SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Nickerson*, 2025 NSSC 428

Date: 20251218
Docket: CRH No. 513573
Registry: Halifax

Between:

His Majesty the King

v.

Lawrence Glen Nickerson

Dangerous Offender (Stage 2) Decision

Judge:	The Honourable Justice John Bodurtha
Heard:	June 16, 17, 18, 19, and August 19, 2025 in Halifax, Nova Scotia
Oral Decision:	December 18, 2025
Written Decision:	March 4, 2026
Counsel:	Eric Taylor and Kathryn Piche, for the Crown
	Lawrence Glen Nickerson, Self-represented

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By the Court:

Introduction

[1] On January 19, 2024, on the first day of his three-day trial, the accused Lawrence Glen Nickerson ("Nickerson") pleaded guilty to assault with a weapon against Nathan Mansfield, contrary to section 267(a) of the *Criminal Code* (the "*Code*"), the sole count on the Indictment. At that time, I went through a detailed section 606 inquiry with Mr. Nickerson, to review the validity of the guilty plea and accepted it after hearing his responses.

[2] Following the finding of guilt, the Crown advised that it would seek a dangerous offender/long-term offender assessment pursuant to section 752.1 of the *Code*. I ordered a pre-sentence report and a *Gladue* report. The ordering of a dangerous offender assessment was adjourned until after the necessary materials were gathered. The dangerous offender assessment was ultimately ordered on July 3, 2024. The assessment, dated October 21, 2024, was received shortly after that date. Based on the assessment the Crown advised on November 1, 2024, that it would proceed with a dangerous offender application. The application was set for June 16-25, 2025.

[3] At the dangerous offender hearing evidence was tendered by the Crown. Twelve witnesses testified including the author of the assessment Dr. Grainne Neilson, whose testimony I accept in its entirety. No evidence was tendered by the accused. Mr. Nickerson did not testify, and no witnesses were called on his behalf.

Facts

[4] The facts relating to the predicate offence were read into the record on February 22, 2024, and ultimately confirmed to be correct by Mr. Nickerson. Those facts are as follows:

> On October 12, 2021, the victim Nathaniel Mansfield ("Mansfield") and the accused Lawrence Glen Nickerson ("Nickerson") were inmates at Central Nova Scotia Correctional Facility ("CNSCF"), a provincial jail located in Dartmouth, Nova Scotia. They were both housed together in North 3, a "range" or area of the jail with 16 individual inmate cells, a common area ("dayroom") and a shower area.
>
> At approximately 9:00 pm, correctional officers were facilitating medication delivery in a corridor outside North 3. While Nickerson was in the corridor having

just received medication, Mansfield entered the corridor with a meal tray and attempted to hit Nickerson with it. The two were separated by officers and Nickerson returned to the dayroom. Mansfield told an officer that Nickerson had just stabbed him. He was brought to the Health Care Unit where a nurse observed and dressed six (6) puncture or stab wounds: one on his elbow, one on his side, and four on his back. The injuries were minor and did not require a hospital visit. Photos were taken of the wounds. Mansfield was taken to a cell in the Health Care Unit. The weapon used by Nickerson was not found, but was believed to be an improvised sharp weapon, known as a "shank".

Mansfield told correctional officers that there had been pressure on inmates to bring drugs to the dayroom from the laundry facility. Nickerson had told Mansfield to "get" an inmate working in the laundry facility. Mansfield refused, and Nickerson responded "it's them or you". A short time later, Nickerson stabbed Mansfield.

Mansfield refused to provide a formal written statement and declined to request an investigation into the incident or charges against Nickerson. Correctional officers reviewed video footage from the dayroom and corridor, and found that the incident had been captured on video.

The video shows Mansfield leaving a cell with a food tray and settling down at a table in the dayroom to eat. His movements are closely watched by Nickerson from a different cell.

Once Mansfield is settled, Nickerson walks from a cell down the stairs to the dayroom, and as he descends the stairs he retrieves a sharp shiny object from his clothing and holds it in his right hand by his side.

Nickerson reaches the bottom of the stairs and walks behind Mansfield. When he is behind Mansfield he begins swinging the item in his hand at Mansfield several times.

Mansfield reacts in surprise, and Nickerson continues to his own cell where he closes the door behind him. Mansfield gets up from his table, checks out his injuries, removes his shirt and begins pacing the dayroom, apparently yelling in the direction of Nickerson's cell. Nickerson leaves his cell and walks about the dayroom, with Mansfield apparently continuing to yell at him.

Eventually, corrections staff arrive and begin administering medication to inmates. Nickerson attends to receive medication, and when he turns to return to the dayroom Mansfield attacks him with a meal tray.

Correctional officers intervene, Nickerson returns to the dayroom and Mansfield is kept separate, where he is seen showing his injuries to corrections staff.

Corrections staff obtained reports from some of the officers who had been present. They contacted Halifax Regional Police the next day and provided the video footage, officer reports and copies of the photos taken of Mansfield's injuries.

Police later laid the charge of Assault with a Weapon against Nickerson. Nickerson eventually plead not guilty and a trial date was set in Halifax Supreme Court.

Despite not having provided a formal statement of the incident, and requesting no investigation, Mansfield was subpoenaed for the trial and attended. At that time he indicated he would testify, and provided further details of the incident to Crown and police. Due to this new disclosure and the fact Mansfield was now willing to testify, the defence sought and was granted an adjournment. A new trial date was scheduled. Mansfield agreed to provide a written statement of the incident, and did so to the Halifax Regional Police investigator.

In Mansfield's formal statement, he indicated as follows:

1. Earlier in the day on October 12, 2021, he testified as a witness in a separate case for which he had been subpoenaed. When he returned to CNSCF and North 3, he told another inmate about what happened in court.
2. Nickerson heard that Mansfield had testified in court, and told Mansfield that Mansfield had the option of either stabbing another inmate or being stabbed himself. Mansfield refused to stab the other inmate, but did stage a mock fight with that other inmate. Nickerson saw Mansfield "going too easy on the guy" and told Mansfield to arrange to be transferred to a different range at CNSCF. Mansfield agreed to do so after the delivery of medications by corrections staff which was to take place soon.
3. Before medications were delivered, Nickerson approached Mansfield in the dayroom and stabbed him.
4. Later, when Nickerson went to receive his medication, Mansfield attacked him with a meal tray in order to create an incident that would result in Mansfield being removed from the range, where he could also seek medical treatment for his stab wounds.
5. When asked to provide a formal statement of the incident, Mansfield declined, out of fear other inmates would learn of it and put his life in danger.

Criminal Record

[5] The past criminal record of Mr. Nickerson was found in exhibit seven. The facts and offences of which Mr. Nickerson was previously found guilty are summarized from the Crown brief below:

Sentence Date	Offence Date	Charge(s)	Description	Sentence
May 2, 2007 Shelburne, NS (Youth)	September 19,2006 to September 24, 2006	354(1)(A) *CC*	Possession of Stolen Property	24 months' probation
	October 6, 2006	334 *CC* x2	Theft (two counts)	24 months' probation concurrent
	October 7, 2006	430(4) *CC*	Mischief	24 months' probation concurrent Restitution $289.56

		354(1) *CC*	Possession of Stolen Property	24 months' probation concurrent Restitution $70.43
	October 13, 2006	145(5.1) *CC*	Breach of Bail Condition	24 months' probation
	October 15, 2006	334 *CC* 145(5.1) *CC*	Theft Breach of Bail Condition	24 months' probation 30 hours of community service
	November 17-20, 2006	430(4) *CC* 145(5.1) *CC*	Mischief Breach of Bail Condition	24 months' probation Restitution of $2,261.85
	January 30, 2007	145(5)(a) *CC*	Fail to Attend	24 months' probation

Sentence Date	Offence Date	Charge(s)	Description	Sentence
June 25, 2008 Shelburne, NS (Youth)	October 9, 2007	430(4) *CC*	Mischief	3 months concurrent deferred custody (provincial), 2 years' probation
		YCJA 137	Breach of Youth Probation	3 months concurrent deferred custody (provincial), 2 years' probation
	October 22, 2007	YCJA 137	Breach of Youth Probation	3 months concurrent deferred custody (provincial), 2 years' probation
	May 5, 2008	430(1)(a) *CC*	Mischief	3 months concurrent deferred custody (provincial), 2 years' probation
		YCJA 137	Breach of Youth Probation	3 months concurrent deferred custody (provincial), 2 years' probation
	May 12, 2008	264.1(1)(a) *CC* 264.1(1)(b) *CC* 266 C.C	Uttering Threats Uttering Threats Assault	3 months concurrent deferred custody (provincial), 2 years' probation
		430(1)(d) *CC* 129(a) *CC* x2	Mischief Resists/Obstructs Peace Officer x2	3 months concurrent deferred custody (provincial), 2 years' probation
		145(5.1) C.C	Breach of Bail Condition	3 months concurrent deferred custody (provincial), 2 years' probation
		YCJA 137 x2	Breach of Youth Probation (two counts)	3 months concurrent deferred custody (provincial), 2 years' probation

FACTS taken from the Sentencing Transcript

1. On September 24th Gilbert Hustons learned there had been a break and enter at the ox hauling barn. When he arrived he learned there was one speaker missing from each set. September 25th Cst. Johnston learned that Gregory Bell from Shelburne was attempting to pawn a 15 inch speaker. He made patrol to Mr. Bell's residence and he seized the floor speaker and 15 inch speaker at that time. He noted that the floor speaker was somewhat damaged and the 15 inch speaker had been freshly painted. Gregory Bell gave a statement and indicated that he had received the speakers from Lawrence Nickerson. The speakers were returned; however, slightly damaged.
2. On October 6th, 2006 in the late evening, Lawrence Nickerson, Thomas Coolen, and Christian Hammond went to 50 Spa Road and stole an ATV belonging to Leland Surette. Mr. Nickerson "hot-wired" the vehicle, and the three drove away on the ATV. Due to mechanical failure, the vehicle was abandoned at the end of Spa Road. The three youths then went to 62 Spa Road, Shelburne where Mr. Nickerson again "hot-wired" the ATV belonging to Donald Dolliver. The three drove to the Roger Grovestine Recreational Complex. There, they rammed the gate with the ATV, breaking the lock to the gate in the process, and drove around on the baseball field causing damage to the grounds.
3. Mr. Nickerson was in contact with Mr. Coolen, his co-accused on the MV theft charges.
4. Cst. Steeves was dispatched to a theft that had occurred at Shell in Shelburne. The complainant observed two young males, one being Lawrence Nickerson, on the surveillance camera and they stole a pack of cigarettes. He indicated that Lawrence Nickerson had taken the cigarettes, put them in the waistband of his pants pocket. The complainant confronted the two youths and Lawrence Nickerson returned the cigarettes.
5. Mr. Nickerson was on an undertaking to keep the peace & be of good behaviour.
6. Several youths, including Mr. Nickerson, were arrested for damaging three school buses: fire extinguishers had been removed and set off on buses, glass everywhere inside one bus, speakers stolen from ceilings of all three buses, fire axes stolen from driver's area of each bus, drive line damage to one of the buses in the ditch. The damage was estimated to be over $5,000. Richard D'Entremont gave a witness statement indicating he had gone to run his dog that day, but there were three or four kids on bicycles who pulled out in front of him. He recognized one of them as Lawrence Nickerson. A number of young persons were interviewed and one indicated on November 29th, under Charter, that it was himself, another young person and Lawrence Nickerson who damaged the buses.
7. Mr. Nickerson provided two cautioned statements denying his involvement completely.
8. He was on an undertaking on that day with a condition to keep the peace and be of good behaviour and clearly violated that undertaking.
9. On January 30, 2007, having been released on a promise to appear for fingerprints that day, he failed to appear.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
February 4, 2009 Shelburne, NS (Youth)	October 10, 2008	264.1 *CC* x4	Uttering Threats (four counts)	4 months concurrent, deferred (provincial) Lifetime Firearms Prohibition 2 years Probation DNA Order
		YCJA 137 x3	Breach of Youth Probation (x3)	4 months concurrent, deferred (provincial) 2 years Probation

FACTS taken from the Sentencing Transcript

1. Lawrence Nickerson called his stepfather, Keith Jacklin. Mr. Jacklin asked who it was and Mr. Nickerson told Mr. Jacklin he was going to come to his residence with a gun and blow his brains out. Mr. Nickerson then proceeded to tell Mr. Jacklin that he was also going to shoot, kill and blow Jeanette Nickerson's brains out, who is his mother, also an employee of Mr. Jacklin's, Vincent Buchanan. The accused told Mr. Jacklin many times that he would come to his residence with a gun and kill both of them. The accused also told Mr. Jacklin that he was going to damage and burn his truck. The accused expressed that he did not care that he would go to jail, and that he would only get 3 years of custody and would then get out of jail and kill Mr. Jacklin, and Ms. Nickerson both. Mr. Nickerson then called the Jacklin business and left threatening messages there.
2. Mr. Nickerson was currently on a probation order, that included conditions to keep the peace and be of good behaviour, and not to possess or consume alcohol and to abide by the curfew between 8pm and 6:30am. All three of those conditions were breached. The probation order was dated June 25, 2008 and was to be in effect for two years.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
May 20, 2009 Shelburne, NS (Youth)	April 10-18, 2009	334(a) *CC*	Theft Over	2 months' consecutive custody-supervision $113 Restitution
		334(a) *CC*	Theft Over	1 month consecutive custody-supervision
		334(b) *CC*	Theft Under	1 month consecutive custody-supervision $196 Restitution
		YCJA 137 x2	Breach of Youth Probation (x2)	1 month concurrent custody-supervision
		249(2) *CC*	Dangerous Operation of M.V.	5 months' concurrent custody-supervision
		334(b) *CC*	Theft Under	2 months consecutive custody-supervision $1200 Restitution
		334(a) *CC*	Theft Over	2 months' consecutive custody-supervision $414.45 Restitution
		334(a) *CC*	Theft Over	1 month consecutive custody-supervision
		334(b) *CC*	Theft Under	1 month consecutive custody-supervision
		249.1(2) *CC*	Flight in Vehicle from Police	2 months' concurrent custody-supervision

FACTS taken from the Sentencing Transcript

1. On April 15th, 2009, police received a report of a stolen vehicle. A short time later, the owner of the vehicle Stephen Wolfe contacted the officer and informed him that he'd found his vehicle at the ballpark on Prince Street. The officer was then notified that a second vehicle, belonging to David Underwood, had been reported stolen. The officer surmised that Mr. Underwood's vehicle had been stolen, driven to Lockport to dump there and Mr. Wolfe's minivan stolen and then taken to Shelburne. And that, in fact, was correct. Two witnesses who saw the Underwood vehicle noted that they knew it was not Mr. Underwood driving but a young white male, alone.
2. On April 18th, 2009, Csts. Greene and Miller were at the RCMP detachment at 3:00am when they heard tires screeching in close proximity to the detachment. Cst. Greene decided to try and find and stop the vehicle. He noticed a small car driving at a very high rate of speed, heading towards Water Street. Once caught up to the car, he noted the vehicle hit the gravel shoulder twice. He activated the lightbar on his fully marked police car and the vehicle continued to drive west. Cst. Greene then activated his siren and the vehicle quickly gained speed, with the Cst reaching speeds up to 150km. Cst. Greene's pursuit was called off by a risk manager.
3. A cautioned statement was taken from a young female who indicated she and another young girl had met Lawrence Nickerson on April 18th. Shortly after, Shawn Marriott approached them and asked if they had seen anyone around, because somebody tried to steal his van. After he left, Lawrence Nickerson indicated to the two females that he had just tried to steal Mr. Marriott's van. According to the witness', Mr. Nickerson attempted to steal three vehicles from the Harlow Construction site. He then told one of the females that he had stolen Dave Underwoods car and also a van from Lockport.
4. While under caution Mr. Nickerson indicated that he couldn't remember where the keys to the van were and also couldn't remember where the keys to the Marriott vehicle were. He indicated that he drank a bottle of hard liquor by himself prior to trying to steal Marriott's van.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
September 15, 2010 (Youth)	August 29, 2010	YCJA 137	Breach of Youth Probation	Suspended sentence, 1 year probation
		145(3) *CC*	Breach of Bail Condition	Suspended sentence, 1 year probation
	August 28, 2010	YCJA 137	Breach of Youth Probation	Suspended sentence, 1 year probation
	May 8, 2010	264.1(1)(a) *CC*	Uttering Threats	Suspended sentence, 1 year probation
		YCJA 137	Breach of Youth Probation	Suspended sentence, 1 year probation
		430(4) *CC*	Mischief	Suspended sentence, 1 year probation
	April 1, 2009	YCJA 137	Breach of Youth Probation	120 days concurrent custody-supervision

FACTS taken from the Sentencing Transcript

1. 430(4) CC: On May 10th, a property representative for a building at 106 Parr Street reported that a window had been broken at the residence. It appeared that someone had entered the home, turned the temperature up and removed the fire alarm from the ceiling. A neighbor told the police that she knew who broke the window. It was Lawrence Nickerson. She watched him do it.
2. 264.1 CC: Police received a call on May 8th, from a security guard, that Mr. Nickerson had threatened him and there was some sort of altercation. The police responded and found Mr. Nickerson intoxicated at the scene. The security guard informed Mr. Nickerson that the mall was closing and he had to leave. Mr. Nickerson told the security guard he was going to kill him when he gets out of jail. He was on a probation order at that time.
3. 137 CC, 145 CC: While on patrol, Cst. Vaughn decided to do a curfew check on Lawrence Nickerson as he was on an undertaking to be at his residence of 98 Cornwallis Street. The curfew was set from 8:00pm to 6:30am. At 11:00pm Cst. Vaughn requested to see Mr. Nickerson and Mr. Nickerson's uncles stated he was here around 8:00pm and had left. Around 12:15 am Cst. Vaughn received a call from Mr. Nickerson's uncle stating the Mr. Nickerson had just returned home. At the same time, officers attended a possible fight at the legion and found out that Mr. Nickerson had been kicked out and stated that he had alcohol in his possession.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
April 27, 2011 Shelburne, NS	April 9, 2011	253(1)(a) *CC*	Impaired Operation of M.V.	$1000 Fine, 1 year Suspended License, Driving Prohibition Order
		733.1(1) *CC*	Breach of Probation	16 days concurrent custody, 12 months' probation
		335(1) *CC*	Take Motor Vehicle without Consent	16 days consecutive custody, 12 months probation, $500 Restitution

FACTS taken from the Sentencing Transcript

1. On April 9, 2011, Lawrence Nickerson, another individual and Jeremy Bower were spending the evening together at this individual's residence at 144 Water Street, Apartment 4, Shelburne, Nova Scotia. As the evening went on, Jeremy Bower, the owner of a green 1999 Chevrolet Cavalier, fell asleep. This other individual approached Mr. Nickerson with the keys to the vehicle and said something to the effect of, "Let's go for a ride." Neither Mr. Nickerson nor this other

individual had permission of the owner of the vehicle to take the car. Mr. Nickerson drove the car through the Town of Shelburne and ultimately drove the vehicle into the Island Park area. They turned around to leave the area, lost control of the vehicle and subsequently rolled the vehicle onto its side. Both left the scene without reporting the collision and made their way back to this individual's apartment. The following day as RCMP were investigating the incident, they became aware that Mr. Nickerson was the driver of the vehicle. He was arrested, warned and cautioned, and interviewed as a part of the investigation, provided a confession to taking the vehicle without Mr. Bower's consent, and admitted to driving while impaired.

