
CANADA / JUDGMENT

R. v. Bruneau

2009 BCSC 1089

COURT

Supreme Court of British Columbia

DECIDED

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2009 BCSC 1089 R. v. Bruneau

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bruneau,

2009 BCSC 1089

Date: 20090811

Docket: 20248

Registry: Smithers

Regina

v.

Daniel Bruneau

Before: The Honourable Madam Justice Sinclair Prowse

Reasons for Judgment

Counsel for the Crown:

D. Brennan

Counsel for the Accused:

J. Gustafson

Place and Date of Trial:

Vancouver, B.C.

April 20-23, 29-30;

July 6-7, 16-17 and 20-21, 2009

Place and Date of Judgment:

Vancouver, B.C.

August 11, 2009

- [1] On August 6, 2009, I advised Mr. Bruneau of my decision in this Dangerous Offender hearing - namely, that I found him to be a Dangerous Offender. I also advised Mr. Bruneau that I would provide him with a written Judgment, setting out my reasons for this finding. This is that written Judgment.
- [2] At the hearing on August 6, 2009, in addition to imposing a sentence of detention upon Mr. Bruneau in a penitentiary for an indeterminate period on all of the predicate offences, I made a number of other orders. For convenience, those other orders and the reasons for them are set out at the end of this Judgment.

(I) NATURE OF THE HEARING

- [3] On February 25, 2008, Mr. Bruneau pled guilty to the offences with which he had been charged - namely, sexual assault, unlawful confinement, and attempted choking with the intent that it would enable or assist himself to commit an indictable offence. This plea took place during trial just shortly after I had ruled admissible statements made by Mr. Bruneau to the police during their investigation of these offences. This is the sentencing hearing following those pleas.
- [4] In this hearing, the Crown seeks to have Mr. Bruneau designated as a Dangerous Offender and to have him sentenced to imprisonment for an indeterminate period.
- [5] The Defence, on the other hand, opposes this application and seeks to have Mr. Bruneau sentenced as a Long Term Offender. In particular, the Defence seeks to have Mr. Bruneau sentenced to a determinate period of 5 further years imprisonment and to a period of 10 years supervision after his release. (Mr. Bruneau has been in custody for approximately 2 years - namely, since his arrest following the commission of the predicate offences.)
- [6] In this hearing, there were 6 witnesses - namely, the victim of the predicate offences who testified as to the circumstances of those offences; Tyler Khan and Sean Huish, both of whom have been employed with Correctional Services of Canada since 1997 and who testified as to the supervisory and other services that were available to an offender upon release and to the treatment programs that were available while in prison; and Dr. Lawson, Dr. Lohrasbe and Dr. Nicholaichuk who all tendered opinions as to Mr. Bruneau's risk to re-offend and his treatability.

(II) ISSUES

- [7] As far as the issues are concerned, there are both preliminary and specific issues pertaining to these applications.

(A) Preliminary Issue

- [8] On July 2, 2008, the provisions of the Criminal Code, R.S.C. 1985, c. C-46 [Code], governing Dangerous Offender and Long Term Offender applications were amended. These amendments occurred after Mr. Bruneau had pled guilty to these offences and after the Crown had applied to have him found a Dangerous Offender.
- [9] As a consequence, the Court must first address the preliminary issue of which provisions should govern this application - whether it is the previous provisions or the current provisions.
- [10] Counsel jointly submit that the previous provisions should govern this application. I agree with that submission.
- [11] As a general matter, persons accused of criminal conduct are to be charged and sentenced under the criminal law provisions in place at the time that the offence was allegedly committed: *R. v. Johnson*, [2003] 2 S.C.R. 357, 2003 SCC 46, at para. 41 [*Johnson* (2003)]. However, if criminal law provisions change between the commission of the offence and the completion of the matter, the Offender is entitled to be sentenced under whichever provision provides the lesser punishment: Charter of Rights and Freedoms, s. 11(i).
- [12] As was held in *R. v. Dorfer*, 2009 BCSC 202 at para. 51 (the only case of which I am aware that considers this issue), "taken as a whole, it cannot be said that the new provisions are more favourable to [the Offender]".
- [13] Upon reading the previous and current provisions, I agree with this characterization.
- [14] For example, if the evidence is that the Offender is a Dangerous Offender, a key issue to be addressed is whether the less severe sentencing options of the Long Term Offender provisions are sufficient to protect the public. Under the previous Dangerous Offender provisions, the onus is on the Crown to prove that these less severe sentencing options are not sufficient whereas under the current Dangerous Offender provisions, the onus shifts to the Offender to prove that the Long Term Offender provisions are sufficient.
- [15] In my view, this example illustrates that the current provisions are "not more favourable" to the Offender.
- [16] Given all of these circumstances, I am satisfied that the present application should be governed by the previous provisions which were in force prior to July 2, 2008.

(B) The Process To Be Followed

- [17] In this hearing, the Court must first determine whether the Crown has established that all of the requirements for a finding of Dangerous Offender status pursuant to s. 752.1 and 753 of the Code have been met. There are both procedural and substantive requirements under these sections.
- [18] If those requirements are not proven, the Offender will not be declared a Dangerous Offender. Instead, the Court may either treat the application as an application to find the offender to be a Long Term Offender and to impose a sentence in accordance with those provisions or the Court may impose a determinate sentence for the offences for which the Offender has been convicted: see s. 753(5) of the Code.
- [19] If, on the other hand, the Court is satisfied that all of the requirements for Dangerous Offender status have been proven, it must then determine whether there is no reasonable possibility of eventual control in the community of the risk posed by the Offender: Johnson (2003). In other words, with respect to this second step, the Court must determine whether the less severe sentencing options as a Long Term Offender would be sufficient to reduce his threat to the life, safety or physical and mental well-being of other persons to an acceptable level: Johnson (2003).
- [20] If so, the Offender should be sentenced as a Long Term Offender. If not, the Offender should be sentenced as a Dangerous Offender.

(C) Statutory Framework

- [21] As far as the statutory framework is concerned, the grounds on which an offender will be found to be a Dangerous Offender are set out under s. 753 of the Code and the grounds on which an Offender will be found to be a Long Term Offender are set under s. 753.1 of the Code.
- [22] Specifically, with respect to a Dangerous Offender finding, s. 753 provides that:
- (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find the offender to be a dangerous offender if it is satisfied
 - (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing
 - (i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,

(ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or

(iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint, or

(b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any sexual matter including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

[23] With respect to a Long Term Offender finding, s. 753.1 of the Code provides that:

(1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that

(a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;

(b) there is a substantial risk that the offender will reoffend; and

(c) there is a reasonable possibility of eventual control of the risk in the community.

(2) The court shall be satisfied that there is a substantial risk that the offender will reoffend if

(a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 163.1(2) (making child pornography), subsection 163.1(3) (distribution, etc. of child pornography), subsection 163.1(4) (possession of child pornography), subsection 163.1(4.1) (accessing child pornography), section 172.1 (luring a child), subsection 173(2) (exposure), or section 271 (sexual assault), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault) or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and

(b) the offender

(i) has shown a pattern of repetitive behaviour of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or

(ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury pain or other evil to other persons in the future through similar offences.

- (3) Subject to subsections (3.1), (4) and (5), if the court finds an offender to be a long-term offender, it shall
- (a) impose a sentence for the offence for which the offender has been convicted, which sentence must be a minimum punishment of imprisonment for a term of two years; and
 - (b) order the offender to be supervised in the community for a period not exceeding ten years, in accordance with section 753.2 and the Corrections and Conditional Release Act.

(D) The Issues

[24] As far as the issues in this application are concerned, there are both procedural and substantive requirements to be met in a Dangerous Offender hearing. There is no dispute that all of the procedural requirements have been met in the present application.

[25] Furthermore, there is no dispute that there are 4 different grounds on which an Offender may be found to be a Dangerous Offender - namely, on any one of the 3 subsections of s. 753(1)(a) or on s. 753(1)(b): R. v. Lewis (1984), 12 C.C.C. (3d) 353 (Ont. C.A.), and R. v. Dow, 1999 BCCA 177, 134 C.C.C. (3d) 323 at para. 13. The Crown need only prove one of these 4 grounds - not all 4.

[26] Furthermore, there is no dispute that one essential element of all 4 grounds is that the Offender has been convicted of a serious personal injury offence as defined in s. 752 and that this element has been proven in this application.

[27] Specifically, pursuant to s. 752, "serious personal injury offence" means

- (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 on another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

- (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).

[28] As one of the predicate offences was sexual assault (s. 271), I find that Mr. Bruneau has been convicted of a serious personal injury offence.

[29] Consequently, the issues in this application are:

- (1) whether the evidence proves that Mr. Bruneau is a Dangerous Offender on any of the grounds set out under s. 753(1); and
- (2) if so, whether the evidence proves that there is no reasonable possibility of eventual control of Mr. Bruneau in the community and that therefore sentencing Mr. Bruneau as a Long Term Offender would not be sufficient.

(III) BACKGROUND CIRCUMSTANCES

- [30] To determine these issues, it is necessary to consider both the circumstances of the offences as well as the circumstances of Mr. Bruneau.

(A) Circumstances Of The Offences

- [31] Over almost 21 years, extending from October 2, 1986 until August 20, 2007, Mr. Bruneau has committed 5 offences - namely, sexual assault in 1986, manslaughter in 1988, and the predicate offences of sexual assault, unlawful confinement, and attempted choking with the intent of enabling him to commit an indictable offence, all of which occurred in one incident in 2007.

(1) The First Offence - 1986 - Sexual Assault

- [32] With respect to the first offence of sexual assault, that offence occurred on October 2, 1986, in Thornhill, B.C., a small community just outside of Terrace. Mr. Bruneau was 26 years old at the time. He sexually assaulted a young girl as she was walking home after school along a trail that ran through a forested area. She had just turned 10 years old, the day of this offence being her birthday.
- [33] Mr. Bruneau approached her from behind. He then walked along beside her, but slightly behind. He walked like that with her for some time, saying something to her at some point about mushrooms. He then grabbed her arm; took her about 50 steps or more off the trail into the forest; told her if she did what he said, he would not hurt her; put his hand down the front of her jogging pants and underneath her underpants; put his fingers into her vagina; and then rubbed his fingers up and down inside her a few times. He then took her back to the trail; told her that he should not have done that and walked a little further along the trail with her. He then left and she went home.
- [34] Although the victim did report this incident to her mother later that day and the police did investigate the matter, it was not until three years later that Mr. Bruneau was identified as her assailant and charged with the offence. Specifically, through happenstance, the victim saw Mr. Bruneau at a public barbecue that she was attending in July 1989. Mr. Bruneau's band was playing at this barbecue. She immediately recognized Mr. Bruneau as the person that sexually assaulted her as he drove into the area in which the barbecue was being held.

