

CANADA / JUDGMENT

R. v. Dirks

2025 BCSC 1430

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1430 R. v. Dirks

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dirks,

2025 BCSC 1430

Date: 20250711

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Registry: Cranbrook

Rex

v.

Jason Dirks

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Before: The Honourable Justice Girn

Oral Reasons for Judgment

Counsel for the Crown:

A.L. Duncan

Counsel for the Accused:

G.A.P. Verdurmen

Place and Dates of Hearing:

Kamloops, B.C.

December 16-20, 2024

February 3-7 and 10-13, 2025

March 27-28, 2025

Place and Date of Judgment:

Kamloops, B.C.

July 11, 2025

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[1] THE COURT: This decision was delivered in the form of Oral Reasons for Judgment. They have since been edited for the purpose of publication.

OVERVIEW

- [2] On February 14, 2022, Mr. Dirks plead guilty to sexual assault contrary to s. 271 and uttering threats, contrary to s. 264.1(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. He has been in custody since his arrest on October 2, 2020. An agreed statement of facts was filed as an exhibit and read into the record. I will review this later in these reasons.
- [3] On July 8, 2022, Justice Morellato made an order pursuant to s.752.1(1) of the Code for the purpose of conducting an assessment of Mr. Dirks. Dr. Barry Cooper ("Dr. Cooper") performed the assessment and filed a report dated September 19, 2022. A follow up interview was conducted and a supplementary report from Dr. Cooper dated January 1, 2025 was filed. Mr. Dirks participated in both interviews. Both reports were tendered as exhibits on this sentencing hearing.
- [4] On December 23, 2022, the Attorney General of British Columbia consented to an application pursuant to s. 753 of the Code that Mr. Dirks be declared a dangerous offender.
- [5] On March 25, 2024, the Crown formally indicated its intention to seek a declaration that Mr. Dirks be found a dangerous offender or in the alternative that Mr. Dirks be sentenced to a determinate period and be subject to long-term supervision for a period of ten years.
- [6] The parties agree that the offence of sexual assault for which Mr. Dirks has been convicted is a primary designated offence contained in s. 752(a)(ix) of the Code for which it would be appropriate to impose a sentence of two years or more and that Mr. Dirks was convicted twice previously for a primary designated offence as contained in s.752 of the Code, for which he received sentences greater than two years of imprisonment. They are:

February 14, 2006 - Sexual Assault - 3 years imprisonment; and

March 18, 2013 - Aggravated Assault - 7 years imprisonment.

- [7] Pursuant to s. 753(1) of the Code, the Crown seeks that Mr. Dirks be declared a dangerous offender. If that declaration is made, the Crown seeks an indeterminate sentence.
- [8] In support of its position, the Crown submits that Mr. Dirks constitutes a threat to the life, safety or physical or mental well-being of other persons. Crown argues that the evidence demonstrates that Mr. Dirks exhibits a pattern of repetitive behaviour, of which the impugned offences form a part. The Crown argues that the pattern shows a failure to restrain his behavior and the 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 behavior.
- [9] As well, the Crown contends that Mr. Dirks by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and the likelihood of causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses.

[10] The Crown also seeks mandatory ancillary orders:

- a) An order authorizing the taking of the number of samples of bodily substances that is reasonably required for the purpose of forensic DNA analysis, pursuant to s. 487.051(1) of the Code;
- b) A mandatory firearms prohibition, pursuant to s. 109(1) of the Code, for life; and
- c) An order requiring that a copy of all reports and testimony given by experts and observations of the Court with respect to the reasons for the finding, together with any transcript of the trial of the offender, be forwarded to the Correctional Service of Canada ("CSC"), pursuant to s.760.

[11] Mr. Dirks takes the position that he does not meet the statutory criteria for a dangerous offender designation and that the Crown has failed to meet its burden to establish the dangerous offender designation. He accepts that the Court has the requisite evidence to designate him as a long term offender and that he should be sentenced to 7 years of jail with a period of supervision in the community for 10 years under a long-term supervision order.

[12] Mr. Dirks also submits that if the court is satisfied that he should be designated a dangerous offender that there is a reasonable expectation that a determinate sentence of at least 7 years, followed by a long-term supervision order will adequately protect the public.

[13] Mr. Dirks does not oppose the ancillary orders sought by the Crown.

LEGISLATIVE FRAMEWORK - DANGEROUS OFFENDER REGIME

[14] Part XXIV of the Code relates to dangerous and long-term offenders. The primary objective of this regime is to protect the public from violent offenders at a high risk of re-offending: *R. v. Johnson*, 2003 SCC 46 at para. 19; *R. v. Lyons*, 1987 CanLII 25 (SCC), 2 S.C.R. 309 at para. 16; *R. v. Dadmand*, 2018 BCSC 729 at para. 47.

[15] Protection of society is the overarching purpose of the dangerous offender provisions. As stated by the SCC in *R. v. Jones*, [1994] 2 S.C.R. 229, 1994 CanLII 85 (S.C.C.):

[124] The overriding aim is not the punishment of the offender but the prevention of future violence through the imposition of an indeterminate sentence. An indeterminate sentence is not an unlimited sentence. If, in the case at hand, the psychiatrists testifying on behalf of the accused are correct in their assessment that Mr. Jones will be fit to be released in ten years, then he will be liberated at that time. The offender faces incarceration only for the period of time that he poses a serious risk to the safety of society. In the interim, it is hoped that he will receive treatment that will assist him in controlling his conduct. To release a dangerous offender while he remains unable to control his actions serves neither the interests of the offender nor those of society.

[Emphasis added.]

- [16] The regime is aimed at those offenders whose particular offences, circumstances and personal characteristics "militate strenuously in favour of preventative incarceration": R. v. Neve, 1999 ABCA 206 at para. 55; Lyons at para. 44.
- [17] Unlike in the conventional sentencing regime, rehabilitation is not the primary objective in an application for a dangerous offender designation, and the designation itself represents that the importance of rehabilitation is attenuated in the circumstances. These circumstances are such that the offender is "not inhibited by normal standards of behavioural restraint so that future violent acts can quite confidently be expected of that person": Lyons at para. 27.
- [18] As stated by Justice Winteringham (as she then was), in R. v. W.H., 2024 BCSC 336 at para. 28, the dangerous offender designation is one of the most onerous sentences that can be imposed in our criminal justice system which involves imposing a sentence of an indeterminate length, which is dependent upon the review of the National Parole Board.
- [19] As such, I am guided by Justice Winteringham's comments that the Court must not just ensure the statutory criteria have been satisfied, but also to not make such a designation if a lesser penalty would still satisfy the general principles and objectives of sentencing, including protection of the public and whether it is possible to impose a lesser restrictive sentence: W.H. at para. 29.
- [20] Section 753 of the Code creates a two-stage process: first, the Court is tasked with determining whether the offender must be designated as dangerous; and second, the Court is tasked with determining the appropriate penalty in the circumstances.
- [21] Once it is determined that the offender meets one or more of the requirements for a dangerous offender designation, the sentencing judge has three options as set out in s. 734(4):
- (4) If the court finds an offender to be a dangerous offender, it shall
 - (a) impose a sentence of detention in a penitentiary for an indeterminate period;
 - (b) impose a sentence for the offence for which the offender has been convicted--which must be a minimum punishment of imprisonment for a term of two years--and order that the offender be subject to long-term supervision for a period that does not exceed 10 years; or
 - (c) impose a sentence for the offence for which the offender has been convicted.

Designation Stage

Serious Personal Injury Offences

- [22] To be designated a dangerous offender, an offender must have committed a "serious personal injury offence", which is defined in s. 752 as:

- (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving
 - (i) the use or attempted use of violence against another person, or
 - (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage 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).

- [23] Sexual assault is a serious personal injury offence explicitly included in s. 752 in subsection (b) of the definition. Crown also argues that sexual assault is likewise a serious personal injury offence pursuant to subsection (a) of the definition. Mr. Dirks takes no issue with this.
- [24] The two definitions of a serious personal injury offence relate to the two bases for dangerous offender designation, discussed below.

Burden and Standard of Proof

- [25] The Crown bears the burden of proving all the elements of s. 753 beyond a reasonable doubt: *R. v. Pike*, 2010 BCCA 401 at para. 29.
- [26] Before designating a dangerous offender, the Court must be satisfied that the offender poses a high likelihood of harmful recidivism and that their conduct is intractable, being that the offender is unable to surmount the conduct. This involves a prospective assessment of dangerousness: *R. v. Boutilier*, 2017 SCC 64 at para. 27; *Dadmand* at para. 16; *R. v. Foulds*, 2018 BCSC 1809 at para. 24. Both subsections under s. 753 require this threat assessment.
- [27] The Code does not require the Crown to establish with absolute certainty that the offender will pose a threat or will, if released, cause death, injury, pain or other evil on account of a failure to restrain their behaviour. Rather, the Court must be satisfied beyond a reasonable doubt of the likelihood, meaning that it be more probable than not: *Dadmand* at para. 27.
- [28] The Crown submits that the presumption in s. 753(1.1) of the Code is engaged. That section reads as follows:

(1.1) If the court is satisfied that the offence for which the offender is convicted is a primary designated offence for which it would be appropriate to impose a sentence of imprisonment of two years or more and that the offender was convicted previously at least twice of a primary designated offence and was sentenced to at least two years of imprisonment for each of those convictions, the conditions in paragraph (1)(a) or (b), as the case may be, are presumed to have been met unless the contrary is proved on a balance of probabilities.