2. Mr. Nickerson at the time was on a probation order with conditions that was issued on September 15, 2010, with conditions that he keep the peace and be of good behavior.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
June 22, 2011 Shelburne, NS	June 11, 2011	73 *CC*	Forcible Entry	20 days consecutive custody, 1 year probation
		733.1(1)(a) *CC*	Breach of Probation	20 days consecutive custody, 1 year probation
		733.1(1)(a) *CC*	Breach of Probation	20 days consecutive custody, 1 year probation

FACTS taken from the Sentencing Transcript

1. On June 11, 2011, RCMP received a call of a disturbance at 88 George Street in Shelburne. In that incident, three intoxicated males had confronted Lawrence Nickerson at his mother's home, who had also been drinking. Police responded and dealt with the individuals. Mr. Nickerson fled the area on foot and ran off into the woods. Lawrence Nickerson then attempted to make his way to his grandmother's residence on Cornwallis Street in Shelburne. He eventually arrived at a private residence located at 74 George Street in Shelburne. Apparently believing this was his grandmother's home, Mr. Nickerson simply walked through the door, took off his shoes and went to sleep on the couch. At approximately 9:30 a.m. the next morning, the homeowner, Shawna Gouldan awoke to find Mr. Nickerson in her living room. She recognized him, called 911, and Mr. Nickerson fled that scene. He was eventually located by RCMP, arrested, warned, Charter cautioned and gave an interview, admitting to having drank 19 beer and a quart of vodka throughout that evening. He confirmed that he did believe that the home that he had entered was the residence of his grandmother.

2. At the time he was on a probation order dated April 27, 2011, with conditions that he abstain from the consumption of alcohol and keep the peace and be of good behavior.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
September 28, 2011 Shelburne, NS	September 10, 2011	333.1(1) *CC*	Theft of Motor Vehicle	102 days consecutive custody
	August 5, 2011	733.1 *CC*	Breach of Probation	30 days concurrent custody
Yarmouth, NS	July 18, 2011	430(4) *CC*	Mischief	1 day concurrent, 12 months' probation, $236.90 Restitution

FACTS taken from the Prosecutor's Information Sheet (sentencing hearing recording/transcript not available)

1. On September 10, 2011, police received an anonymous tip that Lawrence Nickerson was intoxicated and driving around on an ATV. Upon arrival, Mr. Bruce and Mr. Jacklyn advised that its Lawrence Nickerson on the ATV and he had just stolen it from Mr. Bruce. Police located Mr. Nickerson on the bleachers and noted he was intoxicated, so arrested him for theft of a motor vehicle.

2. On August 5, 2011, this writer (Ian Goulden) was in the parking lot of the Shelburne Mall and witnessed Lawrence Nickerson exiting the Nova Scotia Liquor Commission with two, twenty-four cases of beer and place them in a van, which was parked outside of the store. Mr. Nickerson was in violation of the condition of his probation order to not possess alcohol.

3. On July 18, 2011, water was observed on the floor in Dayroom C. Correctional Officers noted the water was coming from cell C-3, which was Lawrence Nickerson's cell. The sprinkler had been damaged, thus allowing the area to be flooded with water. He was the only person in that cell at the time of the incident. The cost to repair the sprinkler was $236.90.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
May 30, 2012 Shelburne, NS	May 6, 2012	733.1(1) *CC* x2	Breach of Probation (two counts)	3 months concurrent custody

FACTS taken from the Sentencing Transcript

1. On May 6, 2012, when the RCMP responded to a call at 88 George Street regarding a potential assault and a breach of probation. There was Jeanette Nickerson and Robin Robart who were present with Lawrence Nickerson. Mr. Nickerson had been at that residence all evening and he had been drinking at the time. He was bound by two different probation orders which required him to abstain from alcohol and to keep the peace and be of good behavior. As a result of that, two charges were laid with respect to breaches.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
February 27, 2013 Shelburne	October 9-24, 2012	733.1(1) *CC*	Breach of Probation Uttering Threats	5 months concurrent custody (federal)
New Germany, NS	October 6, 2012	264.1(1) *CC*	Breach of Probation	5 months concurrent custody (federal)
		733.1(1) *CC*	Theft Over	5 months concurrent custody (federal)
Pinehurst, NS	October 4-5, 2012	334(a) *CC*	Breach of Probation	1 year concurrent custody (federal)
		733.1(1) *CC*	Break and Enter and Commit	5 months concurrent custody (federal)
Port Medway, NS	September 20-21, 2012	348(1)(b) *CC*	Theft Under	6 months consecutive custody (federal)
Lower Ohio, NS	September 14, 2012	334(b) *CC*	Theft Under	56 days consecutive custody (federal)
		334(b) *CC*	Breach of Probation	5 months concurrent custody (federal)
		733.1(1) *CC*	Theft	5 months concurrent custody (federal)
Barss Corner, NS	September 13, 2012	334 *CC*	Theft Over	5 months concurrent custody (federal)
Port Medway, NS	September 12-18, 2012	334(a) *CC*	Breach of Probation	1 year consecutive custody (federal)
		733.1(1) *CC*	Theft	5 months concurrent custody (federal)
	August 26, 2012	334 *CC*	Break and Enter and Commit	5 months concurrent custody (federal)
Shelburne, NS	Aug. 1 – Oct. 15, 2012	348(1)(b) *CC*	Breach of Probation	6 months consecutive custody (federal)
		733.1(1) *CC*	Mischief	5 months concurrent custody (federal)

Yarmouth, NS	July 14, 2012	430(4) *CC*	Breach of Probation	5 months concurrent custody (federal)
Shelburne, NS	Apr. 27, 2011 – April 1, 2012	733.1(1) *CC*		5 months concurrent custody (federal)

FACTS from the Sentencing Transcript

1. On September 28th, 2011, Mr. Nickerson was sentenced for a number of offences. He received a period of custody followed by 12 months' probation with a condition that he report to a probation officer. He was directed on a number of occasions to attend. He failed to report on October 9th. Couldn't be reached by phone. They attempted to call his phone, tried his address. There was no means of contacting him, despite their many efforts to do so. Mr. Nickerson didn't report.

2. On October 6, 2012, Shelburne RCMP were dispatched to a complaint of uttering threats to destroy a property at 5272 Highway 10 in New Germany. Bethany Cronk reported that Lawrence Nickerson had told her he was going to burn her van and was in the back of the apartment building drinking alcohol with his friends. Mr. Nickerson was arrested and provided a statement after Charter caution warning and he admitted to threatening to burn Ms. Cronk's van. He said he was mad at the time of the threat. At the time he was on probation with condition to keep the peace and be of good behavior.

3. On October 5th, 2012, Lunenburg County RCMP received a complaint of theft of heavy equipment accessories totaling over $20,000. On October 24th, 2012, RCMP interviewed John VanTrease, who admitted to committing the theft. Mr. VanTrease advised RCMP that Lawrence Nickerson was with him and assisted in the theft. Mr. Nickerson was arrested on October 25th, and he was interviewed after Charter and caution and he confessed to committing the theft as well. The theft was from Ivan and Larry Veinotte and the total amount of items taken was $26,888.31. None of the items were recovered. Mr. VanTrease had advised RCMP that they drove the items to Dartmouth Metals in Burnside. Mr. VanTrease claimed that Mr. Nickerson got the money from selling those items. They are seeking restitution. At the time that this theft occurred, Mr. Nickerson was on probation with condition to keep the peace and be of good behavior.

4. On September 21, 2012, Queens RCMP received a complaint of a break and enter and theft from the Farmers' Medway Market in Port Medway, Nova Scotia. The thieves had entered the store by pushing in a window air conditioner, and upon entry, stole a large quantity of cigarettes as well as cash and lottery tickets. Video surveillance on a nearby wharf showed a white Dodge pickup truck in the area at approximately 1:30 a.m. A footprint was left behind inside the store on a freezer, and a photo of same was taken. Shoes seized from Lawrence Nickerson after he was arrested by Bridgewater RCMP in connection with a number of offences appeared to be a match to the footprint left inside the store. During a warned caution statement given by Mr. Nickerson to Cst. Conn from Shelburne RCMP, Mr. Nickerson admitted to going to the store on that night with Mr. VanTrease. Mr. Nickerson admitted to receiving cigarettes from VanTrease which were taken from the store.

5. On September 14, 2012, at 1:35 a.m., Lawrence Nickerson and John VanTrease attended at 353 Ohio Road, Butler Small Engine Repair, and 355 Ohio Road, D & W Service Repair in Lower Ohio, Shelburne County. While in the shared parking lot of the two businesses, John VanTrease siphoned two jugs of gasoline out of a U-Haul truck and Mr. Nickerson placed the jugs of gasoline up into the bed of their truck. After siphoning gasoline from the U-Haul trucks, Mr. VanTrease went into D & W Service Repair property and cut wires from a fuel cell on a rally truck belonging to Andrew Hemeon. Mr. VanTrease can be seen on video calling Mr. Nickerson over and Mr. Nickerson can be seen removing the fuel cell pump from the truck and walking over to their truck with it. At this time, Mr. Nickerson was bound by a probation order to keep the peace and be of good behavior.

6. On September 13, 2012, Dwight Crouse reported that a gas tank which was three-quarters full of gas, was taken from his boat at the wharf in Port Medway. Video surveillance taken from that date September 13th, 2012, at the wharf showed a white Dodge pickup truck arrive at the wharf and two males taking the gas. Warned caution statement from Lawrence Nickerson was taken when he was arrested in relation to a number of offences, and he admitted to stealing the gas. And the second male involved was John VanTrease.

7. On September 21st, 2012, RCMP received a complaint of a theft of a large quantity of used tractor trailer wheels, scrap metal, excavator pads and other items stolen from Holland Carriers Limited sometime between September 12th and September 18th, 2012. The owner of Holland Carriers reported that a white Dodge Ram was seen around the property during the time of the thefts and they reported a licence plate number. Investigations determined that the registered owner of the vehicle is John VanTrease, uncle to Lawrence Nickerson, and who was living in the area at the time. On October 25th, Mr. Nickerson was arrested on other matters and while being interviewed under warning

and Charter caution, Mr. Nickerson admitted to committing this theft. At the time he was on probation with a condition to keep the peace, be of good behavior. The total value of items taken was over $10,500.

8. On August 27th, 2012, Dwight Crouse discovered that someone stole a jerry can filled with gasoline. The total value of that stolen property was approximately $50, and it occurred at Port Medway Government Wharf in Port Medway, Nova Scotia sometime in the early morning of August 26, 2012. RCMP arrested Mr. Nickerson in relation to a number of offences and obtained a warned caution statement where he confessed that he did take this gas can and the contents of it being gas.

9. Break and enter and breach of probation charge occurring between August 1st and October 15th, 2012. On October 26, 2012, Cst. Conn of Shelburne RCMP obtained a warned caution statement from Mr. Nickerson incidental to arrest in relation to a number of offences. During this statement, Mr. Nickerson disclosed that he and John VanTrease broke into a shed at a property he had described as being on the Sandy Point Road and belonging to Ron Johnson. This was at 949 Sandy Point Road. Mr. Nickerson told RCMP that they stole a green Polaris ATV and admitted to later selling that stolen ATV to a person in Bridgewater, the ATV has not been recovered. The break and enter did in fact occur at 945 [sic] Sandy Point Road and the property owner, Ron Johnson, confirmed to RCMP that an ATV was missing from his shed. At the time, Mr. Nickerson was bound by a probation order with condition to keep the peace and be of good behavior.

10. On July 14, 2012, Mr. Nickerson was incarcerated at Southwest Nova Scotia Correctional Facility in Yarmouth and was being held in a cell where the fire alarm sounded off from there. Correctional staff attended and determined that Mr. Nickerson had pulled the sprinkler, and water was flowing through his cell and dayroom. The damage that was caused to that cell totaled $374.24.

11. April 27th, 2011, Lawrence Nickerson appeared in Shelburne Provincial Court, was found guilty of offences contrary to breach of probation and theft of a motor vehicle or taking a motor vehicle without consent. He was sentenced to a period of custody followed by 12 months' probation with a condition of that probation order stating that he make restitution to Jeremy Bower in the amount of $500 to be paid by April 1st, 2012. During that period of probation, he was reminded by his probation officer on at least three occasions to make the restitution. He did not do so, and no restitution has been paid.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
June 4, 2014 Shelburne, NS	July 28, 2012	733.1(1) *CC*	Breach of Probation	3 months consecutive custody (provincial)

FACTS from the Report to Crown Counsel, and from the Transcripts of Jury Pre-Charge Hearing, Verdict and Sentencing Hearing

1. The 13-year old complainant attended a hospital concerned about having contracted a sexually-transmitted disease, and disclosed an unwanted sexual encounter a month earlier with 21-year-old Lawrence Nickerson while the two were intoxicated by alcohol. Mr. Nickerson later admitted to police to having had sexual intercourse with the complainant and to having consumed alcohol, although at trial he denied having sexual contact with the complainant. Mr. Nickerson was bound by two probation orders to keep the peace and be of good behaviour, and not to consume alcohol. He was found guilty by a jury following trial of having breached his probation order, but was found not guilty of the alleged sexual offences.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
May 10, 2016 Priestville, NS	August 12, 2015	430(4) *CC*	Mischief	VFS $100, 30 days concurrent custody (provincial)

FACTS taken from the Sentencing Transcript

1 On August 12, 2015, while in custody at Northeast Nova Correctional Centre, Lawrence Nickerson was observed on video by staff smashing the overhead light in the cell and using a piece of metal from the broken fixture to carve up the camera housing. The total cost of repairs was $1,914.75.

2 Earlier that afternoon, Mr. Nickerson was observed on video urinating on the floor, plugging his toilet in the cell so it would overflow and also covered the monitor camera with wet toilet tissue.

3 After being moved into a different cell, Mr. Nickerson was observed standing on a metal stool in his cell beating on the overhead light with his hands. Mr. Nickerson was able to remove the plastic housing over the light, smashed it, and then proceeded to smash the fluorescent tubes. Mr. Nickerson can be seen on video taking a bolt from the smashed light, carving up the camera lens.

4 Mr. Nickerson continued gauging and scratching the lens with the bolt until it was nearly impossible to see through the camera. He also carved his initials into the cell door.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
August 3, 2016 Dartmouth, NS	April 13, 2016	270(1)(a) *CC*	Assaulting a Peace Officer	VFS $100, 2 months consecutive custody (provincial)
		264.1(1)(a) *CC*	Uttering Threats	VFS $100, 2 months concurrent custody (provincial)
	October 25, 2015	430(4) *CC*	Mischief	VFS $100, 1 month concurrent custody (provincial)
	October 6, 2015	264.1(1)(a) *CC*	Uttering Threats	VFS $100, 4 months consecutive custody (provincial)
		264.1(1)(a) *CC*	Uttering Threats	VFS $100, 4 months concurrent custody (provincial)
	October 5, 2015	430(4) *CC*	Mischief	VFS $100, 1 month concurrent custody (provincial)
	July 27, 2015	264.1(1)(a) *CC*	Uttering Threats	VFS $100, 4 months consecutive custody (provincial)
	July 27, 2015	264.1(1)(b) *CC*	Uttering Threats	VFS $100, 4 months concurrent custody (provincial)
	July 18, 2015	145(3) *CC*	Fail to Comply with Recog or Undertaking	VFS $100, 1 month concurrent custody (provincial)
	July 15, 2015	430(4) *CC*	Mischief	VFS $100, 1 month concurrent custody (provincial)
		430(4) *CC*	Mischief	VFS $100, 1 month concurrent custody (provincial)
		430(4) *CC*	Mischief	VFS $100, 2 months concurrent custody (provincial)

FACTS taken from the Sentencing Transcript

1 On April 13th, 2016 the correctional guard, Mr. Sabean, was conducting orientation with the inmates. And at 12:21 he opened the cell door to Mr. Nickerson's cell when he was charged by Mr. Nickerson, who attempted to drop kick him. A struggle ensued in the cell and it led to the outside of the cell. Mr. Sabean was able to gain control of Mr. Nickerson on the ground, and other members came to assist. Mr. Nickerson said, "I am going to fucking kill you, Ryan Sabean."

2 On October 25, 2015, Lawrence Nickerson was housed in segregation. And he removed the cell camera from the mounts on the ceiling of the cell. He caused $264.50 worth of damage.

3 On October 6, 2015, Mr. Nickerson told Officer McKenzie he would slit his throat and kill his mother. Told him he knows what car he drives and when he gets released, he is going to go to his house. He told Officer Thorburne that he would slit his throat and that when he gets out on the 13th of November, he's going to go to the officer's home and kill his family.

4 On the October 5th, 2015 information, the mischief, Mr. Nickerson busted a sprinkler in his cell, $450 cost to repair.

5 On July 27, 2015, Lawrence Nickerson said, "You think it's hard to figure out where you live, Awalt? You got a nice house. A nice house, plastic siding. Maybe it would light on fire nice." The second threat on that file was, "Doesn't fucking matter. You take me out of it. I'm stabbing one of you. I'm stabbing one of you. I'm stabbing the fuck out of

one of you guys. Mark my fucking words." And that was to the CNSC officers dealing with him. There's a breach there, too. He was on bail out of Bridgewater at the time.

6 Mr. Nickerson then covered the camera in segregation, beat the cell window out of the door and smashed the camera cover off and took the light fixture off. He caused $1,045 in damage.

7 Mr. Nickerson was somehow able to uncuff himself using the cell door while in segregation. He showed he was uncuffed to the camera and destroyed the handcuffs.