(2) The Second Offence - 1988 - Manslaughter

- [35] As far as the second offence of manslaughter is concerned, that offence occurred on November 10, 1988, in Terrace B.C. The victim was a 17-year old girl and Mr. Bruneau was 28 years old.
- [36] They had met by chance the evening before in a donut shop called the Donut Factory. Mr. Bruneau took her to his friend's apartment to which he had access. They picked up some wine enroute to the apartment. At the apartment, the victim and Mr. Bruneau drank wine and had sexual intercourse. There was nothing to indicate that this intercourse had not been consensual.
- [37] After having intercourse, the victim and Mr. Bruneau became involved in a conversation in which they discussed the victim's and Mr. Bruneau's family situations. At the time of this conversation, Mr. Bruneau was sitting on the couch and the victim was sitting on the floor between his legs. Her back was towards him.
- [38] In the course of this conversation, Mr. Bruneau became angry with the victim as the result of two comments that she made - namely, a comment in which she referred to Mr. Bruneau's estranged wife as a bitch and a comment in which she disclosed that she (the victim) was presently having her menstrual period (and therefore had been having it when they had had sexual intercourse earlier).
- [39] As a result of his anger, Mr. Bruneau put a sleeper hold on the victim. That is, he reached around her neck from behind and choked her to death. Apparently, as a result of this hold, the victim would have lost consciousness within 15 seconds. The autopsy disclosed that Mr. Bruneau applied pressure for 2 to 3 minutes.
- [40] After killing the victim, Mr. Bruneau methodically removed all evidence that would have connected him to the victim. To begin with, he cleaned up the apartment, removing any indication that he and the victim had been there. This included washing and putting away the wine glasses that they had used and removing the wine bottle. He then disposed of her body by removing it from the apartment and taking it to an area near the airport where he left it.
- [41] On the way back to Terrace, he threw her jacket into a bush area near the highway after discovering that he had accidentally left it in the car.
- [42] Although the victim's body was discovered the next day by a security guard at the airport, it was not until April 1989 (5 months later) that the delivery person for the donut shop saw Mr. Bruneau and recognized him as the person that he had seen with the victim at the shop late on the night of November 10th - in other words, just hours before her murder. As had been the situation with the first offence, it was happenstance that brought Mr. Bruneau to the attention of the police.
- (3) The Predicate Offences - 2007 Sexual Assault; Unlawful Confinement; and Attempted Choking To Enable Or Assist in the Commission of an Indictable Offence

- [43] The three predicate offences occurred on August 20, 2007.
- [44] Shortly before noon on this day, Mr. Bruneau picked the victim up in New Hazelton, B.C. She was hitchhiking home after seeing her boyfriend off. He was returning to work in a forestry camp. The victim is aboriginal and lives on the reserve located near Kitwanga, B.C., where Mr. Bruneau was living at the time. She was 18 years old.
- [45] When Mr. Bruneau picked her up, he reminded her that he had picked her and her boyfriend up previously and given them a ride. She did not recognize him. He told her that he knew her grandfather, who she was staying with at the time. He purchased some ice tea for the victim, some alcohol, and some rolling papers.
- [46] He asked her if she wanted to come to his house to listen to music, explaining that he had some musical instruments there as he was in a band. As the victim was interested in music, she agreed. Once at his home, they played the instruments, drank some alcohol and smoked some marijuana. After a while, Mr. Bruneau made some pizza. He and the victim talked about themselves and their interests. For example, the victim told him that she liked soccer and playing the piano.
- [47] At some point during this conversation, Mr. Bruneau started to make comments to the victim of a sexual nature, including telling her how pretty she was. These comments made her uncomfortable. She asked if he would take her home. He told her to wait a bit because he was feeling kind of high. She said ok and turned around so that her back was towards him.
- [48] He then grabbed her from behind, put a choke hold around her neck, knocked her feet out from under her, and pinned her to the floor. She tried to scream for help, but could not. Mr. Bruneau got mad at her, advising her that if she was quiet, he would not hurt her.
- [49] Keeping one arm around her neck, he used his other hand to grab her left arm and put handcuffs on it. (The victim believed that he had the handcuffs in his other hand, although she did not see them there.) Because of the choke hold, she was having trouble breathing. She did not want him to hurt her. She persuaded him to handcuff her hands in front of her body rather than behind her back. He did that, handcuffing her hands with the palms up.
- [50] He then grabbed the metal part between the handcuffs and pulled the victim into the bedroom. Once in the bedroom, he put her on the bed, tore off her pants, and raped her. Apparently, he was thrusting so hard while raping her that the mattress shifted off the boxspring. He did not use any protection. After raping her, he performed cunnilingus on her.
- [51] While committing these offences, he talked to the victim saying things like "It feels so good" and "You are so beautiful". The victim did not say anything. Rather, she cried throughout. She thought it was a life and death situation.

- [52] After Mr. Bruneau was finished, the victim asked if she could go to the washroom. He indicated that she could and he unlocked the handcuffs. Though he let her use the washroom, he accompanied her there and watched her from the doorway. After he left, she ran into the living room, went to the phone and dialled numbers randomly. He grabbed the phone from her and accused her of trying to get him into trouble. He told her that he should not have picked her up. She told him repeatedly that she would not tell anyone.
- [53] She asked him to drive her home. He drove her to an intersection near her home. As she was getting out of the vehicle, he grabbed her arm and told her "You are not going to tell anyone. I know where you live. Slice and dice." He then drove off in the opposite direction.
- [54] The victim reported these offences immediately. She had marks on her wrists and on her neck. Both of her thumbs had gone numb from having the handcuffs on. That numbness lasted for about 2 weeks. Her vagina was sore for a while.
- [55] The day after the incident, Mr. Bruneau went to the police station after learning that they wanted to speak to him. He was immediately placed under arrest for sexual assault and forcible confinement.
- [56] Mr. Bruneau provided a statement in which he confirmed all of the material details of the statement given by the victim save and except that he contended that the sexual intercourse had been consensual and that he had never used handcuffs or choked her.
- [57] In the meantime, the police had searched Mr. Bruneau's home. They never located the handcuffs, although they did find a case for handcuffs, a toy gun in a holster, and a plastic container filled with marijuana leaves in an open cupboard located in the kitchen dining area. The police also found an improperly stored rifle.
- [58] The charges against Mr. Bruneau were withdrawn and he was released.
- [59] About a week later, on August 28, 2007, the police did a further interview with the victim where she confirmed that the sexual relations that she had had with Mr. Bruneau were not consensual and that he had handcuffed her.
- [60] On September 5, 2007, the police went to Mr. Bruneau's home and, among other things, asked if he would undergo a polygraph test regarding these alleged offences. Mr. Bruneau agreed to undergo this test and on September 20, 2007, went to the police station for that purpose.
- [61] After he arrived, Mr. Bruneau and the police officer who was going to conduct the test talked about general matters as well as about how the test worked. In the course of this conversation, Mr. Bruneau explained that he was in the process of selling his home and moving to the Queen Charlotte Islands as the victim's allegations had cost him his job and reputation.

- [62] Just before the test was to start, Mr. Bruneau advised the police officer to stop the test as it was unnecessary to do it. Mr. Bruneau then advised the police officer that the incident had happened "pretty much" as the victim described, save and except that he had never choked her. He went on to admit that he had handcuffed her, but that it was not for as long as she had alleged - just 15 to 20 minutes and that afterwards, he had taken one of the handcuffs off her and put it on himself.
- [63] He further explained that prior to the incident, he had kept the handcuffs at his home near the marijuana stash and that after the offences, he hid them outside his residence where the dogs resided and then later threw them into the local dump where he was employed. He also told the police that he had picked the victim up in the hopes of "getting lucky". He further stated that he had always intended to confess, but that he wanted to get his affairs in order first.
- [64] Mr. Bruneau was asked if he wanted to write a letter of apology to the victim. He responded that he would like to do that, but that rather than write out the letter, he would prefer that he dictate and that the police officer do the actual writing.

[65] The letter that he dictated is as follows:

I just want to say to you and your family that I'm really sorry for all the stuff, for doing what I did to you and I'm sorry to her family and going through all this stuff and I just hope that she learned a lesson not to hitch-hike because it could have been worse if it had been somebody else, the "Hwy of Tears" guy. Just hope that something like that does not happen to you again and I'm really sorry for what happened and I'm going to do my time for this and I also lost my house, my job, and my name around the community. I know she probably does not care of what I'm saying, but I'm truly sorry.

P.S. Keep practicing your voice because you got a lot of potential.

Dan

- [66] During the course of the trial, Mr. Bruneau pled guilty to these offences after these statements were ruled admissible.

(B) Background Circumstances Of Mr. Bruneau

(1) Family Background, Childhood and Interpersonal Relationships

- [67] As far as Mr. Bruneau's personal circumstances are concerned, he was born almost 49 years ago on September 4, 1960, in Montjolie, Quebec. He is the 7th of 9 children. His family moved from Quebec to Terrace, B.C. when Mr. Bruneau was 4 years old. He has spent the majority of his life in that area.

- [68] Specifically, he lived there for 25 years before his imprisonment in 1990. After serving his sentence for the commission of the first 2 offences, he moved back to Quebec where he resided for the next 11 years. (One of his sisters was living there.) In 2004, he returned to the Terrace area because he missed his family.
- [69] Sometime during the next three years, Mr. Bruneau moved to Kitwanga which is about 100 kilometres northeast of Terrace and is where he was living when the predicate offences occurred.
- [70] Mr. Bruneau reported to Dr. Lawson that in some respects, his childhood was difficult. In particular, he was sexually assaulted on an almost nightly basis by a man who boarded with his family. These assaults extended over a 4-year period and started when he was 7 years old and continued until he was 11 years old.
- [71] As far as interpersonal relationships are concerned, although Mr. Bruneau has been involved in a number of romantic relationships (including 2 marriages) and does have a friend who has known him since he was 8 or 9 years old, in many respects, he is an isolated person. That is, aside from immediate family members (and even that is unclear), he does not appear to have close long-term relationships with anyone. For example, he does not appear to be close to his children nor does he actually have a close relationship with the person who has been his friend for 41 years.
- [72] In the course of preparing his report, Dr. Lawson interviewed a number of people including Mr. Bruneau's first wife; the woman with whom he has had his most recent romantic relationship; and the friend to whom I have just referred. After completing these interviews, Dr. Lawson concluded that "Mr. Bruneau presents very differently to different people and to the same people at different times."
- [73] Mr. Bruneau was married for the first time in June 1983. He was 23 years old and she was 17 years old. They had been going out for 2 years. They were married for about 3 1/2 years, separating in January 1987. They had two children, the first being born in 1985 and the second being born in 1987 about 6 months after he and his wife separated. The children continue to reside with his first wife.
- [74] As his first wife reported to Dr. Lawson, although Mr. Bruneau never physically assaulted her, he did lose his temper both while drunk and sober. At these times, he would rant and rave and punch holes in the walls. He never forced her to have sexual relations against her will. On the other hand, she never denied him sex because she was unsure as to his reaction.
- [75] It was about 4 months after their separation that the first offence occurred - that is, the sexual assault of the 10-year old girl.

- [76] In the 3 ½-year period following his separation and his imprisonment on the manslaughter offence, Mr. Bruneau was involved in romantic relationships for most, if not all, of the time. He lived with one woman for 3 to 4 month periods at a time over the course of a year and had a monogamous relationship with another woman for 1 1/2 to 2 years during this period. (There is nothing more known about these relationships as neither of these women was interviewed.)
- [77] It was during this period that the manslaughter offence occurred.
- [78] During the 11-year period that he spent in Quebec following his release, he was involved with 3 different women, the length of these relationships varying from a few months to 5 years. His second marriage was the last of these relationships. None of these women were interviewed. (In fact, no one whom Mr. Bruneau had contact with during this 11-year period was interviewed.) Nevertheless, the evidence indicates that none of these relationships were particularly close as Mr. Bruneau had completely forgotten about the first relationship and he could not recall the last names of the last two women, including the last name of the woman to whom he was purportedly married for 1 to 1 1/2 years.
- [79] After his return to Terrace in 2004, Mr. Bruneau was romantically involved with a woman for about 6 months. That relationship ended about 9 months before the commission of the predicate offences. As she advised Dr. Lawson, during the course of their relationship, she purchased two pick-up trucks, a guitar, amplifier, furniture and dentures for Mr. Bruneau, representing an expenditure of \$9,600 which he never repaid.
- [80] As she further described to Dr. Lawson, "He can put the charm on but when things don't go his way, he's like Dr. Jekyll and Mr. Hyde ...". Again, as had been true with his first wife, although he would lose his temper from time to time, he never physically assaulted her.
- [81] In addition to these romantic relationships, Mr. Bruneau has had a number of short-term (that is, one night) sexual relationships.
- [82] Aside from his first wife who was 6 years his junior and his last sexual partner who was 10 years his senior, his sexual partners have been his age or 2 to 3 years younger.
- [83] With respect to the friend, she is the mother of one of his best childhood friends. She has known Mr. Bruneau since he was 8 or 9 years. He also spent a good portion of the summers with her and her family from the time he was 11 to 19 years old. As Dr. Lawson wrote in his report, "she had '... never seen any bad in him...' and described him as an honest, hard-working, very clean person whom she had never suspected of lying (with the possible exception of the current offences) and whom she had never seen angry. On the contrary, she stated that he was 'happy-go-lucky, always making people laugh by making his voice sound funny...'".

