

CANADA / JUDGMENT

R. v. W.G. Brown

2002 BCSC 567

COURT

Supreme Court of British Columbia

DECIDED

18 April 2002

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

Source record

2002 BCSC 567

Citation:

R. v. W.G. Brown

Date: 20020418

2002 BCSC 567

Docket:

X051787

Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN

AND:

WILLIAM GIBSON BROWN

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE D. SMITH

Counsel for the Crown:

W. Dawson

Counsel for the Accused:

T. La Liberte, Q.C.

Date and Place of Hearing:

May 7-11, 14, 17, 18, 2001

June 19-21, 2001

July 26, August 9, 2001

January 7, 10, 11, 2002

New Westminster, BC

INTRODUCTION

- [1] On January 29, 1999, William Gibson Brown was convicted of sexually assaulting a five-year-old boy ("the predicate offence"). An appeal of his conviction was dismissed on March 15, 2001, (*R. v. W.G.B.*, 2001 BCCA 230). Following his conviction for the predicate offence, the Crown made application, with the consent of the Attorney-General, to have Mr. Brown declared a dangerous offender or, in the alternative, a long-term offender, pursuant to the provisions of Part XXIV of the Criminal Code of Canada ("the Code"). At issue in this sentencing hearing is whether Mr. Brown's pattern of repetitive behaviour, which is admittedly harmful and causes injury, is substantially or pathologically intractable, or whether it is treatable and can eventually be controlled in the community within the limits defined by the long-term offender provisions of the Code.
- [2] The Crown relies on s. 753(a)(i) and s. 753(b) of the Code as the bases for its application to designate Mr. Brown a dangerous offender. Those provisions apply to an offender who has been convicted of a serious personal injury offence, which by definition in s. 752(b) of the Code includes the offence of sexual assault, and meets the following criteria as set out in s. 753(a)(i) and s. 753(b):
1. s. 753(a)(i): a pattern of repetitive behaviour ... showing a failure to restrain his or her behaviour and a likelihood of his or her causing death or injury ... through failure in the future to restrain his or her behaviour...

OR

2. s. 753(b): by his conduct in any sexual matter ... has shown a failure to control his or her sexual impulses and a likelihood of his or her causing injury ... through failure in the future to control his or her sexual impulses.
- [3] The predicate offence occurred after Part XXVI of the Code was amended on August 1, 1997 ("the amended provisions"). The effect of the amended provisions was thoroughly canvassed in the companion decisions of *R. v. Johnson* (2001), 158 C.C.C. (3d) 155, 2001 BCCA 456 and *R. v. Edgar* (2001), 158 C.C.C. (3d) 212, 2001 BCCA 457. At para. 104 in *Johnston*, Ryan J.A. summarized the amended provisions as follows:
1. ... Once a court determines that an offender meets the dangerous offender criteria, the offender should be declared a dangerous offender. There is no residual discretion not to declare the offender a dangerous offender.

...

2. ... Before a court may declare a person to be a dangerous offender, it must find that the offender's condition is "substantially or pathologically intractable". This means that the question of treatability must be examined in determining whether the offender is dangerous... [The amended provisions have] eliminated the ability of the court to sentence a person found to be a dangerous offender to a determinate sentence. It is essential that the treatability analysis be done under these new provisions at the designation stage.
3. Under the new provisions, if an offender is likely to be cured of his or her condition within the parameters of the appropriate determinate sentence, the condition cannot be said to be intractable and he or she ought not to be declared a dangerous offender. If the offender may not be cured, but may be controlled in the community within the limits defined by a long-term offender sentence, the offender should not be declared a dangerous offender, but a long-term offender instead. The long-term offender provisions of Part XXIV of the Code are thus more beneficial to an offender than the former provisions ...
- [4] Ryan J.A. adopted the language of La Forest J. in *Lyons v. The Queen* (1987), 37 C.C.C. (3d) 1 (S.C.C.) by defining the concept of dangerousness as a pattern of behaviour or conduct that is "substantially or pathologically intractable"; that is, conduct which is "deep-seated or difficult to cure". (para. 70).
- [5] There no longer exists a residual discretion to decline to designate an individual as a dangerous offender if the criteria in ss. 753(a)(i) and 753(b) of the Code have been met. The amended provisions now require the treatability analysis of the offender's conduct to be conducted at the designation stage of the hearing rather than at the sentencing stage as occurred before the amended provisions were implemented. Thus, the offender's prospects of treatment, control and management in the community now feature a prominent role in determining the level of intractability of an offender's conduct.
- [6] This approach was also taken by Lambert J.A. in the earlier decision of *R. v. Poole* (2000), 142 B.C.A.C. 151, 2000 BCCA 481, where he discussed the timing of the treatability analysis at para. 16:
- ... possibility and the potentiality for treatment must now form a part of the consideration of the circumstance of "the likelihood of causing death or injury to other persons ... through failure in the future to restrain his behaviour".
- [7] In summary, therefore, if the Crown establishes beyond a reasonable doubt that the offender's pattern of behaviour or conduct meets the criteria set out in s. 753(a)(i) or s. 753(b), the amended provisions require the sentencing judge to impose an indeterminate sentence. If the offender does not meet the criteria for dangerous offender status, the court may consider the long-term offender provisions of s. 753.1(1) of the Code as an alternate sentence to the application.
- [8] The criteria for a long-term offender designation include:

1. The appropriate sentence of incarceration must be two years or more;
 2. There must be a substantial risk that the offender will re-offend; and,
 3. There must be a reasonable possibility of eventual control of the risk in the community.
- [9] A "substantial risk of re-offending" is defined in terms similar to those found in the dangerous offender provisions. These include a conviction for certain specified sexual offences (including sexual assault), and a pattern of repetitive behaviour or sexual conduct (including the predicate offence) that will cause serious harm to others and for which there is a likelihood in the future of a failure to control.
- [10] The essential difference between the dangerous offender and the long-term offender designations is the finding in the latter that the offender's condition is treatable, (even if not curable), and eventually controllable in the community under supervision for a period of up to ten years. In such circumstances, the offender's pattern of behaviour or conduct would not be "substantially or pathologically intractable".
- [11] If the offender does not meet the criteria for either a dangerous or long-term offender designation, the court may still impose a determinate sentence.
- [12] I turn now to Mr. Brown's background history in order to address the issue of whether his pattern of behaviour, which is admittedly harmful, meets the description of being "substantially or pathologically intractable", or whether his conduct is treatable and eventually controllable in the community.