8 On the July 18, 2015, Cst McCrum attended Central Nova Correctional Facility in response to a property damage call caused by Inmate, Lawrence Nickerson. Mr. Nickerson was in a segregation cell and was the lone occupant in that cell. Mr. Nickerson is seen going to the right-hand side frame of the door and although his back is turned to the camera, he is observed looking down and doing something with what appears to be the handcuffs that he has on his wrists. After a very short period, Nickerson is then seen walking away from the door and around the cell with his left hand now uncuffed. The right wrist still can be seen to have a cuff on it with the other cuff hanging down but still attached. The handcuff was damaged by the accused by prying it open on the door frame. The handcuffs were owned by the correctional center and are not repairable. Nickerson is then seen showing that he has uncuffed himself to the camera.

9 On the 15th July 2015, Lawrence Nickerson covered a camera twice. Was able to destroy his shackles and then grabbed a padlock off of a cell. He refused to put it down. There was an altercation with the guards trying to get the shackle away -- or the padlock away. He pushed a guard into a brick wall as they struggled to get him under control. OC spray was deployed in his face, and he was able to continue resisting after the OC spray had covered his face. With respect to why he did it, he said it was for something to do to pass the time.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
August 31, 2016 Priestville, NS	November 25, 2015	434 *CC*	Arson	Fine $50 + VFS $15, 6 months consecutive custody (provincial), 10 year Firearms prohibition

FACTS taken from the Sentencing Transcript

1. Lawrence Nickerson can be observed lying on the floor of his cell covered with a blanket, still covered with the same blanket, he goes over to the comer of his cell and huddles over what appears to be a brown lunch bag and contents, with his back to the camera. He steps back from the corner and flames can be seen from the bag. Nickerson was, throughout this incident, alone in the cell.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
January 18, 2017 Shelburne, NS	July 15, 2015	270(2) *CC*	Assaulting a Peace Officer	3 months consecutive custody (federal)
		430(4) *CC*	Mischief	3 months concurrent custody (federal)
	February 27, 2014	145(3) *CC*	Breach of Bail Condition	1 month consecutive custody (federal)
	September 4, 2011	239(b) *CC*	Attempt to Commit Murder	6 years concurrent custody (federal), Lifetime Firearm Prohibition
		733.1(1) *CC* x3	Breach of Probation (three counts)	1 month concurrent custody (federal)
		434 *CC*	Arson	8 months consecutive custody (federal)
	July 29, 2011	733.1(2) *CC*	Breach of Probation	1 month concurrent custody (federal)

FACTS taken from the Sentencing Transcript

1. On July 15, 2015, while he was at Provincial Court in Shelburne awaiting a Court appearance on various charges, Mr. Nickerson assaulted a Sheriff and damaged handcuffs while being placed in cells.
2. On February 27, 2014, after being remanded on the arson and attempt murder charges, the Court imposed a non-communication order with both victims, Tara Herbert and Jeremy Bower. The Accused mailed a letter to Tara Herbert from jail.
3. On September 4, 2011, Mr. Nickerson had set fire to a trailer in Shelburne which at the time was occupied by Jeremy Bower and Tara Herbert, who were sleeping in the trailer at the time the fire was set. Mr. Nickerson did so with the intent to kill both individuals, as a result of an ongoing feud that he was having with Jeremy Bower related to a restitution order for damage made against Mr. Nickerson for damage he had done to Bower's vehicle. Mr. Nickerson poured gas on the trailer under the bedroom window of the victims where he knew they were sleeping at the time. This took place at night. He knew they were home, because he had seen them in the home earlier that same evening, and the vehicle was in the yard.
4. He made a trail of gas from underneath the window over the grass. He then lit the gas trail, which eventually ignited the trailer. He then left the scene.
5. He took a picture of the fire and posted it on Jeremy Bower's Facebook and then deleted the photo. This was how he came to the attention of the police initially.
6. They brought Mr. Nickerson in for questioning on three occasions, and on three occasions, Mr. Nickerson denied his involvement in the case. The case was eventually deemed closed by RCMP due to lack of evidence to pursue charges for a period of time.
7. However, then Mr. Nickerson sent a letter to Keith Jacklin from the Dorchester Penitentiary, and in that letter, Mr. Nickerson confessed to the arson of Mr. Jacklin's vehicle, as well as to the trailer.
8. RCMP attended the penitentiary to interview Mr. Nickerson, and during the course of that interview, Mr. Nickerson provided a full confession, showing no remorse for his actions. In fact, he stated during that interview that he was disappointed that he was not successful in killing Mr. Bower and Ms. Herbert.
9. Mr. Nickerson had set fire intentionally to Keith Jacklin's truck, which resulted in the vehicle being totalled. At the time, Mr. Nickerson was on probation with a no alcohol condition and was consuming alcohol at the time that he committed this particular offence.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
May 6, 2021 Shelburne, NS	November 4, 2020	264.1(1)(a) *CC* 430(4) *CC* 430(4) *CC*	Uttering Threats Mischief Mischief	2 months consecutive custody (provincial) 1 month consecutive custody (provincial) 1 month consecutive custody (provincial)

FACTS taken from the Sentencing Transcript

1. On November 4th, 2020 around 1:00 in the morning, the Shelburne RCMP were contacted by the Halifax Regional Police to locate Mr. Nickerson for an arrest. Apparently Mr. Nickerson had committed offences in Halifax on November 2nd. There was a Canada-wide parole warrant for him for his arrest. The Shelburne RCMP located Mr. Nickerson at his mother's residence in Shelburne around 1:40 a.m. on November 4th.
2. He was arrested by the Shelburne RCMP. At 4:28 a.m., Cst. Sanford was following in his police vehicle, a police vehicle being driven by Cst. Flowers, and Mr. Nickerson was in Cst. Flowers' police vehicle. They were on their way to the Shelburne lockup. Cst. Sanford, from his vantage point in the following police vehicle, observed Mr. Nickerson rip the light off of the back window in Cst. Sanford's police vehicle and began to peel the interior of the roof from inside the police vehicle.
3. Mr. Nickerson was lodged in cells in Shelburne. As soon as he was in the cell, he began destroying the inside. He ripped the bedframe from off the floor. So, he was moved to another cell. Once in that cell, Mr. Nickerson began ripping the wall apart.
4. He could not be safely held in the Shelburne lockup, so he was taken to the Yarmouth County detachment and while being driven from Shelburne to Yarmouth, he damaged the passenger door, side door, with a crack in that second police vehicle.
5. And on the way from Shelburne to Yarmouth, he uttered threats to kill Cst. Sanford.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
January 31, 2022 Dartmouth, NS	June 29, 2021	430(4) *CC*	Mischief	30 days consecutive custody (provincial)

FACTS taken from the Sentencing Transcript

1. After a video appearance on June 29, 2021, Mr. Nickerson proceeded to grab a chair and smash the screen of the video, causing damages in the amount of $734.91. All of his actions witnessed by correctional officers.

Sentence Date	Offence Date	Charge(s)	Description	Sentence
June 10, 2022 Halifax, NS	Mar 24 - Apr 12, 2021	423.1(1)(b) *CC*	Intimidation of a Justice System Participant	18 months consecutive custody (federal)
	Feb 5 – Mar 13, 2021	423.1(1)(b) *CC*	Intimidation of a Justice System Participant	12 months concurrent custody (federal)
		264.1(1)(a) *CC*	Uttering Threats to Cause Death or Bodily Harm	3 months concurrent custody (federal)

FACTS taken from the Sentencing Transcript

1. Mr. Nickerson called Adria Lewis for a period of two weeks' prior to his domestic trial. One call he just said to remember a specific address on Caldwell Road, which is the address of Ms. Lewis' children. Mr. Nickerson also tried to have people slash her tires to prevent her from testifying against him, to give her drugs, hoping she wouldn't come to court as a result of consuming the drugs.
2. Between February 5th and 14th, Ms. Lewis was receiving many phone calls from Mr. Nickerson, at that point where there was no conditions being in place. She indicated that since he was inside of custody, he had been continually trying to persuade her to drop the charges from, the assault from 2020, was ignoring her requests to stop calling her, and would not agree to continue the relationship. On February 14th, Mr. Nickerson threatened to kill Adria and her children in retaliation for her declining to have a relationship with him as well as not trying hard enough to drop the assault charges. On March 13th, 2021, Mr. Nickerson called Adria Lewis' mother, Violet and threatened to kill her, Adria, as well as her brother William Lewis. Mr. Nickerson informed Violet that if she doe to court, he will hunt her down and burn any car or house associated with her. He also said that she will go missing before court and stated "I don't care. It will happen".

Sentence Date	Offence Date	Charge(s)	Description	Sentence
March 9, 2023 Halifax, NS	November 2, 2020	266 *CC*	Assault	Deemed time served (1 day concurrent)
		267(c) *CC*	In Assault, chokes, suffocates or strangles	80 days concurrent custody (provincial)
		335(1) *CC*	Take Motor Vehicle without Consent	Deemed time served (1 day concurrent)

FACTS taken from the Sentencing Transcript

1. Ms. Adria Lewis, along with Mr. Nickerson, had attended the Shubenacadie Millbrook intending to vote on Band Council and Chief. They attended Millbrook in Adria's 2009 Jeep, had been consuming alcohol throughout the night. Mr. Nickerson was driving them back towards Halifax after the vote and an argument started over suggestions of Ms. Lewis cheating. Mr. Nickerson got angry during the verbal argument, pulled the vehicle over to a stop, pulled Ms. Lewis from the Jeep and pushed her against it while grabbing her throat. She briefly lost consciousness.
2. She got back in the Jeep and they continued driving, with the argument continuing. She started to cry. Calling her a stupid baby, that he didn't kill her. She was indicating that she was going to kill herself to escape him, and he got angry at her again. She tried to leave the Jeep with Mr. Nickerson grabbing her hand when she reached for her seatbelt, then pulled the belt tight to keep her in her seat. Put his hands on her throat again.
3. They kept driving back to Adsum House, and when they arrived, Mr. Nickerson pulled her out of the vehicle, where she fell and landed on her right elbow and arm. He then dragged her by her hair and body to the door of Adsum House, where she was pushed through the door, the latter part which was observed by a staff member from Adsum House.
4. He then left with her Jeep, at that point, not having permission to take it. Police were called by members of Adsum House. Ms. Lewis gave them a summary of what happened, but not a formal statement at that point. He was arrested a couple of days later.

[6] Mr. Nickerson was also charged with and convicted of offences that were committed after the Predicate Offence. Without limiting the specifics of the evidence to be relied upon, the facts and offences of which Lawrence Glen Nickerson was found guilty after the Predicate offence are summarized below:

Sentence Date	Offence Date	Charge(s)	Description	Sentence
December 12, 2024 Pictou, NS	May 17, 2022	264.1(1)(a) *CC* 266 *CC* 267(a) *CC*	Uttering threats Assault Assault with a weapon	90 days consecutive custody (provincial) and 5 years firearms prohibition

FACTS taken from the Sentencing Transcript

1. **264.1(1)(a) CC and 266 C.C.**: On May 17, 2022, Lawrence Glen Nickerson was to be transported to Provincial Court by sheriffs from the Northeast Correctional Centre for a morning court appearance. Mr. Nickerson wanted his afternoon medication to go with him. He was told that his request was denied as it is a controlled substance and cannot be sent outside the facility.
2. Mr. Nickerson told Correctional Officer Connors, "I'm not fucking going until I get my meds." Once the officers were ready to load Mr. Nickerson, he became more agitated and said he was not going. He took an aggressive stance with his fists up and said, "Let's go", then lunged toward Correctional Officer Connors. Correctional Officer Connors took a step back and ended up having to take steps to restrain Mr. Nickerson.
3. Mr. Nickerson was handcuffed. He then made threatening comments toward Correctional Officer Connors, saying "You'll get yours when I come back and these cuffs aren't on."
4. Once back in the secure bay, Mr. Nickerson became non-compliant again and stopped moving his feet and becoming, in effect, dead weight. He continued to resist once officers got him into the transport van. Before the door was secure to be closed, Mr. Nickerson turned and spit at Correctional Officer Connors, getting saliva in both of his eyes.
5. **Assault with a Weapon:** Also on May 17, 2022, when he was given his meal at lunch in the close confinement unit, Lawrence Glen Nickerson threw his lunch all over the wall and dumped his coffee out under his door. Correctional Officer Palmer escorted Mr. Nickerson out of his cell for video court and then cleaned up the cell, including plunging the toilet. When Mr. Nickerson returned, he stated that he would plug it again, as he planned on doing what he could to hurt the staff that he didn't like.
6. Close to suppertime, Mr. Nickerson requested to see healthcare. He was advised they were not able to see him until new admissions were completed. Mr. Nickerson then requested hot water, which was provided. When the meal slot door of the cell was open, Mr. Nickerson stuck both arms through the meal slot and threatened to "shit bomb" Correctional Officer Palmer if he was not taken to health care right away. Correctional Officer Palmer denied the request, and Mr. Nickerson then threw a cup of feces and liquid on Correctional Officer Palmer, getting it in his hair, vest and hands.

Facts Proven in Relation to Pending Criminal Charges

[7] Mr. Nickerson has three pending charges that are currently before the Provincial Court of Nova Scotia. In the hearing before me, the Crown has proven the facts behind these charges beyond a reasonable doubt. The facts proven were the subject of my mid-sentencing fact findings on June 18, 2025, pursuant to section 724 of the *Code*, and are as follows:

A. February 19, 2024 Incident:

1. On February 19, 2024, Correctional Officer Prabhdeep Singh was working at CNSCF in Dartmouth, Nova Scotia in the course of his duties as a peace officer. On that date, Lawrence Nickerson was a person in custody at CNSCF.

2. While Officer Singh was interacting with another person in custody, Mr. Nickerson suddenly approached Officer Singh from behind. He kicked Officer Singh in the back of the leg and pushed him. A brief altercation continued, after which correctional officers were able to gain control of Mr. Nickerson.

3. The above was captured on video and introduced as evidence through Correctional Officer Alan Thorburne, who was in the role of Acting Captain at the time and was in a position to authenticate the video footage. Officer Thorburne identified the above-noted parties in the video footage played in court.

B. July 19, 2024 Incident:

4. On July 19, 2024, Mr. Nickerson was a person in custody at the Central Nova Scotia Correctional Facility in Dartmouth, Nova Scotia. On that date, he was being held in in a closed confinement unit ("CCU") cell.

5. At approximately 00:52 hours, correctional officers attended outside the cell and determined Mr. Nickerson had broken the intercom/communication buzzer inside his CCU cell, then subsequently used the pieces to break the windowpane of the door of his cell. He then threw items out of his cell through the broken window.

6. Correctional officers responded at approximately 1:09 hours and transferred Mr. Nickerson to another CCU cell due to the damage Mr. Nickerson caused to his cell.

7. At approximately 01:34 hours, Mr. Nickerson began to damage the camera lens of his new cell. He continued to do so until the camera lens could no longer capture any images.

8. The above was captured on video and introduced as evidence through Correctional Officer Alan Thorburne, who was in the role of Acting Captain at the time. Officer Thorburne identified Mr. Nickerson in the video footage played in court. Officer Thorburne confirmed that Mr. Nickerson did not have permission to damage the property of CNSCF, and that CNSCF did not consent to the damage. Officer Thorburne also confirmed that the cost to replace the items destroyed by Mr. Nickerson was $3562.86.

C. December 6, 2024 Incident:

9. On December 6, 2024, Lawrence Nickerson was a person in custody at the Central Nova Scotia Correctional Facility in Dartmouth, Nova Scotia. On

that date, Mr. Nickerson was being transferred from the day room to CCU, cell 5.

10. Upon being transferred to the CCU cell 5, Mr. Nickerson was agitated and his tone of voice was aggressive with correctional staff and uttered a threat to kill or injure the first person who would have opened the door. Correctional Officer Lauren Papp testified to hearing this threat.

11. As a result of his behaviour, multiple correctional officers were required to assist in removing Mr. Nickerson's handcuffs. Once they did, Mr. Nickerson attempted to assault correctional staff by swinging his arm at them, resulting in many correctional staff members taking Mr. Nickerson to the ground and securing him there. After this, correctional staff removed themselves from the cell and secured the cell door quickly.

12. After being secured in the cell, Mr. Nickerson began to kick at the cell door and ripped the intercom panel off the wall. He then used that metal panel to break the CCTV camera.

13. A team of correctional staff responded by donning protective gear and attending to extract Mr. Nickerson from his cell. Before they did so, Mr. Nickerson continued to hit the cell door and broke the window on the door of his cell.

14. The correctional staff team attended Mr. Nickerson's cell and utilized OC spray through the meal tray slot in the door and subsequently were able to handcuff Mr. Nickerson through the meal tray slot. The team then relocated Mr. Nickerson to CCU cell 1.

15. After being relocated to CCU cell 1, Mr. Nickerson scratched the CCTV camera lens of his cell until the camera lens could no longer capture any images.

16. These events were testified to by Correctional Officer Alan Thorburne (Acting Captain at the time), as well as by Correctional Officer Lauren Papp. The events were captured on video and played in court, authenticated by Officer Thorburne. Officer Thorburne identified Mr. Nickerson in the video footage.

17. Officer Thorburne confirmed that Mr. Nickerson did not have permission to damage CNSCF property, and CNSCF did not consent to the damage done by Mr. Nickerson. Officer Thorburne confirmed that the cost to replace the items destroyed totaled $4885.36.

Applicable Legislation and Jurisprudence

A. The Purpose and Evolution of Part XXIV of the *Code*

[8] The dangerous offender provisions of the *Code* are intended to protect the public from future harm. Prevention of future violence, and not punishment, is the primary consideration during a dangerous offender proceeding: *R. v. Lyons*, [1987] 2 S.C.R. 309, at para. 27. The Supreme Court spoke about the process in *R. v. Jones,* [1994] 2 S.C.R. 229, at para. 124:

> In the case of dangerous offender proceedings, it is all the more important that the court be given access to the widest possible range of information in order to determine whether there is a serious risk to public safety. If there is, the dangerous offender sentencing allows the justice system to more precisely tailor the actual time served by the offender to the threat that he poses to society. The overriding aim is not the punishment of the offender but the prevention of future violence through the imposition of an indeterminate sentence. An indeterminate sentence is not an unlimited sentence. If, in the case at hand, the psychiatrists testifying on behalf of the accused are correct in their assessment that Mr. Jones will be fit to be released in ten years, then he will be liberated at that time. The offender faces incarceration only for the period of time that he poses a serious risk to the safety of society. In the interim, it is hoped that he will receive treatment that will assist him in controlling his conduct. To release a dangerous offender while he remains unable to control his actions serves neither the interests of the offender nor those of society.

