
CANADA / JUDGMENT

R. v. Cadieux

2015 BCSC 1678

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 1678 R. v. Cadieux

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cadieux,

2015 BCSC 1678

Date: 20150902

Docket: 60797-2

Registry: Chilliwack

Regina

v.

Marc Joseph Claude Cadieux

Before: The Honourable Mr. Justice B.M. Joyce

Oral Reasons for Sentence

Counsel for the Crown:

G.R. Lindsey

Counsel for the Accused:

D. Gaffar

Place and Date of Hearing:

Chilliwack, B.C.

August 24 - 25, 2015

Place and Date of Judgment:

Chilliwack, B.C.

September 2, 2015

Introduction

- [1] THE COURT: On April 30, 2014, I convicted Mr. Cadieux of a number of offences in connection with what is often referred to as a home invasion that occurred in Chilliwack, British Columbia on April 16, 2012. In particular, I convicted Mr. Cadieux of break and enter with intent to commit an indictable offence; robbery; assault causing bodily harm; wearing a mask with intent to commit an indictable offence; and unlawful confinement.
- [2] After Mr. Cadieux's conviction, the Crown commenced proceedings under Part XXIV of the Criminal Code, R.S.C. 1985, c. C-46 seeking to have Mr. Cadieux declared a dangerous offender. The Crown sought and obtained an order pursuant to s.752.1 to have Mr. Cadieux assessed by a psychiatrist. That assessment was provided by Dr. Riar on or about December 2, 2014.
- [3] On August 4, 2015, counsel for Mr. Cadieux obtained an independent assessment from another psychiatrist, Dr. Tomita.
- [4] Since receiving the report from Dr. Tomita, the Crown decided to withdraw its application seeking to have Mr. Cadieux declared a dangerous offender. Instead, the Crown now seeks, with the agreement of defence to have Mr. Cadieux declared to be a long-term offender pursuant to s. 753.1(1) of the Criminal Code and to have Mr. Cadieux sentenced to a determinate term of imprisonment to be followed by a period of supervision pursuant to s. 753.1(3) of the Criminal Code.
- [5] Even though the Crown and defence are in agreement that Mr. Cadieux should be declared a long-term offender, it is ultimately for this Court to determine whether such designation is appropriate based on the evidence presented at this hearing and the legal principles that apply.
- [6] At this hearing, Mr. Cadieux sought a decision that the convictions for two of the offences for which I found him guilty, namely the offences of assault causing bodily harm and unlawful confinement, be stayed conditionally on the basis of the principles set out in *R. v. Kienapple* [1975] 1 S.C.R. 729 [Kienapple]. During the course of submissions, defence counsel resiled from that position regarding the offence of unlawful confinement and sought, instead, to have the conviction for assault causing bodily harm conditionally stayed.
- [7] The issues to be determined are therefore:
 - (a) whether the conviction for assault causing bodily harm should be conditionally stayed;

- (b) whether the conditions are satisfied such that Mr. Cadieux should be declared a long-term offender;
- (c) the appropriate sentence to be imposed for the offences of which Mr. Cadieux has been convicted; and
- (d) the appropriate length of the long-term supervision order.

Circumstances of the index offences

- [8] I will first review the circumstances of the index offences based on findings of fact that I made in my determination of Mr. Cadieux's guilt regarding those offences. The circumstances are set out more fully in my reasons for judgment found at 2014 BCSC 1802. Additional facts concerning the planning for the break and enter are taken from what Mr. Cadieux told Dr. Tomita. The following summary of the events will suffice for present purposes.
- [9] In the early morning hours of April 16, 2012, Mr. Cadieux and three accomplices drove to the home of Ms. Belinda Robertson and Mr. James McIsaac in a rural area of Chilliwack. They had been informed that there was a safe in the residence with a large quantity of money in it and their intention was to break into the residence, break into the safe and take the money. They were led to believe that the house would be unoccupied. It is apparent from what Mr. Cadieux told Dr. Tomita that he was the individual who planned the break and enter and enlisted the other persons to help him carry it out.
- [10] When the four men arrived at the residence, one of them who was never identified or charged remained in the vehicle while Mr. Cadieux and the other two accomplices, Mr. Ganaway and Mr. Tkachuk, proceeded to the residence. When they arrived at the residence, they realized that it was occupied. Mr. McIsaac and Ms. Roberson were asleep in a downstairs bedroom, the closet of which contained the safe. Unknown to the perpetrators, Ms. Robertson's daughter was also in the house asleep in an upstairs bedroom. While she heard commotion, she never came downstairs until after the robbers had fled.
- [11] Mr. Cadieux entered the residence through the window of the bedroom where Ms. Robertson and Mr. McIsaac were sleeping. Mr. Tkachuk may also have entered through the window. Mr. Ganaway entered through the back door of the residence. All three men were masked.
- [12] Something caused Ms. Robertson to wake up. She saw someone climbing through the window. Ms. Robertson screamed, waking her husband who leapt out of bed and encountered a man who had come through the window. I concluded this man was Mr. Cadieux. Mr. McIsaac struggled with Mr. Cadieux, in the course of which struggle, Mr. Cadieux struck Mr. McIsaac on the head with a metal post, part of a bicycle seat, causing a cut to Mr. McIsaac's scalp. At one point, Mr. Tkachuk joined in the struggle to assist Mr. Cadieux and punched Mr. McIsaac a couple of times in the kidney area of his torso.

- [13] One of the intruders yelled at Ms. Robertson to tell Mr. McIsaac to stop fighting or they would kill him. At one point during the struggle, Mr. Ganaway threatened to kill Ms. Robertson if Mr. McIsaac did not stop fighting.
- [14] Mr. McIsaac ceased fighting with the intruders. At that point, Mr. Cadieux demanded the combination of the safe. Ms. Robertson told Mr. Cadieux that he would not be able to open the safe because it was difficult to open. Mr. Cadieux went to the closet where the safe was located and then returned to the bedroom. He directed Ms. Robertson to go into the closet and open the safe. As she did so, Mr. Cadieux held something in his raised hand, probably the bicycle post.
- [15] Mr. Cadieux took a quantity of cash and some jewellery from the safe. The robbers also took some bracelets from Ms. Robertson's wrist. They also took Ms. Robertson's purse containing her wallet with cash, identification, a credit card and a cell phone. In addition, they took Mr. McIsaac's jacket and wallet and some family videotapes. Just before the robbers made their retreat, Mr. Cadieux ripped a gold chain from Mr. McIsaac's neck.

Should the conviction for assault causing bodily harm be stayed conditionally?