- [29] The Crown submits that sexual assault is a primary designated offence under s. 272 for which, having regard to Mr. Dirks' criminal record and the nature of the offence, it is appropriate to impose a sentence of two years or more. The Crown further submits that Mr. Dirks has two previous convictions for primary designated offences, both of which he respectively served at least two years.
- [30] Based on his criminal record, Mr. Dirks' convictions of both sexual assault and aggravated assault are primary designated offences under s. 752.
- [31] I am satisfied that the presumption in s. 753(1.1) applies. The burden then is on Mr. Dirks to rebut the presumption on a balance of probabilities and show that the conditions under ss. 753(1)(a) and 753(1)(b) are not satisfied.

Bases for Designation

- [32] Section 753(1) outlines two bases on which an offender may be designated a dangerous offender. The language of the provision is imperative. That is, if the Court finds the conditions under either s. 753(1)(a) or s. 753(1)(b) are satisfied, the Court must find the offender to be a dangerous offender.
- [33] The Crown tailored their submissions to mainly addressing the designation under s. 753(1)(b). Crown's position is that this is the most appropriate subsection under which the Court can find Mr. Dirks a dangerous offender. For completeness, I review and provide an overview of both bases of designation.

Section 753(1)(a)

- [34] Per s. 753(1)(a), the Court shall find the offender to be a dangerous offender if it is satisfied:
- (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing
 - (i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,
 - (ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or

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

[35] The elements under section 753(1)(a)(i) must be proved beyond a reasonable doubt by the Crown:

- a) a pattern of repetitive behavior;
- b) the predicate offence must form part of the pattern;
- c) the pattern must show a failure by the offender to restrain his behavior in the past; and,
- d) the pattern must show a likelihood of death, injury or severe psychological damage to other persons through failure to restrain his behavior in the future: *R. v. Pike*, 2010 BCCA 401 at para. 26

[36] To find that Mr. Dirks is a dangerous offender pursuant to s. 753(1)(a), he must constitute a threat to the life, safety or physical or mental wellbeing of other persons, based on proof of conduct which meets one of the listed thresholds: a pattern of repetitive behaviour, a pattern of persistent aggressive behaviour, or behaviour of a brutal nature.

[37] In essence, the first three elements concern the "pattern of repetitive behaviour". The last element, focusing on likelihood of future injury, has been characterized by the courts as the "threat" or "threat assessment".

[38] As stated in *Pike*, the established legal principles relating to the threat assessment include the following:

[83] Similarly, the pattern analysis is inextricably linked to the ultimate threat assessment. It is the basis for predicting the future behaviour which threatens others. As explained in *Neve*, the two are linked in the sense that "the court cannot make a determination that an offender constitutes a threat in the manner specified in s. 753(a) except on the basis of evidence that meets at least one of the specified behaviour thresholds" (at para. 103). The Court went on to state (at para. 110):

We read s. 753(a) as requiring that the court be satisfied on two points: (a) that the predicate offence is part of a pattern of behaviour which has involved violent, aggressive or brutal conduct; and (b) that it is likely that this pattern of conduct will continue and will lead to conduct endangering the life, safety or physical well-being of others [Emphasis added.]

[90] Whatever "pattern" is identified, it should be described in such a way as to provide a basis to predict the likelihood of the same behaviour occurring in the future. Although the pattern should not be described in such a level of detail as to obscure the "common characteristics which embody and reveal the essential elements of the pattern" (*Dow* at para. 23), the inverse is equally true. Where the pattern is described in no greater detail than the language of the provision itself, it offers no basis for descriptive or predictive analysis, and the

essential elements are equally obscured.

- [39] Although psychiatric evidence is "helpful in relation to the pattern and very important in relation to predicting the likelihood of future behaviour it is for the sentencing judge to determine the key elements of the pattern, not the psychiatrists called by the Crown or the defence": R. v. Dow, 1999 BCCA 177, at para. 29; R. v. Neve, 1999 ABCA 206, at para. 199.
- [40] The Crown says that there are two clear patterns which exist having regard to Mr. Dirks' criminal record and the evidence heard over the course of the hearing.
- a) Broadly, Mr. Dirks has a repetitive pattern of violence towards women. He need not be in an intimate relationship with these women. This pattern includes all forms of physical violence (i.e. threats, assaults, and sexual assaults); and
 - b) Narrowly, Mr. Dirks has a repetitive pattern of sexual violence towards women. As Mr. Dirks has aged, this pattern has narrowed further into women in the context of an intimate relationship, as was seen in the case of Kristen Dirks (former spouse) and G.T. (victim of predicate offence).
- [41] In both cases, the predicate offence forms part of this behaviour, and the intimate partner violence and sexual violence have caused and risk injury and severe psychological damage.
- [42] The Crown submits that Mr. Dirks' criminal record, the evidence of his former spouse, Kristen Dirks ("Ms. Dirks"), and Mr. Dirks' own evidence in cross-examination demonstrate a failure to restrain his behaviour in the past. The Crown further submits that this same evidence suggests that it is highly likely that Mr. Dirks will commit an offence risking death, injury or severe psychological damage to a woman in the future.
- [43] I will now move onto the primary argument advanced by the Crown in support of a dangerous offender designation.

Section 753(1)(b)

- [44] The other basis upon which an offender may be designated a dangerous offender is s. 753(1)(b), which requires that:
- (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.
- [45] Justice La Forest in R. v. Lyons, [1987], 2 S.C.R. 309 at para. 18, outlined four criteria for the designation: (1) the offender has been convicted of, and has to be sentenced for, a "serious personal injury offence"; (2) this predicate offence is part of a broader pattern of violence; (3) there is a high likelihood of harmful recidivism; and (4) the violent conduct is intractable.

- [46] The required elements in this provision are both retrospective and prospective: the offender must have failed in the past to control their sexual impulses and must have a likelihood of causing future injury, pain, or other evil through a continued failure to control these impulses: *R. v. Sipos*, 2014 SCC 47 at para. 22.
- [47] As Chief Justice Lamer stated in *R. v. Currie*, [1997] 2 S.C.R. 260 at para. 22: the prospective dangerousness of the offender is measured by reference to "his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted". The Court must look to whether the past behaviour evinces a likelihood of inflicting future harm upon others: *Dadmand* at para. 26; *R. v. Sohal*, 2019 BCSC 2271 at para. 147.
- [48] The Crown is not required to prove absolute intractability. That is, there is no requirement that "the offender will never be treatable in his lifetime": *R. v. Pedden*, 2005 BCCA 121 at para. 26 [emphasis in original]. Evidence of treatability is relevant to informing the degree of risk that the offender poses and assists the sentencing judge in determining the likelihood of danger beyond a reasonable doubt: *R. v. Boutilier*, 2017 SCC 64 at para. 45.
- [49] The sentencing judge must consider "all retrospective and prospective evidence relating to the continuing nature of this risk, including future treatment prospects": *Boutilier* at para. 43.
- [50] The test in s.753(1)(b) is not whether the offender can control his sexual impulses but whether he has failed to do so. It is a factual investigation that is both retrospective and prospective in its application: *R. v. Sipos*, 2014 SCC 47 at para. 20.
- [51] The court must be satisfied beyond a reasonable doubt of the likelihood, rather than the certainty, that the offender will cause injury, pain or other evil through a failure to control his sexual impulses in the future: *R. v. Foulds*, 2018 BCSC 1809 at para. 26, citing *Lyons* at paras. 91-94. "Likelihood" means "more than simply a possibility it means more [probably] than not": *Foulds* at para. 27 citing *R. v. Allan*, 2009 BCSC 1245 at para. 194.

Penalty Stage

General Principles

- [52] When an offender is designated a dangerous offender, the hearing proceeds to the penalty, or sentencing, stage. Section 753(4) provides the following:
- (4) If the court finds an offender to be a dangerous offender, it shall
 - (a) impose a sentence of detention in a penitentiary for an indeterminate period;
 - (b) impose a sentence for the offence for which the offender has been convicted -- which must be a minimum punishment of imprisonment for a term of two years -- and order that the offender be subject to long-term supervision for a period that does not exceed 10 years; or
 - (c) impose a sentence for the offence for which the offender has been convicted.