- [84] The basis on which I have concluded that this friendship may not be particularly close is not only because Mr. Bruneau appears to have only disclosed one side of his personality to her (she had never seen him angry), but also because during the 11-year period that he was in Quebec, he did not contact her once, not even during his one visit to the Terrace area.
- [85] It is Dr. Lawson's view that "Mr. Bruneau's style of interpersonal interaction very much appears to be guided by his objectives at the time.... Having control of interpersonal relationships is very important to Mr. Bruneau." For example, his goal with his friend was to "present himself in a highly positive light thereby enabling him to maintain [this friend] as a source of social support." With respect to his first wife and to his last girlfriend, "his goal appears to have been to control their behaviour because they fulfilled his needs for sexual access and a family man image in the first case and for the acquisition of property in the second."
- [86] With respect to his children, Mr. Bruneau appears to have little, if any, relationship with them. They were 6 and 8 years old respectively when he was released from prison after serving his sentences for the manslaughter and sexual assault offences. During the 11-year period that he lived in Quebec after that, he only visited the Terrace area once. It is unclear whether he visited his children during that visit or whether he had any contact with them during the 11-year period. Though he said his reason for returning to the Terrace area in 2004 was to be near his family, it was unclear as to which family members he was referring and in particular, if they included his children.
- [87] Other than a concern that he expressed to the police about his children learning about the present offences, there is nothing in the evidence to indicate that he has any kind of relationship with them.

(2) Education and Employment

- [88] With respect to education and employment, school proved difficult for Mr. Bruneau. Although he attended school until he was 15 years old at which time he was in either Grade 7 or Grade 9, he was functionally illiterate when he was sentenced and went to prison in May 1990 following the manslaughter conviction.
- [89] Whether his difficulties with school arose because English was his second language as Mr. Bruneau spoke only French when he started school, intellectual limitations, learning disabilities or a combination of these factors, those difficulties have not interfered with his ability to secure and maintain employment or to learn new skills.
- [90] He has been employed for most, if not all, of his adult life - albeit for the most part in unskilled jobs. At the time of the predicate offences, he was employed by the community to manage the dump.

- [91] Throughout his life, he has had the ability to learn by watching. For example, he learned to play various musical instruments by watching other people play them. He was able to develop this skill to the degree that he was able to perform in bands, for which he was paid.
- [92] As far as his intellectual limitations are concerned, though there is a dispute as to their existence, there is no contention that it was because of intellectual limitations that Mr. Bruneau committed these offences.
- [93] Rather, the only relevance of any intellectual limitations is to Mr. Bruneau's treatability and, in particular, to the manner in which information is imparted to him in treatment programs.
- [94] Although there is no issue that Mr. Bruneau has trouble reading (although his ability improved as a result of a course he took while in prison for the manslaughter and sexual assault offences), there is a dispute as to whether he is of less than average intelligence or simply has learning disabilities.
- [95] Dr. Nicholaichuk opined, after testing Mr. Bruneau, that he was in the borderline range of intellectual ability and that he had learning disabilities that limited his ability to comprehend either the written word or verbal instructions. It was his view that Mr. Bruneau had to have instructions be simplified and demonstrated as much as possible. That is, he could understand instructions if he was shown what he was to do, rather than being given written or verbal instructions.
- [96] Dr. Sherwood, the clinical and consulting psychologist who examined Mr. Bruneau while he was incarcerated on the manslaughter offence, described Mr. Bruneau in his report to the parole office dated August 30, 1991, as "functioning within the average range of overall intellectual ability, although he is unschooled and only semi-illiterate." These observations of Dr. Sherwood are in keeping with the opinions of Mr. Bruneau himself and of members of his family, who had testified during the manslaughter trial, that Mr. Bruneau was of average intelligence although he had trouble reading.
- [97] The view that Mr. Bruneau is of average intelligence is also in keeping with the observations made by the teaching staff at the educational upgrading program that he attended from January 1992 until mid-July 1992 while in jail. Specifically, they reported that during that period, he had learned to read at a Grade 6 level and he had "the ability to achieve literacy and to go on and pass the G.E.D."
- [98] Mr. Bruneau chose not to continue with that upgrading program because he wanted to participate in a work project so that he could earn income before his release the following summer. In other words, Mr. Bruneau did not leave this program because of intellectual limitations or learning disabilities.
- (3) Incarceration History (Including Treatment Programs)

- [99] With respect to Mr. Bruneau's incarceration history, over the last 19 years, Mr. Bruneau has spent approximately 5 1/2 years in custody.
- [100] Specifically, he spent 3 1/2 years in prison following his conviction for the manslaughter and sexual assault offences. He has spent 2 years in prison since being arrested on the predicate offences. (As a result of his conviction on the manslaughter offence, Mr. Bruneau was sentenced to 3 1/2 years imprisonment. While serving that sentence, he was convicted of the 1986 sexual assault and sentenced to imprisonment for 6 months, that sentence to be served consecutively to the manslaughter sentence. With statutory release, the actual time of imprisonment was reduced to 3 1/2 years.)
- [101] During his imprisonment for the manslaughter and sexual assault offences, although he committed some minor infractions such as being out of bounds and being disrespectful, he was generally compliant and co-operative.
- [102] Ultimately, he was released on parole in August 1993. He had been paroled earlier than that - namely, on October 24, 1991. At his request, he had been released to a halfway house in Vernon as he had family in that area. However, that earlier parole was revoked within approximately 6 weeks (on December 13, 1991) because of a fraud that he had perpetrated on Social Services. Specifically, as the result of a false application that he made to that Ministry, he was paid funds to which he was not entitled. It appears that this offence was discovered by chance as the authorities were investigating him with respect to a completely different matter.
- [103] During his incarceration, Mr. Bruneau participated in a number of programs - including a program on substance abuse (November 1990), alternatives to violence (December 1990), anger and its management (December 1990), living skills (December 1990), hobby shop safety (March 1991) and educational upgrading (January 1992 and July 1992).
- [104] Although Mr. Bruneau was encouraged to participate in sex offender programs when he was incarcerated, with the exception of one meeting, he did not do so. For example, in June 1991 (just over a year after he was incarcerated), Mr. Bruneau was offered one on one counselling for sex offenders because there was no sex offender program available at the Elbow Lake institution. However, he expressed his aversion to psychological counselling and did not seek out the doctor for sexual offender counselling.
- [105] A few months later, on August 23, 1991, Dr. Sherwood examined Mr. Bruneau at the request of the parole board. In his subsequent report dated August 30, 1991, he wrote that "He has refused any kind of involvement in sexual offender programming and was firm that he would be unwilling to attend any kind of program either within that institution or outside." Dr. Sherwood quoted Mr. Bruneau as saying "Go to something like that and the whole town looks at you".

- [106] Subsequently, in the fall of 1991, Mr. Bruneau agreed to participate in a sexual offender program because he would not be granted day parole otherwise. After his release on parole, at the first session of this program, he denied having committed the 1986 sexual assault. (Mr. Bruneau has consistently maintained that he did not commit this criminal offence.)
- [107] Because of his denial of being a sexual offender, Dr. Stein (the psychiatrist who was conducting this program) decided to treat Mr. Bruneau on an individual, monthly basis rather than in the group sessions. Unfortunately, there were no further sessions held because Mr. Bruneau breached his parole before the next session and he was returned to prison.
- [108] After his return to prison, he did not participate in any sexual offender programs. Whether this was because he was not invited to do so or because he refused to do so is unclear.
- [109] When he left prison in August 1993, there were only two conditions of his statutory release - namely, that he abstain from alcohol and that he submit to a breathalyser upon request. During his period of supervision, he did not breach either of these conditions.
- [110] As far as his present incarceration is concerned, he is a co-operative and compliant prisoner. During this period of custody, he has completed two substance abuse management programs, each consisting of 15 sessions with each session being 1.5 hours in duration.
- [111] With respect to sexual offender programs, Mr. Bruneau advised Dr. Lawson in the spring of 2008 that "he would participate in a sex offender treatment program while in custody only if the other offenders could not identify him as a sexual offender." Since then, he has changed his mind and is presently willing to participate openly in these programs.
- (6) Mr. Bruneau's Attitude to Himself, the Offences, and Women
- [112] As far as Mr. Bruneau's attitude to himself is concerned, in most, if not all, situations, he sees himself as the victim. He takes little, if any, responsibility for his actions.
- [113] For example, his most consistent explanation for the dissolution of his romantic relationships was the bad behaviour of the partner - that is, they had affairs, they did not understand the demands of his music career, they just wanted his money, and they treated him as if he were stupid. As far as his last relationship is concerned, he contends that it broke up because of rumours that she spread about him in the community. It was not, as she reported to Dr. Lawson, because he was only interested in her money.
- [114] He is egocentric, seeing the world from a narrow, self-interested perspective. As Dr. Lawson observed in his report, Mr. Bruneau has a need to control his interpersonal relationships. He has an egocentric perspective in having his own needs met and a disregard for the consequences of his actions on others.

- [115] With respect to his attitude towards the offences (which includes his attitude towards the victims of the offences), generally he does not appear to appreciate the significance of them nor does he show demonstrate any real understanding of the impact of them on his victims.
- [116] Mr. Bruneau has consistently maintained that he did not commit the first offence. He further contends that the family of the victim of the manslaughter offence framed him for this sexual assault because they were upset with his sentence on the manslaughter offence. Given that he had not yet been convicted or sentenced on the second offence when he was identified by the victim on the first offence, this is highly unlikely.
- [117] With respect to the manslaughter offence, Mr. Bruneau contends that this was an accident. As Dr. Lawson observed when discussing this offence with Mr. Bruneau, Mr. Bruneau became angry, contending that he had had to spend 3 years in prison for a matter that was an "accident".
- [118] As far as the present offences are concerned, he sees himself as the victim. As he set out in the letter of apology, he lost his job, his home and his reputation as a result of the offence.
- [119] With respect to the fraud that resulted in the revocation of his parole in 1991, he again was the victim as it was an honest mistake or, alternatively, something that his friends had encouraged him to do. (This explanation is highly unlikely given the positive steps that he had to take to carry out this fraud, including providing a false address and false reasons for being entitled to the assistance.)
- [120] He appears to be unable to step out of his own perspectives even when it is in his interest to do so. For example, in his letter of apology to the victim in the predicate offences, the letter quickly shifts from apologizing to casting blame, at least in part, on the victim because she was hitch-hiking. This is followed by a description of the difficulties that he had undergone as a result of these offences.
- [121] Dr. Nicholaichuk characterized Mr. Bruneau's attitude to the offences as "denial and minimization", a situation which was not uncommon nor an obstacle to treatment. The evidence does not support this characterization. Rather, Mr. Bruneau's attitude goes beyond denial and minimization to little or no appreciation of the significance of the offences that he has committed.
- [122] As far as his attitude towards women is concerned, Mr. Bruneau distrusts women and feels victimized by them. As Dr. Lawson put it in his report, Mr. Bruneau:
- ... harbours attitudes that normalize rape and diminish men's responsibility for it. For example in his interview with Sergeant Hardy he estimated that 25% of men have committed rape. ... Mr. Bruneau's estimate indicates that he does not consider rape to be a particularly uncommon feature of men's behaviour ... In the same interview Mr. Bruneau commented that "sometimes the stiff thing got no conscience".. apparently suggesting that men are powerless to control their sexual behaviour and seek satisfaction without regard for the impact on their victims.