[9] With the introduction of the *Tackling Violent Crime Act*, S.C. 2008, c. 6, Parliament enacted numerous changes to the dangerous offender provisions of the *Code*. This resulted in the following changes:

1. An increase in the pool of predicate offences;
2. Removing the discretion of the court to not find that an offender is a dangerous offender where the eligibility are satisfied;
3. Shifting judicial discretion to the sentencing stage;
4. Limiting this judicial discretion by creating a statutory presumption of an indeterminate sentence for dangerous offenders; and
5. Increasing the risk standard from “reasonable possibility of eventual control” to the new standard of “reasonable expectation” that a lesser measure than indeterminate custody would adequately protect the public.

B. Conditions Precedent to the Dangerous Offender Application

[10] Conditions precedent to the commencement of a dangerous offender application include the following:

1. The accused has been convicted of a serious personal injury offence as defined in 752(a) or (b) of the *Code* or both;
2. The Crown sought and obtained a remand for assessment pursuant to s.752.1(1) of the *Code*;
3. An assessment report was filed with the Court pursuant to s.752.1(2) or (3) of the *Code*;
4. The Attorney General's consent to the application has been obtained, pursuant to s.754(1)(a) of the *Code*; and
5. A written Notice of Application has been filed with the court and provided to defence counsel at least seven days before the hearing, pursuant to s.754(1)(b) and (c) of the *Code*.

C. Evidentiary Considerations

[11] The Supreme Court of Canada endorses placing a wide range of evidence before the Court in assessing an offender's eligibility for a dangerous offender designation: *R. v. Jones*, *supra*, at para. 128.

D. The "Two Stage" Process

[12] There are two stages during a dangerous offender application. First, the Court must consider whether to designate the accused a dangerous offender. Second, the Court must consider the appropriate penalty. These stages are often referred to as the "designation stage" and the "penalty stage": *Boutilier, supra,* at paras. 13 to 15.

1. The Designation Stage

[13] The statutory criteria for the designation stage are outlined in section 753 of the *Code*. In this case the Crown relies on subsections 753(1)(a)(i) and (ii) of the *Code*, which read as follows:

> 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 which 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, [or]
>
> (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…

[14] In *R. v. Boutilier*, *supra*, the Supreme Court of Canada elaborated on the statutory scheme – describing these components as both the "objective" and "subjective" portions of the designation stage. The court stated at paras. 17-18:

> 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 752 defines the list of serious personal injury offences.
>
> Second the offender must represent a "*threat* to the life, safety or physical or mental well-being of other persons." This second element, the requisite threat level, requires the judge evaluate the threat posed by the offender on the basis of evidence establishing one of the following three violent patterns of conduct:
>
> …
>
> These paragraphs are disjunctive – they provide three standalone grounds for finding that the offender is a "threat" under s.753(1).

[15] The Supreme Court then distilled the "designation stage" to four essential elements:

1. The offender has been convicted of a "serious personal injury offence";
2. This predicate offence is part of a broader pattern of violence;
3. There is a high likelihood of harmful recidivism; and
4. The violent conduct is intractable.

The Crown must prove each of these four elements beyond a reasonable doubt (para. 26).

[16] The Saskatchewan Court of Appeal made the following points about the designation stage in *R. v. Starblanket,* 2019 SKCA 130, at para. 67:

> Importantly, the majority in *Boutilier*, under the pen of Côté J., made these declarations of principle:
>
> > (a) "an offender cannot be designated as dangerous unless the judge concludes that he or she is a *future* 'threat' after a prospective assessment of risk" which requires a "consideration of future treatment prospects" (at para 23, italics emphasis in original);
> >
> > (b) following R. *v. Lyons*, [1987] 2 S.C.R. 309 (S.C.C.) [*Lyons*], a sentencing judge must still be satisfied on the evidence that (*Boutilier* at paras 26-27):
> >
> > > (i) the offender poses a high likelihood of harmful recidivism;
> > >
> > > (ii) his or her conduct is intractable, which is defined as "behaviour that the offender is unable to surmount" (at para 27);
> >
> > (c) "[d]etermining whether or not a high risk of recidivism and intractability are present necessarily involves a prospective inquiry into whether an offender will continue to be ... 'a real and present danger to life or limb'" (at para 35);
> >
> > (d) "the Crown must prove every dangerousness criterion beyond a reasonable doubt (*R. v. Gardiner*, [1982] 2 S.C.R. 368 (S.C.C.); *R. v. Jones*, [1994] 2 S.C.R. 229 (S.C.C.))", but "what must be proven beyond a reasonable doubt with respect to these two prospective criteria is not their certainty, but their likelihood: *Currie*, at para. 42. This is so because 'as a matter of practicality, the most that can be established in a future context is a likelihood of certain events occurring'; *Lyons*, at p. 364" (at footnote 1; see also para 41);
> >
> > (e) "the sentencing judge must consider all retrospective and prospective evidence relating to the continuing nature of this risk, including future treatment prospects" (at para 43);
> >
> > (f) "[a]t the designation stage, treatability informs the decision on the threat posed by an offender" (at para 45); and
> >
> > (g) "offenders will not be designated as dangerous if their treatment prospects are so compelling that the sentencing judge cannot conclude beyond a reasonable doubt that they present a high likelihood of harmful recidivism or that their violent pattern is intractable" (at para 45).
>
> See *S.P.C.*, *Piche*, *Parfitt*, and *R v. Napope*, 2019 SKCA 124 (Sask. C.A.).

I will look at each of the four essential factors as they apply to Mr. Nickerson:

a) Serious Personal Injury Offence

[17] "Serious personal injury offences" under this section of the *Code* are outlined in section 752. Assault with a weapon, the offence committed by Mr. Nickerson, is a serious personal injury offence.

b) Patterns of Behaviour – Generally

[18] *R. v. Neve*, 1999 ABCA 206, provides a helpful analysis of "patterns of behaviour" for dangerous offender proceedings. The Court notes at para. 123 that there are generally three types of evidence that can be considered for the pattern analysis under s. 753:

- The offender's past criminal acts and criminal record;
- Extrinsic evidence relevant to those past acts and the circumstances surrounding them; and
- Psychiatric reports opining as to that conduct.

[19] At para. 127, the Court said:

> In assessing what is relevant and to what issue, one must keep in mind that the standard or measure to be used in determining whether an offender is a threat, and thus capable of being designated a dangerous offender, begins with" pattern of behaviour". While psychiatric and character evidence may be admissible, and while such evidence may be used to explain, for example, why the offences make a pattern, they are not the standard or measure. Actual behaviour is. Thus, they cannot be used to create the pattern in the absence of actual conduct. We concede that there may be a fine line between creating a pattern and explaining it. But nevertheless, there is a line. It is there for a reason, one that is integral to the operation of the dangerous offender provisions. That reason is to ensure that any determination of an offender's future danger is firmly anchored in the pattern of past behaviour (and opinions based on that pattern) and not on an assessment of the person or his or her character generally. If the court were able to find a threat without the necessary finding that the required pattern of conduct had been proven, this would effectively mean that evidence which is not allowed in at the pattern stage could find its way in through the back door. In other words, the threat must rest on the concrete foundation of past behaviour. Put simply, no pattern, no threat.

[20] The Court emphasized where the focus is on, at para. 131:

> …actions, not thoughts. An inquiry into whether the requisite pattern of conduct has been established is not an inquiry into the thoughts, feelings and actions of the offender throughout his or her entire life. It is restricted to an assessment of those acts which may or may not be an element of the pattern of conduct. While the motives behind, and the context surrounding an offender's actions, may well be relevant to explain conduct and whether it fits within a proscribed pattern, the thoughts of an offender, absent any causal connection to his or her actions, cannot be loaded onto the pattern scale for the purposes of s.753(a). The dangerous offender legislation is designed to capture dangerous offenders, not dangerous thinkers.

[21] The Court confirmed that the Crown can rely on untried criminal offences to establish the pattern of behaviour. This conduct must be proven beyond a reasonable doubt (para. 133).

[22] To establish a pattern, three things must be present. There must be repetitive behaviour, the dangerous behaviour was not restrained in the past, and there must be a likelihood that the same behaviour in the future will not be restrained and will cause death or injury. These three elements are described generally, to protect against over-particularization leading to a requirement for a "level of detail which obscures the common characteristics which embody and reveal the three essential elements of the pattern: *R. v. Dow*, 1999 BCCA 177, at para. 23.

[23] At para. 25 of *Dow*, *supra,* the Court of Appeal said this about "patterns":

> … the very essence of a pattern that there be a number of significant relevant similarities between each example of the pattern that is being considered, but that, at the same time, there may be differences between each example, some of them quite distinctive, so long as the differences leave the key significant relevant elements of the pattern in place. That is, after all, what is meant by a pattern. We talk of a pattern in dress-making. That means that each example is assembled from pieces that are cut in the same proportions and that fact, in itself, is what constitutes the common element of the pattern. But the size of the pieces and of the assembled item of clothing, the fabric of which they are made, and the colour of the item of clothing may all be different without affecting the identity of the pattern. The same is true of patterns of decorative tiles, and of many other items. The aspects of the object which are relevant to a description of the pattern must all be similar in their essential characteristics. But other aspects of the items, which are not essential to a description of the relevant pattern itself, may be markedly different from one example to another.

[24] It is not necessary that conduct forming part of a pattern be equally or objectively as serious as the predicate offences: *R. v. Shea*, 2017 NSCA 43, at paras. 125-127.

[25] In the pattern analysis caution is required when considering "context" (e.g., for violent behaviour within prisons). Again, *Shea*, *supra*, at paras. 132-133, is helpful when considering institutional "context" and patterns of violent behaviour:

> With respect, the application judge's contextual approach was erroneous. On its face, s. 753(1) does not require the injection of "context" as used by the application judge into the determination of what behaviours may or may not properly fall within "a pattern of repetitive behaviour" or "a pattern of persistent aggressive behaviour."
>
> There are many "contexts" in which problematic (and sometimes criminal) behaviour is common — with youthful offenders; with those living in poverty; with those suffering from addiction or other mental health difficulties; and with those in historically marginalized groups, to name but a few. The dangerous offender caselaw is replete with pattern analysis which finds as part of a "pattern of behaviour" youthful conduct, behaviour under the influence of drugs or alcohol, behaviour prompted by the effects of poverty and behaviour while incarcerated. Other than *Neve*, I have been unable to find any clear support for the use of the circumstances surrounding behaviour as a means of excluding it from a pattern analysis. These "contexts" may be explanations for criminal choices, but they are not justifications or legal excuses.

c) Repetitive Behaviour…Showing a Failure to Restrain… – s. 753(1)(a)(i) of the *Code*

[26] In *R. v. Tynes*, 2022 ONCA 866, at para. 67, the Ontario Court of Appeal emphasized that subsection 753(1)(a)(i) of the *Code* is based in part on similarity in the offender's behaviour:

> Justice Watt of this court held in *R. v. Gibson*, 2021 ONCA 530, 157 O.R. (3d) 597, that the pattern requirement in s. 753(1)(a)(i) is not based exclusively on the number of offences. It is also rooted in the elements of similarity in the offender's behaviour: *R. v. Langevin* (1984), 11 C.C.C. (3d) 336 (Ont. C.A.), at pp. 348-49. Similarities can be found not only in the types of offences but also in the degree of violence or aggression threatened or inflicted on the victims: *R. v. Szostak*, 2014 ONCA 15, 118 O.R. (3d) 401, at para. 33, leave to appeal refused, [2014] S.C.C.A. No. 300; *R. v. Neve*, 1999 ABCA 206. Where there are numerous incidents in the pattern — as in this case — fewer similarities between the incidents are required: *R. v. Hogg*, 2011 ONCA 840, 287 O.A.C. 82, at paras. 39; *R. v. Jones*, [1993] O.J. No. 1321 (Ont. C.A.), at p. 3.

d) Persistent Aggressive Behaviour…Showing A Substantial Degree of Indifference… – s.753(1)(a)(ii) of the Code

[27] An offender's patterns of behaviour can be relevant to both s. 753(1)(a)(i) and (ii). Courts have determined, however, that there is a difference between "repetitive" behaviour and "persistent" behaviour. In *Tynes, supra*, at para. 70, the Ontario Court of Appeal said this about "persistent" behaviour:

> Unlike the "pattern of repetitive behaviour" in s.753(1)(a)(i), the jurisprudence has not interpreted this subsection to require similarities between the predicate offence and past offences. Instead, the past behavior must be "persistent" and coupled with indifference and intractability: see e.g., *R. v. Wong*, 2016 ONSC 6362, at para. 70; *R. v. Robinson*, [2011] B.C.J. No. 1001 (B.C. S.C), at para. 122; *R. v. Morin* (1998), 1998 SKQB 13883, 173 Sask. R. 101 (Sask. Q.B.), at para. 85.

[28] The Ontario Court of Appeal spoke about repetition in *R. v. Smith,* 2023 ONCA 575, at para. 28:

> Authors Gary Botting, Vincent LaRochelle and Alison Yule in *Dangerous Offender Law* (Toronto: LexisNexis Canada, 2021), at p. 27, describe "persistence" as "subsistence through a long period of time, a concept quite different from the notion of repetition. While a repetitive pattern of harmful conduct is the main predictive element of paragraph 753(1)(a)(i), the main predictive element of paragraph (ii) is the offender's indifference to future harm to others arising from their conduct."

[29] The court said this about "indifference" in *R. v. Haley*, 2016 BCSC 1144, at para. 296:

> The "substantial degree of indifference" requirement of s. 753(a)(ii) must be "measured broadly, by examining the attitude of the offender before, during and after the events in question" to the end of identifying the small group of offenders who display a conscious but uncaring, awareness of causing harm to others": *R. v. Allan*, 2009 BCSC 1245 (B.C. S.C.) at para. 218, aff'd 2012 BCCA 388 (B.C. C.A.); *R. v. G. (T.)* (1998), 109 B.C.A.C. 32 (B.C. C.A.) at paras. 23-24.

[30] The Court noted that repeat offending can provide proof of a substantial degree of indifference in *R. v. Kopas,* 2006 CarswellOnt 10063 (C.J.), at para. 29:

> The question then is, is there evidence showing that there was a substantial degree of indifference on the part of Mr. Kopas respecting the foreseeable consequences to other persons of his behaviour. Now, Mr. Kopas has, it has been noted on a couple of occasions, expressed some remorse, and I certainly give him credit for

> that. However, when one looks at the pattern of his offences, again, I particularly emphasize the robberies showing on his record, it is my view that although he may occasionally express good intentions, and may occasionally state that he is resolved not to commit further offences, his behaviour shows that he does. That is, regardless of he says from time-to-time, the fact is that upon release, almost invariably he commits more robberies, and in doing this he must be indifferent to the effect on the tellers of his behaviour. Any person of even minimal intelligence would know that the effect on the tellers would be, first of all, cause fear at the time the events happened, and, secondly, to cause continuing psychological damage to them. I cannot see how Mr. Kopas cannot be aware of that since virtually any adult person would know that that is happening. Therefore, I find that there is, in his behaviour, an exhibition of a substantial degree of indifference respecting the foreseeable consequences, that is the severe psychological harm, on the tellers whom he robs.

e) Likelihood of Harmful Recidivism

[31] In *R. v. S.M.J.,* 2023 ONCA 157, the Court of Appeal said "treatability" can inform the analysis of recidivism, at para. 27:

> At the designation stage of the dangerous offender analysis, treatability informs the offender's likelihood of recidivism: *Boutilier*, at para. 45. In assessing the treatability of an offender, a sentencing judge may consider evidence including the applicant's amenability to treatment, treatment avoidance, and failure to follow through with previous treatment: see e.g., *R. v. K.P.*, 2020 ONCA 534, 152 O.R. (3d) 145, at para. 13; *R. v. G.L.*, 2007 ONCA 548, 87 O.R. (3d) 683, at para. 40; *R. v. Simon*, 2008 ONCA 578, 269 O.A.C. 259, at para. 93. An offender's amenability to treatment is particularly important where treatment may be necessary to reduce or control future dangerousness: *R. v. Gibson*, 2021 ONCA 530, 157 O.R. (3d) 597, at paras. 205-206.

f) Intractability

[32] The Supreme Court in *Boutilier*, *supra,* spoke of intractability at paras. 27 and 46, respectively:

> …a sentencing judge must still be satisfied on the evidence that the offender poses a high likelihood of harmful recidivism and that his or her conduct is intractable. I understand "intractable" conduct as meaning behaviour that the offender is unable to surmount. …
>
> …
>
> … a finding of dangerousness has always required that the Crown demonstrate, beyond a reasonable doubt, a high likelihood of harmful recidivism and the

> intractability of the violent pattern of conduct. 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. This necessarily involves the consideration of future treatment prospects. …

[33] I note that the Crown has never been required to prove absolute "intractability" meaning that the offender will never be treatable in his lifetime: *R. v. Pedden*, 2005 BCCA 121, at para. 26.

[34] Evidence of treatability was explained in *R. v. Sohal*, 2023 BCCA 256, at para. 19:

> … Evidence of treatability that "(i) is more than mere speculative hope, and (ii) indicates that the specific offender can be treated within an ascertainable time frame" is required to meet the goal of protecting the public: *R. v. Little*, 2007 ONCA 548 at para. 42.

