SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Crowe*, 2014 NSSC 210

Date: 20140610
Docket: CRH No. 340325
Registry: Halifax

Between:

Her Majesty the Queen

v.

Robert Thomas Crowe

Restriction on Publication: Section 486 *C.C.C.* - Identity of victim

Editorial Notice- Identifying information has been removed from this electronic version of the judgment.

Revised Decision:	The original decision has been corrected according to the attached erratum dated June 26, 2014. This decision replaces the previously released decision.
Judge:	The Honourable Justice Heather Robertson
Heard:	May 12, 13, 16, 20, 21, 22, 23, and 29, 2014 in Halifax, Nova Scotia
Written Release of Decision:	June 20, 2014 (Orally: June 10, 2014) (Dangerous Offender Application and Sentencing)
Counsel:	Eric Taylor and James Giacomantonio, for the Crown and Cait Regan-Cottreau, law student J. Brian Church, Q.C., for the offender

Robertson, J.: **(Orally)**

Introduction

[1] On March 26, 2012 following a trial, the accused Robert Thomas Crowe was found guilty of four of the five counts on the Indictment #340325. The counts for which convictions have been entered are as follows: On or about the 27th day of June, 2010, at or near Dartmouth, in the County of Halifax in the Province of Nova Scotia, Robert Thomas Crowe did:

> Count 1: without lawful authority confine I. T. contrary to Section 279(2) of the *Criminal Code*;
>
> Count 3: in committing a sexual assault on I. T. cause bodily harm to her, contrary to Section 272(2)(b) of the *Criminal Code*;
>
> Count 4: while bound by a Probation Order issued on the 21st day of May, 2008, fail to comply without reasonable excuse such order, to wit., "keep the peace and be of good behaviour," contrary to Section 733.1(1)(a) of the *Criminal Code*; and
>
> Count 5 while bound by a Recognizance issued on the 17th day of November, 2009, under Section 810, commit a breach of a condition of that Recognizance, to wit., "keep the peace and be of good behaviour," contrary to Section 811 of the *Criminal Code*.

[2] Following findings of guilt, the Crown made application under s. 753 of the *Criminal Code* to have Mr. Crowe declared a dangerous offender and sentenced to detention in a penitentiary for an indeterminate period.

Procedural Requirements

[3] The Crown has met all of the procedural requirements as set out in the legislation.

> a) The third count on the Indictment, sexual assault causing bodily harm contrary to s. 272(2)(b) *C.C.*, for which Mr. Crowe is to be sentenced and which is the subject of this application is a serious personal injury offence under section 752 *C.C.*, in that:
>
> i) it is an indictable offence involving either:
>
> a) the use or attempted use of violence against another person, or

> b) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,
>
> and for which Mr. Crowe may be sentenced to imprisonment for ten years or more;
>
> ii) in addition, s. 272(2)(b) *C.C.* is one of the offences listed in the definition of "serious personal injury offence" found in s. 752 *C.C.*;
>
> b) An assessment report under s. 752.1(2) has been filed with the Court;
>
> c) The Attorney General of Nova Scotia has consented to this application, as per s. 754(1)1;
>
> d) At least seven days' notice has been given to the defence by the Crown, outlining the basis on which the Crown intends to found the application (s. 754(1)); and
>
> e) A copy of the notice has been filed with the Court (s. 754(1)).

[4] It was acknowledged by counsel for the offender at the beginning of this application that the sexual assault of Ms. T. was a serious personal injury offence as defined by s. 752 of the *Criminal Code*.

[5] The hearing of this application lasted eight days and the court heard from three witnesses. The Crown's expert Dr. Bloom and two other witnesses from Correction Services Canada who testified as to programme resources for treating sexual offenders.

[6] All the evidence given by the witnesses together with the extensive documentary evidence before this court has been considered. Because of the volume, only portions of the evidence will be referred to and highlighted.

The Law

Applicable Legislation: Sections 752 and 753 *Criminal Code*

[7] The *Criminal Code* sets out the process by which an accused may be declared and sentenced as a dangerous offender. Broadly stated this process requires:

> (a) The Crown to establish that the conditions precedent to the application have been complied with;

(b) The Crown to prove beyond a reasonable doubt that the accused meets one or more of the four definitions of a dangerous offender;

(c) If the court determines the conditions precedent have been met, and that the accused fits within one or more of the definitions then the court must decide if an indeterminate sentence is appropriate or if a lesser penalty is sufficient to adequately protect the public.

[8] The dangerous offender provisions were amended in 1997 and 2008, but the process above has essentially remained the same.

[9] Prior to 1997, if the accused met one or more of the definitions of a dangerous offender, then the court had discretion to make the designation. The court also had discretion to impose either a determinate or indeterminate sentence.

[10] On August 1, 1997 the *Criminal Code* was amended and that discretion was made clearer than in the pre-1997 legislation. The concept of "long-term offender" was also introduced, by which the accused could be designated a long-term offender and sentenced to a determinate sentence, which would be followed by an order requiring the accused to submit to a period of community supervision of up to ten years. The court's discretion was primarily influenced by whether there was a "reasonable possibility of eventual control of the [accused's] risk in the community" (see s. 753.1(1)(c) of the *Criminal Code* and *R. v. Johnson*, [2003] S.C.J. No. 45)). If the court declined to exercise its discretion, the accused was declared a dangerous offender and sentenced to a mandatory period of indeterminate custody.

[11] On July 2, 2008 the dangerous offender provisions of the *Criminal Code* were amended yet again with the passage of Bill C-2, the *Tackling Violent Criminals Act*. Under the present legislative scheme, the court no longer has discretion to not declare an accused to be a dangerous offender if the accused meets one or more of the definitions. That is to say, if an accused meets one or more of the definitions, the court must declare him to be a dangerous offender. However, the court retains the discretion to impose a determinate sentence even with this declaration, but only in narrow circumstances. The court is required to impose an indeterminate sentence unless it is satisfied there is a "reasonable expectation that a lesser measure will adequately protect the public against the commission by the offender of murder or a serious personal injury offence" (see s. 753(4.1) *C.C.C.*). The "lesser measure" includes either a determinate sentence

with up to ten years of supervision or a determinate sentence with no supervision order.

[12] On June 27, 2010, Robert Thomas Crowe committed the offences for which he is being sentenced. Mr. Crowe is subject to the dangerous offender legislation currently in existence.

Purpose of Dangerous Offender Legislation

[13] Crown counsel has in their brief ably outlined the purpose of the Dangerous Offender Legislation. I repeat it here.

[14] The fundamental purpose of the dangerous offender provisions is to protect the public. This has been confirmed by the Supreme Court of Canada in *R. v. Johnson*, *supra*, wherein Justices Iacobucci and Arbour stated at paragraph 19:

> In *R. v. Lyons*, [1987] 2 S.C.R. 309, this Court affirmed that the primary purpose of the dangerous offender regime is the protection of the public: see also *Re Moore and The Queen* (1984), 10 C.C.C. (3d) 306 (Ont. H.C.), cited with approval in *Lyons, supra*, at p. 329. In *Lyons*, La Forest J. explained that preventive detention under the dangerous offender regime goes beyond what is justified on a 'just deserts' rationale based on the reasoning that in a given case, the nature of the crime and the circumstances of the offender call for the elevation of the goal of protection of the public over the other purposes of sentencing. La Forest J. confirmed, at p. 339, that the legislation was designed "to carefully define a very small group of offenders whose personal characteristics and particular circumstances militate strenuously in favour of preventive incarceration".

[15] What is particularly significant about the provisions is that they seek to protect the public from these who will likely offend in the future (see use of the word "future" in subsections 753(1)(a)(i), (iii) and 753(1)(b) but not in section 753(1)(a)(ii)).

[16] In *Criminal Pleadings & Practice in Canada* (2nd edition), Mr. Justice Ewaschuk provides this useful summary at 18:3500 under the heading "Purpose of the Legislation":

> The dominant purpose of the dangerous offender legislation is to protect the public from an offender who has shown a propensity for violent crimes, the determination of which involves a balancing of the legitimate right of society to be protected with the right of the accused to freedom after serving the sentence imposed for the substantive offences committed.

> The prime concern in applying the dangerous offender provisions is the public interest, i.e., the protection of the public, since the ultimate issue is whether there exists a certain potential for harm at the time of the application (the sentencing) and *not* thereafter.
>
> The purpose of the legislation is to determine whether the convicted offender has the status of a "dangerous offender" and to determine the appropriate sentence. The dangerous offender application is *not* in respect of the offence, the offender having already been convicted, but in respect of the "future dangerousness" of the offender.
>
> The legislation is targeted to apply to a small group of offenders whose personal characteristics and particular circumstances militate strenuously in favour of preventative detention.
>
> The overriding aim is *not* the punishment of the offender, but the prevention of future violence through the imposition of an indeterminate sentence.
>
> Although the imposition of an indeterminate sentence on a dangerous offender is viewed as a measure of "last resort" after the usual sentences and programs of treatment have been tried and have failed, a declaration of the accused as a dangerous offender may be justified even for a *first offender*.

