likelihood), he is likely to cause injury, pain or other evil to other persons as a result of such failures. On this foremost statutory criteria, I find that Mr. Obed should be declared a dangerous offender.

[100] I will now briefly touch upon the other three pathways to the designation of a dangerous offender under s.753(1)(a).

[101] The first of these, under subparagraph (i), requires a pattern of repetitive behaviour by the offender showing a failure to restrain his behaviour and a likelihood of causing death or injury, or inflicting severe psychological damage on other persons through a failure in the future to restrain his behaviour. The predicate offence must form part of that pattern.

[102] Of all Mr. Obed's various criminal convictions (for which he has spent approximately 20 years in prison), the following are relied upon by the Crown as the most indicative of a pattern of repetitive behaviour:

- March 16, 1985, at the age of 14 he broke into the home of a 45-year old woman in his hometown of Hopedale, NL. He used a knife to subdue her and had forced sexual intercourse with her.

- June 6, 1987, at the age of 16 he broke into the home of a 20-year old woman in Hopedale, NL. He used a skate blade and power nozzle of a vacuum cleaner to brutally beat her.

- July 1, 1988, at the age 17 he broke into a number of homes, including one where he entered the bedroom of a sleeping 13-year old girl with a stolen garden rake. He sat on the bed, stroked her hair, kissed her. When she woke up, he asked her if she'd like to have sex with him. When she refused, he left.

- Nov. 1, 1990, at the age of 19 he broke into the home of a 70-year old woman who was asleep with her husband. He came into their bedroom and attacked her with a knife, cutting both of her hands. Her husband awoke, Mr. Obed assaulted him and fled the house.

- October 9, 1993, at the age of 22 Mr. Obed sexually assaulted his sister, Harriet Obed.

- Dec. 23, 1933, at the age 23 Mr. Obed broke into the home of a woman he knew from a community college computer program. He hid in the closet with socks on his hands and a butcher's knife waiting for her to get home. When she returned home with a

friend, Mr. Obed attacked both of them with the knife. He was chased from the house and when found by police he had two pairs of her stolen underwear on him.

- September 10, 2006, at the age 35 Mr. Obed attacked an unsuspecting woman from behind as she was walking down the street. He threw her to the ground and violently sexually assaulted her, all the while asking her if she was having fun. On the same evening he attempted to break into the home of another woman.

- July 5, 2007, at the age of 36 Mr. Obed was arrested for looking into the window and kicking the back door of a woman who was home alone.

- August 16, 2021, at the age 41 Mr. Obed attacked the female bartender at the Sand bar lounge in Happy Valley-Goose Bay, NFLD. Without warning or provocation, he punched her in the face, knocked her to the ground, he bit her, grabbed her by the hair and hit her on the head again and again.

- June 1, 2018, (predicate offence), at the age of 47 Mr. Obed broke into the home of the victim and violently sexually assaulted her for a prolonged period of time.

[103] The pattern of repetitive behaviour illustrated by these convictions (which include four sexual assaults) is Mr. Obed's propensity to attack women who are in some vulnerable setting for his own gratification. He has demonstrated a failure to restrain his behaviour in the past all too often. Given that past behaviour usually reflects the likelihood of future behaviour, and taking into account Dr. Neilson's evidence in this regard, I am further satisfied that this pattern of repetitive behaviour shows a likelihood of his causing harm to other persons through a failure in the future to restrain his behaviour. In the result, Mr. Obed should be declared a dangerous offender under this set of criteria as well.

[104] The second pathway to a dangerous offender finding, under subparagraph (ii), requires a pattern of persistent and aggressive behaviour with a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to others.

[105] Once again, Mr. Obed's many past convictions, and their underlying facts, demonstrate a pattern of persistent and aggressive behaviour on his part. It is also well documented in Dr. Neilson's report that Mr. Obed shows indifference to the consequences of his criminal behaviour inflicted upon his victims. The evidence supporting this conclusion is set out at length earlier in this decision. Based on that evidence, Mr. Obed should likewise be declared a dangerous offender under this set of statutory criteria.