- [16] The first matter I will deal with is the question of whether the conviction for assault causing bodily harm should be stayed conditionally. As I said, based on the facts that I have just recounted, I found Mr. Cadieux guilty of all five offences charged. Defence now submits, however, that the conviction for assault causing bodily harm is part of the robbery and should be conditionally stayed. Ms. Gaffar makes that argument on two grounds. First, that in the circumstances of this case, assault causing bodily harm is a lesser included offence to robbery and that convictions should not be entered for both the lesser and the greater offence, and second, that Kienapple applies.
- [17] The Crown does not take a strong position on this application taking a practical approach and saying that the decision would not affect the ultimate global sentence and is of little consequence regarding Mr. Cadieux's criminal record given its already substantial nature.
- [18] Ms. Gaffar refers to and relies on the decision of the Supreme Court of Canada in *R. v. Doliente*, [1997] 2 S.C.R. 11, [Doliente] in which the Court agreed with the dissenting opinion of Mr. Justice Harradence of the Alberta Court of Appeal ((1996), 184 A.R. 131). The facts in *Doliente* were as follows. On August 10, 1994 at about 7:15 p.m., the complainant entered the Eaton Centre parkade in downtown Calgary. As she walked to her vehicle, she was asked by a man if she would help him by giving his car a boost. She agreed and moved her car to position it near his to apply booster cables. When she got out of her vehicle to raise the hood of her car, the accused pulled a revolver from his trousers and said, "Lady, this is a robbery". The complainant was told to go back to her vehicle and get her purse and money. The complainant entered her vehicle and occupied the driver's seat with the door closed but the window open. The assailant remained outside the vehicle pointing the revolver at her. There was conversation concerning the amount of money she had and her credit cards. Her assailant asked for her wallet, which she gave him. She was then ordered out of the vehicle

and she complied with his demand. The accused told her to kneel in front of the vehicle beside hers. He pulled a switchblade knife from his pocket and stabbed her four times in the back as she was kneeling. He started to leave and then returned, kicked her, told her to stay down, and took off in her vehicle.

[19] This whole incident took a minute or less.

[20] Mr. Doliente was identified from a surveillance video, found, arrested, and charged with robbery and aggravated assault. Following a trial before a jury, Mr. Doliente was convicted of robbery and a conditional stay was entered on the aggravated assault charge as the trial judge found it to be an included offence of robbery.

[21] Mr. Doliente appealed his conviction for robbery and the Crown appealed the conditional stay. All three members of the appeal panel agreed that Mr. Doliente's appeal should be dismissed. With regard to the conditional stay, the majority concluded that the trial judge had erred and that a conviction should be entered for aggravated assault. Mr. Justice Harradence in dissent would have upheld the conditional stay. At para. 29 he said:

[29] Section 343 of the Criminal Code defines robbery in these terms:

343. Every one commits robbery who

- (a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;
- (b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person;
- (c) assaults any person with intent to steal from him; or
- (d) steals from any person while armed with an offensive weapon or imitation thereof.

[22] Mr. Justice Harradence at para. 30, then referred to s. 662 of the Criminal Code, dealing with offences, which reads as follows:

662.(1) A count in an indictment is divisible and where the commission of the offence charged, as described in the enactment creating it or as charged in the count, includes the commission of another offence, whether punishable by indictment or on summary conviction, the accused may be convicted

- (a) of an offence so included that is proved, notwithstanding that the whole offence that is charged is not proved; or
- (b) of an attempt to commit an offence so included.

[23] Justice Harradence then stated at para. 31:

- [31] As this section indicates, there are two instances in which an offence will be included in another: when the principal offence, as described in the enactment creating it, includes the commission of another offence; or, when the principal offence, as charged in the count, includes the commission of another offence.
- [24] Mr. Justice Harradence noted that the charge of robbery in the Indictment before him made no specific reference to a specific subsection and that every component of s. 343 was put in issue. The accused was therefore put on notice that he might be convicted of robbery or any of its included offences as set out in the subsection. At para. 39, Mr. Justice Harradence stated as follows:
- [39] One of the ways in which robbery may be committed is when an individual "steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person" (s. 343(b)). In *R. v. Horsefall* (1990), 61 C.C.C. (3d) 245, the British Columbia Court of Appeal found this description of robbery sufficient to make assault causing bodily harm an included offence. There, as in the present appeal, the indictment charged that the accused "did commit robbery" of the complainant (p. 246). It was a charge of robbery simpliciter .
- [25] Mr. Justice Harradence found that likewise s. 343(b) describes the offence of robbery in terms sufficient to make aggravated assault an included offence by use of the word "wounds".
- [26] Mr. Justice Harradence then considered how or if the principle of *Kienapple* operated in this circumstance. At para. 49 he wrote:
- [49] In my view, a discussion of *Kienapple* in this context is not entirely apropos. When a person is charged with a principal offence which consists of one or more lesser included offences, that individual stands accused and will be expected to defend against the principal offence and every included offence in issue. Furthermore, as s. 62 of the Criminal Code makes clear, if the principal offence is not made out, the accused may be convicted of each included offence proved. Conversely, a conviction entered on the principal offence carries with it a tacit conviction in respect of each lesser included offence. Consequently, separate convictions cannot be entered on the included offences, whether they are charged in a separate count or not. To conclude otherwise is to misunderstand the nature of included offences and to disregard the maxim *nemo debet bis puniri pro uno delicto*: an accused cannot be convicted twice for precisely the same offence arising out of the same act. This is a narrower application of the *res judicata* doctrine than that outlined by Laskin J. in *Kienapple*.
- [27] The Supreme Court of Canada simply said:

- [1] We are substantially in agreement with the reasons of Harradence J.A. The charge of aggravated assault was an included offence in the robbery charge. The two charges arose out of the same delict as defined in *Kienapple v. The Queen*, [1975] 1 S.C.R. 729. Accordingly, the appeal is allowed, the judgment of the Court of Appeal is set aside and the judgment at trial is restored.
- [28] In the present case, the Indictment charged the offence of robbery simpliciter. The assault causing bodily harm occurred immediately prior to the theft of the contents of the safe and in order to overcome the resistance that Mr. McIsaac attempted to put up against the intrusion. I am satisfied that in these circumstances assault causing bodily harm was an included offence to the charge of robbery. That offence was part of the same delict. Applying the reasoning in *Doliente*, and the case of *Horsefall* to which Mr. Justice Harradence referred, I conclude that having convicted Mr. Cadieux of robbery, the appropriate disposition with respect to the charge of assault causing bodily harm would have been to enter a conditional stay of proceedings on that charge and I now do so.

Mr. Cadieux's criminal history

- [29] Having dealt with that preliminary issue, I am now going to turn my attention to Mr. Cadieux's criminal history. Mr. Cadieux has a lengthy criminal history. His criminal record, as tendered by the Crown, begins in 1987, when he was 16 years old. His offending has frequently involved property crimes, but he has also been convicted of a number of offences involving violence. The following is a chart setting out a list of the offences according to Mr. Cadieux's record as filed by the Crown, including the date of the conviction, his age at the time of the conviction, and the sentence imposed:

Date

Age

Offence

Sentence

Oct 15, 1987

16

(1) Robbery

(2) Theft under \$1000

(3) Theft under \$1000

(1-3) 3 months secure custody and 3 months open custody together with 6 months' probation

Jun 27, 1989

18

- (1) Theft over \$1000
- (2) Failing to comply with probation order
- (3) Failing to comply with recognizance (x3)
- (4) Theft under \$1000
- (5) Failing to comply with a probation order
- (6) Fraud under \$1000
- (7) Failing to comply with a probation order
- (8) Possession of stolen property over \$1000
- (9) Dangerous operation of a motor vehicle
- (1-2) 6 months on each charge
- (3) 6 months on each charge, concurrent
- (4-5) 6 months on each charge
- (6-7) 6 months on each charge
- (8) 6 months concurrent and 3 years' probation
- (9) 6 months concurrent, three years' probation and one year license suspension