- [53] While this provision of the Code provides three options, s. 753(4.1) guides the discretion of the sentencing judge in this regard. Section 753(4.1) requires the sentencing judge to impose an indeterminate sentence pursuant to s. 753(4)(a), unless they are satisfied that there is a reasonable expectation that one of the lesser measures provided in s. 753(4)(b) or (c) will adequately protect the public. A "reasonable expectation" is a "confident belief, for good and sufficient reasons to be derived from the quality and cogency of the evidence heard on the application": *R. v. Bragg*, 2015 BCCA 498 at para. 34, quoting *R. v. Walsh*, 2011 BCSC 1911 at para. 291; *Sohal* at para. 150.
- [54] Section 753(4.1) codifies the judicial exercise of discretion to impose an indeterminate sentence "in light of the regime's general purpose of public protection in dealing with offenders presenting a very high likelihood of harmful recidivism": *Boutilier* at para. 65.
- [55] While the designation stage focused on the future threat the offender poses to society, the sentencing stage is concerned with imposing a sentencing which will most appropriately manage this threat: *Boutilier* at para. 31.
- [56] The Court must impose an indeterminate sentence "if, and only if, an indeterminate sentence is the least restrictive means by which to reduce the public threat to an acceptable level": *Foulds* at para. 73. The Court is "duty bound" to impose the least intrusive sentence that will adequately protect the public: *R. v. Dadmand*, 2022 BCCA 162 at para. 17.
- [57] All factors are relevant, however, a key consideration for whether there is a reasonable expectation that a lesser measure will adequately protect the public is the treatability of the offender. As Justice Brown stated in *Foulds*, treatability relates to "both an offender's amenability to treatment, as well as the prospects for the success of treatment in reducing the offender's risk of re-offending": at para. 36. This will include consideration of the offender's past history, treatment record, diagnoses, and motivation for change: *Foulds* at para. 40. Our Court of Appeal emphasized in *R. v. Tremblay*, 2021 BCCA 26 at para. 39, quoting *R. v. Awasis*, 2020 BCCA 23 at paras. 71-73, that evidence of treatability must be more than a speculative hope and must indicate that the offender can be treated within an ascertainable period of time.
- [58] With the foregoing principles in mind, the Supreme Court in *Boutilier* outlined the analytical framework sentencing judges should adopt when assessing the appropriate penalty for a dangerous offender:
- [70] [] First, if the court is satisfied that a conventional sentence, which may include a period of probation, if available in law, will adequately protect the public against the commission of murder or a serious personal injury offence, then that sentence must be imposed. If the court is not satisfied that this is the case, then it must proceed to a second assessment and determine whether it is satisfied that a conventional sentence of a minimum of 2 years of imprisonment, followed by a long-term supervision order for a period that does not exceed 10 years, will adequately protect the public against the commission by the offender of murder or a serious personal injury offence. If the answer is "yes", then that sentence must

be imposed. If the answer is "no", then the court must proceed to the third step and impose a detention in a penitentiary for an indeterminate period of time. Section 753(4.1) reflects the fact that, just as nothing less than a sentence reducing the risk to an acceptable level is required for a dangerous offender, so too is nothing more required.

Designation as a long-term offender

[59] In Foulds, Justice Brown outlines the test in order to make a finding of long-term offender:

[41] If the court does not find that [the offender] is a dangerous offender, then, under s. 753(5), the court either may treat the Crown's application as an application to find [the offender] to be a long-term offender under s. 753.1, or may impose sentence for the offences for which [the offender] has been convicted.

[42] Under s. 753.1, in order to find [the offender] to be a long-term offender, the court must be satisfied that:

- it would be appropriate to impose a sentence of imprisonment of two years or more for the offences for which he has been convicted;
- there is a substantial risk that the offender will re-offend; and
- there is a reasonable possibility of eventual control of the risk in the community.

BACKGROUND

Circumstances of the Offender

[60] Mr. Dirks is 45 years of age. He was born in Fernie and was adopted at 12 days. He was raised in a household by his adoptive parents with one step-brother who is 13 years his senior. He knows his birth mother but not his father.

[61] Mr. Dirks says that being aware of his adoption early on made him feel that he was not good enough and initiated his fearfulness of being abandoned by people. He told the Court that this fear has been an issue his entire life.

[62] Mr. Dirks was sexually assaulted by his brother at an early age. When he revealed it to their mother, the brother was sent away to live with his biological father. Mr. Dirks feels shame in relation to this traumatic event. Mr. Dirks was also victimized by a babysitter, this time by forced fellatio, sometime between the age of 5 and 10. He also recalls a friend sexually assaulting him when Mr. Dirks was very intoxicated. Mr. Dirks did not receive counselling in relation to these events until he was 21 years old, while in custody.

[63] Mr. Dirks was very young when he first began using alcohol and cannabis, which grew into serious addictions. This impacted his teenage years and continued into his 20s, 30s, and 40s.

[64] Mr. Dirks attended school until grade 9 at which point he left to enter the workforce. While in school, he drank alcohol, smoked marijuana, skipped classes, and got into trouble.

- [65] After leaving school, Mr. Dirks worked at the mill where his father also worked. During this time, he developed a strong work ethic. However, he continued to consume alcohol and cannabis. He attempted suicide by heavily bingeing on substances. Mr. Dirks has also struggled with memories of being sexually assaulted his whole life.
- [66] Mr. Dirks eventually moved to Alberta to work in the oil and gas industry. He had good job opportunities but continued to engage in alcohol and substance abuse and began to experiment with hard drugs.
- [67] Mr. Dirks has been involved with different intimate partners throughout his entire adult life and some of these relationships have been the subject of court proceedings on his criminal record.
- [68] Mr. Dirks has two children. He does not have any contact with either of them. He has continued to enjoy support from his parents. While Mr. Dirks continues to have contact with his father, his mother passed away while he was in custody.

Gladue Factors

- [69] Section 718.2(e) of the Code mandates that when sentencing an indigenous offender, the Court must always consider:
- a) the unique systemic or background factors that may have played a part in bringing the particular indigenous offender before the Court; and,
 - b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her indigenous heritage and connection.

R. v. Gladue, [1999] 1 S.C.R. 688, at para. 66; R. v. Ipeelee, 2012 SCC 13, at para. 59.

- [70] However, the status of an offender as an indigenous person does not play a role in determining whether or not the offender is to be declared a dangerous offender.
- [71] An offender's status as an indigenous person must be considered in determining what a fit and proper sentence should be. That will relate to whether there should be an indeterminate sentence or the appropriate length of a determinate sentence: R. v. Radcliffe, 2017 ONCA 176, at para. 63; R. v. Mattson, 2014 ABCA 178, at para. 44.
- [72] In this case before me, the Crown submits that there is no evidence to suggest that Mr. Dirks is Indigenous. The Court ordered a Gladue Report. The report writer stated that they told Mr. Dirks about the avenues that he could pursue in order to obtain more information about his ancestry. I have learned that he chose not to pursue them in advance of the dangerous offender hearing. The Crown takes the position that no evidence exists on this point as it relates to his indigeneity.

Criminal History

[73] Mr. Dirks has lengthy history of criminal convictions going back to 2001. His last conviction was in 2013. In this history, I will summarize the most relevant.

April 10, 2001 - Sexual Assault (1st Sexual Assault) and failing to comply with undertaking

[74] On December 12, 2001, Mr. Dirks plead guilty to sexual assault and failing to comply with an undertaking. In relation to the sexual assault, on April 10, 2001, Mr. Dirks, then 21, offered a ride to a 15 year old Indigenous girl who was walking on the highway near the Lower Kootenay First Nation near Creston, British Columbia. The victim was unknown to Mr. Dirks. He refused to let her out of the car at her destination and drove her to a remote wooded area, where he began to forcibly kiss her and grab at her clothes. Eventually, he was able force her into the back seat during which time she was slammed against the exterior and interior of the car. While in the back seat, Mr. Dirks attempted to rip off her pants and forcibly pry open her legs. The victim was able to escape to a nearby store after Mr. Dirks unsuccessfully tried to pursue her.

[75] Following his arrest, Mr. Dirks was released on conditions which included that he not be in the presence of any children under the age of 16 years. He breached that order on July 12, 2001 when Mr. Dirks was found in the company of a 14 year old female. Mr. Dirks was sentenced to six months imprisonment in addition to 10 months of pre-sentence custody and probation for a period of 2 years with conditions which included that he not be alone with any female under the age of 19 without supervision.

August 21, 2002 (Unlawfully in Dwelling House and breach of probation order)

[76] On August 22, 2002, Mr. Dirks plead guilty to unlawfully being in a dwelling house and breaching a probation order. Mr. Dirks, 22, at the time, entered a neighbor's house who lived across the road from him in Creston. Two children were the only ones in the home at the time. The 14 year old female found Mr. Dirks in her bedroom while she was sleeping. Mr. Dirks attempted to lie down beside her and when she told him to go away, he told her to keep quiet. The female got up and Mr. Dirks tried to hug her and touch her. She told him to get off her and her screams were heard by her 16 year old brother. Mr. Dirks then left but was arrested the next day.

[77] Mr. Dirks was on probation at the time of this offence and breached the condition that he not be alone with a female under the age of 19 years. He was sentenced to 6 months in jail and 16 months probation.

August 10, 2003 (Unauthorized Possession of Firearm, possession of firearm x2, possession of ammunition and fail to appear)

[78] On September 14, 2005, Mr. Dirks plead guilty to various weapons offences and failing to appear in court. Mr. Dirks, then 23, offered a 17 year old female who was unknown to him a ride in his vehicle in Airdrie, Alberta. He was intoxicated by alcohol at the time and struck a parked vehicle and then fled the scene. Police located Mr. Dirks in the same vehicle two weeks later and this time with a 15 year old female. The police located inside the vehicle a .22 calibre handgun under the driver's seat. Mr. Dirks was still bound by a probation order that he not be in the company of female under the age of 19.

[79] Mr. Dirks was sentenced to two years, his first federal period of incarceration. He was also placed on probation, once again the same condition that he not have any contact with females under the age of 19.