[123] As Dr. Nicholaichuk put it, "he may feel that [women] are at least partially responsible for their own rape."

(7) Risk Assessment and Treatment Recommendations

[124] Since his incarceration on the predicate offences, Dr. Lawson as amicus curiae to the Court, Dr. Lohrasbe at the request of the Crown, and Dr. Nicholaichuk at the request of the Defence have not only done assessments on Mr. Bruneau's risk to re-offend and his treatability, but also have tendered their reports in evidence and have testified in this hearing.

[125] This evidence pertains to the second issue raised in this hearing - namely, whether the Court should exercise its discretion and sentence Mr. Bruneau as a Long Term Offender even though the evidence supports a finding that he is a Dangerous Offender. To exercise that discretion, the Court must be satisfied that, the less severe sentencing options as a Long Term Offender are sufficient to reduce the risk that Mr. Bruneau presents to an acceptable level.

[126] Dr. Nicholaichuk and Dr. Lawson both opine that Mr. Bruneau poses a moderate to moderately high risk to re-offend and that, as Dr. Nicholaichuk worded it, "there is some potential for Mr. Bruneau to be managed in the community assuming a number of conditions are met."

[127] Their specific recommendations for Mr. Bruneau's treatment and management are:

1. continued educational upgrading as improved literacy skills will be essential for full participation in treatment programs;
2. an intensive sexual offender treatment program and community-based sex-offender treatment;
3. a substance abuse treatment program;
4. individual treatment to address issues stemming from his childhood abuse;
5. an anger and emotional management program;
6. a cognitive living skills program;
7. frequent monitoring over an extended parole with specific reference to acute and stable risk factors;
8. prohibitions against the possession and use of intoxicants, being unsupervised in the presence of children and adolescents and picking up hitchhikers of any age; and
9. taking medication as prescribed by a physician or psychiatrist.

[128] Dr. Nicholaichuk also adds that it is essential that the treatment programs be presented in a manner that took Mr. Bruneau's learning disabilities into account - namely, that they be simplified and include demonstrations in addition to written and oral instructions.

[129] In addition to these recommendations, Dr. Nicholaichuk opined that Mr. Bruneau's risk to re-offend would decrease in any event as he aged. He testified that generally, criminal activity decreases with age. Applying this general trend to Mr. Bruneau, his risk to re-offend would therefore decrease in a corresponding manner as he got older.

[130] Dr. Lohrasbe disagrees with the opinions of Dr. Lawson and Dr. Nicholaichuk. It is his view that, at this time, Mr. Bruneau's risk to re-offend is unknowable, but from what is known, it could be high, his prospects of effective treatment are poor, and the likelihood that he will manage his behaviour safely if released is poor.

[131] Specifically, Dr. Lohrasbe opines in his report that:

Mr. Bruneau is forty-eight years old. His attitudes towards himself, his victims, and his offences are well-described by Dr. Lawson and these attitudes are not encouraging. There appears to very little by way of genuine remorse or victim empathy, and a marked self-centredness.

All things considered, my opinion at the present time is that:

1. The risk for sexual violence that he poses for young females in the foreseeable future is essentially unknowable but the available history indicates that risk factors are durable, his potential targets cover a wide range, and the severity of harm can be high;
2. The prospects for effective treatment with available techniques and programs in the coming years is low; and
3. The likelihood of him being safely managed in the community with available resources in the future is poor.

Risk, treatability, and prospects for management are not unchangeable and will need to be reassessed prior to any plans being made for his return to the community.

[132] To put these opinions in context, as was explained in the evidence, the risk to re-offend and treatability are different things although there is some overlap.

[133] Of underlying importance to both is a thorough understanding of the Offender and of the root cause or causes of his criminal conduct - that is, the chain of thoughts, feelings, fantasies, and behaviours that led to the commission of his criminal offences.

[134] Whether the Offender is treatable will depend on the root cause of the criminal conduct and on the Offender himself and whether he is amenable to treatment. Root causes and amenability to treatment are both relevant to the risk to re-offend and to treatability.

- [135] All of the doctors agreed that generally speaking, the goal of treatment was not to "cure" the Offender (as that may be impossible) but, rather, to assist the Offender to develop the necessary skills (that is, reliable internal controls) to manage their behaviour so that they are able to avoid criminal conduct in the future.
- [136] Whether the root cause or causes is identified is in large part dependent on the willingness of the Offender to identify it. Furthermore, whether it is reasonably possible for the Offender to develop the necessary skills to manage their behaviour to avoid future criminal conduct will depend on the nature of the root cause of that conduct and on the Offender's attitude (amenability) to developing those management skills.
- [137] In the present case, all of the doctors agreed that the root cause or causes of Mr. Bruneau's criminal conduct are unknown. Although both Dr. Lawson and Dr. Nicholaichuk are of the view that the offences are motivated by anger (as well as Mr. Bruneau's negative attitude toward women), the root cause of the anger is unknown.
- [138] In reaching their respective opinions all of the doctors relied upon the documents provided by the Crown (these documents pertained not only to the various offences but also to Mr. Bruneau's earlier incarceration and parole); on the information acquired by Dr. Lawson during the various interviews with Mr. Bruneau; on Dr. Lawson's interviews with one of Mr. Bruneau's sisters, with Mr. Bruneau's first wife; and with Mr. Bruneau's most recent sexual partner; and on the information gathered by Dr. Lawson from various actuarial instruments.
- [139] In addition to this material, Dr. Nicholaichuk also relied on the information that he gathered from the two personal interviews that he (Dr. Nicholaichuk) had with Mr. Bruneau; from an intelligence and comprehension test that he had Mr. Bruneau complete; and from an additional actuarial instrument that he employed.
- [140] Dr. Lohrasbe did not interview Mr. Bruneau because Mr. Bruneau would not grant him an interview.
- [141] As far as the information gathered from the actuarial instruments is concerned, the instruments used by Dr. Lawson were the Psychopathy Checklist-Revised (PCL-R), the Violence Risk Appraisal Guide (VRAG), the STATIC-99 and the Sexual Violence Risk -20 (SVR-20). The additional one used by Dr. Nicholaichuk was the Level of Service Inventory - R (LSI-R).
- [142] Generally, these tests indicated that Mr. Bruneau was in the moderate to moderately high risk category to re-offend.
- [143] With respect to the specific results of different actuarial instruments, as far as the PCL-R is concerned, Dr. Lawson described it as "the single most accurate predictor of an offender's risk of violent recidivism". Mr. Bruneau's overall score placed him in the 43.9th percentile to re-offend which is the moderate risk category. However, this instrument is divided into two categories of factors. The Factor 1 category measures destructiveness and violence driven

by "internal" factors whereas the Factor 2 category measures destructiveness and violence driven by "reactive" factors as affected by external events. Mr. Bruneau's score on the Factor 1 category was in the 74.7th percentile whereas his score on the Factor 2 category was in the 16.8th percentile (his report had incorrectly stated the Factor 2 score as being in the 13th percentile).

[144] As Dr. Lawson observed in his report:

Elevated Factor 1 scores are associated with increased risk of instrumental violence whereas Factor 2 scores are associated with increased risk of reactive violence. Whereas Mr. Bruneau's total scores places him in the moderate risk category, the significant discrepancy between the Factor 1 and 2 scores suggest his risk may be higher.

[145] As far as the VRAG is concerned, this test is used as a predictor of violent recidivism. Mr. Bruneau scored in the 47th percentile range which places him in the moderate range - that is, having a probability of violent recidivism of 0.17 over the next 7 years and 0.31 over the next 10 years.

[146] With respect to the STATIC-99, it is an instrument used to assist in the prediction of sexual and violent recidivism for sexual offenders. Mr. Bruneau scored a 5 on this instrument. As Dr. Lawson stated:

Individuals with these characteristics, on average, sexually reoffend at 33% over five years and at 38% over ten years. The estimate of sexual recidivism adjusted for Mr. Bruneau's current age, however, is 13.8%. The rate of any violent recidivism (including sexual) for individuals with these characteristics over 5 years and 48% over 10 years (no-age correction available). Mr. Bruneau's STATIC 99 score place him in the moderate high category (in the top 21%) relative to other male sexual offenders.

[147] With respect to this actuarial instrument, Dr. Lawson also cautions that because the recidivism estimates provided by this test:

... are group estimates based on reconvictions and ... derived from groups of individuals with the characteristics [the 10 risk factors measured by this test], ... these estimates do not directly correspond to the recidivism risk of the individual offender. The offender's risk may be higher or lower than the probabilities estimated with the STATIC -99 depending on other risk factors not measured by this instrument.

[148] The risk factors measured by this instrument are:

- prior sexual offences;
- current non-sexual violent offences;
- history of non-sexual violence;
- number of previous sentencing dates;

- age;
- victim gender;
- cohabitation for 2 consecutive years with a sexual partner;
- history of non-contact sex offences; and
- length of acquaintanceship with the victim and familial relationship with the victim.

- [149] Dr. Lawson also employed the SVR-20 in the course of his clinical assessment of Mr. Bruneau. This is a widely used set of guidelines that structure clinical prediction by focusing the inquiry on sets of risk factors that individually have discriminated between sexual and non-sexual violence among offenders. The SVR-20 includes three sets of factors: psychosocial adjustment, sexual offences, and future plans.
- [150] The findings on this test were generally consistent with the findings on the actuarial measures in indicating that Mr. Bruneau is at a moderately high risk of sexual recidivism.
- [151] Specifically, with respect to the 11 psychosocial adjustment factors, Mr. Bruneau may be at risk of sexual recidivism on 5 of these factors. These factors include being a victim of child abuse, substance abuse problems, relationship problems, past non-sexual violent offences and past supervision failures. In addition, there is partial evidence regarding five of the remaining factors including sexual deviation, psychopathy, major mental illness, suicidal/homicidal ideation and employment problems.
- [152] Of the 7 sex offences factors, Mr. Bruneau is at risk on 4 factors. These are multiple sex offense types, escalation in frequency or severity of sex offences, extreme minimization/denial of sex offences and attitudes that support or condone sex offences. With respect to the remaining factors, there is partial evidence of risk with respect to his negative attitude towards intervention. This last factor was derived from the comment made by Mr. Bruneau during his interview with Dr. Lawson that "he would participate in a sexual offender treatment program while in custody only if the other offenders could not identify him as a sexual offender."
- [153] Lastly, the LSI-R is an actuarial instrument that is a widely employed, normed scale designed to assess criminal risk and assist in the identification of factors which are contributory to it. During his testimony, Dr. Nicholaichuk opined that Mr. Bruneau's risk was 45% and in keeping with the results of the other actuarial instruments.
- [154] Although the actuarial instruments indicated a baseline for Mr. Bruneau of presenting a moderate to moderately high risk of re-offending, as was disclosed during the testimony of Dr. Lawson, some of these measurements should probably be higher. For example, he scored a moderately high risk to re-offend on the SVR-20. However, he should probably have been scored higher because there were factors that pertained to Mr. Bruneau were not included and would have raised the score.