[35] In *R. v. Bird*, 2023 SKCA 40, the Saskatchewan Court of Appeal spoke of treatment prospects at paras. 57 and 59, respectively:

> …There is clear support in the jurisprudence for the proposition that, in order to add up to treatment prospects that are "so compelling" to raise a doubt about future violence or intractability, the evidence regarding successful treatment must amount to more than speculation, an expression of hope, or the mere possibility that future treatment might succeed…
>
> …
>
> … where the offender's past behaviour suggests that their risk for violent offending will carry into the future, a reasonable doubt about future violence or intractability must be based on evidence that permits the conclusion that the prospects for successful treatment are good enough that they can reduce or contain the offender's risk to such a degree that there is no longer a high likelihood of future violent offending (see, for example: *R v W.D.*, 2020 NLSC 96 at paras 19-20, citing *R v Little*, 2007 ONCA 548, 225 CCC (3d) 20). A number of considerations will be relevant in determining whether the evidence permits such a conclusion, including (a) whether the offender has deeply ingrained personality disorders that are resistant to change, (b) the availability or lack of availability of appropriate treatment facilities or programs, (c) the offender's outlook for improvement where programs or facilities exist, (d) whether or not an ascertainable time frame for improvement can be estimated or predicted, and (e) whether the delivery of the necessary treatment will be impeded because the offender has multiple disorders or a limited capacity to learn (see *R v Leach*, 2021 ABQB 61 at para 91, citing *R v Ominayak*, 2007 ABQB 442 at para 209, 443 AR 1, aff'd 2012 ABCA 337,539 AR

> 88). I would also add that a sentencing judge must consider other contextually relevant evidence, including whether there has been a change of significance in the offender's personal circumstances or motivation that speaks directly to their likelihood of complying with treatment or their prospects for benefiting from it. In *R v Levac*, 2022 SKKB 215 at paras 93-95, for example, Mitchell J. observed that evidence regarding the offender's attitude and motivation to change is highly relevant in that regard.

2. The Penalty Stage

[36] Where an accused is found to satisfy the elements of either (i) or (ii) of s. 753(1)(a) of the *Code*, the Court has no discretion and "shall find the offender to be a dangerous offender." A presumption is contained in s. 753(4.1) of the *Code* that the appropriate disposition is detention in a penitentiary for an indeterminate period. Section 753(4.1) reads:

> 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.
>
> [Emphasis added.]

[37] For offences committed after the enactment of the *Tackling Violent Crime Act,* courts must now assess whether the evidence demonstrates a "reasonable expectation that a less severe sentence will adequately protect the public." Courts have interpreted this new standard as requiring a higher degree of confidence in the treatability of the accused than the former standard of "reasonable possibility of control". As noted in *R. v. Racher,* 2011 BCSC 1313, at paras. 46-47:

> Under the current scheme, the exercise of discretion has moved to the stage of imposition of sentence rather than being at the stage of determining whether the offender should be declared a dangerous offender. However, under s. 753(4.1) the test for the exercise of the discretion is no longer a reasonable possibility of control. The Court must impose an indeterminate sentence unless it is satisfied that there is a reasonable expectation that a less severe sentence will adequately protect the public. I am satisfied that the change of language in the dangerous offender provisions was intentional and that it imposes a different and higher standard than was previously the case.
>
> Madam Justice Arnold-Bailey considered the meaning to be given to s. 753(4.1) in *R. v. Walsh*, Chilliwack Reg. No. 55701, May 24, 2011. With regard to what is meant by reasonable expectation, Madam Justice Arnold-Bailey

reviewed authorities in which that expression was used in other contexts and concluded:

> 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.

[38] Despite how a "*reasonable expectation*" amounts to a higher threshold than a "*reasonable possibility*", the factors which apply in deciding whether either threshold has been met are generally regarded as the same: *R. v. J.M.,* 2011 SKPC 109, at para. 114. From my review, the factors have not changed but the degree of confidence needed as to whether a dangerous offender can be safely managed in the future has changed.

[39] Generally, there is no onus on either party with respect to s. 753(4.1) of the *Code*. It is a matter for the court to decide based on the entirety of the evidence: *R. v. Taylor*, 2012 ONSC 1025, at para. 11, and *R. v. Downs*, 2012 SKQB 198, at para. 4.

a) Reasonable Expectation within s. 753(4.1) of the *Code*

[40] There are several factors to consider when determining whether there is a reasonable expectation that a dangerous offender can be safely managed. Rarely is one factor determinative. For non-sexualized violence, these factors include:

1. The personality profile of the accused;
2. The nature and scale of the change needed to manage risk;
3. Genuine motivation to pursue change;
4. Presence or absence of pro-social supports and skills in the community;
5. Past history in complying with court orders;
6. Past history in rehabilitative measures and programming;
7. The impact of untried treatment programs;
8. The impact of historically undiagnosed disorders;
9. Behaviour of accused while pending disposition;
10. A definite timeframe to successfully manage risk and the resources necessary to manage risk are presently in existence; and
11. The Parole Board of Canada.

What follows is an examination of those factors.

i) The Personality Profile of the Offender

[41] The presence of personality disorders, such as antisocial personality disorder and psychopathy may be seen as barriers to achieving control in the community, given that they can cause "inconformity with social norms, increased aggression, impulsivity, and a reckless disregard for the safety of others…rendering [the accused] less amenable to treatment": *R. v. Nelson*, 2023 ONCA 143, at para. 31.

[42] In *R. v. M.J.,* 2013 ONSC 6803, at paras. 261-267 and 420-422, the court found that personality pathologies are less likely to yield to successful treatment.

ii) Nature and Scale of the Change Needed to Manage Risk

[43] If the offender needs to make large scale and difficult changes, there is less chance there can be control of the risk. The Saskatchewan Court of Queen's Bench in *R. v. Casemore*, 2009 SKQB 306; aff'd at 2011 SKCA 14, made the following observation at para. 18 with respect to the nature and scale of the change needed to successfully manage risk:

> Where massive, wholesale changes need to be made, and sustained, by the offender in question, and there is little to no evidence to suggest that such a thing is realistic or likely, then it cannot be said that there is a reasonable possibility of eventual control of the risk in the community.

iii) Genuine Motivation to Pursue Change

[44] In *R. v. K.(B.M.)*, 1995 CarswellNWT 46 (S.C.), the court spoke about how genuine and proven motivation is relevant. Actions speak louder than words. The court stated at para. 143:

> … I am not satisfied that Mr. K. is motivated to accept treatment or to change. He may talk as if he is, but there is nothing in the evidence I heard of his conduct, to suggest that this is anything more than talk…

[45] Similarly regarding words, the court in *R. v. Pilgrim*, 2008 CarswellOnt 3298 (S.C.J.), at para. 214 said:

> In the past, Mr. Pilgrim has said he was motivated for treatment. But an examination of each significant occurrence demonstrates that he did not follow through with that motivation. His words were empty. In parole parlance, he did not

> "walk the talk". There is a trend. Mr. Pilgrim expresses motivation for treatment at the beginning, but once in a program, his motivation always declines noticeably, which he then blames on anything but the program.

iv) The Presence or Absence of Pro-Social Supports and Skills

[46] Pro-social support is important. Whom the offender will be spending time with/in the community when they are released is a consideration. Reintegration is more likely to occur with an offender with work skills. Someone who will have "great difficulty finding employment", with "no technical training", "no support network in any community", and "street gang affiliation" is unlikely to gain control of their violent tendencies: *R. v. Innocent*, 2009 CarswellOnt 4791 (S.C.J.), at paras. 52 to 56; as aff'd by 2012 ONCA 659.

v) Past History in Complying with Court Orders

[47] When determining an appropriate sentence, compliance with past court orders is a consideration. A determinate sentence in conjunction with a long-term supervision order is a potential "lesser measure" pursuant to s. 753(4.1). It requires an offender to meet the conditions of the long-term supervision order. A determinate sentence is not appropriate for an offender who has a poor history of complying with court orders: *R. v. Casemore*, *supra*; *R. v. Solano*, 2014 ONCA 185, at para. 5.

vi) Past History in Rehabilitative Measures and Programming

[48] *R. v. Bruneau*, 2009 BCSC 1089, addressed how success with rehabilitation and programming depends on the sincere commitment of the offender, at para. 236:

> Ultimately, the effectiveness of treatment lies with the commitment of the Offender to identify and manage their behaviour so that they avoid the commission of future criminal offences.

vii) The Impact of Untried Treatment Programs

[49] *R. v. Casemore (C.A.)*, *supra*, addressed the impact of untried treatment programs, at para. 15:

> It is not a requirement that an offender have tried all treatment programs available before being given an indeterminate sentence. If there is evidence that an offender has not responded to past treatment programs that were offered, the court may not be satisfied that the offender will respond in the future.

viii) Speculative vs. Confirmed Diagnosis

[50] In *R. v. BJFW,* 2004 CarswellSask 268 (Q.B.), aff'd on appeal by 2005 SKCA 101, the accused asserted that he *may* suffer from undiagnosed Attention Deficit Hyperactivity Disorder (ADHD), which is why he "has been untreatable". The accused was not assessed by an expert for ADHD, and the diagnosis was not confirmed. The Court sentenced the accused to a period of indeterminate custody, and with respect to the undiagnosed ADHD assessment, the court found it too speculative to warrant any consideration at para. 79:

> The suggestion that the accused may suffer from ADHD and if he does, maybe that disorder can be treated and if it is treated, maybe he would then be interested and motivated to be treated for his sexual deviancy is far too speculative to warrant any consideration in determining an appropriate sentence for the accused.

ix) Behaviour of Offender Pending Disposition

[51] The offender's behaviour pending disposition is a clear indicator for management of risk: *R. v. Middleton*, 2014 ONSC 1071, at paras. 26 and 27; *R. v. Newhook*, 2010 NSPC 19, at paras. 35-36; and *R. v. Gonzales*, 2013 SKCA 10, at para. 38.

x) A Definite Timeframe to Manage Risk and the Resources Necessary to Manage Risk Presently Exist

[52] A failure for either sub-factor is sufficient to answer whether a reasonable expectation exists. In *R. v. Little*, 2007 ONCA 548, the Ontario Court of Appeal comments at para. 8:

> … the trial judge erred by declaring Little a long-term offender and imposing a determinate sentence in the absence of evidence either that Little could be meaningfully treated within a definite period of time, or that the resources needed to implement the supervision conditions that the trial judge concluded were necessary to eventually control Little's risk in the community were available, so as to bring Little's risk of future reoffending within tolerable limits.

[53] The court went on to note that "'real world' resourcing limitations cannot be ignored" (para. 70). These similar comments around resourcing limitations were found in *R. v. McCallum*, 2011 BCSC 715, where the judge noted that, while individual treatment or therapy was recommended, it was not generally made

available in the community (para. 55). It was also noted in *R. v. Bitternose,* 2013 ABCA 220, at para. 37:

> Nor is it enough to postulate that the necessary facilities might be created by the time of the respondent's release years in the future. The subsection says "is satisfied", and "is a reasonable expectation", using the present tense…

xi) The Parole Board of Canada

[54] The court must impose indeterminate custody if the evidence does not establish a "reasonable expectation" that a lesser measure other than indeterminate custody would adequately protect the public. Once imposed, the offender is then under the supervision of the Parole Board of Canada and can pursue release into the community through their framework. The Parole Board of Canada is best positioned to assess an accused's progress in a penitentiary and decide whether the risk is properly managed: *Innocent, supra*, at para. 52.

[55] Accordingly, indeterminate custody is not a "throwing away of the key", but a recognition by the Courts that in appropriate situations suitability of release is best measured in the future. In *R. v. T.R.S.,* 2006 BCSC 82, the court stated at para. 225:

> This is not to say that there cannot be hope for T.R.S. A dangerous offender designation does not mean that the offender will necessarily be locked up for the rest of his life without any chance of parole. CSC does not approach the management of a dangerous offender on the basis that nothing can be done so nothing will be done. Rather the approach is to consider what forms of treatment, therapy and counselling is best suited for the offender to try to reduce the risk and permit his eventual release on parole with appropriate conditions and safeguards. CSC is required to consider parole after seven years and every two years thereafter.

E. The Long-Term Offender Designation

[56] Section 753(5) of the *Code* bridges the dangerous offender designation to the long-term offender section:

> (5) If the court does not find an offender to be a dangerous offender,
>
> > (a) the court may treat the application as an application to find the offender to be a long-term offender, section 753.1 applies to the application and the court may either find the offender is a long-term offender or hold another hearing for that purpose; or
> >
> > (b) the court may impose sentence for the offence for which the offender has been convicted.

[57] The long-term offender section reads:

> 753.1(1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that
>
> > (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
> >
> > (b) there is substantial risk that the offender will reoffend; and
> >
> > (c) there is a reasonable possibility of eventual control of the risk in the community.

[58] If I am not satisfied that an offender meets the dangerous offender designation, there remains the option to designate the offender a long-term offender.

[59] The Supreme Court of Canada considered the long-term offender provisions of the *Code* in *R. v. Ipeelee*, 2012 SCC 13. The majority noted at para. 43 that the dangerous offender and long-term offender provisions serve different objectives in the sentencing process:

> The rationale for the dangerous offender designation can be contrasted with that of the long-term offender provisions, which were not introduced to the *Criminal Code* until 1997. That year, extensive amendments were made to Part XXIV of the *Criminal Code* by Bill C-55 (*An Act to amend the Criminal Code (high risk offenders), the Corrections and Conditional Release Act, the Criminal Records Act, the Prisons and Reformatories Act and the Department of the Solicitor General Act*, S.C. 1997, c. 17). These amendments, following the recommendations of the Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders (the "Task Force"), introduced the long-term offender designation and the availability of LTSOs. The Task Force noted that a lacuna existed in the law whereby serious offenders were denied the support of extended community supervision, except through the parole process. LTSOs were designed to fill this gap and supplement the all-or-nothing alternatives of definite or indefinite detention…

[60] The majority, per LeBel J., noted that the primary purpose of a long-term supervision order is rehabilitation of the offender, working in tandem with the need to protect the public:

> [48] Reading the *Criminal Code*, the *CCRA* and the applicable jurisprudence together, we can therefore identify two specific objectives of long-term supervision as a form of conditional release: (1) protecting the public from the risk of re offence, and (2) rehabilitating the offender and reintegrating him or her into

> the community. The latter objective may properly be described as the ultimate purpose of an LTSO, as indicated by s. 100 of the *CCRA*, though it is inextricably entwined with the former. Unfortunately, provincial and appellate courts have tended to emphasize the protection of the public at the expense of the rehabilitation of offenders. This, in turn, has affected their determinations of what is a fit sentence for breaching a condition of an LTSO.

[61] Lebel J. noted at para. 50 that "…rehabilitation is the key feature of the long-term offender regime that distinguishes it from the dangerous offender regime…"

General Principles in Dangerous Offender Proceedings

[62] The following cases contain relevant principles applicable to dangerous offender and long-term offender proceedings:

(a) *R. v. L.(B.R.)* (*sub nom. Latham*), [1987] M.J. No. 263 (Q.B.);

(b) *R. v. Currie*, [1997] 2 S.C.R.260;

(c) *R. v. Jones*, [1994] 2 S.C.R. 229;

(d) R. *v. Carleton*, [1983] 2 S.C.R. 58; affirming (1981), 69 C.C.C. (2d) 1 (Alta. C.A.);

(e) *R. v. Gardiner*, [1982] 2 S.C.R. 368;

(f) *R. v. Brown*, [1999] B.C.J. No. 3040 (S.C.);

(g) *R. v. Nepoose* (1997), 118 C.C.C. (3d) 570 (Alta. C.A.);

(h) *R. v. L.M.T.* (sub nom. Teskey), [1996] A.J. No. 344 (Q.B.);

(i) *R. v. Boyd* (1983), 8 C.C.C. (3d) 143 (B.C.C.A.); and

(j) *D.L.S.* (*sub nom. Schwartz*), [2000] B.C.J. No. 47 (S.C.)

[63] In reviewing the decisions, the following general principles emerge which I adopt and reproduce from the Crown brief as follows:

1. The public interest looms large on dangerous offender applications. The specific object is to protect society from the person who has been convicted of a serious personal injury offence and who has shown a propensity for violent crimes (sexual or otherwise) (*L.B.R., supra*);
2. The overriding aim of dangerous offender legislation is not punishment but the prevention of future violence (*D.L.S., supra*);

3. The onus of proof is upon the Crown and the standard of proof is beyond a reasonable doubt (including acts of past discreditable or criminal conduct) with the exception of the future likelihood component that is on a balance of probabilities (*Lyons, supra*, at p. 47-51; *Carleton, supra*, at p. 6; *D.L.S., supra*);

4. The strict rules which govern a trial do not apply at a sentencing hearing and it would be undesirable to have the formalities and technicalities characteristic of the normal adversary proceedings prevail. The hearsay rule does not govern the sentencing hearing. Hearsay evidence may be accepted where found to be credible and trustworthy. The judge traditionally has had wide latitude as to the sources and types of evidence upon which to base his sentence. He or she must have the fullest possible information concerning the background of Mr. Nickerson if he or she is to fit the sentence to the offender rather than to the crime (*Gardiner, supra*; *Jones*, *supra*; *Boyd, supra*, re reliance upon psychiatric evidence relating to records that are relied upon in expressing opinions);

5. Dangerous offender and long-term offender proceedings do not constitute a new trial but rather a sentencing phase of a trial. The balancing of Charter values in this context results in societal values for protection outweighing individual rights against self-incrimination (*Brown, supra*);

6. The confession rule has been designed for proceedings where, broadly speaking, the guilt or innocence of a person is the matter in issue. The rule has not been established for proceedings related to the determination of sentence (*Jones, supra*);

7. An offender cannot be punished for not fully participating in the assessment nor can the Court make an adverse inference with respect to his or her refusal to participate. At a dangerous offender application it is the Crown and not the defence who has put the accused's mental state in issue (*Brown, supra*; *L.M.T., supra*).

[64] I note that in this case, Mr. Nickerson did participate up to a point in the court-ordered assessment process. He allowed himself to be interviewed on two occasions over the course of a total of six hours; however, he declined to participate in two follow-up interviews and refused to attend for psychological testing.

Evidentiary Issues

A. Areas of Importance

[65] It is important for the Court to consider the accused's ability to manage his own behaviour in trying to determine whether a long-term offender designation is appropriate: *R. v. T. (R. E.)* (2005), 204 C.C.C. (3d) 51 (B.C.C.A.).

[66] A determination of the appropriate period of supervision requires an assessment of the risk of re-offending, and an emphasis on measures to control a risk already judged to be susceptible to eventual control in the community. Relevant factors include past conduct, the possibility of effective treatment, and the possibility of burnout: *R. v. Blair*, (2002) 164 C.C.C. (3d) 453 (B.C.C.A.).

[67] To achieve the goal of protection of the public under the dangerous and long-term offender provisions, evidence of treatability that is more than speculative hope, is necessary: *R. v. Little* (2007), 225 C.C.C. (3d) 20 (Ont. C.A.), leave to appeal refused [2008] SCCA No. 39.

[68] A court requires proof that the nature and severity of the accused's identifiable risk can be sufficiently controlled in the community to determine that the accused's risk can be reduced to an acceptable level so that the accused may be designated as a long-term rather than a dangerous offender: *Little*, *supra*.