Oct 25, 1989

18

- (1) Conspiracy to commit an indictable offence (x3)
- (2) Break and enter
- (3) Failing to comply with a probation order (x2)
- (1) 3 months on each charge
- (2) 3 months concurrent and three years' probation
- (3) 1 month on each charge

Nov 10, 1989

18

Theft under \$1000 (youth court)

1 month secure custody

Aug 13, 1990

19

- (1) Attempted theft over \$1000
- (2) Failing to comply with a probation order
- (1) 3 months and 2 years' probation
- (2) 3 months concurrent

Oct 12, 1990

19

Theft over \$1000

2 months

Dec 21, 1990

19

Theft under \$1000

5 days

Nov 4, 1993

22

- (1) Break and enter
- (2) Failing to comply with a probation order
- (3) Theft under \$1000
- (4) Failing to comply with a probation order
- (1) 90 days and 2 years' probation
- (2) 15 days
- (3) 1 month

Dec 13, 1994

23

- (1) Theft under \$1000
- (2) Obstructing a peace officer
- (3) Failing to comply with a probation order
- (4) possession of stolen property under \$1000

- (5) Failing to comply with a probation order
- (6) Possession of a narcotic
- (7) Possession of stolen property under \$1000
- (8) Possession of stolen property under \$1000
- (1-2) 5 months on each charge, concurrent
- (3) 4 months concurrent
- (4-5) 30 days on each charge, concurrent
- (6) 3 months, concurrent
- (7) 6 months
- (8) 7 months and 2 years' probation

Oct 20, 1995

24

- (1) Theft under \$5000
- (2) Uttering a forged document
- (3) Break and enter with intent
- (4) Break and enter and commit an offence
- (5) Break and enter and theft
- (6) Failing to comply with a recognizance
- (7) Possession of a narcotic
- (1) 12 months and 3 years' probation
- (2) 3 months and 3 years' probation
- (3-5) 18 months and 3 years' probation
- (6-7) 3 months and 3 years' probation

Jan 25, 1996

25

Theft under \$5000

3 months and 2 years' probation

Jun 16, 1998

27

- (1) Robbery with a firearm
- (2) Break and enter and commit and offence (x3)

(1-2) 4 years on each charge, concurrent

Aug 10, 1998

27

Conspiracy to commit murder

58 months

Aug 26, 1998

27

- (1) Attempted break and enter with intent
- (2) Break and enter and theft (x2)
- (3) Break and enter an theft (x3)
- (4) Break and enter with intent (x2)
- (5) Theft under \$5000
- (6) Possession of a controlled substance
- (7) Failing to comply with a recognizance
- (8) Break and enter and theft

(1-4) 2 years on each charge

(5) 6 months

(6) 3 months

(7-8) 2 years on each charge

Jun 23, 1999

28

Escape lawful custody

22 days

Mar 22, 2005

34

Assault causing bodily harm

1 day

Jun 24, 2005

34

Robbery (x2)

5 years actual sentence (in addition to credit for 220 days spent in custody)

Jun 12, 2012

41

(1) Assault

(2) Uttering threats

1 day on each charge in addition to credit for 14 days in custody, and 12 months' probation

Jan 31, 2013

42

(1) Use of an imitation firearm

(2) Personating a peace officer

(1) 1 year

(2) 131 days in addition to credit for 233 days in custody

[30] By my count, the offences include four convictions for robbery, one conviction for conspiracy to commit murder; two convictions for uttering threats; 16 convictions for break and enter; 11 convictions for theft; four convictions for possession of property obtained by a crime; one conviction for dangerous driving; at least 15 convictions for breach of probation or breach of a recognizance; and three narcotics convictions.

[31] The conspiracy to commit murder offence, of which he was convicted in 1998, arose when Mr. Cadieux was involved with a criminal gang in Quebec. His recounting of that offence to Dr. Tomita was as follows. He was told that a man had \$200,000 in his safe. He was directed to shoot the man, so the rest of the gang could rob him. Mr. Cadieux said that he did not want to follow through on this plan and ran away to Sherbrooke. He then committed an armed robbery of a convenience store and was arrested. After his arrest, he disclosed the plan to murder and rob the man. Mr. Cadieux maintains that the co-accused were apprehended in the midst of robbing the victim.

- [32] In 2005, Mr. Cadieux was convicted of two charges of robbery of a gas station and a store a day apart. In both instances, he used a hatchet to threaten the staff of the gas station and store. Mr. Cadieux's version of these events as related to Dr. Tomita is somewhat different. He told Dr. Tomita that he committed the robberies with a co-accused who was his drug dealer. Both of them were using drugs at the time. They committed a robbery of a store with a plan to fill a van with cigarettes. Mr. Cadieux recalled they went into a store; he showed a gun and got money. He said they used the money to purchase more crack and then ran out.
- [33] The next day they committed another robbery. Mr. Cadieux said it was initially not supposed to be a robbery. As his co-accused had gone inside, Mr. Cadieux watched through the window and saw the clerk taking money out of the till and realized what was happening. Mr. Cadieux then saw another worker come out from the back and start beating up the co-accused. Mr. Cadieux said he picked up an axe and ran into the store. He grabbed the male clerk and put the axe to his neck and the victims cooperated after that. Mr. Cadieux and his co-accused took the money and ran away.
- [34] In 2012, Mr. Cadieux was convicted of assault in relation to an incident involving his partner, Ms. O'Hanley, when he pushed her. He was also convicted of uttering threats in relation to a separate incident when he threatened his adult son's girlfriend.
- [35] In 2013, Mr. Cadieux was convicted of use of an imitation firearm and personating a peace officer when he was involved in an incident in which Mr. Cadieux and an accomplice attempted to rob an ATM machine at a gas station. This incident occurred around the time of the offences that are the subject matter of this sentencing hearing.

Mr. Cadieux's performance while subject to supervision

- [36] Next, I will comment on Mr. Cadieux's performance while subject to supervision. Mr. Cadieux's performance while on provincial bail or probation has been poor. He has at least 16 convictions for breaches of recognizance or probation. He also served a sentence for escaping lawful custody. Mr. Cadieux's performance while on federal parole has likewise been poor. He had his parole revoked three times: in 2002, 2009, and 2010. He was released on statutory release on October 22, 2008 and his parole was suspended on December 29, 2008. His suspension was cancelled and he was returned to the community on January 15, 2009. He was suspended on January 23, 2009. His parole was revoked on March 17, 2009. He was released again on statutory release on January 6, 2010. There was a parole suspension on May 28, 2010.
- [37] A CSC Correctional Plan Progress Report completed by the Vancouver Parole Office on November 13, 2008 refers to the fact that Mr. Cadieux was observed to engage in deceptive and manipulative behaviour and was on an intensive supervision protocol.