[155] Furthermore, although his overall score in the PCL-R was in the moderate risk to re-offend range, his high score in the Factor 1 category of this evaluation suggests that his risk to re-offend may actually be higher because the traits identified are difficult to treat. As Dr. Lohrasbe he set out in his report:

Individuals who are considered to [be] primary psychopaths (those who often score high on Factor 1) tend to be emotionally shallow and, crucially lacking in empathy. Their destructiveness and violence is driven by internal factors rather than reactive to external events. They are profoundly narcissistic, far more than most people, and see the world from a narrow, self-interested perspective to a degree that puts them outside of the range of 'normal' narcissism. They appear to be unable to step outside of their own perspectives, even when it is in their interest to do so. Such fundamental character defects are particularly resistant to treatment efforts and many clinicians generally conceded that, at a minimum, they are extraordinarily difficult to treat."

[156] All of the doctors agreed that the actuarial instruments simply provide a baseline. As Dr. Lohrasbe put it, "[t]hese actuarial measures provide a starting point for further consideration based on the specific characteristics of the individual."

[157] As will become evident later in this decision, ultimately I found that Dr. Lohrasbe's opinion was supported by the evidence whereas the opinions of Dr. Lawson and Dr. Nicholaichuk went no further than mere speculation and an expression of hope.

(IV) ANALYSIS AND DECISION

[158] As was set out earlier, the two issues to be addressed in this case are:

- (a) whether the evidence proves that Mr. Bruneau is a Dangerous Offender; and
- (b) if so, whether the evidence proves that the less severe sentencing options as a Long Term Offender are sufficient because there is a reasonable possibility of the eventual control of the risk that he poses to the community.

(A) Does the Evidence Prove That Mr. Bruneau is a Dangerous Offender Pursuant to s. 753?

[159] As far as whether the evidence proves beyond a reasonable doubt that Mr. Bruneau is a Dangerous Offender, pursuant to s. 753, there are 4 grounds on which this finding can be made.

[160] For the reasons which follow, I am satisfied that the evidence proves that Mr. Bruneau is a Dangerous Offender under the first ground - namely, s. 753(1)(a)(i). Given this finding, I do not find it necessary to determine whether the evidence also proves him to be a Dangerous Offender under any of the remaining grounds.

[161] Section 753(1)(a)(i) provides that:

- (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find the offender to be a dangerous offender if it is satisfied
 - (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing
 - (i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,

[162] As was touched upon earlier, there is no dispute that all of the procedural requirements of this ground have been met as well as the requirement that Mr. Bruneau be convicted of a serious personal injury offence.

[163] The issue is whether the remaining substantive requirements of this ground have been proven. As was set out in Dow at para. 22, the three essential elements of this ground are:

- (1) that there be a pattern revealed by repetitive behaviour;
- (2) that the pattern must contain an element that the dangerous behaviour was not restrained in the past; and
- (3) that there must be a likelihood that the same behaviour in the future will not be restrained and will cause death or injury.

The predicate offences must form a part of the repetitive behaviour.

[164] Dangerousness is a finding of fact respecting an offender's present condition, as measured by past behaviour and patterns of conduct. Likelihood must be based on evidence of past violent acts that establish a pattern of repetitive behaviour. Each alleged past act must be proven beyond a reasonable doubt: *R. v. Wormell*, 2005 BCCA 328, 198 C.C.C. (3d) 252, leave to appeal ref'd [2005] S.C.C.A. No. 371 at para. 34 [*Wormell* (BCCA)].

[165] In determining whether an offender meets the criteria under s. 753(a)(i)-(iii), sentencing judges may consider the offender's past criminal record, the circumstances of their previous offences, the length of their sentences, and the circumstances of the predicate offences: *R. v. Wright*, 2008 SKQB 268 at para. 188.

(1) The Pattern Revealed By Mr. Bruneau's Repetitive Behaviour

[166] As was set out in Dow at para. 23, in determining whether a pattern has been revealed, the process of particularization should not result in a level of detail which obscures the common characteristics which embody and reveal the essential elements of the pattern. In that case, the Court held at para. 26 that the sentencing judge had erred when he said that it

was a necessary part of the pattern that the victim in every incident must have been identified by the offender for the purposes of venting his rage against a woman. It was sufficient that all of the victims were female and had been violently assaulted in generally similar circumstances.

[167] Applying these principles to the circumstances of this case, I find that:

- (1) all of the victims were female;
- (2) all of them were young (being 10, 17, and 18 years old, respectively);
- (3) all of the victims were vulnerable: the first victim being a young child; the second victim being someone who, in Mr. Bruneau's words, was "a street kid who had had a hard life"; and the third victim being someone whom Mr. Bruneau believed to have a reputation of being easy;
- (4) all had no or a very peripheral relationship with Mr. Bruneau prior to the offence: the first victim did not know him at all; the second victim knew Mr. Bruneau in passing as she had been the girlfriend of one of the members of the band in which Mr. Bruneau played; and the third victim had been driven with her boyfriend by Mr. Bruneau, though she had no memory of this;
- (5) in all of these offences, Mr. Bruneau seemed to be on the prowl, taking advantage of a situation that came up;
- (6) in all of the incidents, Mr. Bruneau performed a sexual act on or with all of the victims (2 of which were not consensual); and
- (7) all of these offences included some form of violence: in the first offence grabbing and threatening the victim; in the second offence, choking the victim; and in the predicate offences, choking, confining and threatening the victim.

[168] Given these common characteristics, I am satisfied that there is a pattern revealed by Mr. Bruneau's repetitive behaviour.

[169] Counsel for Mr. Bruneau argues that the evidence fell short of proving a pattern because of the length of time between the offences. In particular, he argues that the 19-year crime-free gap between the manslaughter and the predicate offences is sufficient to break any potential "pattern of repetitive behavior".

[170] In support of this proposition, Defence Counsel relied on R. v. Elder, (27 April 2007), Kamloops 72620 (S.C.) [Elder].

- [171] This case does not stand for the proposition proposed. To put this conclusion in context, the accused in Elder was not arrested for the predicate sexual offence until 5 years after the fact. During those 5 years, he had lived a quiet, crime-free life in a friend's basement and had bonded to his friend's children in a normal way. Prior to the predicate offence, however, the accused had committed a long string of sexual offences, virtually all of which had been accompanied by alcohol.
- [172] Justice Rogers declared the accused a Long-Term Offender. Justice Rogers was satisfied that the accused was a dangerous offender pursuant to the statutory criteria (para. 33). However, he was satisfied that he could be designated a Long-Term Offender as there was a reasonable possibility of control in the community. This was in large part due to the 5 years where he evaded capture in his friend's basement and lived a crime-free life. He had managed to control his impulses there, despite not being under constant supervision, as the friend and her family often went away for weekends. This record of behaviour suggested that he was capable of being supervised in the community, despite the fact that he had twice offended previously while under close supervision, his personality disorders and the fact that he was an untreated sexual offender.
- [173] That is, in Elder, the evidence showed that during this crime-free period, the offender had identified the root cause of his criminal behavior - namely, alcohol consumption. Further, he demonstrated that he had developed the skills to control his impulses, despite not being under constant supervision.
- [174] In the case at bar, on the other hand, the fact that Mr. Bruneau committed the predicate offences proves that during the long lapse between offences, he neither identified the root causes of his criminal behavior nor developed the skills necessary to manage his behavior. In other words, although there was a long lapse, the pattern continued.
- [175] The present case is similar to R. v. Wormell, 2001 BCSC 1100 at paras. 11-12, aff'd 2005 BCCA 328, leave to appeal ref'd [2005] S.C.C.A. No. 371 [Wormell (BCSC)], where the offender committed sexual assaults against 13 children over a 41-year period. Despite having 4 crime-free periods in his life (of 2, 11, 7 and 9 years, respectively), the offender consistently re-offended.
- [176] Defence Counsel further contends that the evidence fell short of proving a pattern because Mr. Bruneau had committed so few offences - that is, only two offences prior to the predicate offences. This contention is not supported by the law.
- [177] Rather, a pattern can be established by as few as two offences: R. v. B.W.N., 2003 NBQB 207, 270 N.B.R. (2d) 201 at para. 121, citing R. v. P.M.C., [1998] B.C.J. No. 3225 (S.C.). In P.M.C., Wilson J. concluded at para. 20 that s. 753(1)(a)(i) would be satisfied where repetition existed with some similarity between the incidents such that it could be said that they formed a pattern. Repetition may be established by as few as two incidents:

Counsel for the offender did not provide any other cases dealing with the issue of pattern of repetitive behaviour, (and my own review of those cases indicate that each turns on its facts, and they are thus not particularly helpful) but he did provide a definition of "pattern" from the New Shorter Oxford English Dictionary, 1993. The most appropriate definition provided there is "an arrangement or order discernible in objects, actions, ideas, situations, etc.". I conclude, then, for the Crown to prove that there is a "pattern of repetitive behaviour", there must be: firstly, repetition (although not necessarily more than two incidents); and secondly, some similarity between the incidents, so that it can be said that they form a pattern. I do not find that the Crown need prove an identity of the elements of the incidents, or that they show a particular psychological profile or trait of the offender such as paedophilia. The incidents can be serious or not, and involve violence or not, but they must go beyond merely a series of criminal offences, so that the court can identify some commonality or arrangement or order between them. [emphasis added]

[178] However, the fewer the incidents, the more similar they must be: *R. v. Neve*, 1999 ABCA 206, [1999] 1 W.W.R. 649 at para. 113. Similarity may be established in two ways: (1) where there are similarities in terms of the kinds of offences or (2) where the offences themselves are not similar in kind, but in result, in terms of the degree of violence inflicted on the victims: *R. v. Deckert*, 2001 SKQB 26, 201 Sask.R. 161 at para. 94 and *Neve* at para. 113.

[179] In the present case, there are sufficient similarities in the offences to establish patterns based both on the kinds of offences (the first offence and one of the predicate offences were both sexual assaults) and on the results of the offences. In the first offence and the predicate offence, Mr. Bruneau verbally threatened the victims and in the first offence and the second offence, he choked both of the victims.

[180] To summarize, for all of the above reasons, I am satisfied that the Crown has established a pattern revealed by Mr. Bruneau's repetitive behaviour.

(2) The Element In the Pattern That Demonstrates that Mr. Bruneau's Behaviour Was Not Restrained In The Past

[181] With respect to the element that demonstrates that Mr. Bruneau's behaviour was not restrained in the past, Mr. Bruneau's anger in the manslaughter offence was instantaneously ignited by two chance remarks made by the victim that he found offensive. The extent of his anger was so deep that he continued to choke her for 2 to 3 minutes even though she had lost consciousness within the first 15 seconds.

[182] In so far as the predicate offences are concerned, Mr. Bruneau became instantaneously aggressive when the victim became uneasy with his romantic overtures and asked to go home. Within seconds of her making this request, he assaulted her using the same choke hold that he had used against the manslaughter victim. He continued to use force against her even though he had to be aware that she was not consenting, not only because initially she had struggled against him and tried to scream, but because she was crying throughout the incident.