December 7, 2003 (Sexual Assault, breach of probation and failure to comply with recognizance) (2nd sexual offence)

[80] On February 14, 2006, Mr. Dirks was convicted after trial of his second sexual assault along with breaching a probation order and failing to comply with a recognizance. Mr. Dirks, then 23, drove the 17 year old victim and her friend to a bar in Calgary, Alberta, where they consumed alcohol before going back to the victim's home. Mr. Dirks and the victim were known to each other. The victim, who was extremely intoxicated, woke up to find Mr. Dirks having vaginal intercourse with her. Mr. Dirks was still on probation bound by a condition prohibiting him from having contact with females under the age of 19.

[81] Mr. Dirks was sentenced to 3 years imprisonment for the sexual assault and 4 months consecutive for breaching a probation order and failing to comply with a recognizance.

June 21 and July 19, 2004 (Breach of Recognizance x4)

[82] On April 21, 2005, Mr. Dirks, then 24, was convicted for being found in a vehicle on June 21, 2004 with a 17 year old female intimate partner. Mr. Dirks was on bail with conditions that he not be in the company of a female under the age of 19. On July 19, 2004, Mr. Dirks was once again breaching this condition when he was found in the company of his under age intimate partner and another female under the age of 19.

[83] He was also charged with sexually assaulting this second female but was acquitted after trial. Mr. Dirks was sentenced to a global four month term of imprisonment.

[84] Mr. Dirks then managed to stay out of trouble for a number years. However, he then found himself in trouble with the law again, once again involving an intimate partner.

August 12, 2012 (Assault causing bodily harm)

[85] On August 29, 2012, Mr. Dirks, then 32, plead guilty to assaulting his intimate partner, Ms. Dirks after she wanted to end their marriage. Mr. Dirks was advised of this while he was working in Fort St. John. A week later, he returned to their home in Creston unannounced. Ms. Dirks attempted to flee in her vehicle. However, Mr. Dirks reached into the car, choked

her and covered her mouth with his hands. She was able to convince him to attend his parents home nearby. While they were there, Mr. Dirks once again proceeded to choke Ms. Dirks and was pulled off by his mother. Mr. Dirks then punched Ms. Dirks in the face numerous times and forced Ms. Dirks and their infant child to return home with him. Ms. Dirks eye was swollen shut as a result of the assault. When Mr. Dirks was asleep, Ms. Dirks fled the home with their child.

[86] Mr. Dirks was sentenced to six months jail and placed on probation for a period of one year with conditions that included he not have any contact with Ms. Dirks.

January 8, 2013 (Break and Enter with Intent, Aggravated Assault and Fail to Comply with Probation Order)

[87] 10 months after completing his six month sentence for assaulting Ms. Dirks, Mr. Dirks, then 32, applied to have the condition prohibiting contact with Ms. Dirks varied. That application, heard on January 7, 2013, was denied.

[88] On January 8, 2013, Mr. Dirks drove from Creston to Trail, BC, where he believed Ms. Dirks had relocated. After driving around for two hours looking for her vehicle, at approximately 1:00 a.m. he finally located her residence.

[89] Using a hammer, Mr. Dirks broke a window gaining access to the home where Ms. Dirks, their daughter and her new partner were asleep. Mr. Dirks also had with him a box cutter. Mr. Dirks then attacked Ms. Dirks' partner by striking him in the head with the hammer while Ms. Dirks escaped the home through a window. Mr. Dirks threatened to slice the victim's throat. Mr. Dirks also kicked open the bedroom door where their daughter was alone sleeping. No harm was done to the child. Mr. Dirks left the house and was later located beneath a parked truck suffering from a severed artery after slashing his wrists. Mr. Dirks told the police that it was his intention all along to commit suicide.

[90] Mr. Dirks was sentenced to seven years imprisonment. The sentencing judge relied on a psychiatric assessment that was prepared by Dr. Wiehahn for the sentencing.

[91] Dr. Wiehahn noted that while Mr. Dirks was able to appreciate the impact of his actions and was truly remorseful, "Mr. Dirks was not aware that he had a tendency to become agitated, even violent in intimate relationships when they start breaking down."

[92] Dr. Wiehahn's assessment was that Mr. Dirks has no real insight or plan to alter this pattern of behavior he tends to display in intimate relationships during times of conflict. Dr. Wiehahn noted that Mr. Dirks presented as having strong borderline personality disorder traits. Using the HCR - 20 risk assessment tool, Dr. Wiehahn predicted that the risk for Mr. Dirks to act violently in the year following was moderate to high.

Circumstances of the Predicate Offences

- [93] As I have noted above, there was an agreed statement of facts filed on the predicate offences. Mr. Dirks and the victim, G.T., had been involved in a romantic relationship since March 2018, while Mr. Dirks was on parole. They began residing at Mr. Dirks home in Kitchener, British Columbia in the spring of 2020. G.T.'s daughter, seven at the time, came to live with the couple in August 2020 after emigrating from the Philippines.
- [94] On September 26, 2020, G.T. and Mr. Dirks had an argument after she had followed Mr. Dirks when he was visiting a neighbor. G.T. was upset that Mr. Dirks and the neighbor were using cannabis.
- [95] In the early morning hours thereafter, G.T. joined Mr. Dirks in their bed. Mr. Dirks then removed G.T.'s pants and restrained her by lying on top of her. He then forced both anal and vaginal intercourse without her consent lasting approximately 10 minutes. G.T. was crying and asked Mr. Dirks to not do this. Mr. Dirks covered her mouth with his hand. He told G.T. during the forced intercourse that it was wrong for her to follow him and not trust him and that the forced intercourse was her punishment. As a result of this forced anal intercourse, G.T. experienced pain in her rectum and had difficulty during walking the following week.
- [96] After this incident, G.T. and Mr. Dirks were discussing their relationship during which G.T. suggested a period of separation and an argument ensued. Mr. Dirks then assaulted G.T. by kicking her on her legs while she was seated on the bed. He yelled at her and called her a "**f* bitch**" and a "**f* cunt**". Mr. Dirks told her that if she left the relationship he would find her and kill her.
- [97] G.T.'s daughter heard the argument and ran to the neighbors house for assistance.
- [98] After the incident, G.T. went outside to the front porch but Mr. Dirks grabbed G.T.'s neck and forced her back inside the house. Mr. Dirks then slapped G.T. on her face and on the back of her head numerous times. He also choked her squeezing her neck and making it difficult for her to breathe. The choking occurred approximately three times after which Mr. Dirks stopped and told her not to tell anyone about the incident. A few days later, G.T. fled the residence and went to the neighbor's house where she contacted the police. Mr. Dirks was arrested on October 2, 2020.

Victim Impact Statement

- [99] G.T. provided a victim impact statement. G.T. wrote that she met Mr. Dirks at church and trusted that he was a good man. G.T. states that the violence she experienced in her relationship with Mr. Dirks has affected her in many ways and has caused her emotional, physical and sexual trauma. She now has a hard time trusting people especially men. While she is now in another relationship, it took her a long time to trust him. She was afraid that her current partner would hurt her the same way as Mr. Dirks did. The abuse she endured has affected her ability to be intimate in her current relationship.

[100] She has had to work very hard to move forward and has tried to be the best mother to her children.

[101] Since the sexual assault, G.T. has experienced frequent nightmares and flashbacks and for many years after the incident she has not felt safe and always worries about Mr. Dirks coming back to take revenge on her for reporting the sexual assault. G.T. changed her number and blocked Mr. Dirks' parents on Facebook to ensure they would not try to contact her again. She also moved away from Kitchener so as to ensure that she and her daughter would be safe from Mr. Dirks.

[102] She continues to be fearful that when Mr. Dirks is released he will hunt her down and kill her.

EVIDENCE

Crown Evidence

[103] The Crown called four witnesses on this dangerous offender application.

[104] Three of those witnesses testified about correctional programming both in the federal and provincial stream as well as in the community.

Shannon Plumpton

[105] Shannon Plumpton is a supervisor at Correctional Service of Canada ("CSC") and testified about programming available in the community as well as in the institutional setting. She has also previously worked as a parole officer and as a programs officer.

[106] Ms. Plumpton testified about the various treatment programs available to offenders within the correctional institutions and in the community while on parole. In the institutional setting, after an offender completes the initial assessment at the Regional Reception and Assessment Centre, the following are then offered to the offender:

- a) A ten-session primer;
- b) Regular core programming, which is divided into medium intensity (50 sessions) and high intensity (100 sessions) groups;
- c) Once core programming is completed, the offender participates in a 12-session maintenance program;

[107] In the institution, an offender can take the primer and the core programming only once during their sentence. If an offender commits a new offence after release, they are able to re-take the core programming.

[108] The core programs have three streams - Indigenous offenders, sexual offenders and multi-target for all other offenders.