[69] A sentencing judge is not entitled to assume that the resources necessary to implement recommended supervision conditions, which are neither committed nor available at the time of a dangerous offender hearing, will be available when the accused is released from custody: *Little*, *supra*.

[70] The fact that there remains a reasonable possibility that the accused's risk could be controlled in the community by treatment and medication does not mean that no substantial risk of re-offence exists: *R. v. A.D.M.*, 2009 NSCA 1.

B. Types of Admissible Evidence

[71] The rules of evidence are relaxed at dangerous offender proceedings to ensure the Court receives the widest possible range of information. This relaxation of the rules applies both to the types of evidence to be introduced and the method of proving the various allegations. For example, the court may permit the Crown to lead evidence of character and repute if the court sees fit (s. 757 of the *Code*).

[72] Even though the Crown may call different types of evidence and rely on different methods of proof, the burden remains unchanged. Any disputed allegation of criminal conduct or aggravating fact must be proved beyond a reasonable doubt.

[73] The Court may hear and rely on hearsay and receive documentary evidence: *R. v. Jones*, *supra*; *R. v. Gardiner*, *supra*; *R. v. Boyd*, *supra*.

1. Other Offences

[74] The Crown set out a table containing all of Mr. Nickerson's criminal convictions. However, there is also evidence in reports before the Court which refer to other conduct by Mr. Nickerson which did not result in criminal convictions. The Crown argued that despite these incidents not resulting in convictions these references are admissible into evidence. I agree that the Crown may do so if the offender has not been acquitted, provided that the other criminal conduct is relevant to the elements under the dangerous offender definitions (ss. 753(1)(a)(b)).

[75] In *R. v. Shrubsall*, 2001 NSSC 197, Justice Cacchione stated at para. 18:

> The Alberta Court of Appeal in *R. v. N.(L.)* (1999), 137 *CC*C. (3d) 97 (Alta. C.A.) held that evidence of criminal behaviour which was not the subject of criminal charges may be introduced in dangerous offender proceedings. The Ontario Court of Appeal in *R. v. S. (C.L.)* (1999), 133 C.C.C. (3d) 467 (Ont. C.A.) also held that the dangerous offender provisions of the *Criminal Code* contemplate the admissibility of evidence of prior misconduct, including matters which were not the subject of criminal charges if the evidence is relevant. The same direction is also found in *R. v. Lewis* (1984), 12 C.C.C. (3d) 353 (Ont. C.A.) and *R. v. Corbiére*, [1995] 8 O.A.C. 222 (Ont. C.A.).

[76] In *R. v. J.H.B.* (1995), 101 C.C.C. (3d) 1 (N.S.C.A.), the Court of Appeal held the offender did not have to be convicted of a prior offence in order for it to be admissible at a dangerous offender hearing. The Crown called considerable evidence concerning other criminal activity that was not the subject of the predicate offence or other charges. The Crown also introduced evidence of the accused's extensive collection of pornography and excerpts from his diaries. The accused's past conduct is of concern to the court. Prior incidents may be of considerable importance in establishing a pattern of repetitive and persistent aggressive behaviour or a failure to control sexual impulses.

[77] In *R. v. Jack*, [1998] B.C.J. No. 458 (C.A.), the Crown called the victim of a previous rape who refused to talk about the incident but did acknowledge a previous

statement she had given was accurate. The British Columbia Court of Appeal concluded:

> [38] The Crown must, on a sentencing hearing, prove disputed facts beyond a reasonable doubt. That applies to all sentencing hearings including dangerous offender proceedings. Gonthier J. said in *R. v. Jones*:
>
> > As Lamer C.J.C. points out this Court held in *R. v. Gardiner*, [1982] 2 S.C.R. 368, that the Crown must prove disputed facts beyond a reasonable doubt during the sentencing hearing. However, in determining what facts are admissible at the sentencing stage, *Gardiner* reaffirmed the widely accepted principle that judges should have access to the fullest possible information concerning the background of the accused. As Dickson, J. stated at p.414:
> >
> > > It is a commonplace that the strict rules which govern a trial do not apply at a sentencing hearing and it would be undesirable to have the formalities and technicalities characteristic of the normal adversary proceeding prevail. The hearsay rule does not govern the sentencing hearing. The hearsay evidence may be accepted where found to be credible and trustworthy. *The judge traditionally has had wide latitude as to the sources and types of evidence upon which to base his sentence. He must have the fullest possible information concerning the background of the accused if he is to fit the sentence to the offender rather than to the crime.* [The emphasis is that of Gonthier J.]
>
> [39] In this case, the circumstances of the prior offences were proved beyond any doubt. That applies to the 1973 and 1982 offences as much as to the others. The lack of co-operation by the two complainants left no visible gap in the proof.
>
> [40] It is, undoubtedly, a matter of importance that the Crown, on a dangerous offender hearing, prove not only the record of convictions, but also the circumstances of crimes which are relied upon as establishing dangerousness. But it does not follow that the Crown must call all the evidence which was called at the trial of those offences. In most cases, it should be possible to prove the circumstances beyond a reasonable doubt without calling the complainants. It is more than understandable that the 1973 victim would not wish to repeat "all that garbage" some 21 years later. Past victims should not have to relive the emotional trauma inflicted upon them by past offences unless it is necessary to do so. …
>
> [41] ... In deciding what evidence to call at hearings of this kind, Crown counsel should keep in mind the wide latitude given to the Court in sentencing hearings as to the sources and types of evidence which may be received. That latitude will not likely apply to evidence, such as that of the psychiatrist, which is specifically directed to the issue of future dangerousness. But it surely can apply to historical facts such as the circumstances of previous offences. If, as may be the case, the

> purpose of calling the victims of past offences is to emphasize the extent of the trauma suffered by those victims, that has scant relevance to the central issue in proceedings of this kind, that of future dangerousness and is, in any event, a given.

2. Character and Reputation Evidence

[78] Section 757 reads:

> Without prejudice to the right of the offender to tender evidence as to their character and repute, if the court thinks fit, evidence of character and repute may be admitted
>
> > (a) on the question of whether the offender is or is not a dangerous offender or a long-term offender; and
> >
> > (b) in connection with a sentence to be imposed or an order to be made under this Part.

[79] This section specifically provides for the admission of character and reputation evidence if the Court thinks fit.

[80] In *R. v. Jackson* (1981), 61 C.C.C. (2d) 540 (N.S.C.A.), a police officer's evidence about the accused's involvement in other beatings upon women and his general reputation for violence in the community was admissible. The Manitoba Court of Appeal reached the same conclusion in *R. v. Gregoire*, 130 C.C.C. (3d) 65, at paras. 43-45:

> In our view, the accused's contention that witnesses to reputation must confine their evidence to their personal knowledge of the accused's reputation without providing any new background information for holding that opinion of reputation is too broadly stated.
>
> The Court can only assess the weight to be given to a witness's evidence of reputation if the Court knows how that knowledge was acquired. As we previously noted, evidence of reputation or character involves an element of opinion. If the witness' opinion is based on third hand information or fleeting contact with the accused or unsubstantiated rumours of events involving the accused, the trial judge must be so advised. He will then be in a position to assess the weight to attach to that evidence.
>
> However, the evidence of reputation in this case was based upon the witnesses' extensive contacts with the accused and their personal knowledge of the workings of the correction system. The evidence of the accused's reputation was given by witnesses who were familiar with the prison hierarchy, who were familiar with the accused over a lengthy period of time, who were knowledgeable about the accused's status within the prison and who knew how that status was earned. The

> trial judge is obliged to hear all relevant information in these proceedings. Parliament has determined that evidence of reputation is relevant on dangerous offender applications. Background evidence explaining the evidence of reputation is relevant as well and is therefore admissible if it is not unduly prejudicial.

C. Psychiatric Evidence

[81] Experts play a critical role in dangerous offender applications. The Court can rely on psychiatric opinion evidence to reach the conclusion that certain conduct amounts to a pattern of behaviour (s. 753(1)(a)) or that the offender will not control his sexual impulses in the future (s. 753(1)(b)): *R. v. Rindero*, [1999] B.C.J. No. 3076 (S.C.); *J.H.B.*, *supra)*. It is ultimately for the Court to make determinations of fact and draw conclusions about patterns of behaviour or future conduct.

[82] In *R. v. Neve, supra*, the Alberta Court of Appeal suggested the following be considered when assessing and evaluating psychiatric evidence at para. 189:

> 1. the qualifications and practice of the psychiatrist;
> 2. the opportunity the psychiatrist had to assess the person, including: length of personal contact, place of contact, role with ongoing treatment, and involvement with the institution in which the person is a patient or prisoner;
> 3. the unique features of the doctor /patient relationship, such as hostility or fear by the patient (or psychiatrist) arising from the personalities, circumstances of contact, and the role of the psychiatrist;
> 4. specifically and precisely what documents the psychiatrist had available and reviewed, for example, from earlier Court proceedings, institutional records, other medical consultations or treatment;
> 5. the nature and scope of consultations (this could include: personal contact with third parties, information from other health care professionals, prison authorities, police, lawyers, family);
> 6. specifically and precisely what the psychiatrist relies on in coming to an opinion;
> 7. the strength and weaknesses of the information and material that is relied on.
>
> [Emphasis in original]

[83] The Alberta Court of Appeal highlighted that the ultimate determination as to whether an accused should be designated a dangerous offender lies with the Court – not that psychiatrist, at para. 199:

> 199 What this reduces to is the following. First, at all times the responsibility remains with the sentencing judge to assess and weigh the opinion evidence, to determine whether the behavioural thresholds have been met, and whether based

> on that past behaviour someone is a threat and if so, should be designated a dangerous offender: *Jones* (S.C.C.), *supra*; *Young*, *supra*. The experts do not become the judges and the expert opinion is not the judgment. Second, it is the sentencing judge - not the psychiatrists, or the Crown, or the defence - who decides what the key elements of the pattern of conduct are: *Dow*, *supra*. Third, in assessing the *existence of a pattern*, psychiatric opinion evidence, admissible under s.755, must be used cautiously. Clearly, psychiatrists can opine on the interpretation of what is alleged to constitute a pattern of conduct, on whether that pattern of conduct is pathologically or substantially intractable and of course, on the issue of future dangerousness. But, quite apart from any other use of psychiatric evidence in dangerous offender hearings, while the psychiatrists may review past criminal conduct and then give an opinion on whether it forms a pattern, it is in the final analysis the court's responsibility and not the psychiatrists' to make the determination whether the evidence establishes the proscribed pattern
>
> [Emphasis in original]

[84] Expert opinions will always involve some use of secondary source material. In *R. v. Kanester*, [1968] 1 C.C.C. 351, at para. 10, the Court referred to the trial judge quoting extensively from the judgment of Mr. Justice Fauteux in the Supreme Court of Canada in *Wilband v. The Queen*, [1967] S.C.R. 14, particularly where he said, at p. 21:

> … The value of a psychiatrist's opinion may be affected to the extent to which it may rest on second hand source material; but that goes to the weight and not to the receivability in evidence of the opinion, which opinion is no evidence as to the truth of the information but evidence of the opinion formed on the basis of that information.

[85] In *R. v. Larkham*, [1987] O.J. No. 1203 (H.C.J.), the accused refused to be assessed but the Court concluded this "did not prevent Dr. Malcolm from forming an opinion as to Larkham's mental condition. Dr. Malcolm testified that a patient's history is often more important than a clinical interview. After all, impulse control disorder is not demonstrated during an interview" (para. 54). This speaks to Dr. Neilson still being able to assess Mr. Nickerson even though he did not make all his appointments.

[86] Even if the Crown must rely substantially on secondary source material, *Gardiner*, *supra,* and *Jack*, *supra*, support the admissibility of such material and that its relevance goes to weight. The challenge for the Crown is to prove or corroborate as much of the secondary source material as possible.

[87] In *Boyd*, *supra*, Justice Hinkson of the British Columbia Court of Appeal referred to correctional records that were relied upon by the psychiatrist at para. 10:

> … Here the trial judge was not being asked to treat as factual the second-hand evidence upon which the psychiatrists relied, in part, to express their opinions. Rather the psychiatrists were stating the evidence, mainly the records of the regional psychiatric centre, which was the basis for forming their opinions. But unlike the situation in *Abbey*, the trial judge was not being asked to accept the second-hand evidence as factual; rather he was being asked to accept the opinions expressed by the expert witnesses

Dangerous Offender finding

A. Serious Personal Injury Offence

[88] To designate Mr. Nickerson a dangerous or long-term offender the Crown must first satisfy the Court that one or more of the predicate offences is a serious personal injury offence. Section 752 of the *Code* defines "serious personal injury offence" as:

> (a) an indictable offence, other than high treason, first degree murder or second degree murder, involving:
>
> (i) the use of attempted use of violence against another person; or
>
> (ii) conduct endangering or likely to endanger the life or safety of a person or inflicting or likely to inflict severe psychological damage on another person,
>
> and for which the offender may be sentenced to imprisonment for ten years of more, or
>
> (b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault)

[89] Mr. Nickerson has been found guilty of an indictable offence contrary to section 267(a) of the *Code* (Assault with a Weapon). Therefore, he has been found guilty of a serious personal injury offence as defined in s. 752 of the *Code* and is subject to a dangerous offender designation.

B. Section 753(1)(a)(i) - Pattern of Repetitive Behaviour

[90] Section 753(1)(a)(i) sets out the requirements for designating an offender as a dangerous offender on the ground of a pattern of repetitive behaviour:

> (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....

[91] The Crown must prove the following elements of the designation beyond a reasonable doubt:

1. Mr. Nickerson has been found guilty of a serious personal injury offence under s. 752(a);
2. Mr. Nickerson is a threat to the life, safety or physical or mental well-being of other persons based on evidence
    - showing a pattern of repetitive behaviour by Mr. Nickerson;
    - the offence for which he is convicted forms part of the pattern;
    - the pattern of repetitive behaviour shows a failure to restrain behaviour;
    - there is 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 behaviour.

[92] In *R. v. D.E.D. (sub nom. Dicks)*, [1995] N.S.J. No. 159 (S.C.); affirmed in [1996] N.S.J. No. 392 (C.A.), the trial judge reaffirmed the Crown did not have to prove the offender **will** act in a certain way in the future. The Crown need only prove the **likelihood** of the offender behaving in a certain way in the future. The Court stated, “inherent in the notion of dangerousness is the risk, not the certainty, of harm” (para. 3).

C. Section 753(1)(a)(ii) - Pattern of Persistent Aggressive Behaviour

[93] Section 753(1)(a)(ii) sets out the requirements for designating an offender a dangerous offender on the ground of a pattern of persistent aggressive behaviour:

> (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
> >
> > …
> >
> > > (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...

[94] The Crown must prove beyond a reasonable doubt the following elements of the designation:

1. Mr. Nickerson has been found guilty of a serious personal injury offence under s. 752(a);
2. Mr. Nickerson is a threat to the life, safety or physical or mental well-being of other persons based on evidence:
   (a) showing a pattern of persistent aggressive behaviour by Mr. Nickerson;
   (b) the offence for which he has been found guilty forms a part of the pattern;
   (c) the pattern of persistent aggressive behaviour shows a substantial degree of indifference by Mr. Nickerson to the reasonably foreseeable consequences to other persons of his behaviour.

[95] In *R. v. Shrubsall*, *supra*, Justice Cacchione relied upon *R. v. Yanoshewski* (1996), 104 C.C.C. (3d) 512 (Sask. C.A.), in which "the Saskatchewan Court of Appeal equated persistent with repetitive. More than one incident of violence or

aggression is required to make a pattern" (see also *R. v. B.W.N.,* 2003 NBQB 207, [2003] N.B.J. No. 228 (Q.B.)).

[96] In *R. v. Langevin* (1984), 11 C.C.C. (3d) 336 (Ont. C.A.), the Court concluded a pattern of repetitive behaviour existed in the following circumstances, at para. 30:

> In my opinion this element is not based solely on the number of offences but also on the elements of similarity of the offender's behaviour. The offences committed were remarkably similar. Two young girls were grabbed from behind by the appellant, a stranger, and both were taken to a secluded place and ordered to undress. Both were forced into anal as well as vaginal intercourse. The younger girl was forced to fellate the appellant. Both were threatened to assure their cooperation and were released only after assurances not to tell anyone were extracted from them. In the circumstances, these two offences were properly found to establish a pattern of repetitive behaviour.

[97] The Alberta Court of Appeal in *Neve, supra*, continued its analysis of how to assess the existence of a pattern at para. 111:

> Third, repetitive behaviour under s. 753(a)(i) and persistent aggressive behaviour under s. 753(a)(ii) can be established on two different basis. [Persistent in this context has been equated with repetitive: *Yanoshewski*, *supra*.] The first is where there are similarities in terms of the kind of offences; the second where the offences themselves are not similar in kind, but in result, in terms of degree of violence or aggression inflicted on the victims. Either will do. Thus, the mere fact that an offender commits a variety of crimes does not mean that no patterns exists. There is no requirement that the past criminal actions all be of the same or similar.

[98] The meaning of "substantial degree of indifference" was considered in *R. v. Bunn*, 2012 SKQB 397, at para 19:

> In defining substantial degree of indifference, the British Columbia Court of Appeal in *R. v. George*, 1998 CanLII 5691 (BC CA), (1998), 126 *CC*C. (3d) 384, [1998] B.C.J. No. 1505 (QL) (B.*CC*A.) at 394-95, established that the court cannot only look at the offender's actions at the time of the offence but other offences as well in determining "substantial degree of indifference". If the offender has a conscious but uncaring awareness of causing harm to others and this has occurred over a period of long duration involving frequent acts and with significant consequences, this is sufficient to establish a substantial degree of indifference.

Analysis – Dangerous Offender Finding

[99] Based on the applicable case law and the evidence before me, in particular the comprehensive and compelling report of Dr. Neilson, and whose testimony I accept

in its entirety, I find Mr. Nickerson to be a dangerous offender for the reasons that follow.

A. The Predicate Offence is a Serious Personal Injury Offence

[100] On January 19, 2024, Mr. Nickerson pled guilty to the offence of assault with a weapon, contrary to s. 267(a) of the *Code*, an indictable offence (the Crown having elected to proceed by Indictment earlier in the proceeding). This offence involved the use of violence against another person and carried a maximum punishment of ten years' incarceration. This offence meets the definition of a "serious personal injury offence" under s. 752(a) of the *Code*.