(3) The Likelihood that The Same Dangerous Behaviour Will Not Be Restrained In The Future And That It Will Cause Death Or Injury

[183] With respect to the likelihood that the same dangerous behaviour will not be restrained in the future and that it will cause death or injury, this determination requires the assistance of expert testimony: *R. v. Friesen*, 2008 SKQB 423 at para. 20. However, it is for the sentencing judge to determine the key elements of the pattern, not the psychiatrists called by the Crown or the defence: *Dow* at para. 29.

[184] In my view, all the experts agree that without treatment, there is a likelihood that the same dangerous behaviour will not be restrained in the future and that it will cause death or injury. The issues pertained to his treatability given the risk factors that had been identified (namely, his attitude towards the offences, his attitude toward women; and his attitude towards himself) and the factors that were not yet identified (in particular, the root cause of his criminal behaviour).

(4) Conclusion

[185] To conclude, for all of these reasons, I am satisfied that to the standard of proof required, the evidence establishes that Mr. Bruneau constitutes a threat to the life, safety or physical or mental well-being of other persons because of a pattern of repetitive behaviour by him, of which the predicate offences form a part, showing a failure to restrain his behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour.

(B) Having Concluded That the Evidence Proves That Mr. Bruneau Is A Dangerous Offender Pursuant to s. 753(1)(a)(i), Am I Satisfied That The Less Severe Sentencing Options As a Long Term Offender Are Sufficient To Reduce the Threat That Mr. Bruneau Presents to The Community To An Acceptable Level?

[186] Having concluded that the evidence establishes the finding that Mr. Bruneau is a Dangerous Offender pursuant to s. 753(1)(a)(i), I must now consider whether the evidence proves that there is no reasonable possibility of eventual control in the community of the risk that he presents: *Johnson* (2003). That is, I must consider whether the less severe sentencing options as a Long Term Offender are sufficient to reduce the threat that Mr. Bruneau presents to an acceptable level. If so, I must sentence Mr. Bruneau as a Long Term Offender.

[187] In *Johnson* (2003) at para. 28, Iacobucci and Arbour JJ., writing for the Court, considered the effect of the fundamental principle of proportionality in guiding the sentencing judge's discretion in a Dangerous Offender hearing. They concluded that:

The joint effect of these principles [718.2(d) and (e)] is that a sentencing judge must consider the possibility that a less restrictive sanction would attain the same sentencing objectives that a more restrictive sanction seeks to attain.

... If the public threat can be reduced to an acceptable level through either a determinate period of detention or a determinate period of detention followed by a long-term supervision order, a sentencing judge cannot properly declare an offender dangerous and sentence him or her to an indeterminate period of detention.

[188] However, this discretion must be guided by the primary purpose of the Dangerous Offender regime, which is the protection of the public: *R. v. Dagenais*, 2003 ABCA 376, 339 A.R. 132 at para. 74.

[189] As the Court stated in *Johnson* (2003) at para. 19, citing LaForest J. in *Lyons* at 329, as follows:

It is thus important to recognize the precise nature of the penological objectives embodied in Part XXI [now Part XXIV]. It is clear that the indeterminate detention is intended to serve both punitive and preventive purposes. Both are legitimate aims of the criminal sanction. Indeed, when society incarcerates a robber for, say, ten years, it is clear that its goal is both to punish the person and prevent the recurrence of such conduct during that period. Preventative detention in the context of Part XXI, however, simply represents a judgment that the relative importance of the objectives of rehabilitation, deterrence and retribution are greatly attenuated in the circumstances of the individual case, and that of prevention, correspondingly increased. Part XXI merely enables the court to accommodate its sentence to the common sense reality that the present condition of the offender is such that he or she is not inhibited by normal standards of behavioural restraint so that future violent acts can quite confidently be expected of that person. In such circumstances it would be folly not to tailor the sentence accordingly.

[190] As far as the standard of proof is concerned, the British Columbia Court of Appeal rejected the notion in *Wormell* (BCCA) that there was an onus on the Crown to prove beyond a reasonable doubt that it was not reasonably possible to control the risk posed by the Offender through a Long Term Offender sentence. As Southin J.A. explained at paras. 32 to 33:

The task of the Court from beginning to end is to ask itself, "Am I satisfied that there is a reasonable possibility of eventual control of the risk in the community?" If the judge concludes that he or she is not so satisfied then the judge cannot designate the offender a long-term offender.

In my opinion, it is not right to approach this with burden of proof at the back of one's mind. Burden of proof, whether it is proof beyond a reasonable doubt or on a balance of probabilities, directs itself to determining past events.

[191] The Court can only find a reasonable possibility of eventual control if such treatment or control can be effected within the parameters of the appropriate fixed sentence and supervisory conditions within the community: *R. v. Johnson*, 2008 BCCA 149 at para. 70 [*Johnson* (2008)]. Thus, in *R. v. B.A.P.*, 2005 BCCA 121, 208 B.C.A.C. 303, leave to appeal ref'd [2005] S.C.C.A. No. 445, Newbury J.A. said at para. 30:

In the case at bar, I would emphasize the word "reasonable" as a qualifier of "possibility" and the phrase "within the terms of the long-term offender provisions". Again, the Crown is not required to prove absolute intractability to meet its burden. If, as in this case, there is a "possibility" of future treatment, but it is unlikely that such treatment or control can be effected within the parameters of the appropriate fixed sentence and supervisory conditions in the community, a long-term offender designation is not appropriate.

[192] The evidence of treatability or control must amount to "more than an expression of hope" and must be evidence specific to the offender: Johnson (2008) at paras. 70-73.

[193] Section 753.1(3) provides that a sentence as a Long Term Offender must include:

- (a) a minimum sentence of imprisonment for a term of two years and
- (b) an order that the offender be supervised in the community for a period not exceeding 10 years in accordance with section 753.2 and the Corrections and Conditional Release Act.

[194] Although the Court cannot determine the terms of the long-term supervision order (as that is the task of the National Parole Board), it can make recommendations for the National Parole Board to consider: Wormell (BCCA).

[195] In making the determination as to whether a Long Term Offender sentence is sufficient, the factors to be considered are:

- (a) the time frame for release on parole;
- (b) the availability and effectiveness of psychological treatment;
- (c) the availability and effectiveness of pharmacological treatment;
- (d) the availability of supervision;
- (e) the age of offender; and
- (f) the treatability of substance abuse problems and other root causes of criminal activity.

See Johnson (2008).

[196] Upon applying the factors to be considered to the circumstances of this case, I am satisfied that as the situation presently stands, there is no reasonable possibility of eventual control in the community of the risk.

[197] As all of the doctors agreed, the eventual control of the Offender in the community is dependent on the Offender developing an understanding of the root causes of his criminal behaviour, the Offender developing the skills necessary to manage those root causes and thereby avoid future criminal behaviour, and the Offender having the desire to develop that understanding and those skills.

[198] In the present case, the root cause of Mr. Bruneau's criminal behaviour is unknown.

- [199] There is no explanation of what caused him to prey on the 10-year old child in 1986. In cases of sexual assault of children, there will commonly be a prelude to the incident in which the offender builds up a relationship with the child. In the present case, there was no prior relationship. It happened spontaneously, which Dr. Lohrasbe attested was unusual.
- [200] Further, there is no explanation as to what caused Mr. Bruneau to lose control so completely in 1988 that he killed the victim. As has been mentioned previously, he continued to choke the victim for some time after she lost consciousness. This complete loss of control is not usual for Mr. Bruneau. As his first wife and as his last romantic partner explained, although it was not uncommon for him to lose his temper in their presence and even to punch a hole in the wall when angry, he never physically assaulted them. With respect to his long-time friend (she has known him for 40 to 41 years), he was able to control himself to the extent that she has never seen him angry.
- [201] Lastly, there is no explanation as to what caused Mr. Bruneau to prey upon the victim in the predicate offences. He has had a number of romantic relationships, including a number of one night stands. No doubt on previous occasions, his romantic overtures have been rejected. However, on the present occasion, there is no explanation as to what caused him to respond to this rejection in the violent manner in which he did, not only sexually assaulting her, but also confining her and attempting to choke her.
- [202] Though both Dr. Lawson and Dr. Nicholaichuk opined that Mr. Bruneau's criminal behaviour was motivated by anger, both of these doctors conceded that they did not know the root cause of this anger.
- [203] Although Mr. Bruneau contends that his consumption of alcohol is a root cause of his criminal behaviour, the evidence does not support that contention.
- [204] To begin with, as far as the offences are concerned, there is no evidence of any alcohol being consumed in the first offence. Although Mr. Bruneau had consumed alcohol during the second and predicate offences, he was far from incapacitated.
- [205] The evidence indicates that he probably drank at most 2 glasses of wine in the second offence. However, whatever the quantity might have been, the evidence shows beyond a reasonable doubt that it did not interfere with either his mental or physical abilities. To the contrary, the manner in which he cleaned the apartment, ridding it of any evidence of either him or the victim and disposing of her body, demonstrates that he had the mental capacity to think clearly and quickly and the physical capacity to move efficiently and to operate a motor vehicle without attracting the attention of the police.
- [206] As far as the predicate offences are concerned, whatever the quantity of alcohol that he drank and whatever the quantity of marijuana that he had smoked, the evidence shows that it did not interfere with his ability to control his physical movements as the manner in which he subdued the victim required efficient and dexterous movements. Moreover, his thought process did not appear to be affected by alcohol. For example, he quickly

understood that the victim was not interested in having a romantic liaison with him. He had the presence of mind to immediately alleviate her anxiety by telling her that he would drive her home as soon as he had sobered up a little. This is hardly something that he would appreciate if he had been incapacitated by alcohol. Her response to this reassurance was to take her eyes off of him and turn around to go to the living room area. It was when she turned away from him that he took advantage of the situation, knocked her feet out from under her, and put the choke hold on. Later, when she grabbed the phone and started dialling numbers, he understood immediately that she was trying to get help and he reacted quickly to stop her.

- [207] Lastly, after he had committed these offences, he was sufficiently sober enough to drive her to an intersection near her home. This conduct demonstrates that he was not incapacitated either mentally or physically. He had the physical wherewithal to drive a motor vehicle without incident. He had the mental capacity to appreciate that he should not drive her all the way to her home (that is, a place where other people might be able to identify him), but rather that he should drop her off at a more neutral place.
- [208] Other evidence showing that alcohol is not a root cause of Mr. Bruneau's criminal conduct is the fact that he drank a great deal of alcohol for an extended period without committing any criminal offences.
- [209] That is, for a number of years prior to the commission of the predicate offences, Mr. Bruneau drank 13 to 26 ounces of rye whiskey alcohol most days, if not every day. However, he did not commit any criminal offences during this period.
- [210] Although Mr. Bruneau did participate in alcohol and substance abuse programs during his incarceration, the evidence falls short of showing that this was ever a root cause of his criminal behaviour. The circumstances of the offences themselves did not indicate that alcohol was a cause and Mr. Bruneau did not appear to believe that it was. In an interview with Dr. Kuc, a psychologist, in September 1990 (a few months after his incarceration on the manslaughter offence), Mr. Bruneau advised him that alcohol was not a problem for him.
- [211] In my view, Mr. Bruneau's subsequent participation in alcohol and substance abuse programs while incarcerated and his subsequent contention that it was alcohol that caused him to commit the manslaughter and the predicate offences simply are convenient means of appearing to be addressing the root cause without taking the time or making the effort to ascertain what that root cause really is.
- [212] Though reducing his alcoholic consumption would probably be good for Mr. Bruneau's overall health, the evidence does not support the conclusion that it would reduce his risk to re-offend because the evidence does not support the conclusion that it is a cause of his criminal behaviour.