SUMMARY OF HISTORICAL OFFENDING AND ASSESSMENTS

- [13] Mr. Brown has a criminal record of 38 convictions spanning a 30 year time frame from 1969 to 1998. He has also admitted to, or has been implicated in, a number of other offences for which he has not been charged.
- [14] His criminal convictions include 16 for possession of stolen property, three for theft, three for fraud, two for break and enter with intent, and one each for attempted break and enter, possession of house-breaking tools, impersonation, criminal negligence in the operation of a motor vehicle, and disobeying a court order. Nine of his convictions were for sexual offences including the rape of his daughter and the rape of a woman during a residential break and enter.
- [15] Over twenty mental health professionals, one neurologist, a vocational guidance counsellor, and at least one educator have formally assessed him. As part of the assessments he has completed a variety of psychological tests. Many of the earlier assessments relied on his self-reporting for information regarding his personal background. More recently he has admitted that much of his self-reported history was fabricated. All of the assessments concluded that he was a high risk to re-offend.

PERSONAL BACKGROUND

- [16] Mr. Brown was apprehended by the Children's Aid Society ("CAS") of Winnipeg, Manitoba, at about six months of age. He remained in care until he reached the age of majority (18) in 1970. During that time he was placed in seven different foster homes. He was described as being "constitutionally hyperactive" and it is believed, in hindsight, he probably suffered from Attention Deficit Hyperactive Disorder ("ADHD").
- [17] In many of the pre-1992 assessments Mr. Brown alleged that he had been physically, sexually, and emotionally abused as a child, particularly in one placement where he had lived for about eight years. He provided very graphic descriptions of the alleged abuse, which, had it occurred, would have constituted extremely serious offending against a child and might have, to some extent, offered some explanation for Mr. Brown's subsequent criminal behaviour.
- [18] However, a detailed review of the CAS records by the social worker who had supervised Mr. Brown as a child in care showed no medical, hospital, or other records of any alleged abuse. In 1992, after completing the Sex Offender Program at the Regional Psychiatric Centre at Abbotsford, B.C. ("the RPC Program"), Mr. Brown admitted that much of his reported history, including the allegations of abuse during his childhood, had been fabricated. The CAS, however, did have records of several complaints regarding Mr. Brown lying and stealing as a teenager.
1. Early sexual offending
- [19] At age 16, Mr. Brown was involved in his first sexual offence for which he was charged criminally. There is no record of the disposition of the charge but it seems later to have been dropped. Subsequently, Mr. Brown admitted to several persons that he had committed the offence.
- [20] The offence occurred on July 24, 1968, and involved an indecent assault upon a two-year-old boy. The child lived in the apartment building where Mr. Brown delivered papers. Upon finding the child alone in the laundry room of the apartment building, Mr. Brown pulled the child's pants down and ejaculated on the child's anus and penis.
- [21] At age 17, Mr. Brown attempted to indecently assault another young boy. On February 17, 1969, while in the basement of an apartment building, he had just removed the underwear of the three-year-old boy when the child's mother came upon him. After being detained in custody, Mr. Brown denied that he had sexually touched the boy but admitted that he had done it "a few times before". Although Mr. Brown was not charged as a juvenile, in April, 1969, he was placed on probation until September, 1969.

- [22] Mr. Brown's sexually deviant behaviour continued as an adult. On November 14, 1969, he was convicted of three counts of indecent assault. The offences had occurred on September 15, 1969, October 8, 1969, and October 15, 1969, respectively. They involved three six-year-old girls whose genitals he had licked and fondled. Mr. Brown pled guilty to all three offences and received a two year custodial sentence. His sentence appeal was dismissed.
- [23] A psychiatric report prepared by the Director of Forensic Services for his sentencing hearing stated that Mr. Brown did not suffer from a psychotic mental disorder but that he did have a "schizoid personality" with superimposed immature personality with sexual deviation. There was apparently no available psychiatric treatment at that time for this personality disorder. The report concluded that "... Brown does not appear to have sufficient super ego strength to overcome the deviant sexual drives which he experiences".
2. Other criminal behaviour
- [24] Upon his release from prison in March, 1971, Mr. Brown moved to Vancouver, then Medicine Hat, and in September, 1971, to Edmonton. In both Medicine Hat and Edmonton he continued to be involved in criminal activity. On December 21, 1971, he pled guilty to fraudulently obtaining food. A year later, on December 21, 1972, he pled guilty to theft under \$200. He received a fine of \$25 for each conviction. On August 21, 1975, and September 11, 1975, Mr. Brown entered guilty pleas to criminal negligence in the operation of a motor vehicle and theft over \$200 respectively for which he received concurrent four month sentences. On December 2, 1977, he was further convicted of break and enter with intent for which he received a sentence of six months on appeal. On June 18, 1979, he pled guilty to possession of stolen property over \$200, impersonation with intent, and possession of house breaking instruments. For the latter convictions he received custodial sentences of four months, a consecutive four months, and thirty days respectively.
- [25] During this time, Mr. Brown experienced severe emotional and mental instability that included abuse of prescription drugs. He was unable to maintain steady employment and attempted suicide on several occasions, albeit more as an attention seeking device. A 1975 pre-sentence report commented that probation was not an option for Mr. Brown as he was not willing to be supervised and was unable to tell the truth. It described Mr. Brown as "a very immature young man with a rather unrealistic view towards the future. His attitude could be considered poor and he appears to be unable to relate the full truth when questioned in regard to certain matters." A 1978 pre-sentence report stated that he denied committing the offence of break and enter (to which he had pled guilty) and showed no remorse.
- [26] In 1972, Mr. Brown became involved in a relationship that resulted in the birth of his daughter J.L. on September 11, 1973. On April 8, 1974, he married J.L.'s mother. They were later divorced in 1985.