Mr. Cadieux's institutional functioning

- [38] Next, I turn to Mr. Cadieux's institutional functioning. The following information concerning Mr. Cadieux's functioning while incarcerated is drawn from Dr. Tomita's report based upon his review of institutional records.
- [39] An Assessment for Decision completed by Mountain Institution dated September 2, 2003 noted that Mr. Cadieux had incurred drug debt so serious that he was unable to remain in the general population at Mountain Institution and had to be segregated for his own protection at Kent Institution. He was unable to transfer to Mission Institution because of an incompatible residing there and was unable to transfer to Matsqui Institution for fear of retaliation from other inmates.
- [40] A CSC Assessment for Decision Report dated September 10, 2008 noted Mr. Cadieux's institutional behavioural problems. To that point, he had accumulated 41 institutional charges and had been found guilty of 31 charges. It was also noted that Mr. Cadieux had completed the Violence Prevention Program in 2007 and also the maintenance program, but then went on to have a fight with another inmate in September 2007. Mr. Cadieux was suspected of being involved in the institutional drug trade and had engaged in threatening behaviour towards the staff.

Expert evidence at the sentencing trial

- [41] The next portions of my reasons will deal with the expert evidence put forward at this sentencing hearing.

Dr. Riar

- [42] First, the evidence of Dr. Riar.
- [43] As I noted earlier, Dr. Riar prepared an assessment of Mr. Cadieux pursuant to s. 752.1(1) of the Criminal Code. Dr. Riar was somewhat limited in his ability to assess Mr. Cadieux because Mr. Cadieux decided, as was his right, that he did not wish to participate in that assessment. Dr. Riar's information, therefore, came solely from documentary evidence provided to him, including Mr. Cadieux's criminal record, documents from Correctional Services of Canada, the record of Mr. Cadieux's statement to the police that was submitted at trial and my reasons for judgment.
- [44] Dr. Riar used two risk assessment tools to assess Mr. Cadieux's risk of future offending, the PCLR-R and the V-RAG tools; both of which scored him as a moderately high risk of offending violently in future.
- [45] Dr. Riar was overall quite pessimistic regarding Mr. Cadieux's future and very guarded towards his treatability. At paras. 33 - 35 of his report, Dr. Riar wrote as follows:

33. In conclusion, there is little doubt that Mr. Cadieux suffers from antisocial personality disorder, which has been entrenched in his persona since his early years. He also has had significant substance abuse dependence in the past, especially when he lived in the community. In addition to these two diagnostic categories, he has other attributes like impulsivity, irresponsibility, carelessness, callousness, need for stimulation, lack of empathy and disregard for people and the law, which has not abated or faded at all with advancing age so far.
34. Ideally, he could benefit from psychological interventions or treatments in addressing his substance abuse, personality disorder, and other antisocial and criminal attitudes by attending programs available in the correctional settings. Having said that, it is of paramount importance that the person should have insight into his or her difficulties, and there needs to be a genuine motivation and efforts to address their issues to make a change in their life. In my view, Mr. Cadieux has shown in the past that he has very little emotional insight into his conduct or behaviours, and has shown very little interest in addressing them. Taking that into account, it is more likely than not, that he will not be amenable to any interventions to make a change. Even if he shows motivation and genuinely participates in treatment programs, there is no guarantee that when he returns to the community that he will be able to exercise learned behaviours or skills to keep himself safe. I further would say that due to his social disadvantage, that is not having any support from family or anywhere else, lack of skills, and his criminal records, will all be major destabilizers to undo learned skills in treatment.
35. As far as his risk of future offending is concerned, whatever I know of him, I believe that he is at high risk of engaging in similar behaviours in future due to the above-mentioned destabilizers, coupled with his psychopathology of substance abuse, antisocial personality disorder and other criminal and antisocial attributes. I believe whenever he is released from custody external controls are needed to keep him away from engaging in antisocial activities and to keep people safe from him. I do not anticipate him dropping his antisocial and criminal attitudes while incarcerated and without any treatment interventions.

Dr. Tomita

- [46] Dr. Tomita, who prepared an assessment at the request of defence counsel, had the benefit of being able to interview Mr. Cadieux on two occasions for five and a-half hours in total. Upon a full reading of Dr. Tomita's report, I think it is fair to say that he shares, in many respects, Dr. Riar's opinion with regard to Mr. Cadieux's risk for violent re-offending, at least if not treated, although he has a more nuanced opinion with regard to the risk of re-offending, depending on the nature of the violence that might be expected. However, he is not as pessimistic as Dr. Riar in terms of treatability and eventual control of that risk. Indeed, his opinions in that regard are sufficient to persuade the Crown that Mr. Cadieux should be declared a long-term offender rather than a dangerous offender.

- [47] Dr. Tomita's opinions, formulated as a result of his review of records, interviews with Mr. Cadieux and use of risk assessment instruments, are set out in the first part of his report. The factual basis for his opinions are set out in appendices to the report, all of which I have considered. I think that I can most easily set out Dr. Tomita's opinions by quoting the following extracts from his report:

Psychiatric Diagnosis

- [27] Mr. Cadieux's main psychiatric difficulties flow from a Personality Disorder with Antisocial and Borderline Traits and Drug Addiction.
- [29] Mr. Cadieux has a mix of Antisocial and Borderline Personality traits. His Antisocial traits include: irresponsibility, impulsivity, risk taking, irritability and aggressiveness, deceitfulness, and a lack of remorse. His Borderline traits include emotions that are easily aroused, intense, and out of proportion to circumstances; concerns about separation from intimate partners that has been excessive and a pattern of separations that have led to emotional collapses; frequent periods of feeling down, pessimistic and having difficulty recovering from such moods.
- [30] Antisocial Personality Disorder has a chronic course but may become less evident or remit as a person grows older, particularly by the fourth decade of life. In Borderline personality Disorder, the tendency towards intense emotions, impulsivity, and intensity in relationships is often lifelong but the majority of individuals in their thirties and forties are able to gain greater stability in relationships and work functioning.
- [31] Mr. Cadieux has severe Substance Use Disorder problems or using non-psychiatric parlance, he has problems with drug addiction. His drug use is associated with violent behavior for several reasons: disinhibited and impulsive behavior associated with intoxication; exacerbation of personality features that are related to violence such as irritability and hostility; and, disruption of life domains that otherwise might serve a protective functions such as housing, employment, and supportive and prosocial interpersonal relationships.
- [32] Mr. Cadieux holds a belief that he can continue to use marijuana and this will not influence his risk of relapse back to more serious drugs such as cocaine or crystal methamphetamine. This is debatable and the fact that he uses marijuana partly for the pleasurable intoxicating effects does not bode well for his attempts to try to replace his habit of lapsing back to more serious drug use when in emotional distress. In light of his risk profile, a commitment to abstinence would be best; however, Mr. Cadieux is not at that point yet.
- [48] With respect to violence risk assessment, Dr. Tomita made the following comments at paras. 34 to 38:

Violence Risk Assessment

- [34] Mr. Cadieux is at a high risk of future violence at lower levels of severity that are unlikely to be serious or life-threatening .