B. The Predicate Offence is a Part of a Broader Pattern of Violence

[101] Based on the evidence, I am convinced that Mr. Nickerson's past history, along with the predicate offence, establishes: (a) a clear pattern of repetitive and persistent aggressive behaviour, (b) a failure on his part to restrain his behaviour, and (c) a substantial degree of indifference to the reasonably foreseeable consequences of his behaviour.

[102] In my review I have included the following incidents to determine the pattern analysis. I have included the incidents proven beyond a reasonable doubt, those being: the predicate offence, Mr. Nickerson's sentenced convictions, and the facts proven beyond a reasonable doubt for Mr. Nickerson's pending charges.

[103] Mr. Nickerson has been convicted of 117 offences, including the predicate offence. The Crown has organized the offences by type, and I have reproduced that list as follows. I do note that Mr. Nickerson has not been convicted of any sexual offences:

Violence
Attempted Murder
Arson (X2)
Choking
Assault (X3)
Assault with a Weapon (X2)
Assault Peace Officer (X2)
Uttering Threats (X16)
Forcible Entry

Property Offences
Break and Enter (X2)
Theft (X16)
Possession of Stolen Property (X2)
Mischief (X17)

Offences Against the Administration of Justice
Breach of Undertaking or Recognizance (X7)
Breach of Probation (X33)
Fail to Appear for Fingerprinting
Resist/Obstruct Peace Officer (X2)
Intimidation of a Justice System Participant (X2)
Driving while Disqualified

Driving Offences
Impaired Operation
Dangerous Driving
Flight from Peace Officer While Driving
Joyriding (X2)

[104] In addition to these convictions, my June 18, 2025, mid-sentencing fact findings established the facts for Mr. Nickerson's three pending charges (Assault of a Peace Officer and Mischief X2) beyond a reasonable doubt. In addition, the proven facts for the December 6, 2024, incident formed the elements of further offences (Uttering Threats and Assaulting Peace Officers) for which Mr. Nickerson was not charged.

[105] A review of Mr. Nickerson's criminal record, the predicate offence, and the June 18, 2025, mid-sentencing fact findings reveal the following incidents that specifically involved violence (reproduced from the Crown brief):

- May 12, 2008
  - threatening his mother
  - threatening to kill a man, his wife, kids, and burn their house down
  - assaulting and confining the same man
- October 10, 2008:
  - threating to kill his mother, step-father and step-father's employee, and to burn his step-father's truck

- May 8, 2010:
  - threatening to kill a security guard
- September 4, 2011:
  - attempted murder by setting a trailer on fire knowing there were two people sleeping inside
- October 6, 2012:
  - uttering threats to burn the victim's van
- July 15, 2015:
  - assaulting a correctional officer
- October 5, 2015:
  - threatening to burn a correctional officer's house down
  - threatening to stab corrections staff
- October 25, 2015:
  - threatening to kill a correctional officer and his mother
  - threatening to kill a correctional officer and his family
- April 13, 2016:
  - assaulting and threatening a correctional officer
- November 4, 2020:
  - uttering threats to kill a peace officer
- February 5 to March 13, 2021:
  - uttering threats to kill his former partner and her children, as well as her mother and her brother, and to burn down any car or house associated with his former partner
- November 2, 2020:
  - assaulting his former partner several times
  - choking his former partner until she briefly lost consciousness
- October 12, 2021 (predicate offence)
  - stabbing another inmate several times
- February 19, 2024 (mid-sentencing fact findings)
  - kicking and pushing a correctional officer
- December 6, 2024 (mid-sentencing fact findings)
  - threatening correctional staff to kill or injure the first person to open the door

- attempting to assault correctional staff when they arrived to remove him from his cell

[106] For clarity, I have included all the above incidents in my pattern analysis. When determining whether incidents of violence for which an offender has not been convicted should be considered in the pattern analysis. I must ensure that the information is reliable and determine if there is any uncertainty about whether the incidents occurred or Mr. Nickerson's role in them.

[107] For instance, in Dr. Neilson's Assessment Report of Mr. Nickerson (the "Report"), marked as Exhibit 3 at the sentencing hearing, Dr. Neilson referred to several incidents of violence for which Mr. Nickerson has not been convicted. She referenced those incidents from Mr. Nickerson's Educational Records (pp. 4-5 of her Report), his Nova Scotia Youth Facility Records (p. 6 of her Report), Correctional Services Canada records (p. 8 and pp. 20-21 of her Report), his withdrawn, discharged, or acquitted charges (p. 20), and his Provincial Custody Reports (pp. 21-22 of her Report).

[108] Regarding correctional records, the Ontario Court of Appeal in *R. v. Williams,* 2018 ONCA 437, outlined the correct approach in deciding how to weigh them:

> 54 As described above, the sentencing judge accepted the entire contents of the police synopses as proven beyond a reasonable doubt. In my view, this was an error. The sentencing judge ought not to have treated this as an all or nothing decision. The synopses were properly admitted but the contents had to be considered carefully before being relied upon. Some basic facts set out in the synopses can be used for the purposes of establishing details such as dates and ages: *Gibson* (admissibility ruling), at para. 8; *Gibson* (dangerous offender designation), at para. 34. Other facts, where support can be found in other parts of the record, can likewise be relied upon: *Gibson* (dangerous offender designation), at para. 34. This does not, however, lead to the conclusion that the entire contents of the document can be taken as proven beyond a reasonable doubt.
>
> 55 Due to the evidentiary frailties inherent in the nature of a police synopsis, caution is required when the sentencing judge is considering whether the contents of those records can, along with the rest of the record, provide the basis for a finding that the statutory elements of dangerousness have been proven beyond a reasonable doubt. The incidents set out in the synopses must be considered in light of all of the evidence led at the hearing. Certain parts of a synopsis may find support and confirmation, either directly or by reasonable inference, in other parts of the record. If so, it is open to the sentencing judge to rely on those incidents as evidence in support of a finding that the statutory elements of dangerousness, such as the requisite pattern of behaviour, are made out.

> 56 To provide one example, the police synopsis of Mr. Williams' 1999 assault states that Mr. Williams head-butted the complainant. The incident resulted in a youth court conviction and a sentence of five days in open custody and 18 months' probation was imposed. In his discussions with Dr. Klassen, Mr. Williams admitted that his head "nudged" the complainant's face but he maintained that this was accidental. These pieces of information, together, allowed the sentencing judge to reasonably infer that the police synopsis correctly described the offence as involving Mr. Williams head-butting the complainant. As such, this portion of the synopsis was properly considered by the sentencing judge in assessing whether a pattern of behaviour was established.

[109] In *R. v. Shea*, 2014 NSPC 78 (overturned on appeal 2017 NSCA 43 for grounds unrelated to this issue) Judge Derrick (as she then was) described another way to consider the reliability of institutional records. After outlining Mr. Shea's entire criminal and institutional history she said that her duty was to "...extract from Mr. Shea's history of convictions and institutional misconduct and offences the incidents I can appropriately consider in my analysis…" (para. 419).

[110] Judge Derrick reiterated that "…I must conduct my pattern analysis in two stages: first I have to determine which offences and incidents qualify for inclusion in the analysis and then I have to determine if the offences and incidents that qualify constitute a section 753.1(a)(i) or section 753.1(a)(ii) pattern of behaviour." (para. 421).

[111] When considering uncharged institutional behaviour, Judge Derrick said that "…where my review of the documentation from the provincial and federal institutions left me uncertain about Mr. Shea's role, I found that the proof beyond a reasonable doubt requirement had not been met. Where there is ambiguity or only probability, there is no proof beyond a reasonable doubt." (para. 426). In considering reliability, she said that "I find that incidents recorded as having been witnessed by correctional officers or captured on surveillance footage have been proven beyond a reasonable doubt…" (para. 427).

[112] Incidents for which Mr. Nickerson has not been convicted (except those for which he was acquitted) that are noted in the exhibited records to have been witnessed by correctional or health staff or captured on surveillance footage are to be considered for inclusion in my pattern analysis, as Judge Derrick did in *Shea*. This would include the following incidents referred to by Dr. Neilson in her Report, which I reproduce from the Crown brief:

Date of Incident	Nature of Incident	Reference

October 18, 2009	Mr. Nickerson, after a verbal/physical altercation with another youth, walked to the youth's cell and kicked the door. Physical restraint was required by youth workers.	Dr. Neilson's Report, p. 6
July 14, 2022	Mr. Nickerson stated he was going to "shit bomb" the staff that he felt did not treat him right.	CSC files binder, Tab 9, Assessment for Decision February 26, 2023; Dr. Neilson's Report, p. 21
October 25, 2022	At the Millhaven Institution, Mr. Nickerson screamed at a nurse, placing himself in the doorway, preventing the nurse from leaving. After correctional officers moved him away from the door, Mr. Nickerson turned toward the officer with a homemade improvised weapon. He was subdued after physical handling by the officers.	CSC files binder, Tab 9, Assessment for Decision February 26, 2023; Dr. Neilson's Report, p. 20
December 7, 2015	Mr. Nickerson threatened to stab and "shit bomb" a correctional officer.	Neilson's Report, p. 22

[113] I find that these incidents taken alone, all of which have been proven beyond a reasonable doubt, establish a clear pattern from Mr. Nickerson of repetitive and persistent aggressive behaviour. This pattern is only amplified by the incidents Dr. Neilson refers to for which Mr. Nickerson has not been convicted.

[114] Dr. Neilson comments on the nature of the pattern of violent offending in her Report at pp. 42-43. She notes that many of Mr. Nickerson's violent crimes involve a wide victim pool, involving violence that is primarily reactive, irritable, and impulsive in nature, driven by poorly controlled negative emotions like anger, rage and frustration. However, on p. 43 she goes on to opine that "arguably most serious incidents appear to be predominantly instrumental, in that it has been typically planned or evaluated (at least to some degree) and is conducted with an aim in mind…. Explicit aim of harming others, to control or intimidate others, or to settle a score/retaliate." She summarizes that his violent offending demonstrates a clinical pattern of repetitive, non-trivial, diverse acts of violence, over an extended period of time, in varied situations, with multiple victims.

[115] Overall, Mr. Nickerson's pattern of offending can be described in two categories: a) Mr. Nickerson generally resorts to violence impulsively and reactively in response to his dysregulated negative emotions in a wide range of circumstances; and b) he employs violence in planned and instrumental ways to achieve certain aims, resulting in far more serious incidents of violence.

Failure to Restrain

[116] Mr. Nickerson's violent offending demonstrates a clear failure to restrain his behaviour. Dr. Neilson, throughout her Report, addresses the theme of impulsivity as an underlying feature of Mr. Nickerson's violent offending. For instance, on p. 42: "he often loses his temper and acts out impulsively in violent and destructive ways". At p. 44, she explains that:

> …[D]eficient emotional self-regulation is a core feature of ADHD and may also be present in some individuals with intellectual disability as well as those who come from traumatic backgrounds – all relevant for Mr. Nickerson. Also relevant to Mr. Nickerson, is that his self-control is seriously undermined by intoxicating substances, which he continues to use. …

[117] Dr Neilson's assessment correlates directly with a review of the underlying incidents which show that Mr. Nickerson has continuously shown an inability to restrain his violent behaviour over an extended period.

Persistence

[118] It is clear from the evidence tendered on this Application that Mr. Nickerson has a lengthy and persistent history of violent conduct. Dr. Neilson in her Report at p. 3 notes incidents of violence in Mr. Nickerson's life as early as Grade three and continuing throughout his schooling. His violent actions were noted at his time in the Nova Scotia Youth Facility (p. 6 of the Report). Unfortunately, violence has persisted as a theme throughout Mr. Nickerson's life without any significant breaks or gaps, as evidenced by his criminal record and both provincial and federal jail records.

Indifference

[119] Mr. Nickerson shows a substantial degree of indifference to the consequences of his violent actions. Dr. Neilson speaks to this indifference in her Report, at p. 14:

> Mr. Nickerson is a person who seems to lack concern for the negative consequences that his criminal actions have on the victims. He is quite forthright in saying that he is not sorry for the things that he has done. Indeed, his only regret seem[s] to be not having done them properly or completely (e.g., the attempted murder offences). Mr. Nickerson has often pled guilty for offences to "get it over with" and at times has self-represented in court. Nevertheless, despite guilty pleas/guilty findings, he has tried to re-work facts or recant confessions to alleviate his culpability. His lack of empathy or respect for the rights, feelings, and welfare

> of others is evident, as exemplified by his multiple offences which have involved the use of fire, endangering the lives and property of others.
>
> During the present interviews Mr. Nickerson presented as aloof and emotionless, seemingly not caring about anything, including the wellbeing of his victims, his own family members, or even himself as it relates to the consequences of the DO proceedings. File information suggests that this attitude of indifference has been present since his school years."
>
> …
>
> File information reflects a failure to accept responsibility for wrongdoing and lack of remorse/guilt from an early age. This has also been the case later in life where, despite guilty p[l]eas, he has subsequently denied responsibility for his criminal activity or has greatly minimized his actions. On other occasions, he has expressed regret that his violent actions did not result in the desired outcome.

[120] In responding to her questions during her interview with him, Mr. Nickerson "did not seem particularly interested in making a good impression on me … nor did he appear anxious. In my experience, this is a bit unusual in such high stakes circumstance[s]" (para. 24).

[121] At p. 44 Dr. Neilson states "there is evidence of indifference to the suffering of others throughout Mr. Nickerson's history. He has been willing to employ violence, threats of violence and property damage including arson, often in a goal-oriented fashion without regard to the safety or welfare of others. His ability to place himself in the shoes of his victims seems seriously impaired."

[122] Mr. Nickerson's consistent indifference is exemplified in his Pre-Sentence Report for the predicate offence, where he comments that he "should have had a better weapon" and "would do it again – do it better".

C. There is a High Likelihood of Harmful Recidivism

[123] I am convinced that Mr. Nickerson continues to constitute a significant threat to the life, safety and well-being of others, and a high likelihood of violent recidivism is established in the evidence before the Court.

[124] Dr. Neilson utilized several risk assessment instruments to determine Mr. Nickerson's risk of future violent recidivism. With the Violence Risk Assessment Guide-Revised ("VRAG-R"), Dr. Neilson summarized, at p. 32 of her Report, that Mr. Nickerson is between the 97th and 98th percentile compared to other violent offenders, placing him in risk category 9: the highest category on the VRAG-R. She stated that the likelihood of violent recidivism within five years for such offenders

is 76% and is 87% within 12 years. This places Mr. Nickerson in the highest possible risk category for all types of violent offending, including general, domestic, and sexual violence.

[125] Using the Domestic Violence Risk Assessment Guide ("DVRAG"), Dr. Neilson determined that Mr. Nickerson's score of +28 placed him in the highest possible risk category for domestic violence. Within five years, 100% of men in Mr. Nickerson's risk category in the associated study committed a new domestic assault that was recorded by police (p. 33 of the Report).

[126] With the Violence Risk Scale-second edition ("VRS-2"), Mr. Nickerson scored 63.3 out of a possible score of 78, placing him in the 90th percentile and risk Level V, which is the highest of the five VRS-2 risk categories. Dr. Neilson explains that rates of violent recidivism that results in convictions for offenders with this score is 40% at three years and 57.7% at five years (p. 40-41 of the Report).

[127] Based on the results of these assessments, Dr. Neilson concluded at p. 45 of her Report that "In my opinion, the assessment instruments used in the present analysis converge on the finding that Mr. Nickerson's risk of violence in a community setting without appropriate external controls is high over the long term (5-12 years)." She continues on the same page to state that "…even when there has been a positive response to correctional treatment/programs, the re-offence rate of people with risk profiles like Mr. Nickerson tends to remain high over the long term." Finally, on p. 48, she concludes that "recidivism rates are expected to remain high over the long term, only ever approaching the lower levels after years of appropriate interventions."

[128] I find that Mr. Nickerson's continuous offending without any indication of motivation to change or meaningful accountability, along with Dr. Neilson's findings on his risk level, establish a high likelihood of violent recidivism.

D. Mr. Nickerson's Violent Conduct is Intractable

[129] The evidence on this Application demonstrates that Mr. Nickerson's violent conduct constitutes behaviour that he is unable to surmount. I make this finding after a review of Mr. Nickerson's entrenchment in antisocial values and beliefs, the resources and programming available, and the programming's ability to respond to Mr. Nickerson's needs, attitudes, and motivation which will be described below.

1. Entrenchment

[130] A complete review of the evidence suggests that Mr. Nickerson is deeply entrenched in his antisocial values and beliefs. At p. 14, Dr. Neilson points out in her report "given his pattern of offending over a prolonged period, it is easily seen that his criminal values and attitudes are well ingrained." She continues at p. 41 that "…Over time, Mr. Nickerson invested increasingly in antisocial adaptation in the company of antisocial peers/relatives who helped to hone his antisocial attitudes. In effect … he found a "home" and sense of belonging in other social misfits. …His youth incarcerations, far from being a deterrent, seemed to allow him to finally fit in and to achieve some social standing among his peers."

[131] Mr. Nickerson's entrenchment creates a barrier for the change that would be required of him to achieve and sustain.

2. Available Programming

[132] An important consideration in possibly overcoming the intractability assessment is the programming available to Mr. Nickerson that could potentially support a path to surmounting violent behaviour. I will now consider the programming available through the federal and provincial institutions.

[133] The evidence of programming available through Correctional Services Canada ("CSC") was presented at the hearing through Lacey Lozier, Community Program Manager with the CSC. She spoke of programming available to incarcerated inmates at federal institutions in the Atlantic Region, as well as community programs available upon full or conditional release. She confirmed the availability of social, employment, correctional, and educational programming.

[134] Ms. Lozier testified that an offender in a federal institution can be placed in moderate or high intensity programming after a series of testing to determine their needs. She explained that moderate intensity programming involves 50 sessions and takes two months to complete, with an additional section for Indigenous offenders, totalling 62 sessions. High intensity programs involve 50 sessions and take four months to complete, with the same additional 12 sessions available for Indigenous offenders. The Indigenous Correctional Program Model can be woven into the core programming for Indigenous offenders. This involves an elder component and the seven sacred teachings and also focuses on Indigenous social history.

[135] Ms. Lozier explained that there is a waitlist to get into the programming while incarcerated, and priority is based on eligibility dates for parole. Individuals with indeterminate sentences with an eligibility for parole after seven years would not be prioritized above offenders who are eligible for parole after less than seven years.

[136] The priority of programming is also determined based on the offender's level of engagement and motivation to participate in the programming. Ms. Lozier also indicated that inmates on waitlists can come up against their statutory release date before obtaining programming, for reasons beyond their control.