- [109] A person designated a dangerous offender on a long term supervision order is eligible to take the core and maintenance programming in the community on the same streams.
- [110] An offender can take the maintenance program as many times as they need it. The community maintenance program runs for 25 sessions.
- [111] When an individual becomes eligible for any kind of release, from day parole to release on a long-term supervision order ("LTSO"), a community parole officer becomes involved. The institutional parole officer sends a report about the individual to the community parole officer, who reviews the report and develops a detailed community strategy to manage the individual in the community. The community parole officer also provides recommendations for conditions that could be imposed by the Parole Board of Canada ("PBC") if the individual were to be released.
- [112] The PBC determines the conditions of the release, which are to be supervised by the community parole officer.
- [113] Once an offender is released, they are required to meet with their community parole officer. The interview plays an important piece of assessing and monitoring an offender, and an offender's disclosure is crucial to the success of monitoring. It is very difficult, said Ms. Plumpton, to successfully supervise and monitor an offender who is skilled at deception or impression management.
- [114] The frequency and manner of reporting is set by the parole officer, initially according to the offender's level of risk based on both static and dynamic factors. The highest risk offender would be required to have eight meetings a month with their parole officer. The next level down is four meetings a month and even once every three months, once an offender has been out in the community for an extended period of time.
- [115] Some offenders are released on conditions imposed by the PBC that they reside at a Community Residential Facility ("CRF"), also known as a half-way house, or a Community Correctional Center ("CCC"). A CRF is a residence operated on behalf of CSC but owned and staffed by contracted private societies such as the Salvation Army and John Howard Society. A CCC is also a house, but it is owned and staffed by CSC staff. Those on day parole must reside at a CRF/CCC, but those on full parole are rarely required to live there.
- [116] Ms. Plumpton also testified to what happens when an offender who is on a LTSO breaches a condition while in the community. The parole officer has the authority to suspend the offender's release, return them back into custody and refer to the PBC for a decision. There are two options available:
- a) recommend to the PBC that they cancel the suspension and release the offender back into community with a different release plan with special conditions; or
 - b) recommend the laying of charges in relation to breaching a LTSO.

[117] When there is a suspension, the offender serves maximum 90 days and then is released back into the community on the LTSO. There is nothing a parole officer can do after the 90 days suspension as the offender must be released back into the community to serve the LTSO.

Claire McKenzie

[118] Claire McKenzie is the regional manager of the conditional release program with the PBC. She testified about parole eligibility and various types of graduated release.

[119] Ms. McKenzie testified to the various applications for early release, whether the individual is serving an indeterminate sentence or a sentence followed by LTSO. Either can apply for a variety of conditional earned releases:

- a) Escorted temporary absence (ETA) can be for personal development, community service, or to address specific risk factors, which they can apply for at any time during the sentence. The offender is escorted at all times by institutional staff or non-uniformed staff or community volunteer;
- b) Unescorted temporary absence (UTA), which they can apply for at the time of their eligibility for day parole. It is permitted for offender to participate in a community based program such as residential substance abuse program. The UTA can be up to a maximum of 60 days;
- c) Day parole can be applied for after serving 1/6 of the sentence. The authority is granted by PBC for the offender to be at large during their sentence in order to prepare them for full parole or statutory release;
- d) Full parole, which the offender can apply for at 1/3 of their sentence until warrant expiry date.

[120] Mandated statutory release is granted when an offender has served 2/3 of their sentence. The PBC may attach conditions to a statutory release including residency conditions which can be mandated if the offender presents an undue risk to society by committing certain offences prior to expiration of their sentence.

[121] If CSC believes an offender is likely to commit an offence causing death/serious harm, a sexual offence against a child, or a serious drug offence prior to warrant expiry date, CSC can refer the case to PBC for detention, who determines whether the offender should be kept in custody and not released at their statutory release date. If detained, PBC must review detention every 2 years.

[122] Once an offender has reached their warrant expiry date, they are released without any conditions. If an offender is under a LTSO, it would commence after the warrant expiry date.

- [123] The PBC has exclusive jurisdiction in imposing special conditions on the period of supervision on a LTSO. The PBC is not bound by any conditions that a sentencing judge would impose on a long term supervision order.
- [124] If a dangerous offender serving an indeterminate sentence breaches their conditions while on parole, their parole can be suspended and they may be referred to the PBC for a revocation. The PBC is not bound to follow any recommendations made by the parole officer. If parole is revoked, then the offender is brought back into custody until they are eligible for a new form of release, and are required to show manageability. This means that an offender may remain in custody indefinitely if they fail to show manageability.
- [125] An indeterminate sentence is one that does not have an end point. However, an offender serving an indeterminate sentence is entitled to apply for ETA, UTA, day and full parole. The only release they are not eligible for is statutory release. The timeframes for applying and review periods are different for those serving an indeterminate sentence. For example, an offender serving an indeterminate sentence eligible for ETA and UTA is able to apply immediately and for day parole four years after the date of their arrest and can reapply every year until the seven year mark.
- [126] At seven years from their date of arrest, the offender is eligible for the first legislated required review for full parole. Thereafter, a mandatory legislated review occurs every two years but the offender can waive their hearing.
- [127] In Mr. Dirks' case, he has been in custody since October 2020. If the court were to sentence him to an indeterminate sentence, he would be eligible to apply for day parole immediately and in two years, there would be a mandatory legislated review. Of course, this does not guarantee that Mr. Dirks would in fact be approved for parole. It is simply a review hearing.
- [128] The criteria for all of these reviews is mandated under s.102 of Corrections and Conditional Release Act, S.C. 1992, c. 20, which states that the risk must not be undue and that the release facilitate the reintegration of an offender and contribute to protection of society.
- [129] If granted conditional release, the offender serving an indeterminate sentence will be supervised by CSC for the rest of their life - conditions are dynamic based on their circumstances and may change over time. For a dangerous offender serving an indeterminate sentence, once full parole is granted, the offender could effectively be on full parole for the rest of their life with conditions as long as they are behaving. The PBC also has the option of relaxing conditions.

Ralph Oelke

- [130] Ralph Oelke is the acting correctional supervisor at Kamloops Regional Corrections Center - repeat violent offenders intervention. He testified to the various programs available in provincial correctional institutions and the process in which offender participation is recorded by program officers into the Ministry of Public Safety and Solicitor General Client Logs (also referred to as C-logs). He testified to Mr. Dirks' C-logs while in pre-trial custody.
- [131] Mr. Oelke testified that those in pre-trial custody are not required to participate in programs while waiting for trial or to be sentenced. All programs in provincial institutions are similar save and except Ford Mountain Institution ("Ford Mountain"), where Mr. Dirks has been since 2024.
- [132] General programming at provincial institutions include core programs which include Living Without Violence, Respectful Relationships and Substance Abuse Management which are up to 12 sessions in length. There is also the Essential Skills to Success program which has several modules ranging up to two hours in length.
- [133] At Ford Mountain, inmates are able to participate in the Right Living Community, where they are given different opportunities. Ford Mountain also has specific programs for sex offenders but Mr. Dirks is not able to participate in them as he is there under remand as opposed to serving a sentence.
- [134] Mr. Oelke provided a summary from his colleague at Ford Mountain of Mr. Dirks participation in programs there:

Dirks has been active in his programming here, including both classroom and work program. He works in many areas including the mill as a goat keeper and on the fire crew. Upon arrival, he was proactive in trying to finish the Inside Out Program he started in KRCC. With his help, I was able to arrange for -- for him to complete it at XSCC, which is the Indigenous name for Ford Mountain, even though we have not been a part of it in the past.

He has maintained a polite and positive attitude throughout his time here. He also is a member of our community council. This group works with our RLC staff to organize the weekly hut and gym RLC meetings. As well, they help to organize activities for the residents as part of our RLC concept.

He is considered to be a good worker with what he is expected to do. We have no concerns with Dirks being at Ford Mountain Correctional Centre. He is the first official remand we have had. And so far, it has been a positive experience for the centre, as we adjust to having remanded inmates.

Kristen Dirks

- [135] Ms. Dirks is Mr. Dirks' former spouse. Crown says her evidence can be accepted by the court pursuant to s.753.02 of the Code, which states that any evidence given during the hearing of an application made under s.753(1) by a victim of an offence for which the offender was convicted is deemed also to have been given during any hearing held with respect to the offender under s. 753(5)(a) or ss. 753.01(5) or (6).
- [136] While they were married, Mr. Dirks and Ms. Dirks had a daughter with whom he currently has no relationship. She and Mr. Dirks divorced shortly after the 2013 incident.
- [137] In addition to the incidents surrounding Mr. Dirks' convictions in 2012 and 2013, Ms. Dirks testified to additional incidents of violence and sexual violence that occurred at the hands of Mr. Dirks when they were in a relationship. Some of these incidents were never reported.
- [138] Ms. Dirks was 17 when she first met Mr. Dirks. She was living in Alberta at the time. They began dating in 2009 when she was 26 years old while Mr. Dirks was living in a halfway house in Kelowna and would often come to visit him. Shortly thereafter they moved to Creston, where they initially lived with his parents and then moved into their mobile home in nearby Kitchener. Their daughter was born soon after.
- [139] Ms. Dirks testified that the physical violence, including sexual assaults, began a few months after they moved to Creston. She did not report the incidents out of fear for her safety and their daughter's.
- [140] Ms. Dirks testified to an incident in August 2012 when they were having a fight during which Mr. Dirks proceeded to have non-consensual intercourse with her. She also recounted instances when she would wake up in the middle of the night with Mr. Dirks forcing her to give him oral sex. There were other occasions while she was nursing her infant daughter that he would force his penis into her mouth. She recalls during the summer of 2009 when Mr. Dirks had developed a fascination with sodomization and would forcibly sodomize her on a daily basis. This, she testified, last approximately two months. Ms. Dirks did not report any of these incidents to the police.
- [141] Ms. Dirks also testified to a time when Mr. Dirks allegedly sexually assaulted a 19 year old female who was sleeping on their couch.
- [142] While there were two occasions where she conflated into one, I found Ms. Dirks to be a credible witness.
- [143] I note that Mr. Dirks did accept much of Ms. Dirks evidence while in cross examination. He acknowledged that there were up to 10 occasions when he forced anal intercourse on Ms. Dirks.