[17] Justice Wright of this Supreme Court made the following comment regarding how best to understand the dangerous offender regime, in *R. v. L.E.B.*, [2002] N.S.J. No. 285, 2002 NSSC 156 at para. 5:

> There is a very useful overview of the background, purpose and parameters of the dangerous offender and long-term offender provisions contained in Part XXIV of the Code written by Justice Casey Hill in *R. v. Payne*, [2001] O.J. No. 146 (at paras. 75-83). This judgment also describes the essential differences between the two current schemes following the 1997 Code amendments. That overview need not be repeated here and I simply adopt it by reference in this decision. Suffice it to say that the fundamental purpose of these provisions is not the punishment of the offender but rather the prevention of future violence and the protection of the public from those who will likely reoffend in the future. The dangerous offender regime is meant to define a very small group of offenders for whom preventive incarceration is necessary, given their incorrigibility. With long-term offenders, there is more hope in that a reasonable possibility of eventual control of the risk in the community has been demonstrated. The long-term offender regime has been designed to allow correctional authorities to closely control the offender over an extended period in his or her eventual transition to the community. The supervision period, which can have a duration of up to ten years, is specifically focussed on relapse prevention strategies and envisions a proportionate degree of restraint of the liberty, rights and privileges of the individual.

[18] It is worth quoting at length some of the analysis of Justice Casey Hill in *R. v. Payne*, [2001] O.J. No. 146 (Sup. Ct. J.), for a deeper understanding of the reasoning behind the different treatment given to dangerous versus long-term offenders in Canadian criminal law. He writes at paras. 81-83:

> Dangerous offenders are persons who have exhibited a pattern of behaviour which is substantially or pathologically intractable - these individuals are not inhibited by normal standards of behavioral restraint: *Lyons v. The Queen, supra* at 23, 29. Experience has shown that those serving an indeterminate sentence in a penitentiary generally receive treatment only a few months prior to release (*Regina v. Forster, supra* at 79-80; *Regina v. Poutsoungas, supra* at 391) having been jailed in protective custody for years without treatment or parole (*Regina v. Langevin, supra* at 363). This accords with the testimony of Dr. Wright that sexual offender risk reduction strategies and treatment in the Canadian penitentiary system most frequently occur toward the approach of an offender's release date.
>
> In *Regina v. McLeod* (1999), 136 C.C.C. (3d) 492 (B.C.C.A.) at 504-5, Prowse J.A. observed:
>
> > In coming to these conclusions, I am mindful of the background and legislative history leading to the revisions to the dangerous offender provisions of the Code and the introduction of the long offender provisions. A key factor in that background was the Report of the Federal/Provincial/Territorial Task Force on High Violent Offenders: Strategies for Managing High Risk Offenders (Victoria: Department of Justice, January 1995) (the "Report"). Amongst other things, the Report stressed that there was a need for legislation to deal with some categories of offenders (with an emphasis on paedophiles), who do not meet the criteria of dangerous offenders, but, who, nonetheless, are capable of harming numerous victims as a result of their chronic criminal behaviour. At p. 19 of the Report, which specifically deals with the proposed new classification of long-term offenders, the authors state as follows:
> >
> > > A sentencing option providing for long term supervision would be aimed at cases where an established offence cycle with observable cues is present, where a long term relapse prevention approach may be indicated. The success of an LTS (long term supervision) scheme based on the relapse prevention model rests on several key factors.
> > >
> > > a. The measure should be focussed on particular classes of offender, inclination to make long-term supervision widely available should be resisted as costly, unwarranted in most cases, and as contributing to "net widening". The target group, and thus the expectations of the scheme, should be well defined;

> b. The criteria should selectively target those offenders who have a high likelihood of committing further violent or sexual crimes but who would not likely be found to be a Dangerous Offender ... [Emphasis added by Prowse J.A.]

In *Regina v. Guilford*, [1999] O.J. No. 4894 (S. Ct. J.) at para 32, I too quoted from the Report:

> "Long term supervision" (LTS) should have as its objective the enhanced safety of the public through targeting those offenders who could be effectively controlled in the community, based on the best scientific and clinical expertise available. Such control may be the most effective approach in helping to reduce violent criminal acts, fostering and maintaining pro-social behaviour, and reducing the adverse impact of incarceration. Supervision under such a scheme should be designed to avoid long term or indefinite incarceration: the focus should be, instead, to exert all possible effort, short of incarceration, to stabilizing the offender in the community, with particular attention to any precursors to re-offending that may be identified. LTS is based on the assumption that there are identifiable classes of offenders for whom the risk of re-offending may be managed in the community with appropriate, focussed supervision and intervention, including treatment.

A Federal Department of Justice publication Bill C-55: Dangerous Offenders, March 1997, stated:

> There are differences between the LTO and D.O. criteria. Whereas the issue with Dangerous Offenders is their incorrigibility - for example, their inability to control their sexual impulses and the poor prospects for rehabilitation - with Long-Term Offenders there is more hope. While it may be established that there is a "substantial risk that the offender will re-offend", there is also "a reasonable possibility of eventual control of the risk in the community". These factors will have to be assessed in the hearing.
>
> ...
>
> When the court finds the offender to be a Long-Term Offender, it will impose the "regular" sentence for the triggering offence and then add a period of "Long-Term Supervision" to the sentence. This period may be up to 10 years and it involves a kind of probation-like supervision, except that the supervision will be the responsibility of the National Parole Board and the Correctional Service of Canada. The philosophy here is that the 10 years (or less) will allow correctional authorities to closely control the offender in his eventual transition to the community. Studies show that "relapse prevention" strategies, applied over an extended period, can be effective. Please note that the Long-Term Supervision period only begins when the offender has fully completed his sentence of incarceration, including parole.

> ...
>
> ... Long-Term Offender sentencing - including the "order" of long-term supervision - is a limited, specialized measure and the supervision period is very much related to relapse prevention strategies.

[19] It is noted that Justice Casey Hill suggests dangerous offenders are those whose patterns of behaviour are "substantially or pathologically intractable." However, as is forcefully pointed out by Rosenberg J.A. for the Ontario Court of Appeal in *R. v. Szostak*, [2014] O.J. No. 95, at para. 52:

> In my view, any doubt that intractability is not a necessary element to find a person to be a dangerous offender has been removed by the 2008 amendments...

[20] The court goes on at paras. 53-55:

> Thus, the legislation contemplates that a person could be declared a dangerous offender because they meet the definition but nevertheless be given a disposition including a long-term supervision order or a conventional sentence. However, these two options are only available if an indeterminate sentence is not required to protect the public from the commission of murder or a serious personal injury offence. If a person, to be declared a dangerous offender, had to not only meet the statutory definition but display a pattern of conduct that was pathologically intractable, that person could, it seems to me, rarely, if ever, be eligible for a long-term supervision order or a conventional sentence.
>
> Further, while I agree that the legislation must be interpreted in the spirit of *Lyons* and bearing in mind the sentencing principles and objectives in ss. 718, 718.1 and 718.2, it is apparent that Parliament intended a broader group of offenders be declared dangerous offenders than was envisaged in *Lyons* where the court spoke of "a very small group of offenders". While the legislation is still narrowly targeted to a small group of offenders, that Parliament intended to broaden the group of persons to be labelled as dangerous offenders is apparent from the legislative reversal of the principle in *Johnson* referred to earlier that no sentencing objective is advanced by declaring an offender dangerous and imposing a determinate sentence. I point out that there has been no constitutional challenge to the 2008 regime in this case.
>
> Accordingly, it is of no assistance in interpreting the legislation to go beyond the words of the definition in s. 753(1) and introduce principles of intractability or attempt to predict the number of offenders that Parliament intended to bring within the legislative scheme.

[21] Defence counsel has acknowledged in their brief, the effect of the 2008 amendments citing *R. v. Warawa*, 2011 ABCA 294 at para 40:

> 40 The 2008 Amendments create a high degree of rigidity in sentencing. Parliament has clearly placed the protection of the public ahead of any other sentencing principle and has greatly circumscribed judicial discretion. However, in my view, the surrounding context of the statements by Parliament of the fundamental principles of sentencing found in sections 718, 718.1 and 718.2 may be relevant even at the stage of determining whether to impose an indeterminate sentence. The circumstances of an aboriginal offender were considered in assessing whether a lesser measure would adequately protect the public in *R. v. Kudlak*, 2011 NWTSC 29 at para 106, [2011] NWTJ No 37.

And *R. v. Racher*, 2011 BCSC 1313 at paras. 46-47:

> 46 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 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.
>
> 47 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.

[22] The Crown has relied on the following additional authorities that annunciates the general principles of dangerous offender proceedings:

> The decision in D.L.S., [2000] B.C.J. No. 47 (S.C.), is an excellent starting point with respect to general principles applicable in dangerous offender and long-term offender proceedings. Other decisions that contain relevant principles include:
>
> 1. *R. v. L. (B.R.)* [Latham], [1987] M.J. No. 263 (Q.B.);
> 2. *R. v. Currie* (1997), 115 C.C.C. (3d) 205 (S.C.C.);
> 3. *R. v. Jones* (1994), 89 C.C.C. (3d) 353 (S.C.C.);

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

4. *R. v. Johnson,* supra;

5. *R. v. Gardiner* (1982), 68 C.C.C. (2d) 477 (S.C.C.);

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

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

8. *R. v. L.M.T.,* [1996] A.J. No. 344 (Q.B.); and

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

[23] Protecting the public interest is paramount in any dangerous offender application. The public must be protected from the offender who has committed a serious personal injury offence and who has a propensity to commit violent crimes of a sexual nature.

[24] The prevention of future violence, not punishment is the main objective of the legislation.

[25] 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. However the future likelihood component is to a standard on a balance of probabilities. The Crown need not prove beyond a reasonable doubt that the offender will re-offend, only that there is a likelihood he will inflict harm. (*Lyons, supra,* at paras. 47-51; *Carleton, supra,* at p. 6; *D.L.S., supra;* and *R. v. Currie, supra*.)