- [35] Mr. Cadieux is at a moderate risk of future violence at serious or potentially life-threatening level. A repetition of the robbery offences he has committed in the past seems to be the most likely scenario of future serious violence.
- [36] As there remains a reasonable likelihood that the severity of his Personality Disorder difficulties will attenuate as he ages or become less maladaptive via a future treatment response, any future violence will likely be at less serious levels.
- [37] Mr. Cadieux appears to have been making efforts to achieve a prosocial life, but because he has needed to counter a lifetime of criminal thinking patterns he has been unable to desist from re-offending despite his efforts to date. It appears likely he will engage in further treatment but the degree of benefit is difficult to gauge at present.
- [38] In part, his motivation and stability will be contingent on the nature of his future intimate relationships, which are unknowable at present.
- [49] With respect to treatment needs and level of treatability, Dr. Tomita said the following at paras. 39 to 42:

Treatment Needs and Level of Treatability

- [39] Mr. Cadieux evidences a good level of treatability. I note that he has been able to complete programs while in remand and he continues to express the fact that he needs treatment for his drug addiction and emotional problems. Taking into consideration the fact he successfully completed recommended treatment programs during his last federal sentence, I believe his motivation for treatment will be durable.
- [40] Given his level of motivation, the potential for further rehabilitation remains possible but the degree of improvement is difficult to forecast beyond stating that there is a reasonable prognosis for some positive treatment effects.
- [41] Mr. Cadieux's main treatment needs have been identified during past federal sentences and remain the same now: addressing his drug addiction and lapses back to criminal associates and a drug using and criminal lifestyle. In particular, if Mr. Cadieux is able to complete substance abuse treatment in combination with continuing treatment with recovery programs such as NA this would reflect incremental improvement as one could foresee NA supports as one avenue to prevent future relapses by acting as one type of community social support.
- [42] He is not psychopathic and part of this pattern of difficulties is attributable to a treatable problem: Borderline Personality traits.
- [50] With regards to the feasibility of community risk management, Dr. Tomita made the following observations at paras. 43 - 44 and 48 - 49:

Feasibility of Community Risk Management

- [43] The only mechanism that can contain Mr. Cadieux's risk of violence in the community is federal parole.
- [44] There is little likelihood that Mr. Cadieux's risk of violence can be contained in the community either on provincial probation or if he is off legal supervision.
- [48] If federal parole is present for as long as possible, there appears to be a reasonable possibility that it will be effective in containing Mr. Cadieux's violence risk.
- [49] If Mr. Cadieux can establish stable functioning on federal parole, there is a reasonable possibility that a long duration of federal parole will cover the period when he is most at risk of more serious levels of violence. It appears reasonable to expect some degree of risk reduction through further treatment and the effect of aging as he advances into his fifties. If he was able to establish a stable and durable intimate relationship or increase his capacity to cope with relational problems, this would further increase the likelihood that he would eventually be able to manage his violence risk once a period of federal parole expired.
- [51] The portion of Appendix III of Dr. Tomita's report dealing in more detail with violence risk formulation included the following observations:
- [196] Over time, Mr. Cadieux has developed a yearning for a prosocial life, but despite his efforts in this direction he has been unable to achieve durable change in this direction or desist from violent offending.
- [199] While Mr. Cadieux's motivation to achieve a prosocial life has increased over time, his ability to build the capacity to maintain such goals in the community has not been sufficient to maintain stability. Although he has had period of several years of stability while in two past common law relationships, it appears that Mr. Cadieux's stability was heavily contingent on the presence of a partner that was reinforcing his perception of succeeding in family life. When serious relationship problems arose, he fell back into a drug using and criminal lifestyle.
- [200] Mr. Cadieux has made some incremental progress over time. For example, treatment records note positive evaluations; however, this has not been sufficient to afford Mr. Cadieux with enough internalized prosocial attitudes and self-control to prevent slippage back into an antisocial mindset on his own. A good exemplar is Mr. Cadieux's account of another inmate challenging him in pretrial while he was on the phone with his ex-partner, Crystal, he was ready to fight until he heard her reasoning and direction that this was not a good idea. Both professional and personal social supports who can influence him in this manner are still likely to be required, if he is to remain violence free over the long term.
- [201] Mr. Cadieux remains motivated to try and reach the goal of having a stable family and legitimate job. This is encouraging as it is this goal that has led to the two identifiable periods of stability in the past with his ex-partners, Cindy and Crystal. Without this goal, it appears likely that Mr. Cadieux lack a motivating force strong enough to want him to counter falling back into a drug using and criminal lifestyle. However, an ability to develop

ways to cope with problems in intimate relationships without an emotional collapse into pessimism and a return to drug use and criminal lifestyle, is necessary. This will require a combination of professional supports and non-intimate social supports given the fact that a common law partner alone has been insufficient to help him achieve long-term stability.

Analysis

Should Mr. Cadieux be declared a long-term offender?

[52] With that evidentiary background, I then turn to my analysis and a consideration as to whether or not Mr. Cadieux should be declared a long-term offender. I will deal with this issue under a number of sub-headings.

Relevant statutory provisions

[53] The sections of the Criminal Code that are relevant on this application to have Mr. Cadieux declared a long-term offender are as follows:

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

- (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
 - (b) there is a substantial risk that the offender will reoffend; and
 - (c) there is a reasonable possibility of eventual control of the risk in the community.
- (3) 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 must be a minimum punishment of imprisonment for a term of two years; and
 - (b) order that the offender be subject to long-term supervision for a period that does not exceed 10 years.

Have the statutory conditions been met?

[54] It is not disputed and I am satisfied that it would be appropriate to impose a sentence of imprisonment of two years or more for the offences for which Mr. Cadieux has been convicted and there is a substantial risk that he will re-offend. Conditions (a) and (b) are met. It is the third criterion for designation as a long-term offender that requires the closest attention.

Is there a reasonable possibility of eventual control of the risk in the community?

- [55] Dr. Riar assessed Mr. Cadieux as a high risk for violent offending in the future. Dr. Tomita agrees that Mr. Cadieux is at a high risk for future violence at lower levels of severity that are unlikely to be serious or life threatening. However, based upon his review of historical materials, testing, and clinical interviews that Dr. Riar did not benefit from, Dr. Tomita assessed Mr. Cadieux at a medium risk of future violence at the serious or potentially life threatening level.
- [56] Dr. Tomita believes that Mr. Cadieux is genuinely motivated to lead a pro-social life and that he will remain motivated. Motivation alone is not sufficient to reduce the risk to an acceptable level. Treatability is key to any degree of success. Dr. Tomita believes that Mr. Cadieux's motivation to engage in treatment is and will remain present although it is a factor that tends to be dependent on Mr. Cadieux's ability to build and maintain meaningful relationships. In the past, when Mr. Cadieux has been involved in stable intimate relationships and he has been able to remove himself from criminality. When those relationships broke down, he quickly spiralled back into a world of drugs and crime.
- [57] Mr. Cadieux's future with his most recent partner, who has expressed support for him, at least in the past, cannot be known with certainty. He will be spending a lengthy time in prison and there can be no guarantee that she will be ready and willing to receive him back into her life when he is released from custody.
- [58] Mr. Cadieux has another person to whom he appears to be greatly attached, and that is his young daughter. He professes a deep desire to be part of her life. If there can be any motivation for Mr. Cadieux to undergo treatment and devote himself to a crime-free life it should be his daughter.
- [59] Dr. Tomita expresses qualified optimism for positive treatment benefits for Mr. Cadieux. To repeat, in his opinion "there is a reasonable prognosis for some positive treatment effects." It is significant that in Dr. Tomita's view, Mr. Cadieux is not psychopathic and part of his pattern of offending is attributable to a treatable problem, borderline personality traits.
- [60] Dr. Tomita also opines that it is reasonable to expect that as Mr. Cadieux ages, there ought to be a degree of risk reduction. Whatever the precise length of the determinate sentence, and length of long-term supervision order, Mr. Cadieux will spend the next decade and a-half or so under supervision. By the end of the supervision order, he will be in his sixties or close to it, well into middle age.
- [61] In considering the issue of eventual control, it is important to remember that we are not dealing with scientific certainties and we are not talking about cures. What is at issue is the ability of a long-term offender designation and the orders that flow from it to provide an acceptable level of control in order adequately to meet the risk to the public posed by Mr. Cadieux.