3. Sexual assault of his daughter

- [27] On November 22, 1980, Mr. Brown was under investigation as a suspect in a number of break and enters in the Edmonton area. In that regard, his residence was searched and resulted in the police finding some nude photos of his wife, some other unknown females and two Polaroid photographs of his then seven-year-old daughter. The photographs of his daughter displayed her with her legs up in the air, holding her vagina open with two hands. In a subsequent police interview the child allegedly reported that her father had undressed her, touched her vagina, attempted digital penetration of her vagina, simulated intercourse, ejaculated in the vaginal area and made her fondle his penis.
- [28] Dr. Rouget, a pediatrician who examined J.L. on November 28, 1980, reported that following a general conversation with the child, she promptly told him of a long history of molestation by her father who had told her that she was not to tell anyone about what they did together. After a physical examination, Dr. Rouget noted the child's vagina was very abnormal with multiple old tears of the hymen and large scar tissue into the opening and along the wall of the vagina. Her medical records had noted that she had required surgery for a large laceration to her vagina on April 1, 1976, and that she was in the hospital again in May, 1977, for a large vaginal laceration. It was Dr. Rouget's opinion that J.L. had been subjected to repeated and severe sexual abuse.
- [29] In several of the subsequent assessments, Mr. Brown claimed J.L.'s 1976 and 1977 injuries were self-inflicted.
- [30] On November 28, 1980, Mr. Brown was arrested on a charge of indecently assaulting his daughter. He admitted taking the photographs but denied the sexual assault although he said that he would plead guilty to the offence if he were not granted bail. He was released on bail on condition that he have no contact with his wife or daughter. In spite of this prohibition, he had frequent contact with them, which he alleged was at their invitation.
- [31] On January 23, 1981, Mr. Brown pled guilty to a charge of "indecent assault upon a female" in regard to his sexual assault of his daughter. He also pled guilty to 13 counts of possession of stolen property, break and enter with intent, attempted break and enter and failure to comply with a term of bail. He received an aggregate sentence of nine years and three months of which four years were for the sexual assault of his daughter.
- [32] J.L., now 27, testified at this sentencing hearing. She has had a difficult life. She has been involved in a number of relationships, had three children from three different fathers, and has had to relinquish the care of all of her children. She has no memory of her father sexually abusing her except for two snapshot recollections. She recalls one incident when they were in her parents' bedroom and he was lying naked on the bed on top of her. In the other incident she recalled being in his car where he pulled down her pants and spanked her on her bare buttocks for something that in her view did not warrant such a response.

[33] Her inability to recall this terrible period of her childhood is not unusual according to many of the professionals in this field. They advise that it is not uncommon for victims of childhood sexual abuse to block traumatic memories of the abuse. J.L. was severely traumatized by her father's sexual abuse and would appear to fall within this category of victim.

4. Sexual assault during break and enter

[34] On December 27, 1980, while on bail after being charged with the indecent assault of his daughter, Mr. Brown broke into a woman's apartment, raped her, and stole some items from her home. The effect of this assault on the victim was very traumatic. It resulted in her moving from her home and having a lingering fear that the offence would be repeated even though she knew that Mr. Brown had been arrested and was in custody.

[35] Around the time of this offence, there had been a series of break and enters into apartments of young women, many who were single parents, and many who were sexually assaulted by the home invader. The suspect was described as a person wearing army fatigues with a fluorescent "X" on the back and stripes on the arms. The Edmonton police had Mr. Brown under surveillance as a suspect in these offences as he had been seen wearing the same type of unique clothing in the condominium areas where the offences had occurred.

[36] On September 17, 1981, following a jury trial on the charge, Mr. Brown was convicted of "indecent assault on a female" for the rape of the woman whose home he had broken into. For that conviction he was sentenced to four years in custody, consecutive to his aggregate sentence of nine years and three months. His total aggregate sentence was thirteen years and three months.

5. Assessments during the 13 year aggregate sentence

[37] At the outset of his sentence, Mr. Brown maintained his innocence in regard to having committed any sexual wrongdoing, especially against his daughter. He also denied having sexually deviant propensities. He claimed he did not remember having committed any break and enters stating that he was on valium at the time. In regard to the breach of his bail condition that he stay away from his wife and child, he said they wanted him to return home. He expressed no remorse for any of his actions.

[38] While at the Saskatchewan Penitentiary, he completed some psychological tests. The results indicated that he has a level of intelligence in the "Bright Normal" range and has well-developed social skills. However, he was also described as "impulsive, irresponsible, immature", with a superficial show of feelings and at times manipulative. Further testing characterized him as "hedonistic, outgoing, dominant, happy-go-lucky, clever, opportunistic, amoral, charming, popular, and manipulative". He falls within a profile as having "social skills [that] may appear quite good, [but which] eventually display[s] lack of judgement, poor internal controls and neglect of obligations" and "typically show flagrant excesses in their search for pleasure and self-stimulation". He also experiences anxious and

depressive moods, along with anger and tensions, which can cause self-destructive thoughts and actions.