[137] Upon release, Ms. Lozier explained that high intensity programming of the kind that is available while incarcerated is not available in the community. Community-based programs are condensed versions of the moderate and high intensity programming and are of a "rudimentary level", involving the very basics of the main skills explored in the moderate or high intensity in-custody programs. Ms. Lozier explained that there are employment counsellors or community volunteers and an Indigenous Liaison Officer who may be able to offer support to Mr. Nickerson and assist with applications and other processes while in the community.

[138] With respect to the ability to tailor programming to an individual, Ms. Lozier indicated that, depending on what the learning differences are, there may be an ability to tailor sessions to suit the offender. Modified modules are created for those who cannot participate in the full 50 sessions. Sessions may be offered in smaller groups, depending on programming facilitator availability. Details of exactly how these programs are tailored and success rates for those with intellectual impediments were not provided.

[139] Ms. Lozier confirmed that all programming is volunteer-based, and offenders are entitled to refuse programming. While in the community, if participation in programming is a parole condition, failure to participate could result in a breach that may or may not be actioned by the parole officer.

[140] From Ms. Lozier's evidence it appears that, despite some concerns about reliable and consistent availability, programming would likely be available to Mr. Nickerson at some point during incarceration that would target his criminogenic needs. However, I am not convinced that the programming would effectively respond to Mr. Nickerson's specific needs, particularly considering his intellectual impediments and lack of motivation to change.

3. Intractability

[141] The evidence suggests that the availability of programming would have no impact on the intractability of Mr. Nickerson's violent behaviour when considering his specific needs alongside his motivational challenges and entrenched antisocial values.

[142] Dr. Neilson reviewed these needs specifically at p. 46 and stated that "high risk offenders require high intensity programs, and typically also require maintenance programs when they are released". She went on at p. 46 to say that low intensity programs would be insufficient in "dose" given Mr. Nickerson's level of risk, and that programming would have to be delivered at a sufficient intensity: namely, 300 or more hours over many years. She concludes that Mr. Nickerson should be able to demonstrate concrete and sustained improvement in his risk domains prior to any attempt at community management. She notes that programming Mr. Nickerson has attended should be repeated and adapted to account for his intellectual deficits, as his gains from that programming were not "robust" (p. 46).

[143] Dr. Neilson advises that a predictor to determine if someone is a good candidate for future treatment is the individual's response to previous treatment and the degree of motivation for change. At p. 47, she indicates that Mr. Nickerson has a poor awareness of his problem areas and has low intent to make relevant behavioural changes. She concludes that "there is reason to be concerned about Mr. Nickerson's capacity to benefit from future treatment. … Mr. Nickerson is currently poorly motivated, his emotional reactivity persists, and his cognitive capacities are somewhat limited. However, he has managed to establish a therapeutic relationship with some previous therapists."

[144] She notes that "eventual control of any offender in the community relies on their willingness to be *fully* involved in, consistently cooperative with, and honestly engaged in, their correctional release plan, both within the institution and especially post-release. Mr. Nickerson undermined his own success during his parole by not honestly engaging in his release plan…" She adds that, "…Unfortunately, Mr. Nickerson has a very long history of poor responsiveness to supervision and was less than transparent in his reporting to his parole supervisor during his last release. As such very high levels of monitoring and supervision will likely be required, making any future community management very challenging, as well as costly and labour intensive."

[145] At p. 41, Dr, Neilson states that "to reduce his offending risk, Mr. Nickerson will require high intensity treatment and or/intensive supervision/monitoring directed at these at-risk areas" but "he has poor awareness of most of his problem areas and has not yet demonstrated commitment to overcome them. Few behavioural changes are observable even in conditions of strict supervision."

[146] Mr. Nickerson's lack of motivation is evident in his apparent resignation to his fate. Dr. Neilson's report notes at p. 14, "he said that he "doesn't care" whether he gets a dangerous offender designation, opining that "It's easier to be in jail than out." She comments at p. 24 that Mr. Nickerson appears resigned to being incarcerated for a long time, and "almost seemed to welcome that prospect." These observations continue at p. 44:

> …he has become comfortable in jail, which now seems to be his home … he tends to be reactionary and has not developed appropriate self-regulatory skills…he seems to have adopted a cavalier and fatalistic attitude toward his future. This is concerning because Mr. Nickerson is unlikely to perceive the threat of incarceration as particularly aversive, and the consequences of his poor self-regulation in the correctional setting … will provide few opportunities for developing the skills needed for community stability.

[147] When asked whether she believed programming could be successful if it was adapted to Mr. Nickerson's intellectual challenges, Dr. Neilson answered that while it was possible, that intellectual impediments are not the only barriers at issue. A significant issue is Mr. Nickerson's antisocial values, and his refusal to take part in programming. She commented that Mr. Nickerson did not accept the programming as valid because it was not aligned with his belief system.

[148] On p. 48, in the conclusion of her Report, Dr. Neilson states that "In my opinion, Mr. Nickerson will need to make (and sustain) massive, wholesale changes in his behaviour for his risk to be deemed manageable in the community. … Currently, there is very little clinical evidence to suggest that this is likely." She confirmed this view in her testimony, where she expanded that Mr. Nickerson is going to need not just the correct treatment but also appropriate supervision and monitoring. She states that if he is released in the community without having profited from programming, **she does not believe that there is any level of supervision that can manage his level of risk** (emphasis mine).

[149] Regarding the prospects around treatment for the offender, the Ontario Court of Appeal in *R. v. Little,* 2007 ONCA 548, stated, at para. 41:

> ...in order to achieve the goal of protection of the public under the dangerous offender and long-term offender provisions, **there must be evidence** of **treatability** that is **more than** an **expression** of **hope** and that indicates that the specific offender can be treated within a definite period of time…" [emphasis in original].

[150] In *R. v. Dagenais* (2003), 181 C.C.C. (3d) 332, at paras. 77-78, the Alberta Court of Appeal overturned a decision where a court exercised its residual discretion to impose a long-term offender order in place of a dangerous offender order in circumstances where it appeared that:

> ...the sentencing judge would not designate the respondent a dangerous offender unless there was no hope of treatment. From the third statement, it appears the sentencing judge would not exercise his judicial discretion to designate the respondent a dangerous offender unless he could totally reject any prospect of treatment.
>
> This Court's decision in *Neve* indicated that future treatment prospects should be considered a factor in exercising residual discretion. But that decision did not require a sentencing judge to completely reject all prospects for treatment of the offender or find treatment to be entirely hopeless before making the designation, nor did it invite judges to disregard other sentencing principles, such as protection of the public, in exercising residual discretion. The standard the sentencing judge applied to the offender's prospects for treatment was incorrect; he in fact created a new standard, one which would require a finding that the offender had absolutely no prospect of treatment. This standard would be impossible to meet.

[151] Regardless of the programming available, for there to be any chance of rehabilitation or change, Mr. Nickerson must choose to avail himself of those supports. The evidence demonstrates, however, that there is no realistic prospect of this occurring.

Impact of Indigeneity in the Dangerous Offender Analysis

[152] Mr. Nickerson's Indigenous status is relevant to these proceedings in that the *Gladue* factors must be considered in the determination of the level of risk he poses (see *R. v. Gladue*, [1999] 1 S.C.R. 688). These considerations are required at both the designation stage and the penalty/sentencing stage. In *R. v. Boutilier*, *supra*, the court stated that the sentencing judge needs to consider prospective treatment options in the penalty stage distinct from the designation stage, and to apply the sentencing principles in sections 718.1 and 718.2 of the *Code*, including a consideration of *R. v. Gladue* and other sanctions available for Indigenous offenders.

[153] In *R. v. Stevenson,* 2025 SKCA 13, the Saskatchewan Court of Appeal did not squarely comment on how these considerations should come into play at the designation stage, but its comments at paras. 69-71 do provide some guidance on this issue:

> 69 As noted, there are two stages to Part XXIV proceedings. ***Boutilier*** **instructs that "[a]ll 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 para 45). In this appeal, we are, of course, concerned only with the penalty stage, given that Mr. Stevenson has not challenged his designation as a dangerous offender. Evidence pertaining to *Gladue* considerations is squarely relevant at the penalty stage, as it helps to inform whether there is a reasonable expectation that something short of an indeterminate sentence will adequately protect the public by speaking to such matters as the moral culpability of the offender, management of future risk, and a consideration of the least intrusive sentence required to achieve public protection […]. This should not be taken to say that evidence respecting *Gladue* is not relevant at the designation stage to a consideration of treatability and risk to reoffend, and an assessment of intractability […]. **That issue, however, is not before us to decide given the scope of Mr. Stevenson's appeal.**
>
> 70 *Gladue* factors allow a sentencing judge to assess "the viability of traditional Aboriginal-focused treatment options aimed at addressing the issues that contribute to or aggravate an offender's risk. If such resources are available and considered appropriate, they could provide a basis for finding that a lesser sentence will adequately protect the public" (*Awasis* at paras 127 and 133). In *Ballantyne*, this Court stated that a "consideration of treatment necessarily includes *Gladue* factors and culturally specific programming", which in turn relates to risk management (at para 23, emphasis added).
>
> 71 It follows that it is an error in principle for a sentencing judge not to consider *Gladue* at the penalty stage […]. In *Moise*, this Court overturned a dangerous offender designation and indeterminate sentence for the failure of a judge to consider *Gladue*, holding that **"culturally sensitive programming and supports may make a difference to the offender's rehabilitation and management**, within the community, of his or her risk to reoffend" […].
> [emphasis added; citations omitted]

[154] In *R. v. Zoe,* 2020 NWTCA 1, the Northwest Territories Court of Appeal concluded that *Gladue* considerations are relevant at both the first and second stage:

> 58 However, *Gladue* factors may be more relevant to determining whether culturally sensitive programming might enhance the offender's prospects of rehabilitation and treatability: *R. v. Moise,* 2015 SKCA 39 (Sask. C.A.) at para 24; *Bonnetrouge* at para 23. This is especially relevant to this case. There is some

> evidence that Mr. Zoe had been meeting with a traditional counsellor for a certain time period and this had been positive. Analyzing future prospects for treatment, intractability, and appropriate sentence cannot be accomplished on the current record.
>
> 59 **A full *Gladue* report on these issues may have an impact on either or both parts of the dangerous offender analysis.**
>
> [emphasis added]

[155] As a result, I have taken into consideration the *Gladue* factors at both the designation stage (in terms of treatment options and their implication on the likelihood of harmful recidivism and the intractability analysis) as well as at the penalty stage (in terms of treatment options and their implication on the least intrusive sentence required to achieve public protection). I find that even with these considerations, a dangerous offender designation is warranted for Mr. Nickerson. This conclusion is patently clear based on the overwhelming evidence. While culturally sensitive programming would be available to him, there is no reasonable expectation that he will meaningfully engage with such programs to benefit from them.

[156] As Dr. Neilson pointed out at p. 14 of her report, Mr. Nickerson "does not seem particularly motivated to attend programs in the future, but said he could be interested in Indigenous programs, but only if getting them is not too much of a 'headache'". Given the level of engagement and work Mr. Nickerson would be required to put into programming, described above, this outlook demonstrates that there is no realistic prospect of effective treatment for Mr. Nickerson.

Sentencing options following a Dangerous Offender finding

[157] Upon making a dangerous offender finding, subsection 753(4) of the *Code* outlines the possible sentences available:

> (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.

A. An Indeterminate Sentence

[158] Section 753(4.1) of the *Code* states:

> (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.

[159] In *R. v. Levac*, 2025 SKCA 62, the Court of Appeal spoke about the focus being on risk management, not risk elimination, at para. 56:

> As a bottom-line proposition, the proper focus for a judge when considering the availability of a lesser measure than an indeterminate sentence for a dangerous offender is risk management, not risk elimination…The *Criminal Code* does not require a predictive finding of certainty around the success of any specific risk-management mechanism that forms part of a sentence before a sentencing judge may conclude that the sentence can reasonably be expected to adequately protect the public. Instead, the case law instructs sentencing judges to focus on whether an offender's risk can be "*adequately contained*" in the community by way of risk-reducing measures such as treatment, external controls or other means (*Napope* at para 22, emphasis added; see also *Potter* at para 107). [Emphasis in original]

[160] The need for ongoing supervision and monitoring of Mr. Nickerson's behaviour should he be released into the community is stressed by Dr. Neilson throughout her assessment. For example, at p. 45 of her report, under the heading "Risk management strategies required to adequately control the risk, and prognosis", she writes:

> From a clinical perspective, risk management strategies related to violent and criminal behaviour may be divided into four general categories: treatment, monitoring, supervision, and victim safety planning. In the management of high-risk offenders, each element is important and cannot be divorced from the others. **This is because desistance for people who have been involved in persistent violent offending is a difficult and complex process, taking years if not decades, and is likely to involve lapses and relapses.** Mr. Nickerson has an entrenched criminal profile with multiple severe and chronic criminogenic needs across psychological and lifestyle domains. His present resources and strengths are limited.
>
> [Emphasis added]

[161] At p. 46 of her report, Dr. Neilson continues:

> It is encouraging that in the provincial custody setting Mr. Nickerson has recently worked to address some areas of need. However, this is not the end of interventions related to managing his violence risk; it is merely the beginning. Furthermore, these provincial programs were likely low intensity programs, which would be insufficient in "dose" given his very high level of risk. **To be effective, correctional programs must be delivered in sufficient intensity (i.e. 300+ hours, over many years) for high-risk offenders.**
>
> Given the high level of risk and the severe, complex, and chronic nature of Mr. Nickerson's criminogenic needs (as indicated on the VRS-2) **he will most certainly require extensive correctional programming, provided over many years, before any attempt at release into the community. Further, he should be able to demonstrate concrete and sustained improvement in the risk domains noted above prior to any attempt at community management.**
>
> [Emphasis added.]

[162] She writes at p. 47:

> The propensity of people in the highest risk categories to continue to engage in violent behaviour warrants highly structured, comprehensive, intensive, and lengthy treatment, provided over a period of years. This should occur within a secure facility prior to any attempted community release, with gradual step-down of secure settings over time as the person demonstrates incremental behavioral change.

[163] In her testimony at the hearing, Dr. Neilson illustrated for the Court some examples of the challenges with controlling Mr. Nickerson's risk level. In response to any suggestion that the environment of incarceration is responsible for Mr. Nickerson's violent behavior and that the same environmental factors would not be present in the community, she explained that the more likely scenario is that Mr. Nickerson's response to stressors in general, regardless of whether they be from incarceration or "real life", are maladaptive. She opined that for someone like Mr. Nickerson, who has spent the majority of his life incarcerated, "just being in the community is a stress". She elaborated that stressors would come in the form of finding a job, managing finances, navigating the parole system, acquiring prosocial friends, determining how to spend leisure time, and arranging for physical and mental health care, concluding that these things "wouldn't come easy".

[164] She continued that this is problematic for someone like Mr. Nickerson who, because of his impulsivity and his intellectual and problem-solving issues, becomes

overwhelmed easily and gives up where there is any complexity to process. She commented that his follow through is impaired for a variety of reasons.

[165] Dr. Neilson commented that in her assessments of individuals for dangerous offender applications, including Indigenous individuals, Mr. Nickerson was different in that he is aloof, emotionless, and not participating well. In her experience, this was uncharacteristic in this type of proceeding, where offenders generally want to "put their best foot forward" and convince the Court that they are amenable to rehabilitation.

[166] In responding to the question of whether, from a clinical perspective, she sees a realistic prospect beyond speculation or hope that Mr. Nickerson can be treated within an ascertainable timeframe to the point of adequate community management, Dr. Neilson responded that "the short answer is no, I do not." She elaborated with reference to the risk assessment scales cited above and the many criminogenic needs to be addressed. She commented that while high intensity programming might be available, due to a) Mr. Nickerson's intellectual disability; b) his entrenched antisocial values; c) his poor motivation for change as he does not see the need; and d) the fact that he is "institutionalized", the risk is not going to be managed "any time soon".

[167] There is no evidence to satisfy me that there is a "reasonable expectation" that a measure other than an indeterminate sentence will adequately protect the public from Mr. Nickerson and the risk he poses.

[168] Upon review of the considerations establishing the high likelihood of harmful recidivism explored above, the risk to the public posed by Mr. Nickerson is evident. Considering that risk alongside the evidence supporting a finding of intractability, there is no basis upon which to reasonably expect that Mr. Nickerson will take the necessary steps to attempt to manage his risk level. Anything less than an indeterminate sentence would not adequately protect the public.

[169] A consideration of the *Gladue* factors and culturally sensitive programming available does not alter my conclusion. As stated in *R. v. Zoe, supra:*

> 57 We note that in some cases *Gladue* factors may have a limited role in a dangerous offender situation where protection of the public is a primary factor: *R. v. Bonnetrouge*, 2017 NWTCA 1 (N.W.T. C.A.) at para 22. Significant *Gladue* factors may not be enough on their own to avoid a dangerous offender designation or sentence.

[170] Based on all the evidence before me, and following on the dangerous offender finding, I conclude that the appropriate sentence is an indeterminate sentence. I find there is no "reasonable expectation" that a sentence under either paragraph 753(4)(b) or (c) will adequately protect the public against the commission of murder or a serious personal injury offence by Mr. Nickerson.

Remand Credit

[171] Section 753(4)(a) of the *Code* addresses remand credit. There is no need to consider this because I have found Mr. Nickerson to be a dangerous offender and given an indeterminate sentence.

Conclusion

[172] I find that Mr. Nickerson is a dangerous offender and impose an indeterminate sentence. I note that this is not a sentence that continues in perpetuity. Mr. Nickerson's current circumstances may change to such an extent that his risk can be manageable in the community. Should that be the case he would be eligible to be considered for release on parole. However, until those circumstances occur, a dangerous offender designation is appropriate, and an indeterminate sentence is required for the protection of the public.

Ancillary Orders

[173] The Crown seeks and I grant the following ancillary orders:

(a) A DNA Order in relation to the offence of Assault with a Weapon, s. 267(a) of the *Code*, of which Mr. Nickerson has pleaded guilty. Section 267(a) is listed in subcategory (a) of the definition of "primary designated offence" found in s. 487.04 of the *Code*, and there is no discretion provided in the legislation to refrain from ordering DNA pursuant to subsection 487.051(1) of the *Code*.

(b) A Firearms Prohibition Order in relation to the offence of Assault with a Weapon, s. 267(a) of the *Code*, for life, pursuant to section 109(2) of the *Code*.

Bodurtha, J.