[26] This is not a trial but a sentencing hearing. Hearsay evidence is admissible in dangerous offender applications where found to be credible and trustworthy. (*R. v. Gardiner* (1982), 68 C.C.C. 2d 477 at pp. 513-514, *R. v. Jones, supra*; and *R. v. Boyd, supra*.)

[27] The confession rule has not been established for proceedings related to sentencing (*Jones, supra*).

[28] The court cannot draw an adverse inference from the offender's refusal to fully cooperate with the Crown's expert. In this case, the offender did cooperate and was interviewed personally by the Crown's expert, but was less forthcoming in assisting to secure collateral witnesses. (*R. v. Brown, supra*.)

[29] Other evidentiary principles that have emerged in the development of this sentencing regime are:

- The court in considering a long-term offender (LTO) designation must determine whether the offender has the ability to manage his own behaviour. (*R. v. T. (R.E.)* [2005], 204 C.C.C. (3d) 51 (B.C.C.A.)

- Relevant to the assessment of risk of reoffending are factors such as past conduct, treatability, burnout (*R. v. Blair* (2002), 164 C.C.C. (3d) 453 (B.C. C.A.)

- Treatability is more than a speculative hope and the court should look for evidence to support the view that the offender can be treated and controlled in the community (*R. v. Little* (2007), 225 C.C.C. (3d) 20 (Ont. C.A.); and *R. v. McLean* (2009), 241 C.C.C. (3d) 538, [2009] N.S.J. No. 5 (C.A.))

- The Crown may lead evidence of criminal behaviour which was not the subject of criminal charges. (*R. v. Neve* (1999), 137 C.C.C. (3d) 97; and *R. v. Shrubsall*, [2001] N.S.J. No. 539.)

- Evidence relating to other incidents are of importance in establishing a pattern of repetitive behaviour, persistent aggressive behaviour or a failure to control sexual impulses (*R. v. Lewis* (1984), 12 C.C.C. (3d) 353 (Ont. C. A.)

- The evidence may include previous criminal convictions, evidence from preliminary inquiries on charges never brought to trial, evidence related to charges laid and otherwise disposed of or evidence relating to outstanding charges. However disputed allegations of criminal conduct or other aggravating facts must be proved beyond a reasonable doubt. (*R. v. Jack* [1998] B.C.J. No. 458; *R. v. D.E.D. (Dicks)*, [1996] N.S.J. No. 392; *R. v. MacInnis* (1981), 64 C.C.C. (2d) 553 (N.S.C.A.); *R. v. D.L.S., supra;* and *R. v. L.M.T., supra*.)

- The use of psychiatric evidence was extensively commented upon in *R. v. Neve, supra*; see also *R. v. Rindero* [1999] B.C.J. No. 3076; and *R. v. J.H.B.* (1995), 101 C.C.C. (3d) 1 (N.S.C.A.). A caution as to the use of secondary source material is expressed in *R. v. Larkham* [1987] O.J. No. 1203 (H.C.J.); *R. v. Kanester,* [1968] 1 C.C.C. 351 (B.C.C.A.); and *R. v. Knight* (1975), 27 C.C.C. (2d) 343 (Ont. H.C.J.).

What the Crown Must Prove to Achieve a Dangerous Offender Designation

[30] The Crown must satisfy the court that one or more of the predicate offences is a serious personal injury offence.

[31] Section 752 of the *Code* defines "serious personal injury offence" as:

> a) An indictable offence, other than high treason, treason, first degree murder or second degree murder, involving
>
> i. The use or attempted use of violence against another person, or
>
> ii. Conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,
>
> b) An offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

[32] Mr. Crowe has been found guilty of an offence contrary to s. 272(2)(b) of the *Criminal Code* (sexual assault causing bodily harm). Accordingly, he has been found guilty of a serious personal injury offence as defined in s. 752(b) of the *Criminal Code* and is subject on that count to a dangerous offender designation.

[33] The Crown must prove that the offender is a dangerous offender in one of four ways set out in 753(1)(a)(i)(ii)(iii) or (b):

s. 753(1)(a)(i)	(pattern of repetitive behaviour);
s. 753(1)(a)(ii)	(pattern of persistent aggressive behaviour);
s. 753(1)(a)(iii)	(offence of brutal nature);
s. 753(1)(b)	(failure to control sexual impulses)

[34] Under s. 753(1)(a)(i) the Crown must prove: (a) the offender has been convicted of a serious personal injury offence as defined in s. 752(1); (b) the offender constitutes a threat to life, safety, or physical or mental well-being of other persons; (c) a pattern of repetitive behaviour of the offender, of which the present offence forms part, showing a failure to restrain behaviour; and (d) a likelihood of the offender causing death, injury or inflicting severe psychological damage to other persons in the future, through failure to restrain his behaviour.

[35] The requisite proof under s. 753(1)(a)(ii) consists of: (a) a conviction for a serious personal injury offence as defined in s. 752(1)(a); (b) the offender constituting a threat to life, safety or physical or mental well-being of other persons; and (c) a pattern of persistent aggressive behaviour, of which the present

offence forms part, showing a substantial degree of indifference respecting the reasonably foreseeable consequences of his behaviour to others.

[36] The Crown must prove under s. 753(1)(a)(iii) that: (a) the offender has been convicted of a serious personal injury offence as defined in s. 752(a); (b) the offender constitutes a threat to the life, safety or physical or mental well-being of others; (c) the behaviour associated with the predicate offence is of a brutal nature; and (d) the offender's future behaviour is unlikely to be inhibited by normal standards of behavioural restraint.

[37] When proceeding under s. 753(1)(b) the Crown must prove: (a) the offender has been convicted of a serious personal injury offence as defined in s. 752(b); (b) the offender's past conduct in any sexual matter, including the predicate offence, has shown a failure to control his sexual impulses; and (c) a likelihood the offender would cause injury, pain or other evil to others through failure in the future to control his sexual impulses.

[38] Before a court determines whether an offender is a threat, there must be proof of past behaviour which meets at least one of the three separate thresholds under s. 753(1)(a). Should proof of past behaviour meeting one or more of the thresholds be met the court will then consider if based on that behaviour the offender constitutes a threat of the type contemplated in s. 753(1)(a). Offences that do not form part of the proscribed conduct under s. 753(1)(a)(i) or (ii) will not be considered when assessing whether there is a pattern.

[39] With respect to a pattern of repetitive behaviour can arise with only one prior conviction where a pattern is based not solely on number of offences but also the elements of similarities of the offender's behaviour (*D.L.S., supra; R. v. P.M.C.*, [1998] B.C.J. No. 3225 (S.C.); and *R. v. Langevin* (1984), 11 C.C.C. (3d) 336 (Ont. C.A.)).

[40] With respect to a pattern of persistent aggressive behaviour, logically more than one incident of violence or aggression is required to make a pattern (*R. v. B.W.N.*, [2003] N.B.J. No. 228 (Q.B.); and *R.* v. *Shrubsall, supra*.)

[41] *R. v. Neve, supra,* addresses assessing the existence of a pattern at para 111:

> 111 Third, repetitive behaviour under s. 753(a)(i) and persistent aggressive behaviour under s. 753(a)(ii) can be established on two different bases. [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 the 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 pattern exists. There is no requirement that the past criminal actions all be of the same or similar ...

[42] In *R. v. Bunn*, 2012 SKQB 397, the court considered the meaning of "substantial degree of indifference" and concluded 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 C.C.C. (3d) 384, [1998] B.C.J. No. 1505 (QL) (B.C.C.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.

[43] With respect to offences of a brutal nature, in *Langevin, supra*, the court concluded:

> ... The brutal nature of the conduct which must be established before the requirements of the subparagraph are satisfied does not necessarily demand a situation of "stark horror" ...
>
> Conduct which is coarse, savage and cruel and which is capable of inflicting severe psychological damage on the victim is sufficiently "brutal" to meet the test.

[44] In *R. v. Antonius*, [2000] B.C.J. No. 577 (S.C.) (affirmed on unrelated appeal grounds [2003] B.C.J. No. 467 (C.A.) and [2003] S.C.C.A. 210 (S.C.C.) without reasons) Justice McEwan concluded:

> ... The offence was of a brutal nature, not in the sense that remarkable physical violence was associated with it - although Mr. Antonius's assault was serious - but in that it clearly demonstrates such a low threshold of inhibition that I must conclude that Mr. Antonius poses a grave risk that his future behaviour will not likely be inhibited by normal standards of behavioural restraint. He has clearly shown a failure to control his sexual impulses and a likelihood, using the past as a guide to the future; assessing his current level of appreciation and insight into his own behaviour on his own evidence; and bearing in mind the professional assessments that had been performed, that unless he is incarcerated and treated successfully he may cause injury, pain or harm to others through his failure to control his sexual impulses.