[106] The remaining pathway to the finding of a dangerous offender designation, under subparagraph (iii), requires behaviour associated with the offence that is of such a brutal nature as to compel the conclusion that the offender is unlikely to be inhibited by normal standards of behavioural restraint in the future. The phrase "brutal nature" was considered by the Ontario Court of Appeal in **R. v. Langevin** (1984) 11 CCC (3d) 336 (Ont CA) as being "conduct which is coarse, savage and cruel and which is capable of inflicting severe psychological damage on the victim …".

[107] As described earlier, the predicate offence in this case was one of horrific depravity with the violation, injury and degradation inflicted upon the victim. Crown counsel has informed the court that she has chosen not to file a Victim Impact Statement because she is still much affected by it and doesn't want to relive it. Dr. Neilson's testimony was apt when she said "I don't think you need to be a psychiatrist or any specific specialist to realize that the types of harms that Mr. Obed has made for his victims has been pretty substantial; significant physical harm and also very substantial psychological harm".

[108] Although it appears from the case law that this pathway is not often invoked by the Crown, I am satisfied that the Crown has here established this criteria necessary for a dangerous offender designation as well. The predicate offence was incontrovertably of a brutal nature and there is ample evidence provided by Dr. Neilson that Mr. Obed, judging from his past conduct, has shown little conformity to normal societal standards of behavioural restraint, which is likely to carry over into the future.

[109] In conclusion on this first stage of designation, I have no hesitation in declaring Mr. Obed to be a dangerous offender under all four of the statutory criteria for that designation set out in ss. 753(1)(a) and (b).

The Penalty Stage

[110] As stated earlier, once the Crown has proven that the offender should be designated a dangerous offender under any of the four criteria set out s.753(1), the focus shifts to the eventual manageability of the offender in the community and the determination of either an indeterminate sentence or a determinate sentence with or without an LTSO (those being the sentencing options set out in s.753(4).

[111] Pursuant to section 753(4.1), the court shall impose an indeterminate sentence unless it is satisfied that there is a reasonable expectation that the risk posed by the offender can be managed in the community by a lesser measure that adequately protects the public.

[112] In this case, the Crown seeks the imposition of an indeterminate sentence as the only reasonable outcome on the evidence presented. Defence counsel, on the other hand, advocates for a determinate sentence in the range of 15 to 20 years (less credit for remand time), followed by a LTSO for an additional 10 year period. It is argued that a determinate sentence of that length allows ample time for Mr. Obed to undergo a series of high intensity treatment programs while incarcerated which, coupled with the imposition of a LTSO with strict conditions, presents a reasonable expectation that any future risk posed by Mr. Obed can adequately be managed in the community.

[113] Defence counsel further points out that under his proposed sentencing, Mr. Obed would remain in jail until age 60 or more, and under LTSO supervision until age 70 plus. He submits that age thereby becomes a factor such that there is more of a reasonable expectation that his future risk can be adequately managed upon his release.

[114] Indeed, these conflicting positions frame the main issue to be decided by the court in the sentencing of Mr. Obed.

[115] The essential question to be determined here is whether the sentencing sanctions available through the LTSO/determinate sentence provisions are sufficient to manage the threat posed by the offender to an acceptable level in the future. That is to say, can the court be satisfied that there is a reasonable expectation of eventual control of the risk posed by the offender to the community (as reiterated in **R. v. Bragg**, 2015 BCCA 498 at para. 28). It should be noted that the latter case also affirms (at para. 27) that under s.753(4.1.) the Crown bears no burden in the assessment of future manageability.

[116] Also of note is the case of **R. v. Racher**, 2011 BCSC 1313 in which the phrase "reasonable expectation" was judicially interpreted. The sentencing judge in that case adopted an earlier interpretation by the same court in **R. v. Walsh**, which reads as follows (at para. 47):

> What I draw from the above authorities as to the meaning of the phrase "reasonable expectation" that a lesser measure will adequately protect the public in s.753(4.1) is that it amounts to "a confident belief for good and sufficient reasons to be derived from the quality and cogency of the evidence heard on the application.