- [39] It was not felt that he would benefit from a sex offender program because of his continued denial of any sexual offending or deviant sexual behaviour. However, on April 18, 1982, at his request, he was transferred to the RPC Program. After five months, he left the Program by mutual agreement because of his dishonesty with the group, his lack of motivation for treatment, and his attempted negative manipulations. It was also noted that he failed to understand the severity of his criminal activities. His prognosis for release into the community at his Mandatory Supervision Date of August 18, 1988 ("MSD"), was considered "guarded to poor". It was recommended that he be involved in a long-term treatment program to address his many problems.
- [40] By 1984, after participation in a sex therapy group and receipt of some psychological counselling, Mr. Brown started to acknowledge his sexual deviance. Day parole was still denied to him. While he expressed some understanding of his offending, it was felt that he continued to be a high risk to re-offend unless he successfully completed the RPC Program.
- [41] To that end, on June 28, 1984, Mr. Brown was transferred from the Saskatchewan Penitentiary to the Mountain Institution ("Mountain") near Chilliwack. Further psychometric testing found elevated depressive features. He was described as "suspicious, withdrawn, aloof ... [with] difficulty in his sphere of emotions ... [and] will block, repress or deny their existence. Test results indicate a high escape risk and a high probability of parole violation."
- [42] His requests for parole, day parole and unescorted temporary absences ("UTA") continued to be denied.
- [43] On November 7, 1984, Mr. Brown was again admitted to the RPC Program. Again in July, 1995, he was asked to leave the Program due to his lack of commitment to treatment and motivation to change.
- [44] Mr. Brown showed some improvement over time. By 1985, he openly admitted his offences although he did not address them in any depth. However, at the same time he tended to present himself as a victim and to rationalize and minimize his involvement. He successfully completed an alcohol and drug program and continued with regular counselling sessions with a staff psychologist. While at Mountain he had a satisfactory work record and kept a relatively low profile. It was felt, however, that he continued to show signs of manipulative behaviour and his requests for a UTA were denied.
- [45] By 1986, Mr. Brown had developed a fatalistic outlook about his future. He complained of depression for which he received medication. He was bored and frustrated. Through acts of self-mutilation and threats of suicide he attempted to manipulate people. His requests for Escorted Temporary Absences ("ETA") were denied due to his unstable behaviour. It was recommended that he receive intensive psychotherapy, including a return to the RPC

Program, before he would be considered for day parole. On August 22, 1986, the National Parole Board noted that: "Clearly the man is deteriorating and is ... more dangerous now than when [seen] two years ago. He needs help, and lots of it. It is very unlikely he will seek it."

- [46] Dr. Gordon Bulmer, who has a three-year residency in psychiatry and who was a member of the RPC ambulatory medical services team that attended at Mountain, periodically saw Mr. Brown between 1986 and 1990. He described Mr. Brown as a cold individual who tended to intellectualize rather than deal with the emotional impact of his offending upon his victims. He was of the view that Mr. Brown's self-mutilation was a reaction to his anger, frustration and self-pity.
- [47] Although Mr. Brown had a fear of returning to the RPC Program he did make another attempt on May 25, 1987. Again he was found to be unwilling or unable to meet the criteria for his treatment and showed little, if any, motivation. He left the Program on July 29, 1987. His discharge summary noted that, "Mr. Brown seems unable and/or unwilling to give up his anti-social sexual behaviour as a paedophile, rapist and homosexual who is prone to sadistic, self destructive behaviour."
- [48] Mr. Gerald Cyr, a staff psychologist at Mountain, conducted regular therapeutic counselling sessions with Mr. Brown between 1987 and 1991. He described Mr. Brown as emotionally labile and requiring intensive treatment to deal with issues of anger management and insight into his offending. However, Mr. Brown was reluctant to take any treatment. Mr. Cyr diagnosed Mr. Brown as having a severe personality disorder although he also saw periodic signs of maturity and rational thought. At Mr. Brown's request, Mr. Cyr attempted to arrange contact between Mr. Brown and his natural mother but after one meeting his mother requested that Mr. Brown not contact her again.
- [49] In advance of his MSD, Dr. Robert Ley, a clinical psychologist, conducted an assessment of Mr. Brown. Dr. Ley concluded that Mr. Brown had a severe personality disorder of a mixed type, with borderline, antisocial, and histrionic features. He diagnosed Mr. Brown as having severe paraphilia, which was multifarious. He was of the view that Mr. Brown was very dangerous and "an enormous and perpetual risk to the public", and that he required sustained, extensive and intensive psychological treatment. He regarded Mr. Brown as one of the two or three most disturbed people he had assessed in the last five years.
- [50] On May 18, 1988, the National Parole Board ("the Board") made an order for Mr. Brown's continued detention. In August, 1988, at Mr. Brown's request, he was once again transferred to the RPC Program. He successfully completed a number of the assignments but continued to show signs of dishonesty, attempted manipulation of therapy staff, and focused on his own victimization. While in the Program he was found in possession of pornographic literature which he used to attempt to manipulate peers and to gain favours from off-ward peers. By January, 1989, he was asked to leave the Program as he was "not motivated to continue in therapy".

- [51] The discharge summary diagnosed Mr. Brown with an Antisocial Personality Disorder of a Passive Aggressive type, having a sexual deviation and reactive depression. It gave him a poor prognosis. It concluded that with his history of violent sexual offending and his lack of treatment, he remained a high risk to re-offend and cause serious harm to someone if released into the community before his Warrant Expiry Date ("WED") on April 22, 1994.
- [52] In 1990, Corrections Service of Canada ("CSC") retained Dr. Clifford Ratzlaff to complete a further psychological assessment of Mr. Brown for the purpose of determining if his continued detention was warranted. In his report of April 13, 1990, Dr. Ratzlaff concluded that while Mr. Brown was not psychotic he had an Antisocial Personality Disorder with psychotic features, secondary features of deviant sexuality, and tertiary features of very serious neurotic depression bordering on psychosis when alone and unsupervised.
- [53] Dr. Ratzlaff was of the view that Mr. Brown was very emotionally disturbed, lacked empathy and had no sense of remorse for his victims. Given that past treatment had been unsuccessful, Dr. Ratzlaff recommended that Mr. Brown receive intensive psychotherapy to deal with his own problems. He felt that until Mr. Brown began to address his own problems he could not successfully receive treatment for his victimization of others. He concluded by recommending that Mr. Brown continue to be detained until he successfully completed the RPC Program. Until then, in his view Mr. Brown continued to pose a risk to the community.
- [54] On Dr. Ratzlaff's recommendation, Mr. Brown was granted supervised UTAs in order to attend six, one hour psychotherapy sessions with Dr. Ratzlaff over a six month period. During these sessions Mr. Brown provided Dr. Ratzlaff with a fabricated history of his childhood. It included numerous accounts of severe physical, emotional and sexual abuse. While Dr. Ratzlaff had considerable empathy for Mr. Brown, after six months of treatment he concluded that Mr. Brown had made no progress. He recommended the individual psychotherapy sessions be terminated.
- [55] Dr. Ratzlaff described his long-term prognosis for Mr. Brown as "dark and uncertain". He was of the view that Mr. Brown continued to be a high risk to re-offend against children and should not be released before his WED. This opinion was further confirmed when, three days after Dr. Ratzlaff's final report of October 13, 1990, Mr. Brown was found to have in his cell child pornography, three items of ripped children's clothing that Mr. Brown used for masturbation, and a wooden paddle.
- [56] Dr. Derrick Eaves, a forensic psychiatrist, was next retained by CSC to conduct an assessment of Mr. Brown. He prepared three reports dated April 11, 1991, August 30, 1992, and April 21, 1993, respectively. Between the second and third reports Mr. Brown attended and successfully completed the RPC Program.
- [57] At Mr. Brown's request, Dr. Eaves did not review any of the collateral information supplied to him before interviewing Mr. Brown and completing his first report of April 11, 1991. Again, the history Mr. Brown gave to Dr. Eaves for this first report was largely fabricated. Mr. Brown did, however, admit that he had sexually abused his daughter J.L. over an extended period of