- [62] Upon consideration of all of the evidence, I agree with the Crown and defence that the statutory criteria are met and that it would be appropriate to declare Mr. Cadieux a long-term offender.
- [63] I will move next to the consideration of the appropriate length of the determinate sentence and I will discuss this matter under a number of sub-headings.

General sentencing principles

- [64] The general principles of sentencing set out in ss. 718 to 718.2 of the Criminal Code apply to the determination of what is a fit and appropriate determinate sentence for Mr. Cadieux just as they do to any other sentencing proceeding. Those provisions are well known and I do not intend to reproduce them here.
- [65] I will remark, however, that given the nature and severity of the offences for which Mr. Cadieux is being sentenced the principles of denunciation, deterrence and protection must be the primary factors for consideration (see *R. v. Vickers*, 2007 BCCA 554 at para. 12).
- [66] That does not mean that rehabilitation is overlooked entirely, but it is my view that given Mr. Cadieux's age, his criminal record, the seriousness of these offences and the risk of his re-offending, rehabilitation should be thought of in terms of the length of sentence that is necessary as a part of the overall disposition of this matter to best attain the goal of the eventual control of Mr. Cadieux's risk. The determinate sentence, while distinct from the long-term supervision order, is nonetheless part of an overall attempt to protect the public with a disposition that does not excessively or unnecessarily impose incarceration.

Gravity of the offences

- [67] Mr. Cadieux has been convicted of very serious offences. In particular, the offences of robbery and breaking and entering a dwelling house both have maximum potential sentences of life imprisonment.
- [68] These offences were committed in the middle of the night by breaking into the home of Ms. Robertson and Mr. McIsaac while they were asleep in that home, assaulting Mr. McIsaac, threatening Ms. Robertson, forcing her to open her safe and robbing them of property of considerable value. The violation of the safety and security of their home is a matter of the most serious nature and warrants a substantial punishment.
- [69] The sanctity of a person's home has often been commented on by our courts. As was stated in *R. v. Meigs*, 2007 BCCA 394 at para. 25, "it is a grave offence to enter another person's home without permission, and graver to enter the home and violate the occupant. The courts must and do impose stern sanctions for such crimes."

[70] Indeed, by enacting s. 348.1 of the Criminal Code, Parliament has recognized the seriousness of these kinds of offences that are often referred to as "home invasions". That section provides as follows:

348.1 If a person is convicted of an offence under section 98 or 98.1, subsection 279(2) or section 343, 346 or 348 in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,

- (a) knew that or was reckless as to whether the dwelling-house was occupied; and
- (b) used violence or threats of violence to a person or property.

Victim impact

[71] Ms. Robertson and Mr. McIsaac both provided victim impact statements.

[72] In her statement dated July 4, 2014, Ms. Robertson stated that while she was not seriously injured physically, she did receive a deep scratch on her right arm that is still visible and is a constant reminder of this traumatic event. She was terrified by the events, for her own safety and that of her family, and continues to suffer negative consequences from the effect of the invasion into her home and her life. For weeks she was afraid to be alone and afraid to be out after dark, even on her own property. She had trouble sleeping and found herself self-medicating with alcohol. She has received counselling but still has not been able to put the effects of the trauma behind her. In material terms, Ms. Robertson estimates she lost property with a value of approximately \$50,000, as well as sentimental value that is impossible to put in dollar terms. She has invested in increased security measures in her home at considerable cost, but without their bringing a feeling of real security.

[73] In addition to material loss in excess of an estimated \$7,500, Mr. McIsaac wrote of the emotional harm caused by the break-in and assault, including the loss of the family videos that are of course irreplaceable.

[74] Mr. McIsaac felt a sense of damage to his pride for not being able to protect his family and remains anxious and stressed. He resumed smoking to help deal with the stress.

Circumstances relating to the offender

[75] I am going to move now to a discussion of Mr. Cadieux's personal circumstances; most of the information relating to Mr. Cadieux's background and circumstances comes from the report of Dr. Tomita.

[76] Mr. Cadieux was born in January 1971 in Quebec. He did not come to know his father until he was 14 years old. Mr. Cadieux grew up with his mother and a half-brother, who was two years younger. In Quebec, he had an unstable and difficult home environment. His mother was an alcoholic and a prostitute.

- [77] Mr. Cadieux did poorly at school and had behavioural problems, including getting into fights.
- [78] At the age of approximately 13, Mr. Cadieux's mother placed him in the care of the Child Welfare Ministry. Mr. Cadieux was in and out of foster care centres. At times, Mr. Cadieux ran away from the foster care homes and lived in the bush or sometimes returned to live with his mother. For a time he lived with his aunt and uncle, but this arrangement did not last and he returned to foster care. At age 18, Mr. Cadieux "aged out" of foster care.
- [79] At age 14, Mr. Cadieux was introduced to his father who was involved in organized crime and apparently the leader of a criminal gang. Mr. Cadieux tried to emulate his father and became a member of the gang.
- [80] When Mr. Cadieux was approximately 18, he became romantically involved with the daughter of the woman with whom his father lived. They conceived a child. Mr. Cadieux and the young woman moved out together, but his stepmother was upset about the relationship and Mr. Cadieux's father banned him from seeing the young woman and threatened him with serious physical harm if he continued the relationship. A daughter who was born of the relationship died in 1994, when she was two months old.
- [81] As a result of these events, Mr. Cadieux's relationship with his father came to an end and Mr. Cadieux quit the gang. A week later, Mr. Cadieux was shot and spent a period of time in intensive care. Mr. Cadieux suspects that his father arranged the attempted murder, but Mr. Cadieux did not cooperate with the police concerning the incident.
- [82] After leaving the gang, Mr. Cadieux engaged in a criminal lifestyle on his own to support himself. He also developed a problem with drugs. Thereafter, the only times when Mr. Cadieux had anything like a stable situation was when he was engaged in an intimate relationship. These relationships did not last and Mr. Cadieux reverted to a life of drugs and crime.
- [83] When he was in his 20s, Mr. Cadieux became involved with a woman named "Claudia". They lived together for three or four years and had a son, who was born in 1994. That relationship came to an end when Mr. Cadieux was sentenced to jail for a number of offences. Mr. Cadieux was involved with another older woman when he was in his 20s. They shared a life of crime until he was once again incarcerated and she died while he was in prison.
- [84] In 1998, Mr. Cadieux was convicted of conspiracy to commit murder in the circumstances that I described earlier. He was sentenced to 58 months in a penitentiary. After he was released on parole, Mr. Cadieux absconded in 2002 and came to British Columbia with his then partner, a woman named Ms. Belisle.
- [85] Mr. Cadieux and Ms. Belisle came to Britannia Beach in British Columbia where, amongst other things, they grew marihuana. Mr. Cadieux was found and arrested when he made contact with his mother, who apparently gave the police information concerning his whereabouts. Mr. Cadieux remained in British Columbia to complete his federal sentence in

custody. After warrant expiry, he returned to live with Ms. Belisle in Britannia Beach. At that point, he was working in construction and not offending. His life was relatively stable until Ms. Belisle went to Quebec to visit her family and was persuaded not to return to British Columbia to live with Mr. Cadieux. He turned once again to drug use and criminal behaviour, primarily property crime.