[117] Notably, the **Racher** decision has been cited with approval by three appellate courts, namely, in **R. v. S.(D.J.)**, 2015 BCCA 111, **R. v. Osbourne**, 2014 MBCA 73 and **R. v. Bunn**, 2014 SKCA 112.

[118] The recent decision of the Ontario Court of Appeal in **R. v. K.P.**, [2020] O.J. No. 3600 bears some similarity to the present case where the only issue to be decided was whether there was a reasonable expectation that the appellant's risk could be controlled in the community under a long-term supervision order such that a determinate sentence would adequately protect the public. The court there restated that in order to determine whether a lesser measure than an indeterminate sentence will adequately protect the public, there must be evidence before the court that the dangerous offender can be safely released into the community. The court then went on to say (at paras. 12-14) as follows:

> Section 753(4.1) requires the sentencing judge to engage in a thorough examination of all the evidence presented during the hearing to determine the fittest sentence: *Boutilier*, at para. 76. The sentencing judge must consider whether there is a "reasonable expectation" that a lesser measure - a conventional fixed-term sentence or a fixed-term sentence of at least two years followed by a long-term supervision order - will adequately protect the public against the risk that the offender will commit murder or further serious personal injury offences: *Boutilier*, at para. 77. The sentencing judge must exhaust those lesser measures before imposing an indeterminate sentence. The majority further explained that indeterminate sentences should be limited to "habitual criminals who pose a tremendous risk to public safety": *Boutilier*, at para. 77.
>
> When determining the appropriate sentence to manage the risk to public safety, the sentencing judge may consider treatability: *Boutilier*, at para. 45. In assessing the manageability and treatability of the offender's behaviour, the sentencing judge may consider evidence, such as: treatment avoidance, failure to respond to treatment, breaches of court orders, lack of motivation, continued involvement in high-risk conduct, serious personality disorder, and elevated likelihood of violent recidivism …
>
> Where the management of risk requires more tools than are available under the parole authorities, an indeterminate sentence is reasonable. Risk management evidence must demonstrate a prospect of effective supervision, within the means and capacity of the parole authorities …

[119] The trial judge in **R. v. K.P.** found that the accused, who had an underlying personality disorder, had choked and then stabbed his domestic partner and convicted him of attempted murder and related offences. In the sentencing of the accused, the judge concluded, after a full review of the evidence, that there was no reasonable possibility of eventual control of his risk in the community, finding that the accused could not be adequately supervised or treated to ensure, to the extent possible, that he would not reoffend. As such, the judge rejected the option of the lesser measure of a determinate sentence followed by a long-term supervision order, as the public would not be adequately protected if anything less than an

indeterminate sentence was imposed. These findings were unanimously upheld by the Ontario Court of Appeal.

[120] The same kind of analysis must be undertaken in the present case, based on the evidentiary record before the court. The evidentiary record here is a voluminous one, all having been adduced by the Crown.

[121] First of all, the evidence does not even begin to support a finding that Mr. Obed can be safely released into the community after his statutory release from a straight determinative sentence, however lengthy it might be. That is simply not a viable sentencing option in this case and indeed, was not even contended for by defence counsel. Rather, as stated earlier, defence counsel advocates for the lesser measure of a lengthy determinative sentence followed by a LTSO with a duration of 10 years, which is the second of the sentencing options.

[122] Section 753.1(1) prescribes three criteria for the imposition of an LTSO which are as follows:

1. It must be appropriate for the court to impose a sentence of at least two years for the predicate offence (this first criterion is clearly met in this case);
2. The court must find that there is a substantial risk that the offender will re-offend; and
3. There must be a reasonable possibility of eventual control of the risk in the community.

[123] As to the second criterion, s.753.1(2) further provides that the court shall be satisfied that the offender is a substantial risk to re-offend if he has been convicted of an offence under s.753.1(2)(a), which includes the main predicate offences here, and if the criteria set out in s.753.1(2)(b) are met as well. The latter criteria are very similar to those found under sections 753(1)(a) and (b) as earlier recited, pertaining to the designation stage of a dangerous offender sentencing.