time and that the abuse had included sexual intercourse. He also admitted that during his teens he had committed a number of break and enters that were sexually motivated and during which he had raped the woman occupants. He said he carried a gun during these offences and that he obtained thrills from this activity and by staying one step ahead of the police. He also admitted to having a strong sex drive that included an interest in younger persons. He denied having any sexual fantasies of children.

- [58] Dr. Eaves diagnosed Mr. Brown as having an Antisocial Personality Disorder "with self-centredness and hostility so profound that the diagnosis of psychopathy would also be merited". He questioned Mr. Brown's truthfulness regarding his denial of sexual fantasies involving children when he learned of the incident in which Mr. Brown had been found in possession of items of children's clothing. He concluded his initial assessment by describing Mr. Brown as "one of the most disturbed persons I have ever assessed within the prison system and his contact with treatment agencies does not appear to have produced any substantial improvement". He concluded his April 11, 1991, report by stating, "Therapeutic interventions, whilst necessary, are unlikely to modify his personality or his sexuality in significant ways and the risk of recidivism must therefore remain high."
- [59] It was Dr. Eaves' opinion that Mr. Brown posed a profound risk of sexual re-offending and that he was a serious threat to himself and to others.
- [60] In spite of this finding, Dr. Eaves recommended that Mr. Brown again attempt to complete the RPC Program. However, at Mr. Brown's annual detention review by the National Parole Board on May 16, 1991, it was noted that he "remains steadfast in his refusal to participate in an intensive sex offender program at either RPC Prairies or Pacific". As a result, the Case Management Team recommended that Mr. Brown continue to be detained.
- [61] Mr. Brown's resistance to participating in the RPC Program eventually changed. In July, 1992, he again applied for and was accepted into the Program. About a month after starting the Program, Dr. Eaves interviewed Mr. Brown following which he prepared his second report of August 30, 1992.
- [62] Prior to the interview Dr. Eaves reviewed all of the collateral material he had been provided. That material, along with his interview of Mr. Brown, confirmed his initial opinion that Mr. Brown was profoundly unstable, lacked appropriate judgement, and presented enormous risk towards himself and to others. In Dr. Eaves' opinion, Mr. Brown was still not ready for release into the community and had a "very poor prognosis".
- [63] The RPC Program was very intensive and challenging for Mr. Brown. It is for a term of eight months and is reportedly the most complex and intensive sex offender program in Canada. It adopts a multidisciplinary approach that includes intensive group psychotherapy in the mornings and a variety of focused modules in the afternoons. The modules address a variety of topics including: developing effective communication skills; identifying thinking errors; identifying the offender's crime cycle in order to address relapse prevention; writing an autobiography; anger management; relationships and sexuality; and developing empathy

for the offender's victims through role-playing.

- [64] Mr. Brown's description of his crime cycle between 1972 and 1980 was very disturbing. In one short statement he described his sexuality and crimes as "Rape children, adults and daughter". His autobiography further showed a pattern of unstable relationships.
- [65] By January 28, 1993, Mr. Brown had made only minimal progress. He continued to avoid issues, had difficulty in sharing his inner feelings, and continued to experience major difficulties relating to others. In order to continue in the Program, on February 2, 1993, he was required to sign a behavioural contract which outlined the expectations for his full and active participation in the Program along with his commitment to do so.
- [66] During the second half of the Program Mr. Brown showed an improvement in his participation. For the first time he admitted to having fabricated his childhood history. He also acknowledged his variety of sexual interests which included women, men and children.
- [67] Dr. Justin O'Mahony, a clinical psychologist who was the Program Director from 1990-1998, supervised Mr. Brown's progress from June, 1992, until April, 1993. He diagnosed Mr. Brown as having an Antisocial Personality Disorder, of the Passive Aggressive type, which disorder in his opinion was not particularly amenable to treatment. He also diagnosed Mr. Brown as a paedophile based on his pattern of sexual attraction and interest in pre-pubescent and young teenage children. In his view, Mr. Brown's propensity to sexual deviancy with a variety of sexual partners was largely based on opportunity.
- [68] Mr. Brown's completion of the RPC Program did have some positive impact on his behaviour. He showed signs of some behaviour modification which the staff hoped might "slightly reduce" his opportunistic offending. However, Dr. O'Mahony felt that Mr. Brown continued to need further treatment, including another intensive sex offender program, before his risk of re-offending would decrease. He noted that Mr. Brown continued to be manipulative, resistant to change, immature and rebellious. He also thought that Mr. Brown needed to develop personal skills in relating to others and to learn to form healthy relationships.
- [69] Dr. O'Mahony described the task of reducing Mr. Brown's risk of recidivism as "daunting" in view of Mr. Brown's very complex, extensive and lifelong emotional problems. In his view, Mr. Brown continued to be a high risk to children. He also had doubts about whether Mr. Brown really appreciated the full extent of the harm he had inflicted upon his daughter. As Mr. Brown was hesitant about repeating the RPC Program, Dr. O'Mahony's prognosis remained guarded.
- [70] During the sentencing hearing Dr. O'Mahony was advised that within a month of completing the RPC Program Mr. Brown was found in possession of contraband which had been hidden in his cell. Under his mattress were found a pink lacy piece of girl's clothing, a 4x4 photograph of the buttocks of an ape, and a "girly-type" magazine. Upon learning of this, Dr. O'Mahony expressed serious concerns regarding Mr. Brown's risk of recidivism. In his

opinion, the speed with which Mr. Brown had divested himself of the gains he was thought to have made in the RPC Program did not bode well for his prognosis. Dr. O'Mahony also questioned Mr. Brown's motivation to change his behaviour.