[144] However, Mr. Dirks denied sexually assaulting Ms. Dirks in front of their daughter, daily instances of non-consensual anal intercourse, and sexual assaulting a 19-year-old female while Ms. Dirks was in another room. I agree with the Crown that little turns on the admission of this evidence given what Mr. Dirks has already acknowledged in terms of the non-consensual sexual activity with Ms. Dirks.

Defence Evidence

[145] In addition to Mr. Dirks' evidence, which I have summarized above under circumstances of the offender, Mr. Dirks called one additional witness on this hearing.

[146] Peter Falk testified regarding the Adult and Teen Challenge Program in Chilliwack, which Mr. Dirks hopes to enter into once released. It is a residential treatment program built on a model of mentorship. The 19 month program is religiously based one which Mr. Falk testified is there to help life-controlling issues through Jesus Christ. While there is staffing on site, it is not staffed 24 hours a day.

[147] The program does not offer high-intensity sexual offender programming similar to what is offered in federal or provincial institutions nor does it offer comprehensive dialectal behavioural therapy program as recommended by Dr. Cooper. I find this program is not suitable for Mr. Dirks.

Mr. Dirks' Corrections and Treatment History

[148] While serving his three year sentence in 2003 in the Alberta Federal Corrections System at Bowden Mr. Dirks completed the moderate intensity sex offender treatment program, which lasted more than 6 months. However, Mr. Dirks testified that the efficacy of this program was diluted due to his denial of responsibility at the time but nonetheless feels he had a positive performance.

[149] Mr. Dirks acknowledged that he would have made more progress if he had accepted full responsibility. He testified that he was also going through the 12-step program for alcohol and drugs and was at step 5 while at Bowden Institution. This helped him to stop lying to his parents and others.

[150] While serving his sentence for aggravated assault in 2013, Mr. Dirks went to several different federal penitentiaries including Pacific Institution in Abbotsford and Mountain Institution in Agassiz. From 2013 to 2014, he completed the high intensity ICPM (integrated correctional program model) sex offender program and then completed the maintenance program in 2015 and then again in 2016 and 2017.

[151] While on parole, Mr. Dirks also completed the sex offender community maintenance program in 2018. Mr. Dirks acknowledged to Dr. Cooper that he "put next to no effort in the program because he did not believe he needed the program and only went through the motions." Dr. Cooper notes that file information on Mr. Dirks' participation of this program

confirms that Mr. Dirks was attending the program to fulfill obligations of his correctional plan, as opposed to gaining a better understanding of his risk factors and improving his skills to better deal with those risk factors.

- [152] Mr. Dirks also completed courses on conflict management, self-management plans, asking for help, and relationships. He also attended church, participated in AA, NA, and undertook counselling.
- [153] Mr. Dirks earned certificates of completion for courses completed over 4 years while he has been on remand. They are numerous and diverse in scope including employment skills, substance abuse, anger management, communication, and relapse prevention. Some of the courses such as "get out, stay out" address recidivism.
- [154] Mr. Dirks testified that he has used his time to improve himself in all of these aspects. He says that he wants to be useful in the community, substance-free, and address issues from his past like child abuse and fear of abandonment. He is to be commended for the effort he has put into completing these programs and acknowledging and being self aware.
- [155] Mr. Dirks spoke of finding Christianity and faith during his first period of incarceration in the 1990s. He testified that his connection to his faith and teaching was not always strong and that is reflected in the number of convictions he has managed to accumulate.
- [156] Mr. Dirks also submitted materials from studying and corresponding with New Life Ministries. He has sought guidance from Reverend Darren Donas of KRCC as well as Ted from the Mennonite Church in Salmon Arm. Mr. Dirks is dedicated to Christianity and appreciates that what he has done is contrary to his faith. He says that his faith is a valuable support for him going forward.
- [157] Mr. Dirks was the first prisoner on remand to be accepted to Ford Mountain. He has been there since summer 2024 initially to help with the hose repairs during fire season. He has worked long hours on other tasks at a small sawmill, working with chainsaws and has worked as the goat keeper.
- [158] Mr. Dirks has acquired new skills at Ford Mountain driving a skid-steer and forklift. He has indicated he has derived great satisfaction during his time there and hopes to be able to participate in the sex offender treatment program offered at Ford Mountain. As a remand prisoner, he is not permitted to participate in these types of programs.

Relationships with Females and Intimate Partner Relationships

- [159] As can be seen from my review of Mr. Dirks' criminal history, he engaged in relationships with females under the age of 19 which led to criminal charges including sexual assault. As well, much of his early criminal history involves breaches of court orders and probation orders prohibiting him from interacting with those females under the age of 19.

- [160] Mr. Dirks' desire to be in relationships with females also continued while in custody. In cross-examination, Mr. Dirks admitted that even while in custody, he still had contact with women. His relationship with Ms. Dirks began while he was living in the halfway house in Kelowna, in 2009.
- [161] Mr. Dirks acknowledged that when he began his relationship with Ms. Dirks, he was unprepared for an intimate relationship, was consuming drugs, had low self esteem, and was without his faith or addiction recovery community. Mr. Dirks further acknowledged that he manipulated and maintained power over Ms. Dirks, including physically and sexually assaulting her.
- [162] Further, Mr. Dirks had a relationship with another woman while serving his seven year sentence, which he stated distracted him from the sex offender and maintenance programs. The breakup with her also distracted him adversely, as is set out in Dr. Cooper's report.
- [163] Mr. Dirks also began his relationship with G.T. while he was on parole. Mr. Dirks acknowledged in his meetings with the community mental health nurse, Ms. Tooms, that he did not incorporate what he had learned in his programs when he began this new relationship and was overconfident.
- [164] Mr. Dirks acknowledged that intimacy and romantic relationships are the subject matter of his convictions and that they are distractions to his treatment. As such he has stated an intention to practice celibacy and abstain from relationships.
- [165] I note that while on parole, Mr. Dirks did not inform his parole officer that he had begun a relationship with G.T., which was a violation of his conditions of parole.

Expert Evidence of Dr. Cooper

- [166] As I have noted, Dr. Cooper was appointed by the Court to provide an assessment pursuant to s. 752.1(1) of the Code. Dr. Cooper's report, dated September 19, 2022, outlines that he met with Mr. Dirks on two separate occasions, one lengthy in person interview, and another follow up one by telephone. Dr. Cooper also conducted a follow-up interview on January 1, 2025 and concluded that his original opinion regarding risk/treatability and recommendations from his initial report had not changed. In drafting his report, Dr. Cooper also reviewed various correctional materials and prior psychiatric and psychological assessments pertaining to Mr. Dirks.
- [167] Based on his overall examination of Mr. Dirks, Dr. Cooper opined that Mr. Dirks posed a moderate to high level of risk for non-intimate partner violence related recidivism. However, Mr. Dirks is viewed as a high risk for related intimate partner violence ("IPV") recidivism and a high risk for sexual recidivism.

- [168] Dr. Cooper notes that Mr. Dirks was cooperative and engaging during the sessions. The personality assessment inventory which is a self-report measure of personality/psychopathology was administered to Mr. Dirks. This provides information regarding the possible presence of symptoms of a major mental disorder. Dr. Cooper writes that the results of this testing suggest that Mr. Dirks is self-critical, has a negative evaluation of himself, does not manage difficulties well and likely views his successes as dependent on others.
- [169] The testing also found Mr. Dirks having anger management problems including extreme displays of anger resulting in threats, property destruction and fears of his temper and violence from others. On a positive note, Dr. Cooper writes that the testing also suggests that Mr. Dirks has social support and is motivated for treatment.
- [170] Dr. Cooper's diagnostic impressions are consistent with previous professional opinions, namely, that Mr. Dirks' mood and related symptoms are better explained by a diagnosis of borderline personality disorder (BPD). Mr. Dirks also has some symptoms of antisocial personality disorder and narcissistic personality disorder. However, Dr. Cooper notes that this borderline personality structure is considered the most problematic and relevant to the risk Mr. Dirks presents.
- [171] Dr. Cooper notes that Mr. Dirks' risk for re-offending has been evaluated on multiple occasions, including an assessment in 2006 by Dr. Xie, who found Mr. Dirks to pose an extremely high risk of sexual offending. In 2013, it was documented that Mr. Dirks' risk for IPV related recidivism was rated high. Dr. Wiehahn, who evaluated Mr. Dirks in 2013, found him to pose a moderate to high risk for violent recidivism. In 2016, Mr. Dirks was once again assessed and it was concluded that he posed a moderate - high risk for sexual recidivism and a high risk for violent recidivism. All of these were prior to him committing the predicate offences.
- [172] Dr. Cooper did note that Mr. Dirks has a number of protective factors including his employment skills, strong work ethic, religious beliefs and a desire to desist to mitigate his risk level. However, Dr. Cooper opined that Mr. Dirks should continue to be viewed as a moderate - high risk for non-IPV related violent recidivism and a high risk for IPV related recidivism and sexual recidivism.
- [173] Specifically, Dr. Cooper notes:

If Mr. Dirks does commit another offense it would likely be precipitated by elevations in his risk factors. For example, if he experiences (intimate) relationship challenges (e.g., conflict, communication/boundary difficulties; the demise of a union) narcissistic injury (e.g. wounded ego), real or perceived abandonment fears, does not appropriately problem solve, experiences violent ideation and intent, and fails to effectively manage stress/his emotions (e.g. sadness/fear/jealousy/anger), he may act violently (under the influence of a substance or when sober). His most likely victim would be an adult female intimate partner or X intimate partner. The most likely scenario is an active IPV in the intimate partner context. Conflict within an intimate

relationship, including abandonment fears, would represent a time right for violence. Similarly the aftermath of a dissolved relationship could signal a time in which violence is imminent, precipitated by unwanted communication. If Mr. Dirks is violent, such could be severe (e.g. choking), could include sexual violence (e.g. forced anal intercourse) as well as threats of further violence, and could result in physical harm.