- [86] Mr. Cadieux was living with a partner, Ms. O'Hanley, at the time of the commission of the index offences. They have a daughter who is now four years old.
- [87] Mr. Cadieux has had very few social relationships with persons not involved in the world of drugs and crime.
- [88] Mr. Cadieux worked as a roofer for some time in his 20s in Quebec, and for three years in British Columbia. Otherwise, he has had a number of short-term jobs, but generally resorted to crime to support himself.
- [89] In terms of substance abuse, Mr. Cadieux has not had a problem with alcohol, but has used other drugs throughout his life. He has used marihuana on a consistent basis since he was quite young. He also has a long history of cocaine use starting when he was 15 or 16, and more recently took up the use of crystal methamphetamine when he was with Ms. O'Hanley.
- [90] Mr. Cadieux has completed some substance abuse programs while in custody, but does not like group sessions and does not embrace the Narcotics Anonymous model for drug recovery.
- [91] Mr. Cadieux engaged in self-harm behaviour when he was young and has attempted suicide a number of times.
- [92] During the past two years while in custody, Mr. Cadieux has received psychological and psychiatric treatment and has been on a regime of antidepressant medication (Effexor), and Attention Deficit Disorder medication (Strattera), which he claims have made him feel more settled and aware of his emotional state so that he is better able to foresee and prevent some but not all of his maladaptive reactions.

Aggravating and mitigating circumstances

- [93] There are no mitigating circumstances in this case that would tend to reduce the length of Mr. Cadieux's sentence.
- [94] The aggravating circumstances of particular importance are the fact that this was a break and enter into an occupied residence at night (s. 348.1) and Mr. Cadieux's serious criminal record.

Positions of Crown and defence with respect to the determinative sentence

- [95] Based on the sentencing principles, the circumstances of the offences including the aggravating factors, Mr. Cadieux's criminal record and the case law provided, which I will briefly review in a moment, the Crown seeks an effective global sentence before giving credit for time spent in custody of eight years.
- [96] Ms. Gaffar, on the other hand, submits that an effective global sentence of six years would be appropriate. Ms. Gaffar supports her submission with a number of cases. She also relies on the principle of parity. Mr. Tkachuk received an effective sentence of four years for the same offences. Ms. Gaffar submits that it would not be appropriate to impose on Mr. Cadieux an effective sentence of double that length even though he was the person who was primarily involved in the assault on Mr. McIsaac and has a more serious criminal record than Mr. Tkachuk.

Case law

- [97] I turn then to some discussion of the case law.
- [98] The Crown and defence provided a number of cases dealing with sentences for offences of this nature. I do not intend to review those cases in great detail. As has often been said, sentencing is an individual task and other cases can at best give the sentencing judge only some helpful parameters. I have reviewed the cases and will make a few brief remarks about some of them.
- [99] I begin with *R. v. Bernier*, 2003 BCCA 134 [Bernier]. That case is often referred to in "home invasion" cases and it is suggested that it sets a general range of sentences between five and eight years. I commented on Bernier in *R. v. Broussault*, 2009 BCSC 464 [Broussault] at para. 86 as follows:
- [86] What I take from all of this is that the Court of Appeal has suggested that the majority of cases of "home invasion" will fit somewhere in the range of five to eight years, depending upon the circumstances of the particular offences said to constitute home invasion and the circumstances of the particular offender but that there will be cases that fall on either side of that general range. A case may warrant a sentence in excess of that range because of particularly egregious circumstances concerning the offence or a particularly high moral blameworthiness on the part of the offender, and the lack of any mitigating circumstances. Other cases may warrant a sentence under the usual range because the circumstances of the offence are not egregious, and/or the circumstances of the offender are exceptional, such as the lack of any significant record, the youth of the offender, aboriginal status, evidence of remorse, and a clear potential for the rehabilitation of the offender.
- [100] In Bernier, the accused was sentenced to a global sentence of 14 years for robbery, assault, break and enter, and possession of property under \$5,000 obtained by commission of an indictable offence in what was described as a home invasion. Mr. Bernier did not actually participate in the break and enter, but concocted the plan and enlisted those who carried it

out. Mr. Bernier was a 21-year-old Aboriginal offender with a prior record for assault and break and enter. His record was not nearly as significant as that of Mr. Cadieux. He had a drug problem. On appeal, the sentence for break and enter and committing theft was reduced from 14 years to six years.

- [101] In *R. v. Leggo*, 2003 BCCA 392, Mr. Leggo and an accomplice travelled to the victim's home by ferry with a wooden bat and an imitation revolver. They kicked in the front door of the house, tied up the victim and stole his marihuana, \$7,800 in cash, and some other property. He was sentenced to seven and a-half years for break and enter and commit robbery, unlawful confinement, possession of marihuana and possession of cocaine in addition to having spent eight months in custody. He was also sentenced to one year consecutive for using a firearm to commit a robbery. The effective sentence for the break and enter and commit robbery was therefore eight years and ten months. Mr. Leggo was 32 years old and had a lengthy criminal record. There were no mitigating factors. His sentence appeal was dismissed.
- [102] In *R. v. Vickers*, 2007 BCCA 554, the offender was sentenced to ten years following convictions for break and enter with intent to commit an indictable offence and attempted robbery using a firearm. The offences were committed during a home invasion. One of the victims was shot, fortunately not seriously, and the other was struck with a pipe wrench. Mr. Vickers was 24-years-old and had 20 previous convictions, some involving violence. His sentence appeal was dismissed.
- [103] In *R. v. Moore*, 2008 BCCA 129, the offender received an effective eight-year sentence for his participation in a home invasion. Mr. Moore was convicted of robbery, breaking and entering into a residence, committing assault, uttering a death threat and suffocating a person to enable a theft. A charge of assault causing bodily harm was stayed on the Kienapple principle. In dismissing the sentence appeal, the Court of Appeal noted the need for stern sanctions for home invasions. Further, at para. 14, Mr. Justice Low stated:
- [14] The various home invasion cases to which we have been referred seem to establish a range of six to 13 years. The total sentence for a particular individual will depend on the degree of violence involved, the offences committed in the invaded premises and the extent of the offender's involvement. After a proper consideration of all the circumstances of this case it cannot be said that an effective global sentence of eight years was unfit.
- [104] In *R. v. Alexander*, 2008 BCCA 181 the offender was sentenced to eight years for break and enter into a dwelling house and commit the indictable offence of theft. The offender, who was 40 years of age, was described as a persistent burglar with a lengthy record. In upholding the sentence, the Court of Appeal remarked on the fact that the prime consideration was protection of the public.