- [71] When advised of Mr. Brown's two subsequent convictions for sexual assault of young children in 1996 and 1998 respectively, Dr. O'Mahoney opined that Mr. Brown's paedophilic tendencies had failed to be addressed to any degree and that it would appear they remained very strong. The convictions confirmed his view that Mr. Brown, even after completing the RPC Program, remained a "very, very" high risk to re-offend, especially against children and young persons, and that Mr. Brown's denial of the need for treatment was a serious issue. Dr. O'Mahoney was very pessimistic about how much more progress Mr. Brown could achieve even with further treatment. He was not optimistic that Mr. Brown could be treated and safely released into the community at a manageable risk within any fixed period of time.
- [72] Dr. Eaves' third report of April 21, 1993, was prepared after Mr. Brown had completed the RPC Program. This was the first and only time Mr. Brown had successfully completed the Program although he had attempted it on six prior occasions.
- [73] During the interview, Mr. Brown admitted to Dr. Eaves that he had fabricated much of his reported history. In Dr. Eaves' opinion while this admission represented some progress, he was concerned about Mr. Brown's pathological lying and the contents of his lies as those are features of a profound personality disturbance seen in psychopathy. In his view, Mr. Brown still tended to justify and rationalize his conduct, and continued to have little concern for the impact of his behaviour on others. Mr. Brown's inability to form stable interpersonal relationships and his difficulty in being honest, in his opinion, affected his treatability and therefore his risk of recidivism remained substantial.
- [74] This opinion was confirmed after Dr. O'Mahony was advised that contraband had been found in Mr. Brown's cell about one month after Mr. Brown had completed the RPC Program. Given this information, Dr. Eaves concluded that the RPC Program did not appear to have benefited Mr. Brown and that he continued to be preoccupied with children and young persons, all the while denying any sexual attraction to them. In Dr. Eaves' opinion, treatment was unlikely to affect Mr. Brown's prognosis, which he described as "very, very, poor". In his view, Mr. Brown was a high risk to re-offend irrespective of any treatment he received.
- [75] With Mr. Brown's WED of April 22, 1994, fast approaching, on January 20, 1994, the Board granted his request for a One Chance Statutory Release at Sumas Centre for the last three months of his sentence. Sumas Centre is a half-way house that is operated by CSC. It supervises residents on day parole shortly before their WED in preparation for their return to living in the community.

[76] Sumas Centre initially declined to accept Mr. Brown based on the length of his criminal history, the proliferation of his offences, and his apparent lack of remorse. However, the Deputy Commissioner and the Board overruled its objection and ordered Sumas Centre to accept Mr. Brown. The Board imposed six conditions on Mr. Brown's release:

1. abstain from intoxicants
2. submit to breathalyzer on demand
3. psychiatric counselling
4. psychological counselling
5. participate in community Sex Offender program
6. not be in the company of minors under 16 years of age without a responsible adult present.

[77] While at Sumas Centre between February 2, 1994, and April 22, 1994, (his "WED") Mr. Brown was supervised by Susan Larson, an experienced parole officer. Ms. Larson had a good rapport with Mr. Brown and described him as being open with her, co-operative, and having a positive attitude. She said he seemed "gung ho" to succeed in not re-offending.

[78] For awhile, Mr. Brown attended the mandatory psychiatric group sessions. He also obtained a job as a baker at Robin's Donuts in Abbotsford. When Ms. Larson advised him that he should continue with sex offender treatment after his WED she said he seemed amenable.

[79] In April, 1994, Mr. Brown lost his job at Robin's Donuts. He also started missing his group meetings. It was also noted that his participation in the group counselling sessions had been very superficial.

6. Behaviour after release from custody in 1994

[80] After his WED and release into the community, Mr. Brown contacted Ms. Larson on a few subsequent occasions if he felt he was encountering a problem. However, he advised her that he was not interested in continuing with any treatment. His last contact with her was to arrange a meeting for which he did not show up.

[81] After leaving Sumas Centre, Mr. Brown met Linda White, a woman his own age. He moved in with her at a condominium she owned in a seniors complex. About eight months later they married on August 19, 1995. However, in spite of this relationship, Mr. Brown returned to his pre-occupation with teenage girls and young children that was reminiscent of his behaviour as a young man.

[82] Aura Currie met Mr. Brown in 1994 when he was working at Robin's Donuts where she was also employed. She was 19 years old at the time. They continued to meet regularly for coffee. She did not become involved with Mr. Brown but much of his contact with her exemplified examples of inappropriate and sexualized behaviour on his part. He invited her to his apartment for drinks after he was married. He asked her to go skinny dipping with him at

Wreck Beach. And while driving her home from work one night, he took her to a provincial park by the river where he smoked a joint and then claimed to have run out of gas.

Fortunately, Ms. Currie was able to obtain a ride home with another vehicle that had also stopped in the park.