- [174] Dr. Cooper notes that the risk for recidivism is a fluid concept that can be impacted by a number of variables. Dr. Cooper opined that Mr. Dirks has demonstrated a pattern of sexual violence and IPV culminating in his index offenses.
- [175] I accept Dr. Cooper's opinion that certain factors could impact Mr. Dirks' risk level. For example, in theory Mr. Dirks' risk level has the potential to decrease through age, maturation, introspection intervention, treatment motivation and effort and a commitment to manage his risk factors
- [176] In terms of intervention related issues, Dr. Cooper notes that Mr. Dirks' treatability and prognosis have varied over the years. For example, in 2013 Dr. Wiehahn indicated that Mr. Dirks, in terms of treatability, "seems to not display good treatment compliance with little motivation over time."
- [177] As well, in 2019 Mr. Dirks' parole officer stated, "in spite of program attendance and completion, Mr. Dirks has failed to apply skills on a consistent basis even though he had completed core programming during his first and second sentences and he continued to struggle in applying programs and skills on a regular and continual basis."
- [178] With respect to Mr. Dirks' manageability in the community, Dr. Cooper points out that correctional information from 2019 indicates, historically, Mr. Dirks has demonstrated no regard for his conditions and/or no contact orders, when in the community. He also has completed community-based programming in the past with minimal gains.
- [179] Dr. Cooper opines that Mr. Dirks is a high needs, high risk offender with a diverse profile who requires intensive treatment at the group and individual level and will require close supervision if/when released into the community. The most high intensity treatment and management options for Mr. Dirks are offered via CSC in both institutional and community settings. But Dr. Cooper points out that Mr. Dirks has a poor history of response to risk relevant treatment and has been a management concern when supervised in the community.
- [180] While Mr. Dirks views his risk as manageable in the community if he completes relevant programming/treatment, formulates better employment choices and stays out of a serious intimate relationship, Dr. Cooper is doubtful given the quality and quantity of his previous relationships, his historical desire to enter into and maintain said relationships, and certain aspects of his personality. Dr. Cooper does not view this as entirely feasible. I note that Mr. Dirks told Dr. Cooper that historically he did not want to go on in life if he was not in an intimate relationship. Further, it was reported to Dr. Cooper by his mother that he does not

like to be alone, and does not want to be by himself.

[181] Dr. Cooper comments on his concerns about Mr. Dirks' ability to change:

When considering Mr. Dirks' age, his struggles with his personality throughout his adult life and that his personality is resistant to change, his problematic personality features are unlikely to alter in the future. At best he could learn to manage aspects of his personality. However, thus far, treatment efforts aimed at this and related objectives have not proven successful in the long term. Mr. Dirks has insights into aspect of his risk profile and is motivated to desist but has a history of becoming overwhelmed and situ with violent results even after the completion of risk relevant programming.

[182] Dr. Cooper points out that Mr. Dirks has been provided with numerous opportunities in the past to put his claims of change to test with unfortunate results towards his victims. Dr. Cooper does not see significant behavioral change as likely within the foreseeable future. Mr. Dirks has demonstrated poor behavior while under supervision and poor behavior when not supervised, most recently exemplified by his index offenses.

[183] As such, Dr. Cooper opines that Mr. Dirks treatment prognosis is heavily guarded as is the likelihood that his risk could be effectively managed in the community in the foreseeable future even with the completion of risk relevant intervention and close supervision.

[184] In terms of treatment, Dr. Cooper opines that "treatment and management strategies are key and may eventually prove effective if Mr. Dirks effectively responds to treatment, internalizes the lessons and commits to managing his risk factors".

[185] Dr. Cooper recommended the following:

- Mr. Dirks successfully complete a high intensity program or programs targeting his risk factors for violence, IPV and sexual violence;
- That he participate in individual therapy with a licensed professional with experience treating offenders with history of violence IPV and sexual violence focused on his mental health, managing aspects of his personality (e.g. dialectical behavioral therapy focused on his BPD) and his risk factors; and
- Mr. Dirks medication regime be monitored by a psychiatrist.

[186] If Mr. Dirks is released from incarceration, Dr. Cooper stated that Mr. Dirks will require a high level of structure, monitoring and supervision. He also recommends that residency, employment, and supervision are secured as well as continued professional supports and that a condition to report intimate relationships should be considered and said relationships should be monitored closely.

[187] Finally, if there is any change in Mr. Dirks circumstances/elevations in his risk factors Dr. Cooper recommends that Mr. Dirks' risk be reassessed including his risk for IPV if and when he is in an intimate relationship in the community and if incarcerated and considered for private family visits, his risk for IPV should also be reassessed.

DISCUSSION

Should Mr. Dirks be Designated a Dangerous Offender?

[188] While Crown relies on ss. 753(1)(a)(i) and 753(1)(b) in seeking a designation of Mr. Dirks as a dangerous offender, their primary argument was based on subsection (b). The Crown submits that the ultimate question before the Court is how to achieve the statutory objective of protecting the public.

[189] As I have found the presumption in s. 753(1.1) applies, the conditions in both s. 753(1)(a)(i) and s. 753(1)(b) are presumed to have been met, unless Mr. Dirks can prove the contrary on a balance of probabilities.

Serious Personal Injury Offence

[190] There is no dispute that the predicate offence is a serious personal injury offence within the meaning of s. 752.

Section 753(1) Criteria

[191] As I have noted earlier, under s. 753(1)(a)(i), there must be:

- a) a pattern of repetitive behaviour;
- b) the predicate offence must form part of the pattern;
- c) the pattern must show a failure by the offender to restrain his behaviour in the past; and
- d) the pattern must show a likelihood of death, injury, or severe psychological damage to other persons through failure to restrain his behaviour in the future.

[192] Section 753(1)(b) requires that a) the offender's past conduct shows a failure to control his or her sexual impulses and b) a likelihood that he or she would cause injury, pain, or other evil to other persons through his or her failure to control his or her sexual impulses.

Pattern of Behaviour

[193] I will turn first to s. 753(1)(a)(i). Mr. Dirks' predicate offence combined with his earlier 2001 and 2003 sexual assault convictions constitute a pattern of repetitive behaviour showing a failure to restrain his behaviour. I agree with the Crown that Mr. Dirks has exhibited two patterns: a pattern of violence towards women generally, and a pattern of sexual violence towards women with whom he is in an intimate relationship. These patterns show a failure on the part of Mr. Dirks to restrain his behavior in the past.

- [194] Mr. Dirks has not rebutted the presumption that he exhibits this pattern of repetitive behaviour. On the contrary, Mr. Dirks' evidence explicitly and implicitly acknowledges this pattern.
- [195] Applying s. 753(1)(b), Mr. Dirks' past conduct shows a failure to control his sexual impulses. Mr. Dirks has not rebutted the presumption that his past conduct shows a failure to control his sexual impulses. The assaults on each of the three victims including the predicate offence demonstrate a failure by Mr. Dirks to restrain his behaviour in the past and to control his sexual impulses even after undertaking treatment on more than occasion.

Likelihood of Harm

- [196] It is also presumed that, under s. 753(1)(a)(j), the pattern shows a likelihood that Mr. Dirks will cause death, injury, or severe psychological damage to other persons through his failure to restrain his behaviour in the future, and under s. 753(1)(b), that the pattern shows a likelihood that he will cause injury, pain, or other evil to other persons through his failure to control his sexual impulses in the future.
- [197] Mr. Dirks' history of violence and sexual violence have caused physical and psychological damage and injury to the victims. G.T.'s victim impact statement is demonstrative of this. It cannot be disputed that if he were to reoffend, it would exact physical and psychological damage, injury, pain, or other evil on other persons.
- [198] The Supreme Court in Boutilier was clear that there must be a high likelihood of harmful recidivism and that the behaviour is intractable. This requires the court to assess the future threat posed by Mr. Dirks. As the Supreme Court stated in Boutilier at para. 44: "During the application hearing, the Crown or the accused must present any prospective evidence concerning risk, intractability, or treatment programs, including the required assessment report addressing prospect of treatment options".
- [199] Mr. Dirks argues that his future risk of hurting others does not rise to the "high likelihood" that the test requires. Mr. Dirks submits that he has not victim blamed, has taken responsibility for his actions, and has pursued treatment and educational opportunities while in custody.
- [200] He further recognizes certain circumstances and factors increase his risk of recidivism. Specifically, Mr. Dirks has committed to not seeking an intimate partner upon his release from prison, as he acknowledges that it is in these circumstances that his dangerous conduct has arisen. Mr. Dirks is willing to accept treatment and follow the plan that Dr. Cooper has recommended.
- [201] I agree with the Crown that treatment thus far has proven ineffectual, and Mr. Dirks' asserted commitment to following treatment plans is unrealistic. In my view, Mr. Dirks' purported commitment to avoiding intimate relationships with women is impossible to ensure or monitor. This was also echoed by Dr. Cooper.