[45] With respect to the failure to control sexual impulses, the Crown in its brief outlined the following helpful authorities:

> In *Currie, supra*, the Court concluded "any sexual matter" can refer to the predicate offence but it need not. As long as the offender's past conduct, whatever that may be, demonstrates a present likelihood of inflicting future harm upon others, the designation is justified.
>
> In *Schwartz, supra*, the Court stated an accused may be a dangerous offender although his failure to restrain his sexual impulses arises only in certain opportunistic circumstances.
>
> In *R. v*. Oliver (1997), 114 C.C.C. (3d) 50 (Alta. C.A.), the trial judge concluded the test is not whether the appellant can control his sexual impulses but **whether he has failed to do so**. He concluded the accused "... gets himself into these positions by reason of his failure to restrain his sexual impulses. That is the thing that it starts with. Whether he can stop it is not the test ... I am satisfied ... he has shown a failure to control his sexual impulses". The Court of Appeal agreed that "failure to control" involves a straight factual investigation. The Court concluded the accused had not restrained his impulses in the first instance because the complainant was clever enough to talk him out of committing the offence. As to the second matter he may have stopped assaulting the complainant's friend but another target was available to him (para 8-9).
>
> In *R. v. S. (C.W.)* (1987), 37 C.C.C. (3d) 143 (Ont. C.A.), the Court held that "... although the fact the accused desisted from completing the offence of rape shows, in a sense, that he was able to control his sexual impulses, failure to restrain his sexual impulses is shown by his **commencing** to commit the offence of rape". The Court also concluded:
>
> > In my view, the psychiatric evidence is of particular relevance to this issue. The psychiatric evidence indicates that the appellant suffers from an ongoing personality disorder, that he has low impulse controls, and that his conscience is defective in regulating his sexual behaviour. In my opinion, the trial judge was entitled to rely on the psychiatric evidence against the background of the appellant's sexual offences on this issue. It warranted her conclusion that the appellant in the future is likely to similarly fail to control his sexual impulses (para 34).
>
> In *R. v. Carleton*, [1983] 2 S.C.R. 58 affirming (1981), 69 C.C.C. 1 (2d) (Alta. C.A.), the Supreme Court affirmed the section does not require a court to be satisfied the offender **will** cause injury in the future. The Court need only be satisfied there is a **likelihood** of causing future injury:
>
> > It is that existing conduct which the judge must consider in determining whether it is likely that injury may be caused to others in the future. The phrase is "by his conduct has shown a likelihood". It is the nature of that conduct which the judge must be satisfied is such that it is likely that the offender will cause injury to others in the future.

> It is that past conduct with which the judge is concerned, and he is to be satisfied beyond reasonable doubt that the conduct is such that it gives rise to the likelihood of future injury to others.
>
> The likelihood is not as to the probability of whether this offender will in fact offend again - the likelihood flows from the conduct of the offender up to the time of hearing (paras. 10-12).

Record of Convictions

[46] The past criminal record of Mr. Crowe is found as Exhibit 2 filed with the court in binders labeled "*R. v. Robert Thomas Crowe: Documentation Relating to Previous Convictions."* Without limiting the specifics of the evidence relied upon, the offences for which Robert Thomas Crowe was previously found guilty are summarized below:

Offence Date	**Sentence Date**	**Description**	**Sentence**
January 20th , 2004	June 30th , 2004	Attempted theft of motor vehicle Prowl by night	6 months probation
October 31st, 2004	August 17th, 2005	Taking motor vehicle without consent Failure to comply with probation	12 months probation, and 25 hours community service
September 9th, 2005	July 24th, 2006	Forcible confinement Breach of probation	4 months deferred custody, followed by 12 months probation
October 20th , 2005	November 23, 2005	Break and Enter Fail to Comply x 2	12 months probation
December 13th, 2005	July 24th, 2006	Theft under $5,000 Breach of undertaking Breach of probation	12 months probation
February 6th, 2006	March 29th, 2006	Possession of stolen property Fail to comply x 2	6 months probation

April 2nd, 2006	April 20th, 2006	Breach of undertaking	Cancel suspension of conditional supervision and reinstate original conditions
August 23rd – 24th, 2007	May 21st 2008	Sexual assault with a weapon x 2 Unlawful confinement x 2 Robbery with violence Sexual interference Violation of undertaking by officer in charge	18 months custody, followed by 16 months probation

[47] Additionally, the Crown has filed with the court binders labeled "*R. v. Robert Thomas Crowe:* (Exhibit 4) Crown Files for Which the Accused Was Charged But Not Convicted." Not including any charges for which he was acquitted, those offences are summarized below:

Offence Date	**Decision Date**	**Description**	**Outcome**
November 1st – 3rd, 2004	September 27th, 2005	Possession of stolen property Failure to comply with probation order	Dismissed for want of prosecution
August 11th, 2007	July 24th, 2008	Assault x 2	Peace bond

[48] The Crown has also filed with the court folders labeled "*R. v. Robert Thomas Crowe*: Central Nova Scotia Correctional Facility Disciplinary Reports." Those reports are Exhibit 5 and are summarized below:

Incident Date	Description	Disciplinary Action
March 14th, 2011	Verbal altercation with another inmate	3 hours confined to cell
November 17th, 2011	Verbal altercation followed by Crowe being hit and kicked by another inmate	5 days confined to cell

January 11th, 2012	Swearing at staff after claiming he did not get his breakfast	3 days confined to cell
March 19th, 2013	Refusing to lock up until allowed to speak with programs officer	7 days confined to cell
July 30th, 2013	Found in possession of a toque not issued by staff or bought from the canteen	1.5 day confined to cell
July 30th, 2013	Found in possession of a tank top not issued by staff or bought from the canteen	1 day confined to cell
January 10th, 2014	Found punching another inmate at the bottom of a flight of stairs	7 days confined to cell
January 28th, 2014	Small ball of marijuana found in cell	10 days confined to cell

Predicate Offences

[49] Robert Crowe has been convicted of the unlawful confinement of Ms. I. T. contrary to s. 279(2) of the *Criminal Code* and the sexual assault of Ms. T. causing her bodily harm contrary to s. 272(2)(b) of the *Criminal Code*.

[50] The facts found by the court have been summarized by the Crown as follows:

> The facts found by Your Ladyship at trial include the following:
>
> 1. THAT on the evening of June 26, 2010, Ms. I. T. was socializing at the home of a co-worker, D.I., along with another co-worker, K.P., and Mr. Crowe. They were drinking, chatting, and playing music. Aside from a brief visit to the basement apartment in the house, the four remained on the main floor of the home. No guests went to the upstairs floor of the house.
> 2. THAT Ms. P. and Ms. T. shared a pint of vodka throughout the evening, Ms. T. had another shot of alcohol, and Mr. Crowe drank 7 cans of beer he had brought with him. Occasionally, Mr. Crowe and Ms. P. shared a package of "Canadian Classic" cigarettes on the porch. Ms. T. and Mr. I. shared a marijuana joint some time after midnight.
> 3. THAT between 3:30 and 4:00 a.m. on the morning of June 27, 2010, Ms. T. decided to walk home to ensure she was sober, after ignoring a call and text message from her father. She was not stumbling, having difficulty speaking, or showing other obvious signs of intoxication. Mr. Crowe accompanied her, walking beside his bicycle.
> 4. THAT halfway to the end of […]Street, another pedestrian approached Mr. Crowe and asked him to light a cigarette. After doing so, the stranger

left. Mr. Crowe then told Ms. T. to "wait," and pushed her against a retaining wall, attempting to kiss her. Ms. T. pushed him away and said "no." The pair continued walking.

5. THAT as they approached the intersection of […] Street and […] Street, Mr. Crowe pushed Ms. T. into the driveway of B-51 […] Street. He pushed her to her knees and said, "suck my dick," and when she said "no" and resisted, he grabbed her hair and shoved her head forward on his erect penis and forced her to have oral sex. He then told her to bend over and pushed her to do so. He had dropped his pants and pulled her stretch pants down and forced his penis into her anus. He then pushed her to the ground, where she lay on her back in some bushes just off the paved portion of the driveway. He attempted vaginal intercourse and also attempted to kiss her neck and upper chest in the thoracic area. At one point he shoved his hand down her throat, scratching the back of it with his fingernails.

6. THAT Ms. T. did not scream, but was crying. She asked Mr. Crowe to let her leave, but he said "no," stating that she would tell her parents. When she said she would not, he bent her over again. He told her to shut up, but she could not stop crying.

7. THAT at one point, when Ms. T. was on her back being assaulted, she tried to reach for her phone and press a button, any button to place a call. Mr. Crowe took the cell phone from her.

8. THAT a van stopped nearby and someone called out "Is everything okay?" Mr. Crowe then ran into the bushes up the driveway, and Ms. T. ran into the street toward the van answering "no." She declined the offer of a drive, and ran back up the driveway to retrieve her cell phone and purse. She then ran toward home, crossing the intersection at […] Street and […] Street and stopping to rest in the lit parking lot of the Tim Horton's on […] Street to ensure that the accused was not around and had not followed her. She then walked the short distance to her home.

9. THAT upon arriving home, Ms. T. took a shower. Her father was not at home and his car was not in the driveway. When her father returned, she did not tell her father about the assault. Instead she called a friend N. C. at 4:50 a.m., and told her what had happened. Ms. C. counselled Ms. T. to go to the police; however, she went to bed for a few hours before getting up, dressing, and leaving the house for work. She arrived at the mall where she was employed at about 10:00 a.m., accompanied by her friend M. T., and explained to her employer she could not work that day. She also called Ms. P. and Mr. I. and told them of the assault. She asked them to accompany her to the police station. She picked up Ms. P. and Mr. I., and the four drove to the police headquarters on Gottingen Street in Halifax to report the assault.

10. THAT after her initial interview with the police, Ms. T. drove with Ms. T. to the QEII for the Sexual Assault Nurse Examination ("SANE"). She

suffered injuries that included abrasions on the hips, scratches on the back and knees, bruising near her vagina and a slit anus opening.

11. THAT later in the evening of June 27th, Ms. T. gave a taped interview to the police and provided them with all of her clothing worn that night.