- [83] In 1994, Mr. Brown also befriended Leah Bushman, a single mother of three children now ages 13, 11 and 5. Mr. Brown was very friendly with Ms. Bushman's middle child, S.B., when she was age six or seven. S.B. referred to Mr. Brown as "Uncle Billy". He would buy her gifts and told her she was very pretty. She would also regularly sit on Mr. Brown's lap. On one occasion Ms. Bushman noticed that Mr. Brown had an erection while S.B. was sitting on his lap. She told her daughter not to bother Mr. Brown in that way.
- [84] A few months later, S.B. told her mother of an incident that had occurred between herself and Mr. Brown when she had been sitting on his lap on a bench by the pool. S.B., now 11, testified at this hearing. She alleged that when she was sitting on Mr. Brown's lap he touched her vagina over her clothes. She said the touching made her feel uncomfortable and she jumped off his lap and ran into the house. S.B. was only able to remember parts of this alleged incident and on cross-examination her memory was even more vague and confused. She also said she did not tell her mother until two years after the incident had occurred.
- [85] Ms. Bushman recalled seeing S.B. with Mr. Brown at the pool and seeing S.B. suddenly jump off Mr. Brown's lap and run into the house. She said that S.B. told her of the alleged incident two days later and that while she believed her, she chose not to do anything about her daughter's complaint.
- [86] While the circumstances of the pool incident are consistent with Mr. Brown's past and future conduct, given the inconsistencies in the evidence it is not possible to conclude beyond a reasonable doubt that Mr. Brown sexually assaulted S.B. However, given Ms. Bushman's observations of Mr. Brown when he was with S.B. before the incident, the circumstances of the pool incident are highly suspicious.
- [87] Mr. Brown also had Ms. Bushman participate with him in an ATM fraud for \$2,000. After she had spent the money her conscience bothered her and she admitted the offence to the bank officials. She was never charged and did not have to repay the money.
- [88] Ms. Bushman confirmed that Mr. Brown was attracted to young teenagers around the ages of 14, 15 and 16 whom he would often meet at Robin's Donuts. He would boast to her about picking them up, giving them drugs and booze, and in return they would give him "whatever he wanted". He told her he had a preference for the young girls as he could "teach them" and "train the younger ones".
- [89] Ms. Bushman was also a friend of Nicole Meredith who had an affair with Mr. Brown between August, 1994, and August, 1995. Ms. Meredith advised that her sexual relationship with Mr. Brown included spanking and bondage before they had sexual intercourse.

- [90] Ms. Meredith has two daughters, one of whom was five at that time. On March 30, 1996, her five-year-old daughter D.I. disclosed to her that Mr. Brown had licked his finger and touched her vagina. Using a doll, D.I. showed her mother what Mr. Brown had done to her. For a period of time following the incident, D.I. was emotionally distraught, had nightmares and started wetting her bed. She has now recovered from the incident and is apparently doing well.
- [91] On December 7, 1995, Ms. Trudy Chimiuk, the landlady of the complex in which Mr. Brown and Ms. White lived, found a pair of soiled women's or girl's panties lying about the building. Similar panties were found on six or seven more occasions. By January, 1997, Ms. Chimiuk realized this was not a coincidental happening and she contacted the Abbotsford R.C.M.P. After Mr. Brown's arrest on charges in 1997, the incidents stopped.
- [92] On May 13, 1996, Mr. Brown was arrested and charged with sexually assaulting D.I. He remained in custody. At the preliminary inquiry Ms. Meredith gave evidence but D.I. was found not to be competent to testify. As a result, a plea bargain was made. On October 16, 1996, Mr. Brown pled guilty to the offence of sexual touching and received a conditional sentence of two years less a day followed by three years probation. A term of the conditional sentence was that Mr. Brown not be in the company of any child under the age of 14 unless an adult was present. A further term was that he attend any counselling or treatment as recommended by his supervisor.
- [93] Deborah Hines was Mr. Brown's conditional sentence supervisor. She described his behaviour as secretive, evasive and not forthcoming. It was her opinion that Mr. Brown was a high risk to re-offend and needed a high level of supervision in the community.
- [94] She referred him for treatment to Dr. Kent Utendale, a clinical psychologist with expertise in the assessment and treatment of sex offenders. However, Mr. Brown told Dr. Utendale that that he did not feel he needed any treatment.
- [95] Dr. Utendale saw Mr. Brown on January 12, 1997, and again on September 22, 1997. In his report of February 23, 1997, Dr. Utendale described Mr. Brown's mood as labile, varying from anger to wry amusement, to jollity and contempt. He described Mr. Brown's sexual behaviour as deviant. Dr. Utendale's diagnosis was that Mr. Brown had a paraphelia, not attached to a specific behaviour or object, but involving problems of impulse control. He also diagnosed Mr. Brown as having an Antisocial Personality Disorder. In his opinion, Mr. Brown's prognosis was poor because of his refusal to take further treatment.
- [96] On February 20, 1997, while serving his conditional sentence, Mr. Brown was arrested and charged with fraud and theft. He was also charged with breach of the terms of his conditional sentence. He pled guilty to the offences on February 25, 1997, and received a six month custodial sentence. On June 25, 1997, he was released from custody.

[97] In Dr. Utendale's second report of September 26, 1997, he confirmed his previous diagnoses. He stated that Mr. Brown had many treatment needs but that "treating him was another matter". He concluded that Mr. Brown's prognosis was "guarded" because he was unmotivated to seek treatment. He noted in his report:

People cannot be forced to change simply because we would all like them to change. Mr. Brown is not unhappy with who he is nor his life, therefore, there is no impetus to change. ... Seeing someone like Mr. Brown and pretending that we can effectively treat him, jeopardizes the rest of the programme and the many sex offenders involved in therapy who are active participants and can change.

[98] Following Mr. Brown's arrest in February, 1997, Ms. White could not continue making the mortgage payments on the condominium and foreclosure proceedings were started. She eventually moved into another place. When Mr. Brown was released from custody on June 25, 1997, he returned to live with Ms. White however their marriage had broken down and they eventually separated.

[99] On February 10, 1998, Mr. Brown was arrested for the predicate offence. It involved a sexual assault on a five-year-old boy. During a short interval when the child's mother was absent, Mr. Brown pulled down the child's pants, touched the child's penis with his hand, and after lubricating his finger, digitally penetrated the child's anus. Mr. Brown continues to deny he committed this offence.