[124] Given these statutory provisions, and the evidentiary record to which they apply in this case (notably the risk assessment report from Dr. Neilson), I readily find that Mr. Obed does represent a substantial risk to re-offend. The focus then falls upon the third criterion of whether there is a reasonable possibility of eventual control of that risk in the community.

[125] As stated earlier, there is a considerable volume of evidence before the court to enable it to make an individualized assessment of all the relevant factors and circumstances to be considered. I have already reviewed at length the evidence germane to this key question of whether there is a reasonable expectation of eventual control of the substantial risk posed by the offender to the community. I do not find it necessary to regurgitate that evidence now in a repetitive fashion.

[126] Suffice it to say that I accept Dr. Neilson's opinion that Mr. Obed poses a very high risk of re-offending in a sexually violent manner and a moderately high risk of re-offending in a violent manner that may or may not include sexual violence. Dr. Neilson concluded that it can easily be seen that Mr. Obed represents a serious and alarming risk for sexual and general violence and that in her opinion, there is a substantial risk that future sexual violence will involve serious physical and psychological harm.

[127] Of particular note in her report is the last section (quoted earlier at pages 35-36 of this decision) where she paints a negative picture of any reasonable expectation that Mr. Obed's risk can be managed in the community. She reached this conclusion after a comprehensive review of evidentiary factors such as past resistance to community supervision (and breaches of court orders), reluctance to take treatment programs and lack of success in the programs he did take, his lack of motivation and intractability, his anti-social personality disorder and criminal traits, and the several predictive links to the likelihood of future violence from Mr. Obed's past (identified at para. 79 of this decision).

[128] It should be highlighted from Dr. Neilson's testimony as well that there are a number of risk factors that need to be well managed, not just alcohol, which means that any external supervisory controls would need to be very robust given his past

failures. Dr. Neilson reiterated in her testimony that the likelihood of his eventual safe release into the community is “actually quite low”.

[129] Fundamental to enhancing a reasonable possibility of eventual control of the risk in the community is the offender’s motivation to make the necessary internal changes to turn his life around. Mr. Obed has repeatedly shown a lack of motivation to make those changes to overcome his demons. To do so requires insight into his personal behavioural traits and commitment to profoundly change how he conducts himself. Neither is in evidence here, beyond Mr. Obed’s bare expression contained in the Neilson and Thompson reports that he is willing to take rehabilitative programming while serving his prison sentence.

[130] At the conclusion of closing submissions, Mr. Obed was given the opportunity to address the court if he wished to do so. At that point, he had just finished listening to the focussed submissions of counsel on the future manageability of his risk to the community, including his past lack of motivation to better himself. In his brief remarks to the court, Mr. Obed (a) expressed how sorry he is for what he did; (b) said that it wasn’t the victim’s fault (reflecting an astonishing lack of insight); and (c) asked for mercy from the court. Even then, he did not express a willingness or commitment to rehabilitate himself and change his ways.

[131] I recognize that whether for cultural reasons or otherwise, Mr. Obed does not appear to be one to make grand proclamations of his future intentions, to use his counsel's turn of phrase. Nonetheless, his silence in this regard does nothing to build the court's confidence that his risk to the community can be eventually controlled in the future.

Gladue Factors Revisited

[132] The contents of the Gladue report and the evidence of Sarah Anala unquestionably portray the traumatic and tragic childhood experienced by Mr. Obed and how it shaped him into the person he became as an adult. As Ms. Anala put it, Mr. Obed never had a chance in life because of the poor home environment he grew up in where alcoholism, violence and sexual assaults were the norm. While these factors certainly do not excuse Mr. Obed's many past criminal offences, they do provide some insight into why he developed the criminal deviant traits that he exhibited in the commission of these despicable predicate offences. His moral culpability for these offences nonetheless remains high.

[133] Section 718.2(e) of the Criminal of Code imposes a statutory duty on a sentencing judge to consider the unique circumstances of Aboriginal offenders, which in turn invokes a consideration of any applicable Gladue factors. Courts

across the country have made it clear that these considerations also apply to dangerous offender proceedings.