12. THAT also on June 27th, a police forensic team found Ms. T.'s flip-flops, a cigarette package of the same brand smoked by Mr. Crowe and Ms. P., a hair weave that had been ripped from Ms. T.'s head during the assault, a bloody tissue, and a receipt with Ms. T.'s name, all in the driveway of […] Street.

In addition to these specific facts found by Your Ladyship, the following uncontested evidence was heard:

13. THAT on June 30th, 2010 Mr. Crowe was arrested and interviewed by Halifax Regional Police. In his video- and audio-taped interview, Mr. Crowe admitted being at Mr. I.'s house with the complainant and others. He admitted leaving the house with Ms. T., stating that the two walked along [...] Street and that he left her at the intersection of [...] Street and [...] Street. Mr. Crowe stated that he did not assault Ms. T. as he made his way along [...] Street, that at no point was there sexual contact between Ms. T. and himself, and that his DNA should not be found on her. He further stated that he did not know why she reported he had sexually assaulted her, and that she was ruining his life.

14. THAT on January 31st, 2012, the final report from Forensic Specialist Kathryn MacEachern confirmed that one of the body stain swabs taken from Ms. T.'s neck and upper chest areas during the SANE examination contained DNA from Mr. Crowe.

15. THAT at trial, Mr. Crowe testified that he and Ms. T. had had a consensual, sexual encounter in the upstairs bedroom of Mr. I.'s home, sometime in the early morning hours of June 27th, 2010. Mr. Crowe also testified that he intentionally withheld this information during his police interview.

Expert Evidence

[51] The Crown called Dr. Hy Bloom, a forensic psychiatrist. His *curriculum vitae* is before the court and marked as Exhibit 9. He has testified in between 10 to 15 cases in superior courts in Canada and consulted but not appeared as a witness in twice as many more cases. He testified that he had appeared both for Crown and defence counsel, in equal number. The court recognized Dr. Bloom's substantial experience, a career in medicine and law, spanning 30 years. He was qualified as an expert to testify about:

> A forensic psychiatrist able to provide opinion evidence in the area of forensic psychiatry, including, but not limited to, the practice of forensic psychiatry, the diagnosis, assessment, and treatment of mental disorders, the diagnosis and classification of violent and/or sexual offenders, the assessment of risk for future violence or recidivism for violent and/or sexual offenders, the treatment for violent and/or sexual offenders, and the nature and degree of psychological harm caused by violent and /or sexual offenders to their victims.

[52] Dr. Bloom interviewed Robert Crowe between July 3 and 5, 2012 for 7-1/4 hours.

[53] Dr. Bloom reviewed documents provided to him by the Crown, all now exhibits before the court. They included:

> "Inventory of Crown Files for Which the Accused was Charged but Not Convicted"
>
> - Documents spanning a timeframe between November 2004 and March 2007
>
> "Inventory of Documentation Relating to Previous Convictions"
>
> - Documents spanning a timeframe between June 30th, 2004 and May 21st, 2008
>
> "Central Nova Scotia Correctional Facility Disciplinary Reports"
>
> - Documents spanning a timeframe between October 2008 and January 2012
>
> "Sexual Assault Assessment Service File"
>
> - Documents spanning a timeframe between June 2009 and November 2009
>
> "Records Received from the IWK"
>
> - IWK – January 1990 – October 2001
> - IWK – December 2003 – September 2005
> - Mental Health Dartmouth" - October 2001 - July 2006
>
> "Materials Received Via Waiver from Capital Health"
>
> - Documents spanning a timeframe between January 29th, 1990 to May 16th, 2012
>
> Binder of documents referable to Predicate Offences of June 27th, 2010
>
> - Documents spanning a timeframe between November 2010 and November 2011
>
> "Disciplinary Reports" referable to Mr. Crowe's stay at the CNSCF

[54] Dr. Bloom, with the consent of Mr. Crowe interviewed:

> Denika Coakley, a former girlfriend of Mr. Crowe's;
>
> Appifane Locke (a.k.a. "Roo"), described by Mr. Crowe as an intimate partner on some occasions in the past but more as a long-term friend;
>
> Tammy Downey, someone who Mr. Crowe had dated briefly a number of years ago; and
>
> Chris Mosher, a longstanding male friend.

[55] Dr. Bloom testified that he had difficulty reaching and did not interview other collaterals:

> Deckland MacNeil, age 37, who had reportedly been in a relationship with Mr. Crowe for the past 1 ½ years;
>
> Mrs. Crowe, Robert Crowe's mother; and
>
> Danika Moore with whom Mr. Crowe had had as a past intimate partner.

[56] Dr. Bloom testified he felt Mr. Crowe made it difficult to gain interviews with these witnesses. Mr. Crowe refused to consent to interviews with past intimate sexual partners Najala Misner and Allison Robinson.

[57] Dr. Bloom's 97-page report is an extensive review of Mr. Crowe's troubled life, commencing with his difficult childhood, an early life history of conduct disorder behaviors, youthful criminal activity and poor educational outcomes.

[58] Dr. Bloom noted Mr. Crowe's self-reported criminal history as an adult at the age of 19 when he was charged in respect of acts committed against two children, 14 year-old E. O. and 13 year-old K. K. in 2007 was significantly minimized and at variance with the official version documented in the court. Dr. Bloom noted the earlier historic description of the earlier confinement of his mother in 2005.

[59] Dr. Bloom reviewed Mr. Crowe's early mental history and history of substance abuse in an extensive canvass of his medical records found at pp. 31-71 of his report. This includes an early diagnosis of defiant oppositional disorder

treated for at the IWK, and later diagnosed in adulthood as antisocial personality disorder.

[60] These records include the results of the earlier sexological and risk assessment performed by Jan Evans, a psychologist and Dr. Angela Connors at the East Coast Forensic Unit Psychiatric Hospital Sexual Behavior Program (ECFPHSBP), performed after the 2007 assaults on the two children.

[61] In large measure the results of the actuarial risk assessment instruments used by Evans/Connors, and Dr. Bloom were in accord, although Dr. Bloom's assessment was completed after the predicate offences of 2010.

[62] The Evans/Connors analysis found Mr. Crowe at medium to high risk to reoffend. While at ECFPHSBP he also underwent phallometric testing. He demonstrated arousal to audio descriptions of abuse against passively resistant female children and to sexualized violence involving female children, which Ms. Evans suggests Mr. Crowe has a preference for hands on sexual abuse of children. On the psychopathy checklist ("PCL-R") Mr. Crowe scored at the 48.1 percentile meaning that about 51.9% of incarcerated offenders would score higher than Mr. Crowe did. Translated by Dr. Bloom, who did not have Dr. Evans' raw data, he testified this PCL-R would be 27 out of a possible score of 40. Dr. Bloom scored Mr. Crowe's PCL-R in 2012 at 31 and upgraded the score to 33 during his testimony and his final consideration of all the evidence on sentencing. Dr. Bloom testified that in North America a PCLR of 30 or more designates the offender as a psychopath.

[63] Dr. Bloom scored Mr. Crowe on the other risk assessment tools as follows: Static 99: (offender's risk of sexual recidivism) 9 out of 10, the highest category; HCR-20 (a tool which melds clinical and actuarial information to appraise future risk for violence) 29 out of 40 in the moderate to high range; SVR-20 (which looks more specifically to sexual violence) 27 out of 40, the moderate to high range of risk for sexual violence.

[64] I am satisfied after reviewing the evidence used by Dr. Bloom to score the various actuarial instruments that these tools were properly scored based on proven facts and admissible evidence.

[65] Dr. Bloom summarizes Mr. Crowe's offending conduct as follows:

> In summary, Robert Thomas Crowe is a 25 year old single male facing the prospect of being declared a DO/LTO.

> Notwithstanding Mr. Crowe's relative youth, he has a fairly lengthy history of involvement with initially the authorities, and then the criminal justice system, spanning the bulk of his youth, and finding clear representation, with a worsening of offence categories, and the infliction of progressively greater harm, as an adult offender.
>
> Mr. Crowe has been the subject of multiple sentencing events, for a variety of charges, including property offences, assaults, multiple breaches and failures of supervision of various kinds, amounting to (including the predicate offence) eight convictions. There have also been multiple past charges that have either resulted in dismissed/withdrawn charges, and a few acquittals. Some of these include allegations of assault on his former girlfriend Allison. His history reflects the strong likelihood of multiple other instances in which Mr. Crowe could have been charged with threatening, mischief, assault (in both domestic and non-domestic contexts), and drug-related charges, to name just a few that come to mind. The prevalent picture, when one looks at Mr. Crowe's history of offending topographically, is the consistency of his offending behaviour, and the escalation of the level of manipulation, intrusiveness, and violence, over the course of time.
>
> …
>
> … I recognize that Mr. Crowe's early and later life adjustment problems, manifested in problems with personality, motivation, impulse control, behaviour, and capacity for caring, may be inextricably tied to early life adverse experiences, including trauma, inconsistent parenting, conflict between his parents, parental separation, and there also appear to be some potential genetic factors at play (depression and suicidality, substance abuse, and potentially a predisposition for anger dysregulation and aggression in his father). It would not be unfair to say that Mr. Crowe has come by at least some of his problems honestly, as a result of his early life experiences.
>
> He appears to have had considerable difficulties, with anger dysregulation, aggression, problems with socialization, from age three or four, and these problems continued fairly consistently, unabated, over the course of his lifetime. To my mind, we have, in fact, seen a worsening of the picture as Mr. Crowe has aged, notwithstanding some earlier efforts and interventions.