[213] With respect to any intellectual limitations that Mr. Bruneau may have, there is no evidence that those limitations, if they do indeed exist, have caused his criminal behaviour. Rather, as Dr. Nicholaichuk opined, these limitations pertain to the manner in which the treatment programs should be presented to him.

(1) The Time Frame For Release On Parole

[214] With regards to the time frame for release on parole, the sentencing judge must indicate a time frame within which the offender might be suitable for release into the community on parole with stringent conditions. This time frame will determine if there is a reasonable possibility that the offender will make sufficient progress within a determinate sentence to take advantage of the supervision mechanisms that will be provided on his release: Johnson (2008) at paras. 77-79.

[215] As was set out in R. v. Haug, 2008 SKCA 23, 307 Sask.R. 1 at para. 127, in determining the time frame for release, the Court must consider the time in which the offender could be successfully treated to reliably identify and control his impulses, aided by a period of community supervision.

[216] Counsel for the Defence submits that a determinate sentence of 5 further years of imprisonment is appropriate in this case. This calculation was not related to any particular program needed before Mr. Bruneau was to be released, but rather to a determination as to an appropriate length of sentence, given the fact that he has spent 2 years in custody on this matter already and the nature of the predicate offences.

[217] In my view, it is impossible to determine the time frame for release in this case.

[218] As has been touched upon throughout this Judgment, the root cause of Mr. Bruneau's criminal behaviour is unknown. Though root causes may be disclosed through treatment, the evidence fell short of establishing that such disclosure was likely to occur in this case, particularly given Mr. Bruneau's resistance to treatment in the past and his ongoing attitudes towards the offences, women, and himself.

[219] Even if the root cause is identified during treatment, it is unknown when that is likely to occur and therefore, the length of time that will be needed to treat that cause, if indeed they are treatable.

[220] Given these unknowns, it is not possible to determine when Mr. Bruneau might make sufficient progress such that it would be suitable to release him even with stringent conditions.

(2) The Availability And Effectiveness Of Psychological Treatment

[221] As far as the availability and effectiveness of psychological treatment is concerned, I have concluded that this factor is also unknowable.

[222] Because the root cause or causes of Mr. Bruneau's criminal behaviour are unknown, it is impossible to determine what psychological treatment would be effective and whether it is available.

[223] Although Dr. Lawson and Dr. Nicholaichuk recommended various psychological treatments, the evidence falls short of proving that these proposed treatments are likely to be effective. The treatment programs proposed by Dr. Lawson and Dr. Nicholaichuk were:

1. continued educational upgrading as improved literacy skills will be essential for full participation in treatment programs;
2. an intensive sexual offender treatment program and community-based sex-offender treatment;
3. a substance abuse treatment program;
4. individual treatment to address issues stemming from his childhood abuse;
5. an anger and emotional management program; and
6. a cognitive living skills program.

[224] With respect to the first recommendation, there is no dispute that increasing Mr. Bruneau's literacy skills will improve and enable him to more fully participate in treatment programs. Although the improvement of these skills will assist Mr. Bruneau if he chooses to participate in treatment programs, this improvement alone will not reduce his risk to re-offend.

[225] Rather, the critical features of the reduction of his risk to re-offend to an acceptable level rests with Mr. Bruneau's willingness and co-operation in the identification of the root cause of his criminal conduct and Mr. Bruneau's willingness and commitment to develop the necessary skills to manage those root causes to avoid future criminal conduct.

[226] As far as the recommendations regarding Mr. Bruneau being treated through anger and emotional management programs and cognitive living skills programs, none of these programs are available in the correctional system as individual programs. Rather, the skills and issues that would be addressed in these programs are included in the issues and skills to be addressed in other programs such as the sex offender and substance abuse programs.

[227] It is questionable how effective these programs would be in any event given that Mr. Bruneau took them in 1990 when they were offered as individual programs when he was incarcerated on the manslaughter offence. He also enrolled in the alternative to violence program at that time.

- [228] As far as the recommendation that he participate in the alcohol and substance abuse program is concerned, alcohol and substance abuse are most likely not the root causes of Mr. Bruneau's criminal behaviour. Consequently, although participation in these programs may improve his health generally, it is unlikely that it will be effective in reducing his risk to re-offend.
- [229] As far as the individual treatment to address issues stemming from his childhood abuse is concerned, the evidence establishes that this would be beneficial to Mr. Bruneau. What is unknown is the extent and the manner in which this abuse has affected Mr. Bruneau. Given these unknowns, it is impossible to assess whether there is an effective and available treatment for his particular injury.
- [230] Furthermore, as was set out in relation to the proposed sexual offender treatment programs, there is a very real question as to whether Mr. Bruneau will participate in this type of program to the extent that they are required for them to be effective.
- [231] With respect to the recommendation that he participate in an intensive sexual offender treatment program and community-based sex offender treatment, given his underlying anger and his attitudes towards the offences, women, and himself, it is unlikely that he will participate in these programs in a meaningful manner (if he attended them at all) despite his recent assurances that he would.
- [232] I have already noted that Mr. Bruneau has historically refused to participate in this type of program. He does not consider himself to be a sexual offender. He refused to attend these programs even on an individual basis until it became apparent to him that he would not be released on parole unless he agreed to participate. Then for that pragmatic reason, he agreed to attend. At the first meeting of that program, he denied that he had committed the sexual assault in 1986. He did not attend any of the individual meetings that were arranged for him because he breached his parole and was returned to prison.
- [233] Once he returned to prison, Mr. Bruneau did not participate in any sexual offender programs. Although the reason for this is unclear, it is unlikely that Mr. Bruneau sought out these programs given his position, which was still in effect as recently as the spring of 2008, that he would only participate in these programs if the other offenders could not identify him as a sexual offender.
- [234] Given his ongoing anger and attitudes, it is unlikely that Mr. Bruneau will attend these programs or that if he does attend, that he will be open to accepting that there is a problem that he needs to identify and to address. Despite his occasional expressions of purported remorse, the ongoing theme of Mr. Bruneau's outlook on his criminal behaviour is that he is the victim. In other words, the underlying problem is not with him, but rather with women in general and the victims in particular.

- [235] Given this outlook, in my view, his recent willingness to participate in these programs is not driven by a sincere desire to identify the cause of his criminal behaviour and to learn to manage it in the future, but is rather driven by the desire to eventually be released from custody. Specifically, as was the case with his potential parole in 1991, Mr. Bruneau views an agreement to participate in these programs as a necessary step to release.
- [236] Ultimately, the effectiveness of the treatment lies with the commitment of the Offender to identify and manage their behaviour so that they avoid the commission of future criminal offences.
- [237] Dr. Nicholaichuk testified that participation in sexual offender treatment programs can be effective even with unwilling participants. However, as Correctional Services does not force Offenders to attend treatment programs nor does it force them to complete programs once they have commenced them, it is questionable how effective these treatments would be for Mr. Bruneau as historically, he has demonstrated his unwillingness to participate by not attending at all. In other words, there is no mechanism whereby he would be forced to participate.
- [238] Lastly, as the root cause or causes of Mr. Bruneau's criminal behaviour are unknown, it is unknown whether this proposed treatment will be an effective treatment for him.

(3) The Availability And Effectiveness Of Pharmacological Treatment

- [239] Although Mr. Bruneau advised Dr. Lawson that he was diagnosed with bipolar disorder both on September 27, 2007 (after the commission of the predicate offences) and in Quebec 10 years ago (where he lived after his release on the earlier offences), Dr. Lawson was sceptical as to the accuracy of this diagnosis as he observed in his report that "his self-reported history lacks the evidence of a manic episode which is essential to this diagnosis."
- [240] Dr. Lawson does, however, opine that Mr. Bruneau may "be suffering from a type of mood disorder that should further be investigated."
- [241] Assuming for the purposes of this sentencing hearing that Mr. Bruneau does suffer from a bipolar disorder and/or some type of mood disorder, the evidence does not show that either of those conditions were factors in the commission of any of these offences. Consequently, assuming that pharmacological treatment is available to treat these conditions, the evidence does not show that that treatment will be effective in reducing Mr. Bruneau's risk to re-offend because the evidence does not prove that these conditions are related to his criminal conduct.

(4) The Availability Of Supervision

- [242] With respect to supervision orders generally, these services are tailored to the individual Offender and, in particular, to provide support to him regarding the exercise of the skills that they have developed in prison to manage their behaviour to avoid the commission of criminal offences in the future.

- [243] For example, if a root cause of an Offender's criminal conduct is the consumption of alcohol, the Offender (while in prison) will come to recognize this consumption as a root cause of his criminal conduct and will learn the necessary skills to manage their behaviour and avoid the consumption of alcohol, thereby avoiding a circumstance that causes them to act in a criminal manner.
- [244] The process of developing the appropriate terms of supervision to manage behaviour begins as soon as the Offender begins their prison term. Both the prison term and the period of supervision are structured to enable the Offender to gradually become re-integrated in society with the necessary skills to manage their behaviour appropriately.
- [245] As has already been touched upon, the overall design of the system is that the identification of the root cause of the criminal behaviour and the identification and development of the skills needed to manage that behaviour will occur before the Offender is released on supervision. If this does not happen before release, it will not happen after release because all of the programs available as a term of a supervision order pertain to maintenance and not to treatment.
- [246] In keeping with this overall design, supervision is intermittent, not 24 hours a day. When the offenders are initially released, they are placed in halfway houses of varying degrees of security and supervision. However, none of these facilities lock the offenders in; rather, they lock people on the outside out.
- [247] Moreover, the supervision provided outside of the halfway houses is aligned to provide support with the needs of the Offender. For example, if the problem is alcohol, the Offender will be given random breathalyser checks. Most parole officers are supervising 8 Offenders at a time.
- [248] If an Offender breaches his supervision order, the Offender can only be returned to prison for periods of 60 to 90 days at a time, except if a formal offence of breach of probation is laid. Although further substance abuse treatment programs are available during these shorter periods, sexual offender or anger management programs are not.
- [249] As far as the present situation is concerned, because the root cause is unknown, it is unknown what supervision is required for Mr. Bruneau and whether it is available.
- [250] An examination of the circumstances of the offences themselves do not give rise to any supervisory terms that would reduce Mr. Bruneau's risk to re-offend other than terms which are not available because they require 24-hour supervision.
- [251] For example, a curfew would not reduce the risk of re-offending because the offences happened when the opportunity presented itself - not at a particular time of day. In fact, they occurred at all times of the day - mid to late afternoon (the first offence); late evening/early morning (the second offence); and mid-day (the third offence).

- [252] Nothing short of very broad terms come to mind when one considers the victims. Because of their age, personal circumstances, or both, the victims were all vulnerable and to some degree, marginalized people chosen at random. They ranged in age from 10 to 18 years old and were people with whom Mr. Bruneau had little or no connection.
- [253] Dr. Lawson and Dr. Nicholaichuk suggest a term that Mr. Bruneau be supervised in the presence of children and adolescents and a term that he be prohibited against picking up hitchhikers of any age. During submissions, Defence Counsel suggested that a term that he be prohibited from being alone or unsupervised with any female 18 years or younger be included.
- [254] In my view, all of these proposed terms in require 24-hour supervision. As was explained by Mr. Khan from Corrections Services of Canada, such supervision is unavailable. Any person who requires 24-hour a day supervision for the indefinite future cannot be said to be reasonably likely to be controlled in the community: *R. v. Otto*, 2006 SKCA 52, [2006] S.J. No. 303 at para. 22.
- [255] The other specific terms suggested by Dr. Lawson and Dr. Nicholaichuk are that Mr. Bruneau be prohibited from consuming alcohol and that he be required to take his medication as prescribed by his physician or psychiatrist.
- [256] As was touched upon earlier in this Judgment, although these recommendations may be helpful to his health and quality of life generally, the evidence falls short of proving that adherence to these terms will reduce Mr. Bruneau's risk to re-offend.
- [257] Both Dr. Lawson and Dr. Nicholaichuk opined that the supervision order should include "frequent monitoring over an extended parole with specific reference to acute and stable risk factors". Although this is a good suggestion, it is of little assistance as the specific acute and stable risk factors have not yet been identified.
- [258] To summarize, it is not possible to know whether the appropriate supervision is available because the root causes of Mr. Bruneau's criminal conduct are as yet unknown and because the circumstances of the offences themselves do not disclose any effective terms of supervision that is available.
- (5) The Age Of The Offender
- [259] As far as age is concerned, Mr. Bruneau will be 49 years old in September. He was almost 47 years old when the predicate offences occurred.
- [260] Dr. Nicholaichuk opined that, as a general proposition, criminal conduct decreases with offenders who are 51 years or older at release. He attested that this was particularly true of violent and sexual offenders. He explained that although anger does not decrease with age, the violence associated with it usually does.