- [105] In *Brossault*, I sentenced Mr. Brossault to an effective sentence of six years for break and enter a dwelling house with intent to commit an indictable offence and robbery using an imitation firearm. Mr. Brossault was 28 years of age, of Aboriginal heritage, and had a criminal record for property and drug offences.
- [106] The defence referred to a number of cases involving home invasions where the effective sentences were in a lesser range of four to six years.
- [107] In *R. v. Drydgen*, 2013 BCSC 1876, the offender was the driver of the vehicle, who took three other perpetrators to the residence and drove away with them after a break and enter. Although the group was armed with pepper spray and a handgun, Mr. Drydgen was unaware of the presence of weapons and was not a party to any of the weapons offences. He was 19 at the time of the offences and 24 at the time of sentencing. He had a serious prior record. In the time between offending and sentencing, Mr. Drydgen had taken significant steps towards advancing his education and towards rehabilitation for which the Court gave him considerable credit in sentencing. He received an effective sentence of four years.
- [108] In *R. v. Monteiro*, 2005 BCSC 1201, was another decision of mine. Mr. Monteiro was one of two offenders who pleaded guilty to several charges including aggravated assault, being unlawfully in a dwelling house and forcible confinement. They gained entry to the house at gunpoint and assaulted one of the occupants by severely cutting two of his fingers. Mr. Monteiro was 24 years of age and had no criminal record. Mr. Ford, the co-accused, was 23 years of age and had a relatively minor criminal record. Both offenders pleaded guilty. I imposed an effective sentence of three and a-half years on Mr. Monteiro; and an effective global sentence of four years on Mr. Ford, who pleaded guilty to the aggravated assault.
- [109] In *R. v. Forrester*, 2004 BCSC 1310, two men broke into the victim's residence, with baseball bats following an altercation earlier in the day. They left the occupants of the residence seriously injured. Both were Aboriginal offenders. One of them had a minor record and the other had no record. Each was sentenced to five years imprisonment.
- [110] *R. v. Dukeshire*, 1999 BCCA 2176, is a somewhat older case in which two men were convicted of robbery, break and enter, unlawful confinement, possession of a weapon for a purpose dangerous to the public peace and having face-masked with intent to commit robbery. The victims were threatened with a weapon during a home invasion. The sentencing judge imposed sentences of three and one-half years and two years less one day on Mr. Dukeshire and Mr. Morrison respectively, which were increased to five years and four years on appeal by the Crown, on the basis that the original sentences failed to give sufficient emphasis to the objectives of denunciation and deterrence and failed to reflect the intrusive and terrifying nature of the offences.
- [111] In *R. v. Navas-Rivas*, 2013 BCSC 2176, Mr. Justice Smith found the accused guilty of using an imitation firearm while committing an indictable offence, robbery, break and enter, and possession of an imitation firearm for a purpose dangerous to the public peace. The offences were committed in the context of a home invasion of a residence occupied by a

husband, a wife, and their two children. Mr. Navas-Rivas was 23 years old. He had one prior adult offence for assault causing bodily harm. Mr. Navas-Rivas was a reasonable candidate for rehabilitation. He received an effective sentence of five years plus one year consecutive on the firearm offence.

[112] I must also refer to the fact that in a separate sentencing proceeding, I sentenced Mr. Tkachuk to an effective sentence of four years for his participation in this home invasion. That was the length of sentence that the Crown sought in those proceedings. Mr. Tkachuk was 46 years of age. He had a dated criminal record. He had done well on remand and had involved himself with a charitable program involving recycling eyeglasses for Third World countries.

[113] Mr. Cadieux's situation is quite different from that of Mr. Tkachuk. Mr. Cadieux was the one who planned this home invasion, was primarily involved in the assault on Mr. McIsaac, has a much more extensive and serious record than Mr. Tkachuk, and lacks remorse.

Decision re length of effective determinate sentence

[114] Considering the decisions referred to by counsel, the circumstances of these particular offences, the role played by Mr. Cadieux in their commission, Mr. Cadieux's lengthy and serious criminal record, and the lack of any mitigating circumstances, I am of the view that an effective global sentence of seven years is appropriate.

Credit for time spent in custody and actual sentences

[115] I will deal now with the credit for time spent in custody.

[116] Mr. Cadieux was arrested on May 4, 2012, and has been in custody ever since. He received credit for portions of the time he spent in custody when he was sentenced for other offences on June 12, 2012 (37 days) and January 31, 2013 (729 days), for a total of 766 days.

[117] Mr. Cadieux has therefore spent a total of 1,218 days in custody since May 4, 2012 of which 766 days has been credited towards other sentences. Accordingly, Mr. Cadieux is entitled to credit for 452 days in custody. At the rate of 1.5 days for each day spent in custody which the Crown agrees is appropriate, in accordance with *R. v. Summers*, 2014 SCC 26, that amounts to a credit of 678 days.

Actual sentence

[118] Taking into account the credit for time spent in custody, I therefore impose actual sentences as follows:

- (a) for break and enter with intent to commit an indictable offence, five years and 52 days in a federal penitentiary;
- (b) for robbery, five years;

- (c) for wearing a mask with intent to commit an indictable offence, one year; and
- (d) for unlawful confinement, two years.

[119] All sentences are to run concurrent to one another.

What is the appropriate length of the long-term supervision order?

[120] The next matter for consideration is the appropriate length of the long-term supervision order. I have accepted and relied on the opinion of Dr. Tomita, in concluding that there is a reasonable possibility of control of Mr. Cadieux's risk of re-offending and that it is appropriate to declare him to be a long-term offender. I also rely on Dr. Tomita's opinion that in order to best control that risk, federal parole or supervision for as long as possible is necessary. I conclude, therefore, that the appropriate term of the long-term supervision order is a period of ten years.

Ancillary orders

[121] There are two ancillary orders to be made.

[122] First, in accordance with s. 109 of the Criminal Code, I impose a lifetime firearms prohibition.

[123] I also make an order under s. 487.051(1) of the Criminal Code that Mr. Cadieux provide a sample of his DNA for the National DNA Data Bank.

[124] Finally, I direct that a copy of my reasons be transcribed and forwarded to the appropriate persons at Correctional Services Canada, along with a copy of the exhibits filed at this hearing.

Concluding remarks

[125] By way of a concluding remark, Mr. Cadieux, I have imposed a stern sentence. I believe that sentence is justified, but I would like you to know that it is not imposed without feeling or compassion. I expect you will have difficult times ahead of you. I can only suggest that when things get tough, as they no doubt will, you always think of your daughter and that you do what you know in your heart will make her proudest of you. I believe you have good reason to succeed with your eventual rehabilitation and I do wish you well.

"B.M. Joyce J."

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