[202] I have also taken into consideration that Mr. Dirks has continued to commit sexual violence despite receiving high and moderate sex offender treatment programs followed by the completion of the maintenance program on more than one occasion. Considering Mr. Dirks' past behaviour, as well as Dr. Cooper's assessment of a high risk for sexual violence, I am satisfied that there exists a high likelihood of Mr. Dirks causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses.

[203] On the likelihood of Mr. Dirks re-offending in situations involving an intimate partner, Dr. Cooper's opinion is relevant, which I have considered in my assessment. Dr. Cooper stated:

My opinion is that at the current state of affairs with Mr. Dirks, he's a high risk for intimate partner violent recidivism. If he was in a relationship in the near future and if there was conflict or that relationship ended, that would be a ripe time for violence for Mr. Dirks and I think that he's shown that in his past.

I'm not able to say whether that's a hundred percent certainty. What I'm able to say, or at least suggest, is that he, relative to other individuals convicted of similar crimes, is at a high risk to reoffend in that way.

For example, if Mr. Dirks was released right now and -- I would view him as a high risk for intimate partner violence. Would that happen right away? Probably not. I think what may happen is that if there was conflict within that relationship, or if his partner ended that relationship, he would still be high risk and I would suggest that high -- that his risk would be imminent.

[204] Mr. Dirks submits that he has gained a considerable amount of insight into his past behaviour. He gave evidence about how retrospectively he sees his past actions and failures. Yet, in his interview with Dr. Cooper on January 1, 2025, Mr. Dirks acknowledged many risk factors, but did not indicate relationships as being a relevant risk factor.

[205] Mr. Dirks points to the fact that he is currently single and has been for four and a half years and that this is the longest he has been single since elementary school. In his words he has always been very co-dependent. He informed the court that he does not want to be in a relationship, thus eliminating risks that he will be distracted while attending treatment. However, I am skeptical of this given that his past actions do not reflect this. I also note that on January 1, 2025, in his subsequent interview, he told Dr. Cooper that while he is currently single, he wants an intimate relationship in the future and that he would be able to handle conflicts in an intimate relationship by taking time outs and talking with his supports.

[206] Mr. Dirks is willing to accept treatment and follow the plan that Dr. Cooper laid out in his 2022 report. Mr. Dirks says his behaviour is not intractable into the future because he does not present behaviour that is insurmountable.

[207] Dr. Cooper discussed a treatment plan that would address Mr. Dirks' ability to implement the interpersonal skills learned from sexual offender programming. That plan will combine therapy for BPD in conjunction with the high intensity sex offender treatment

program, the multi-target program, and a consultation with a physician for that person to decide a medication regime. Dr. Cooper also stated that this can be administered in both provincial and federal institutions and he also offers them privately. I note that Dr. Cooper met with Mr. Dirks in 2022 when he made these recommendations. Yet, Mr. Dirks did not make any serious efforts to commence this therapy.

- [208] In his testimony, Dr. Cooper said that Mr. Dirks' treatment prognosis is heavily guarded as is the likelihood that his risk could be effectively managed in the community in the foreseeable future even with the completion of risk relevant intervention and close supervision.
- [209] In my view, while Mr. Dirks may be sincere in his willingness to participate in the programs recommended by Dr. Cooper and change his behaviour, this is nothing more than a statement of hope. I am satisfied that the evidence supports a high likelihood of harmful recidivism by Mr. Dirks and his conduct is intractable.
- [210] In the designation phase, on the whole of evidence, I am satisfied beyond a reasonable doubt that Mr. Dirks, despite his current expressions of willingness to participate in programs that he has previously undertaken along with new ones recommended by Dr. Cooper, will fail to restrain his behaviour, and will fail to control his sexual impulses in the future. It follows that I am satisfied that Mr. Dirks is a dangerous offender.

What is the Appropriate Penalty?

- [211] In order to determine the fittest sentence, this Court must "conduct a thorough inquiry" into the possibility of controlling the offender's risk: Boutilier, at paras. 68, 76. The Court must consider whether a lesser sentence would sufficiently protect the public. The offender's moral culpability, the seriousness of the offence and mitigating factors are each part of the sentencing process under the dangerous offender scheme: Boutilier, at para. 63.
- [212] In considering what the appropriate penalty should be, I have also considered Mr. Dirks' treatment record, diagnoses and his motivation for change.
- [213] I am not satisfied that a period of probation or parole would adequately protect the public against a serious personal injury offence.
- [214] Is a determinate sentence followed by a long term supervision order an appropriate sentence? Mr. Dirks submits that a determinate sentence of at least 7 years followed by a LTSO will adequately protect the public.
- [215] He submits that the public can be adequately protected through a less intrusive sentence than an indeterminate sentence. Mr. Dirks submits that he should not receive the harshest sentence available at law. Once again, he emphasizes that his treatment has had some success in the past. With respect, I do not agree. Mr. Dirks says that he is amenable to continuing treatment in the future.

- [216] Mr. Dirks relies on Dr. Cooper's report that, if combined with dialectical behavioural therapy, the sex offender treatment will be useful, and potentially even more so since it will not be Mr. Dirks' first time doing the program. Mr. Dirks is seeking a sentence that involves supervision in the community with conditions to safeguard against the risk if he becomes apathetic towards treatment.
- [217] The Crown submits that the court cannot be satisfied that, if given a penalty that is less restrictive than an indeterminate sentence, the public will be adequately protected from the risk of harm Mr. Dirks poses. The Crown argues that LTSO in lieu of an indeterminate sentence is not sufficient to protect the public. Imposing an LTSO as opposed to an indeterminate sentence means that Mr. Dirks will have a finite release date that cannot be extended, and the Court itself does not have control over the conditions that are imposed on Mr. Dirks upon his release, as this is the jurisdiction of the PBC.
- [218] If Mr. Dirks were to be released under a LTSO, he would be required to live at community residential facility along with increased conditions imposed by the Court. Given Mr. Dirks' unenviable record of non-compliance with court orders and breaches of probation including no contact with females under the age of 19, I have serious concerns on whether Mr. Dirks' risk can be adequately controlled in the community.
- [219] I have already noted my concerns about Mr. Dirks' treatability. Mr. Dirks has been given countless opportunities to learn the tools required to manage his risk. During his last period of incarceration, he engaged in high intensity sex offender programming and substance abuse programs followed by maintenance programming, only to then commit another serious sexual assault on an intimate partner.
- [220] Dr. Cooper's opinion is that Mr. Dirks will require a high level of structure, monitoring and supervision. I am not satisfied that a community residential facility can adequately address the concerns raised by Dr. Cooper. In my view, the nature and severity of Mr. Dirks' identified risk cannot be sufficiently contained in the community in a non-custodial setting, so as to protect the public. In all of the circumstances, including his poor performance with court orders, I do not have a belief that a lesser measure than an indeterminate sentence will adequately protect the public.
- [221] In my view, there is not a reasonable expectation that lesser sanctions will adequately protect the public against the commission of another serious personal injury offence within the timeframe of a determinate sentence and a LTSO.
- [222] It must be remembered that an indeterminate sentence is not a permanent custodial sentence. Mr. Dirks will be eligible to apply for UTA and ETA immediately and parole soon thereafter. He will be eligible for annual reviews and then at the seven year mark, he will be entitled to legislated reviews for both day and full parole with reviews thereafter. While I appreciate it is simply a review, Mr. Dirks is encouraged to undertake the programming recommended by Dr. Cooper, which will minimize his risk giving him a greater chance of success on obtaining parole.

[223] Accordingly, I sentence Mr. Dirks as a dangerous offender to an indeterminate sentence.

[224] I also make the following ancillary orders:

- Mr. Dirks will comply with the terms of the Sex Offender Information Registration Act, S.C. 2004, c. 10 for life, pursuant to s. 490.012(1) of the Code;
 - An order pursuant to s. 743.21 of the Code prohibiting communication, directly or indirectly, with G.T. and Kristen Dirks;
 - A firearms prohibition for life pursuant to s. 109(1)(a) of the Code;
 - A mandatory DNA order pursuant to s. 487.051(1) of the Code;
 - Pursuant to s. 760 of the Code, I direct that a copy of the expert reports and the transcript of their testimony be forwarded to corrections, together with my reasons for judgment.
- [225] Finally, pursuant to s. 737(2.1) of the Code, I am satisfied that due to the length of time Mr. Dirks has spent in custody, a requirement to pay the victim fine surcharge would cause him undue hardship. Therefore, I will waive the requirement for the payment of that victim fine surcharge.

[226] On a final note. I wish to thank counsel for their excellent and thorough submissions.

"Girn J."

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