[66] Dr. Bloom had earlier recognized the positive therapeutic relationship that had developed between Mr. Crowe and Dr. Lou Costanzo while at the IWK over a period of three years.

[67] Dr. Bloom adds:

> In 2010, in the context of Mr. Crowe's assessment by Ms. Evans/Dr. Connors, (after his first conviction for sexual offences (which to my mind heralded a new era of offending for Mr. Crowe)), a paraphilia (sexual deviation) was added to the complement of motivation factors involved in Mr. Crowe's offence history. It

appears that the more that we learn about Mr. Crowe through his offending history, the more clinicians and others get to understand the various constellations of potential offending patterns Mr. Crowe might become involved in, based on the plethora of psychopathology in his background.

In terms of diagnostic considerations, there is no evidence that Mr. Crowe has ever suffered from a major mental disorder, for example a psychotic disorder or a major mood disorder, like bipolar disorder. He has, particularly so in the past, been prone to experiencing both anxiety and briefer bouts of depression which I do not believe are specifically or directly implicated in his offending behaviour. That being said, I do see an indirect connection. I agree with aspects of Ms. Evans' report that suggest that negative affects are quite problematic for Mr. Crowe. Negative feelings like shame and sadness are uncomfortable and disempowering for Mr. Crowe, and consequently, this causes him (likely unconsciously or unwittingly) to feel and express the antithetical and more empowering feelings of anger as an antidote for these negative affective states, and indeed anger has likely played an important role in bringing about violence, and in my view, is also a factor in his sexual offending behaviour.

Mr. Crowe would have merited a diagnosis of substance abuse, particularly alcohol and cannabis, several years ago, but he claims that use or abuse of either these substances have not been issues for him, as they were in the past, since about 2007. Ms. Evans saw this self-reported change in respect of use and abuse of substances as a positive factor when she assessed Mr. Crowe in 2010. I am frankly not convinced that substances are no longer an issue for Mr. Crowe inasmuch as he was drinking, fairly heartily at that, just prior to his assault on Ms. T.. As well, Mr. Crowe, by his own admission, appears to have been in some form of partnership or relationship involving a marijuana grow-op with his friend, Daniel, before the assault on Ms. T. (although this does not necessarily mean he used cannabis). Although he was sketchy in respect of those details, seemingly deliberately for tactical purposes. Consequently, continuing substance abuse issues are distinct diagnostic possibilities for Mr. Crowe. If it can be credibly demonstrated that Mr. Crowe did, in fact, give up using alcohol and cannabis to the extent that he claims, that could be seen as a positive step in terms of diminishing or eliminating the impact of at least one clear risk factor, and in his case, I would think the alcohol abuse is the considerably weightier concern.

[68] Dr. Bloom goes on to reflect on Mr. Crowe's sexual offence:

The biggest concern on Axis I at present, following the psychosexual assessment he had in 2010, is the possibility if not probability that Mr. Crowe suffers from a paraphilia, namely pedohebephilia, described as an erotic preference for prepubescent and pubescent children. The phallometric test protocol in 2010 demonstrated a clear and seemingly unequivocal preference for children in that age group. Although Mr. Crowe may have been struggling for – or rather resisting – a theory to explain his conduct towards the two minors in 2007, a paraphilia

impresses me as at least one plausible explanation for that behaviour, although I do not believe it explains all of it.

Of interest, Mr. Crowe's sexual behaviour towards adolescents in this age range has been atypical for individuals diagnosed with pedohebephilia. It is more common for perpetrators in the latter group to pursue contacts with children in this age range, and potentially look for opportunities to become involved with them and groom (get to know them, engender trust, and lay down the groundwork) them, as the expression goes, for a potential sexual encounter.

Mr. Crowe's 2007 offences are more akin to the opportunistic types of sexual behaviours that men with preferences for coercive sex pursue. Given Mr. Crowe's description of these events as an initially benign encounter, which escalated into a robbery that went awry, as opposed to characterizing it as more purposefully sexual in nature and design, it is difficult to access with the greatest of clarity what was in Mr. Crowe's mind prior to and at the time of these events.

It is highly notable that Mr. Crowe in this case happened upon two victims that one would ordinarily perceive as vulnerable, due in part to the discrepancy between Mr. Crowe's age and the age of the victims, and I say this notwithstanding Mr. Crowe's characterization of both as appearing older.

The manner in which he went about sexually assaulting the victims has within it more inherent contrivance than I believe he admits to, although there was clearly an opportunistic element to them. The use of his language, the instillation of fear by referencing the presence of menacing characters surrounding them (who would have been under Mr. Crowe's control), the use of a weapon and threats, and the demeaning way in which he compelled the two children to interact with each other strongly suggests elements of a coercion preference and possibly some sadistic dimensions. Sadism doesn't just involve inflicting pain, but also subsumes putting victims in a position of being controlled, degraded, and humiliated.

Ms. T. is an adult but also a vulnerable victim. It was late at night. I believe the environment was fairly secluded, much as it was with K. and E.. She was intoxicated. I believe there was a fair amount of contrivance in both sets of circumstances. It is likely no coincidence that both events took place in fairly secluded environments. His actions towards Ms. T. may also have diagnostic implications inasmuch as he subjugated her to his will in a manner that suggests wanting to control, degrade and humiliate. He denied guiding her to his genital area by pulling on her hair, but this is evidently what he did with E. as well. In E.'s case there was some choking involved (which Mr. Crowe refutes), and although the same behaviour doesn't occur with Ms. T., she describes rather bizarre actions on Mr. Crowe's part – pushing his fingers towards the back of her throat (to the extent that she perceived his nails scratching the back of her throat) – which she felt as interference with her breathing. This particular behaviour, as described, impressed me as being highly intrusive, and particularly frightening to

> a victim given that it is associated with the perception of having one's breathing interfered with.
>
> Consequently, having regard to these factors, there is a strong likelihood Mr. Crowe has a paraphilia, namely pedohebephilia. As best as I could gather from Ms. Evans' psychosexual assessment of Mr. Crowe, neither the tests nor her conclusions distinguished between pedophilia – an erotic preference for prepubescent children and hebephilia – an erotic preference for pubescent children, and yet she diagnosed just hebephilia. Commonly, the phallometric laboratory at the Centre for Addictions and Mental Health ("CAMH") diagnoses "pedohebephilia" when the individual clearly responds to children over adults. The reason these two slightly different age groups are clustered together is because it is sometimes difficult to segregate sexual preferences for one or the other group, because they have similar defining characteristics. A preference for coercion and possibly sadistic elements must at least be hypothesized at this time, although there is admittedly insufficient information to postulate a sadistic paraphilia with any confidence. I agree with Ms. Evans' view that voyeurism should be considered based on Mr. Crowe's orchestration of sexual acts between K. and E., for which he had set himself up to be a spectator.
>
> …
>
> Mr. Crowe has (and has always seemingly had) significant personality pathology that has undoubtedly played a role in most, if not all, of his difficulties in life, whether it has to do with relationships within his family, outside of his family, academia, the maintenance of employment, an uncaring attitude towards most others, including in respect of the physical, sexual, and psychological harm that he has inflicted upon them, impulsivity, and disregard for legal, social, and established moral conventions, to name just a few.
>
> … Mr. Crowe qualifies for a diagnosis of antisocial personality disorder, and he also meets the designation of psychopath. The personality picture is even more complicated than that. He has shown some features of borderline personality disorder (manipulation, threatened self-destructive acts, mood lability, extreme anger) and narcissistic personality disorder (self-centredness, limitations in the capacity for empathy, grandiosity, etc.), but of course narcissistic pathology is actually a part of the psychopathy construct. Psychopathy can reasonably be seen as the melding of the problematic, irresponsible and criminalistic behaviours that define antisocial personality disorder, and a number of malignant personality traits within the narcissistic personality realm.

[69] I find that there is an abundance of evidence to support Dr. Bloom's conclusion as to the diagnosis of Mr. Crowe as having antisocial personality disorder and meeting the criteria to be designated a psychopath, with other clusters of personality pathology.

[70] Mr. Crowe consented to be interviewed by Dr. Bloom but I did not draw any adverse inference from the suggestion that he might have been less than co-operative in having certain collateral witnesses interviewed by Dr. Bloom.

[71] Mr. Crowe's life's record is before the court from his troubled very early years to the current state of his health as an offender on remand at the Central Nova Scotia Correctional Facility.

[72] It provides ample evidence upon which Dr. Bloom could offer his expert opinion. I accept the conclusions reached by Dr. Bloom and now turn to the more difficult task of assessing how to manage Mr. Crowe's risk to reoffend.

[73] I am satisfied that the predicate offence, count three on the indictment for which Mr. Crowe was found guilty is a serious personal injury offence pursuant to s. 752.

[74] Mr. Crowe's criminal behaviour must now be examined pursuant to the exacting requirements of s. 753.

PATTERN ANALYSIS

Pattern of repetitive behaviour

[75] In my view, Mr. Crowe's past history establishes a pattern of repetitive behaviour , including his offences against Ms. T., and show a failure to restrain his behaviour. Dr. Bloom's report outlines a myriad of life long problems relating to anger dysregulation, aggression, impulse control, lack of empathy and capacity for caring, that form "consistent features" of his behaviour.

[76] Dr. Bloom reflected on the two sexual assault convictions of 2007 and 2010. He described them as opportunistic in nature, occurring in relatively secluded areas by plan, and as offences against vulnerable victims. Mr. Crowe chose to control, degrade and humiliate his victims in addition to inflicting physical harm.