- [261] As a consequence of this general proposition, Dr. Nicholaichuk opined that Mr. Bruneau's risk to re-offend would probably likely decrease as he aged, although he conceded that the fact that he committed the predicate offences when he was almost 47 years old was "somewhat unusual."
- [262] Dr. Lohrasbe, on the other hand, opined that although there was this general theory, there were also Offenders who are exceptions to it and Mr. Bruneau might be an exception, particularly given his age at the time of the predicate offences.
- [263] There was no evidence that specifically related this aging theory to Mr. Bruneau. To the contrary, he was almost 50 years old when he committed the predicate offences. Moreover, the circumstances of his offences are becoming more, not less, violent as he ages.
- [264] In the first offence, the violence was confined to the act of threatening the victim (namely, he told her that if she did what he said, he would not hurt her and grabbing her by the arm and taking her off the path and into the forest.
- [265] In the second offence, although it had severe consequences, Mr. Bruneau's violence was confined to putting his arm around the victim's neck and choking her to death.
- [266] In the predicate offences, the acts of violence included a number of fluid well-synchronized motions - namely, approaching the victim quickly from behind, kicking her feet out from under her while at the same time putting his arm around her neck, cutting off her air and grabbing one of her arms, putting it behind her back and placing a handcuff on it. The threats he made in these offences were more vicious than the threats that he had made in the first offence. It is unknown if he made any threats at the time of the second offence.
- [267] For all of these reasons, in the particular circumstances of this case, I am not satisfied that Mr. Bruneau's risk to reoffend will decrease with age.
- (6) The Treatability Of Substance Abuse Problems And Other Root Causes Of Criminal Activity
- [268] Because the root cause is unknown, its treatability is unknown.
- [269] This difficult situation is complicated further in this case by Mr. Bruneau's anger and his attitudes towards the offences, women, and himself.
- [270] Although Dr. Lawson and Dr. Nicholaichuk opined that despite these circumstances, there was "some potential for Mr. Bruneau to be managed in the community assuming a number of conditions were met", for the reasons set out previously, I am not satisfied that the evidence supports those opinions to the standard of a reasonable possibility. To the contrary, these opinions go no further than an expression of hope - they are speculative at best. That is not sufficient to satisfy the Court: Johnson (2008).
- (7) Summary

- [271] Upon considering all of the circumstances, including all of the factors set out in Johnson (2008), I am satisfied that the evidence proves that there is no reasonable possibility of eventual control of Mr. Bruneau's risk to the community. Put another way, I am not satisfied that the less severe sentencing options of the Long Term Offender provisions are sufficient to bring the risk that he presents to an acceptable level.
- [272] Given these conclusions, it would be inappropriate for me to exercise my discretion and sentence Mr. Bruneau as a Long Term Offender.

(V) CONCLUSION

- [273] For all of the reasons that I have set out, I am satisfied that the evidence proves the finding that Mr. Bruneau is a Dangerous Offender on the grounds set out under s. 753 (1)(a)(i) or alternatively under s. 753(1)(a)(ii). Furthermore, I am satisfied that at this time, there is no reasonable possibility of eventually controlling the risk that he presents within the community.
- [274] Having reached these conclusions, pursuant to s. 753(4), I impose upon him a sentence of detention in a penitentiary for an indefinite period on all of the predicate offences. In some cases, such as in R. v. T.R.S., [2006] B.C.J. No. 622, the Court has imposed an indeterminate sentence on some of the predicate offences while imposing determinate sentences on the other predicate offences. I have concluded in this case that all of the sentences should be the same because the predicate offences are so interrelated. In particular, they should all be for an indeterminate period of imprisonment.
- [275] This sentence does not mean that Mr. Bruneau necessarily will be in prison for the rest of his life. Whether it does, in large part, depends on him.
- [276] Pursuant to s.761 of the Code, the National Parole Board is required to review an Offender's "condition, history and circumstances" for the purpose of determining whether an Offender who has been sentenced for an indeterminate period should be given parole and, if so, on what conditions.
- [277] The first review takes place as soon as possible after the expiration of seven years from the day on which the Offender was taken into custody. If the Offender is not released then, the next reviews will take place every two years after the previous review.
- [278] Pursuant to s.102 of the Corrections and Conditional Release Act, S.C. 1992, c. 20 [CCRA], the National Parole Board may grant an offender (whether they have been sentenced to a determinate or indeterminate period) parole if they are satisfied that:
- (a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and
 - (b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.

[279] Although it is ultimately the National Parole Board's decision, it is up to Mr. Bruneau to decide if he will take the steps necessary to identify the root cause of his criminal conduct and if he will develop the necessary skills to manage that root cause so that he can avoid criminal conduct in the future. In other words, it is up to him whether he will take the necessary steps to secure his release such that he does not present an undue risk to society and that will contribute to its protection by reintegrating into it as a law abiding citizen.

[280] As was set out in *Steele v. Mountain Institution*, [1990] 2 S.C.R. 1385 at paras. 68-79, 51 B.C.L.R. (2d) 1, the Corrections system has an ongoing obligation to provide offenders with appropriate treatment programs. It is up to Mr. Bruneau whether he takes advantage of them.

[281] It may be that Mr. Bruneau will change himself for the better and eventually be re-integrated into society. However, the following remarks of Henderson J. in *R. v. Sharif*, [1998] B.C.J. No. 3211 at para. 158 (S.C.) are appropriate in this case:

I am not prepared to gamble with the safety of young women by allowing a definite sentence to make his return to the community a certainty. He will have to earn the right to re-enter society again and he must be subject to lifelong supervision.

[282] There are also a number of other matters to be addressed.

[283] Firstly, pursuant to s. 490.012, the Crown has applied for an order that Mr. Bruneau comply with the Sex Offender Information Registration Act for a period of 20 years, that period to commence as soon as possible after the imposition of this sentence.

[284] Mr. Bruneau has been convicted and sentenced on charges of sexual assault and of unlawful confinement. Both of these offences are "designated offences" as defined by s. 490.011(1)(a) and s. 490.012(1)(b), respectively, of the Code. Both offences carry a maximum term of imprisonment of 10 years.

[285] As required by s. 490.012(2), I am satisfied that the Crown has proven beyond a reasonable doubt that Mr. Bruneau committed the unlawful confinement with the intent to commit the sexual assault. Further, I am satisfied beyond a reasonable doubt that the requirements of s. 490.012(1) have been met.

[286] Section 490.012(4) permits me to refrain from making this type of order if I am satisfied that, if such an order was made, its impact on Mr. Bruneau, including on his privacy and liberty, would be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature.

[287] Defence counsel made no submissions with respect to such an impact on Mr. Bruneau.

[288] However, as is set out by the court in *R. v. Turnbull*, 2006 NLCA 66, 214 C.C.C. (3d) 18, I nevertheless have an obligation to decide whether the impact on Mr. Bruneau of such an order would be grossly disproportionate.

- [289] Upon considering all of the evidence, I am not satisfied that it would have such an impact. To the contrary, upon considering the circumstances of the present offences, the circumstances of the previous offences, and all of Mr. Bruneau's background circumstances (including his attitude towards all of the past and present offences, women, and himself), I am satisfied that this would not be an appropriate case to exercise my discretion.
- [290] Consequently, I grant the Crown's application and impose a mandatory order upon Mr. Bruneau to comply with the requirements of Sexual Offender Information Registration Act. This order will end 20 years after today. Pursuant to this statute, Mr. Bruneau shall report within 15 days of this order to the appropriate registration centre and provide the required information to the Registry.
- [291] Furthermore, the Crown has applied for an order under s. 487.051(1) of the Code for the taking of samples from Mr. Bruneau of bodily substances for inclusion in the national DNA data bank.
- [292] To succeed in this application, the Crown must prove that Mr. Bruneau has been convicted of primary designated offences as defined under that subsection. All of the predicate offences fall within that definition.
- [293] Somewhat similar to the preceding application, I have a discretion to refuse to grant this application if I am satisfied that the evidence proves that the impact of such an order on Mr. Bruneau's privacy and security would be grossly disproportionate to the public interest in the protection of society and the proper administration of justice.
- [294] Defence Counsel took no position with respect to this application.
- [295] Upon considering the circumstances of the present offences, the circumstances of the previous offences, and all of Mr. Bruneau's background circumstances (including his attitude towards all of the past and present offences, women, and himself), I am satisfied that this would not be an appropriate case to exercise my discretion.
- [296] Therefore, I impose a mandatory DNA order on Mr. Bruneau pursuant to s. 487.051(1).
- [297] I must also consider whether to impose a Victim Surcharge. Given that Mr. Bruneau has just been sentenced to an indefinite period of imprisonment, I am ordering that the imposition of this surcharge be waived as he does not have the financial means to meet such an obligation.
- [298] Lastly, because of the offences of which Mr. Bruneau has just been convicted, I must impose a firearms prohibition order pursuant to s. 109 of the Code.
- [299] The predicate and previous offences all fall within the ambit of s.109 (1)(a) of the Code as they all involve an act of violence which was actually committed, threatened, or attempted and all carry a maximum term of imprisonment of 10 years or more.

- [300] Although the predicate offences are not Mr. Bruneau's first convictions for offences to which s. 109 relates, the Crown has not served notice that they are seeking a lifetime prohibition. Therefore, pursuant to *R. v. Ferguson* (1995), 64 B.C.A.C. 211 (C.A.), Mr. Bruneau is prohibited from being in possession of any firearms, cross-bows, restricted weapons, ammunition and explosive substances under s. 109(2)(a) for a period of 10 years. He is also prohibited from being in possession of any prohibited firearms, restricted firearms, prohibited weapons, prohibited devices and prohibited ammunition for life, pursuant to s. 109(2)(b).
- [301] If Mr. Bruneau is released within the next 10 years, within 48 hours of that release, he is to deposit any firearms, prohibited firearms, restricted firearms, cross-bows, prohibited weapons, restricted weapons, ammunition, prohibited ammunition or explosive substances which he owns or which are in his possession with the nearest police station.
- [302] If he is released after 10 years, within 48 hours of that release, he is to deposit any prohibited firearms, restricted firearms, prohibited weapons, prohibited devices and prohibited ammunition with the nearest police station.
- [303] Lastly, pursuant to s. 760, I am directing that a copy of these reasons for sentence as well as copies of the reports of Dr. Lawson, Dr. Nicholaichuk and Dr. Lohrasbe be forwarded to the Correctional Service of Canada.

"SINCLAIR PROWSE, J."

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