[134] To that end, I adopt the following passages from the decision in **R. v. Radcliffe**, 2017 ONCA 176 (at para. 52 *et seq*.):

> It is now firmly established that when sentencing an Aboriginal offender, a judge must consider:
>
> i. the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the court; and
>
> ii. the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage and connection…
>
> Although systemic and background factors provide the necessary context to enable a judge to determine an appropriate sentence, rather than to excuse or justify the underlying conduct, it is only where the unique circumstances of an offender bear on culpability, or indicate which sentencing objective can and should be actualized, that they will influence the ultimate sentence...
>
> As a matter of general principle, characteristics that make an offender "less blameworthy" have little impact on a dangerous offender application…
>
> It is well settled that *Gladue* factors and s. 718.2(e) of the *Criminal Code* have limited relevance in dangerous offender proceedings. They have no say in whether an offender meets the statutory requirements for designation as a dangerous offender. Their influence has to do with the subsidiary question of whether there is a reasonable possibility of eventually controlling the offender's re-offence risk in the community, thus on the divide between dangerous and long-term offenders. With the paramount sentencing objective of protection of the public, the judicial discretion to determine an appropriate sentence is significantly circumscribed.

[135] Justice Watt in **Radcliffe** reiterated (at para. 58) that to determine whether a lesser measure will adequately protect the public, there must be evidence before the sentencing judge that the dangerous offender can safely be released into the community, and that mere hope is inadequate to the task of addressing the reasonable expectation of protection of the public. He went on to say that evidence of the existence and availability of community resources that will provide the essential level of extra-custodial supervision to adequately protect the public is necessary.

[136] In disposing of the appeal, the court held that it was inconceivable that the Gladue considerations in that case, especially without evidence of the availability, much less the nature of ameliorative programs, could have converted an unmanageable risk into a manageable one.

[137] In similar fashion, a number of appellate courts in this country have affirmed that before an offender can be sentenced under the long-term offender provisions in the Criminal Code, there must be evidence that the risk posed could be controlled once a long-term supervision order expires (see, for example, **R. v. Bailey**, 2017 NSCA 48 and the authorities therein cited).

[138] In the present case, Crown counsel points out that the Gladue report does not provide concrete information as to how Mr. Obed's risk could be adequately managed through Inuit-focused resources or programming. Neither do we have in evidence a proposed plan of supervision from a defence expert, however distant in the future that may be. There is also little prospect that Mr. Obed would have any meaningful individual support from family members or friends once released into the community. All in all, I agree with the submission of Crown counsel that the Gladue factors here do not change the assessment of Mr. Obed's risk to public safety.

CONCLUSION

[139] To recap, an LTSO remains available only for those dangerous offenders whose risk can be controlled in the community in a manner that adequately protects the public. With some lament in light of the Gladue factors surrounding Mr. Obed, I am unable to conclude on the evidence as a whole that there is a reasonable expectation that a lesser sentence under the LTSO regime will adequately protect the public against the commission of a serious personal injury offence. There may be hope for that result but mere hope is not enough to justify a different outcome.

[140] With the rejection of the lesser sentencing alternative of a determinate sentence followed by a LTSO, it follows from the application of s.753(4.1) that the court must now impose a sentence of detention in a penitentiary for an indeterminate period.

[141] An indeterminate sentence is not a sentence in perpetuity. Offenders serving such sentences do remain under the jurisdiction of CSC for their entire lives, but with eligibility for full parole after seven years following arrest. A dangerous offender is then automatically eligible for a subsequent parole application every two years thereafter. The courts have long held that the parole authorities are in the best position to determine the progress and risk the offender poses in the community.

[142] Ultimately, an indeterminate sentence places rehabilitation in the hands of the offender. It will therefore be up to Mr. Obed to earn his eventual release into the community through successful programming of a high intensity level over the next several years that will serve to rehabilitate his personal character traits and morality enough to enable a safe release plan.

[143] Lastly, the court will also grant the following ancillary orders requested by the Crown and which are not contested by defence counsel:

a. a primary DNA order
b. a s.109 firearms prohibition for life
c. a lifetime SOIRA order
d. a prohibition order against any contact with the victim.

J.