[77] Due to Mr. Crowe's diagnosis of psychopathy his acts are callous, unempathetic and show shallow affect.

[78] An analysis of this behaviour together with the scores achieved on the actuarial tool outlined by Dr. Bloom, satisfy me that Mr. Crowe does exhibit a pattern of repetitive behaviour showing a failure to restrain behaviour.

[79] I accept that this pattern of behaviour will result in a likelihood of causing death or injury to others, or inflicting severe psychological damage on others, through failure in the future to restrain his behaviour pattern of persistent aggressive behaviour.

[80] Mr. Crowe's past history does establish a pattern of persistent aggressive behaviour (including the offences against Ms. T.) showing a substantial degree of indifference on his part as to the reasonably foreseeable consequences of his behaviour upon others. Dr. Bloom has outlined this indifference at pp. 92-93 of his report.

[81] Dr. Bloom was dubious of Mr. Crowe's acceptance of responsibility for his actions and expressions of remorse. He minimized his problematic behaviour in the 2007 offences. Only very recently, by letter dated March 24, 2014 (Exhibit 14) did he acknowledged the harm done or the attack on Ms. T..

[82] Dr. Bloom has referenced other incidents of aggressive behaviour forming a consistent pattern in his life. They are referenced in Dr. Bloom's report and outlined by the Crown:

- a history of temper tantrums and anger problems, starting early in life (p. 9)
- being abusive towards his mother as a teenager (although allegedly not physically), particularly when abusing substances (p. 10)
- longstanding anger management problems (p. 11)
- raising a knife to his uncle, and brother (p. 22)
- threatening his mother with a dumbbell (p. 22)
- throwing his (then) girlfriend against the wall in the course of an argument in March, 2007 (pp. 28-29)
- striking two men outside a convenience store in August, 2007 because he "was not happy about the way he was looking at him," punching one victim in the mouth and the other in the head (p. 29)
- fighting with his cellmate in August, 2008 after alleging the other inmate was looking through his personal belongings (p. 30)

[83] Other events referenced by Dr. Bloom in his report of Mr. Crowe's criminal history include:

- forcibly confining his mother (pp. 17, 25)

- participating in a break and enter of a dwelling house six to eight weeks after being released for breaching conditions relating to the forcible confinement of his mother (pp. 17, 25-26)
- sexually assaulting two minors in August, 2007, threatening them with a brick and a gang assault, and choking the female minor (pp. 23-24, 27-28)

[84] Mr. Crown's history demonstrates the pattern of persistent aggressive behaviour and the substantial degree of indifference that ensues.

[85] I am also satisfied that one can characterize Mr. Crowe's behaviour during the predicate offence to be that of a brutal nature. It is unlikely in my view that if untreated he will restrain such behaviour in the future and be governed by normal standards of behavioural restraint. His conduct has been more problematic because of his substance abuse, most particularly alcohol. The Crown has outlined the aggression aspects of his assault of Ms. T.:

- forcing the victim into a secluded driveway;
- forcing the victim to her knees, ordering her to engage in oral sex;
- when she refused, grabbing her hair and forcing her to perform oral sex;
- forcing the victim to engage in anal sex;
- pushing her onto her back on the ground, attempting to engage in vaginal sex;
- attempting to kiss the victim's chest while assaulting her;
- shoving his hand down the victim's throat, scratching the back of it with his fingernails;
- taking away the victim's cell phone so she could not call for help;
- refusing to let the victim go even after she was crying and asking to be permitted to leave, and instead getting angry and telling her to shut up;
- only ceasing the assault when interrupted by a passing motorist.

[86] Lastly, in both the predicate offence against Ms. T. in 2010 an offence he committed while on probation from the earlier 2007 sexual assault of two minors, Mr. Crowe demonstrates a failure to control his sexual impulses. This is also evidenced by the ECFPHSBP report of Ms. Evans, determining him to be at high risk for future violence including sexual violence.

[87] Dr. Bloom's diagnosis of paraphilia, and pedohebephilia, his level of psychopathy and rating of high risk to reoffend on the other actuarial instruments

demonstrates that Mr. Crowe is at moderate to high risk to repeat sexually violent offences.

[88] In light of this foregoing I find that Mr. Crowe qualifies as a dangerous offender. He meets all of the four potential means by which he could qualify as a dangerous offender under s. 753(1).

[89] I am satisfied on the evidence before me that Robert Crowe constitutes a threat to the life, safety or physical or mental well-being of others and should be declared a dangerous offender.

[90] The Crown in my view has established beyond a reasonable doubt the requirements of 753(1)(a)(i)(ii)(iii) and s. 753 (1)(b). Once proven I am required to declare Mr. Crowe a dangerous offender.

[91] I now turn to the task that does afford the court some residual judicial discretion in the range of possible sentences the court may consider pursuant to s. 753(4).

Section 753(4) *Criminal Code* – Possible Sentences and Conclusion

[92] Subsection 753(4) outlines the possible sentences available to a court upon its making a dangerous offender finding:

> 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.

[93] There is a statutory presumption in favour of an indeterminate sentence, as set out in s. 753(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 less 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.

[94] The court must consider all the evidence that relates to the offender's treatment prospects. I must consider the seriousness of his criminal conduct and the offender's insight into his conduct, with a view to how he may benefit from treatment. His motivation is also an important factor.

[95] With respect to his prospects of treatment, Dr. Bloom at p. 96 of his report stated:

> I consequently see Mr. Crowe as a candidate for intensive treatment with a reasonable possibility of eventual control of his risk in the community. This would be predicated on him entering a highly specific treatment program for high risk sex offenders, as I believe has been and continues to be offered in the federal correctional system, for example, at Walworth Penitentiary in Ontario. There are other programs that would be suitable across the country. [Emphasis added.]

[96] In *R. v. Downs*, [2012] S.J. No. 330, Mills, J. commented on the standard of analysis required that a lesser measure under s. (4.1) will adequately protect the public at para. 6:

> 6 The previous concept was "is there a reasonable possibility of eventual control of the risk in the community." In *R. v. Goforth*, 2007 SKCA 144, 302 Sask. R. 265, our Court of Appeal stated that the possibility of eventual control in the community is not equated with hope or empty conjecture and must recognize the mere possibility that the offender might benefit from treatment is not sufficient to warrant a conclusion that there is a reasonable possibility of eventual control. The new test is whether "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."
>
> 7 If Parliament intended that the same test was to be applied, presumably it would have used the same language. The change in the language must have some meaning and therefore changed the conceptual approach in the process provided. The wording has changed from a reasonable <u>possibility</u> to a reasonable <u>expectation</u>. To me this suggests that the bar has now been set higher. Parliament is no longer concerned with possibilities but rather expectations. The court had previously interpreted "possibility" with meaning something more than mere hope, which of course eliminated the concept that anything is possible. The concept of a possibility greater than a mere hope or empty conjecture does not equate with an expectation that something will occur or not occur. The court is still faced with the notion of predicting the future and <u>expectation of a result</u> is on a higher continuum than a <u>possibility of a result</u>.
>
> 9 The second concept of eventual control of risk in the community is fairly open-ended. The words "eventual control" suggest that there is a time line upon which the offender's future activities can be measured. It suggests that there is a

> process that society is prepared to accept to take place over time that will allow for the reintegration of the offender into the community.
>
> 10 If the risk that is to be controlled is not identified, that risk is not simply that the offender will reoffend. We have seen that a substantial risk that the offender will reoffend was part of the determination of whether he was a long-term offender in the first place. The old test obviously then suggests that the fact that there is a substantial risk to reoffend did not eliminate sentencing someone as a long-term offender. ...
>
> 12 The concept of eventual control has been replaced by the concept of adequate protection of the public. I do not equate the words "adequately protect the public" as a virtual guarantee that the offender would not commit in the future an offence described. The use of the words "satisfied", "reasonable expectation" and "adequately protect the public" all suggest that Parliament has not mandated a notion of absolute safety to the public in this sentencing consideration. The words "adequately protect the public" found in ss. (4.1) appear to come from that concept as identified in *R. v. Johnson*, supra, at para. 44 and was used in the context that the sentencing judge could consider that a determinate sentence followed by a period of supervision in the community could achieve the goal of adequate public protection.
>
> 13 Obviously the concept of reasonable expectation of adequate protection must be offender specific. Any general comparisons will have to wait until more cases have been decided and guidance is received from the Court of Appeal.

[97] The Crown takes the position that there is little or no evidence before the court that could satisfy the court that there is a "reasonable expectation" a measure other than an indeterminate sentence will adequately protect the public from the future risk Mr. Crowe poses. They say Dr. Bloom has found him to be at very high risk for sexual recidivism and moderate risk for violent (non sexual) offence in the future.

[98] Defence counsel urge the court to consider:

> Mr. Crowe, Jr. has never served a federal offence. He has taken responsibility for his actions as evidenced by his letter of March, 2014. It is submitted that this is evidence of acceptance of the findings of the Court. It is fair to say that certainly Dr. Bloom was unmoved by this letter of March. He was however concerned about the letter from one of the collateral references who sent a letter to Mr. Crowe, Jr. which tended to show a side of Mr. Crowe, Jr. that according to "Roo" Robinson, Mr. Crowe, Jr. was empathetic and understanding.

[99] Defence counsel urges the court to remember:

> ... throughout Mr. Crowe, Jr.'s many appearances before you that he has wanted to take the high intensity sexual offender course at a federal institution. You will remember the evidence of Peter Wickwire and Joyce Dicks who spoke about the high intensity course. You will recollect the documentary evidence of Dr. Evans and Dr. Connors who advised Mr. Crowe, Jr. of his moderate to high risk to re-offend. When asked if the Province had a high intensity course, Mr. Crowe, Jr. was advised that there was no such plan in the province. He has asked to be sentenced to a federal institution to obtain a high intensity programme. Since his arrest and detention at Burnside Correctional Facility, Mr. Crowe, Jr. has take [sic] a number of self-help courses. Evidence of these courses were that they were at least a month long in duration and each course was 3 or 4 days per week. (Exhibit 15). ... the fact of Mr. Crowe, Jr. taking the courses, are evidence of an intention to improve himself. If sentenced to a long term sentence order, this fact of completing these courses proves a motivation as Ms. Dicks observed in her cross examination.
>
> ... letter from Dr. Kronfli (Exhibit 17) whose observations and comments indicate Mr. Crowe, Jr. suffered from depression and ADHD. Both these conditions are managed by medication. Another factor that has provided motivation for Mr. Crowe, Jr. is that he has been a target, as a sex offender, and has had his jaw broken. He has been incarcerated for 4 years. ...

[100] Acknowledging Mr. Crowe's risk factors, Mr. Church concluded:

> ... the high risk to re-offend in the future for Mr. Crowe, Jr. can be eventually contolled [sic] by taking the in-custody high intensity sexual offender treatment for the first time followed by a 10 year supervisory order with a requirement to take the maintenance courses over the 10 year supervisory period. Mr. Crowe, Jr. is currently 26 years of age. With a further three year sentence at age 29 a 10 year supervisory order will end at about the age of 39. As Dr. Bloom's evidence opined that the natural aging process reduces the sex drive process for most males. If the pharmacological sex drive treatment is employed, the community's risk is further reduced and better controlled.

[101] On cross examination, Dr. Bloom did agree that Mr. Crowe's participation in all of the available programmes at Central Nova Scotia Correctional Facility could mean that Mr. Crowe wanted to co-operate with treatment. The programmes included: Respectful Relationships, Options to Anger, Anger Management, Alpha Program in Chapel, Substance Abuse Management and a further course Option to Anger. He also felt, however, he may have taken the courses in the face of this application. Dr. Bloom testified that as he was unfamiliar with the course and could not see any measures of performance in successful completion, he could not say what it really meant, with respect to motivation and insight.

[102] As to Exhibit 17 Dr. Kronfli's letter to defence counsel dated May 14, 2014, Dr. Bloom could not comment on its positive aspects and distinguished Dr. Kronfli's role from his own, as Dr. Kronfli was a treating physician who by definition would be more personally involved with the offender and likely therefore to make positive comments.

[103] Dr. Kronfli had written:

> In February of this year, Mr. Crowe's dose of Vyvanse was increased to 60mg a day and his dose of Remeron was 15mg at night. The first is for his diagnosis of Adult ADHD, combined type and the second to treat his mood disorder namely Depression.
>
> Over the last few weeks, he has been doing very well. He restarted his "job" in the laundry and managed to stay out of trouble. His impulsivity, hyperactivity and irritability are much reduced and actually interacting very appropriately with everyone. There was no note of any aggressive or impulsive behaviour since the medication was stabilized. Even when he was assaulted recently and had jaw surgery as a result, he tolerated the stress very well.

[104] Dr. Bloom did agree that this recent observation of Dr. Kronfli could be a good sign.

[105] The offender's willingness to seek medical help, enroll in personal awareness programmes cannot in my view be entirely discounted. Mr. Crowe has asked for treatment for sexual offending since he was first incarcerated, but none was available to him. He remains an untreated sexual offender, after four years on remand awaiting the conclusion of this application.

[106] Dr. Bloom says he "remains somewhere in the middle" between the notion of reasonable possibility of eventual control of his risk in the community and reasonable expectation of the control of that risk. He testified he leaves it to the wisdom of the court to make the determination of whether the long-term supervision order should be made.

[107] Dr. Bloom is of the firm option that Mr. Crowe should be required to complete a high intensity foundational treatment programme, like the programme at Walworth Penitentiary in Ontario, with which he is familiar, that would provide one-on-one treatment as well as a group programme of offender treatment. He emphasized that it would be important to monitor his change and response to treatment. Dr. Bloom recognized that Mr. Crowe would require follow up in the community with cognitive based sexual offence therapy, relapse prevention

programmes, substance abuse management programmes, and a number of other measures outlined in his report.

[108] From all of the evidence before me, I am able to conclude that following the serving of a custodial sentence in a federal penitentiary, where the high intensity sexual offender treatment programme must be completed, there can be a reasonable expectation that the risk that Mr. Crowe poses to reoffend can be eventually controlled in the community.

[109] This can be achieved by a long-term supervision order for a period of ten years.

[110] In determining a fit sentence for the predicate offence I have reviewed the cases provided by the Crown and defence. I find the appropriate sentence for Mr. Crowe to be a period of incarceration for ten years. He has been on remand for almost four years. I give him one and one half years credit for each year on remand, leaving remaining a sentence of imprisonment for four years.

[111] The length of supervision (long-term supervision order) of ten years will in my view provides the reasonable expectation that the public will be adequately protected against future offending. This will allow for the necessary high intensity treatment Mr. Crowe requires within a federal institution and provide for ongoing relapse prevention treatment in the community, as well as his continuing supervision.

[112] I make the following recommendations on warrant of committal:

a) that Mr. Crowe complete high risk sex offender treatment programming;

b) that Mr. Crowe when eligible for a return to the community, abstain from intoxicating substances;

c) that Mr. Crowe when eligible for a return to the community, receive anger management treatment;

d) that Mr. Crowe when eligible for a return to the community, receive follow-up treatment by a psychiatrist/programme experienced in managing high risk sexual offenders;

e) that Mr. Crowe when eligible for a return to the community, have a relapse prevention programme in place.

f) that Mr. Crowe when eligible for a return to the community be considered for sex-drive reducing pharmacotherapy.

g) that Mr. Crowe when eligible for a return to the community comply with any blood testing and urinalysis regime as scheduled by his treating physician in conjunction with parole services to monitor levels of treatment medication and/or substance abuse.

h) that Mr. Crowe have no contact with children under the age of 16, unless they are accompanied by an adult.

i) that he have no contact or communication direct or indirectly with the victim I. T..

[113] In addition to the designation of Mr. Crowe as a dangerous offender the court is prepared to sign the following orders:

a) A DNA order in relation to the offence of sexual assault causing bodily harm, s. 272(2)(b) of the *Criminal Code* and in relation to the offence of forcible confinement, s. 279(2) of the *Criminal Code*, pursuant to s. 487.04 of the *Criminal Code*;

b) A firearms prohibition order in relation to the offence of sexual assault causing bodily harm, s. 272(2)(b) of the *Criminal Code*, a ban for life, pursuant to s. 109(2) of the *Criminal Code*;

c) Registration pursuant to the *Sexual Offence Information Registration Act* (SOIRA), being a lifetime order.

[114] With respect to the non-predicate offences I sentence Mr. Crowe to three years (to be served concurrently) for the unlawful confinement of Ms. T. contrary to s. 279(2) of the *Criminal Code* (Count 1). Further, on counts four and five, breach of a probation order issued May 21, 2008 and breach of a condition of recognizance, issued November 17, 2009 under ss. 810 and 811 of the *Criminal Code* to "keep the peace and be of good behaviour," I sentence Mr. Crowe to one year on each count to be served concurrently with the term of imprisonment for the predicate offence.

Robertson, J.

SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Crowe*, 2014 NSSC 210

Date: 20140610
Docket: CRH No. 340325
Registry: Halifax

Between:

Her Majesty the Queen

v.

Robert Thomas Crowe

Restriction on Publication: Section 486 *C.C.C.* - Identity of victim

Judge:	The Honourable Justice Heather Robertson
Heard:	May 12, 13, 16, 20, 21, 22, 23, and 29, 2014 in Halifax, Nova Scotia
Written Release of Decision:	June 20, 2014 **(Orally: June 10, 2014) (Dangerous Offender Application and Sentencing)**
Erratum:	June 26, 2014

Counsel: Eric Taylor and James Giacomantonio, for the Crown and
Cait Regan-Cottreau, law student
J. Brian Church, Q.C., for the offender

Erratum:

[115] Paragraph [106] reads: Dr. Bloom says he "remains somewhere in the middle" between the notion of reasonable possibility of eventual control of his risk in the community and reasonable expectation of the control of that risk. He testified he leaves it to the wisdom of the court to make the determination of whether the long-term offender designation should be made.

It should read: . . . whether the long-term supervision order should be made.

[116] Paragraph [109] reads: This can be achieved by a long-term offender designation for a period of ten years.

It should read: . . . long-term supervision order for a period of ten years.

[117] Paragraph [111] reads: The length of supervision (long-term offender order) of ten years will in my view provides the reasonable expectation that the public will be adequately protected against future offending. This will allow for the necessary high intensity treatment Mr. Crowe requires within a federal institution and provide for ongoing relapse prevention treatment in the community, as well as his continuing supervision.

It should read: The length of supervision (long-term supervision order) of ten years . . .

[118] Paragraph [113] reads: In addition to the designation of Mr. Crowe as a long-term offender the court is prepared to sign the following orders:

It should read: . . . as a dangerous offender . . .