[100] Following his conviction the Crown applied to have Mr. Brown designated a dangerous offender. Pursuant to s. 752.1 of the Code, the court made an order for a dangerous offender assessment of Mr. Brown. Dr. Michael Coles, a forensic psychologist with expertise in the assessment and treatment of sex offenders, including risk assessment, was appointed to conduct the assessment. He completed his first report on January 14, 2000.

[101] Mr. Brown refused to participate in the preparation of Dr. Coles' report because his appeal on the predicate offence remained outstanding. However, after the Crown had completed its case and Mr. Brown's appeal had been dismissed, he agreed to be interviewed. As a result, Dr. Coles conducted five interviews with Mr. Brown over six and a half hours. His supplemental and amended report dated November 23, 2001, reflects Mr. Brown's participation in the assessment.

THE DANGEROUS OFFENDER ASSESSMENT

[102] Dr. Coles was satisfied that Mr. Brown did not have any major mental illness or disorder and had a higher intellectual functioning. Both of these findings were positive indicators for psychotherapeutic intervention.

- [103] Dr. Coles found Mr. Brown to be co-operative and to demonstrate excellent social and interpersonal skills throughout the interviews. These skills would permit him to access community resources. Furthermore, Mr. Brown answered all questions put to him in what Dr. Coles thought to be an open, honest manner. Based on his scores from the Hares' Revised Psychopathy Checklist ("PCL-R"), Mr. Brown ranked between the 45th and 55th percentiles for re-offending after release.
- [104] Mr. Brown did not acknowledge with Dr. Coles that he was a sex offender and at risk of molesting children. Instead he expressed a desire to stay away from children because if something happened to them he would be immediately suspected. He also stated that he would not take the chance of molesting a child again. He did not want to spend the rest of his life in jail.
- [105] Dr. Coles reviewed in general with Mr. Brown his history of offending but did not discuss with him any details of the offences. Nor did he challenge Mr. Brown's denials of certain offences.
- [106] Mr. Brown claimed to have no memory of his juvenile offences, admitted his five adult sexual offences which occurred while he was in Winnipeg, denied he had committed an excessive number of break and enters although he admitted they were planned, and admitted to sexually assaulting his daughter when she was between the ages of two-and-a-half and seven, but just on four or five occasions. He claimed the two times she was hospitalized with vaginal injuries, they were self-inflicted by use of a vibrator and a hairbrush respectively. He admitted to raping a woman whose home he had broken into but stated he had not been physically violent with her but had been "very gentle". He denied both the 1996 sexual assault of D.I. as well as the predicate offence in 1998 claiming the charges were fabricated out of vindictiveness by the victims' mothers who were jealous over an affair he was having at the same time with one of their friends.
- [107] Mr. Brown also expressed remorse over some of his past offending but showed a tendency to deny those offences which had not been proven. He denied being sexually aroused by children and said he had sexual preferences for adult females. He denied having diverse sexual interests.
- [108] Although Mr. Brown admitted to some substance abuse, there was no indication that substance abuse played a significant role in his offending.
- [109] Dr. Coles felt that Mr. Brown showed an element of denial regarding his past offending and a failure to accept responsibility. Also, in spite of Mr. Brown's claims, Dr. Coles was of the view that Mr. Brown met the definition of a paedophile. This opinion was based on Mr. Brown's admitted sexual deviancy with children and apparent attraction to pre-pubescent children.

- [110] However, Dr. Coles went on to state that Mr. Brown's sexual offending against children fell within a wider pattern of antisocial behaviour that was caused by his inability to control his impulsive behaviour. For Mr. Brown's behaviour to change, the wider pattern of offending behaviour must be successfully treated in addition to the sexually deviant behaviour.
- [111] In Dr. Coles' experience there was no clear treatment for this disorder. The impulsive nature of Mr. Brown's offending and his inability to control his deviant behaviour are residual symptoms of his earlier ADHD which has a biological basis. The ADHD evolved into his present Antisocial Personality Disorder within the DSM-IV diagnosis with psychopathic features. While Mr. Brown can function very well in a restricted environment such as jail, it is problematic whether his risk of recidivism could be safely managed if he was released into the community.
- [112] Mr. Brown's past treatment for this lifelong condition has not proven effective. His participation in the RPC Program and other programs appear to have had minimal effect on teaching him methods of controlling his sexually deviant behaviour. In Dr. Coles' opinion, Mr. Brown's extensive criminal history, the diversity of his offences including the non-specific nature of his paraphelia, and his antisocial, aggressive, and criminal tendencies which are deeply ingrained, all constitute negative factors for Mr. Brown's successful treatment. In addition, the number and variety of his past relationships, and his lack of steady employment are further indicators of instability and increased risk of recidivism.
- [113] When Mr. Brown was asked of his future plans if he was released, he indicated that he wanted to move away from the large urban centre and establish a relationship with a mature woman his own age who did not have any children or grandchildren. While this appeared to be an honest response to Dr. Coles, he questioned how realistic and effective a plan it was for controlling Mr. Brown's behaviour. In order to monitor his behaviour and for risk management, Mr. Brown would need to maintain close contact with any supervisor. A remote area would reduce that opportunity. On the other hand an urban setting might provide greater opportunity for offending.
- [114] It was also noted that Mr. Brown did not include any further sex offender treatment or other treatment for controlling his impulsive behaviour in his future plans.
- [115] In conclusion, Dr. Coles stated that Mr. Brown was a high risk offender who had already received the highest level of supervision after being released into the community and yet still re-offended. That suggested the highest level of supervision given our present resources was inadequate for Mr. Brown. Dr. Coles was also unable to give an opinion on a fixed time in which Mr. Brown might safely be released into the community at a manageable risk.
- [116] In the final paragraphs of his report of November 23, 2001, Dr. Coles states:

Despite his problems in school and his questionable work record while in the community, Mr. Brown has excellent social skills. He has been able to establish several relationships with women while in the community, and has been described as an excellent worker while in jail. In the personal interview/assessment situation, he relates well, saying many of the right things, and saying them in an apparently honest and sincere manner. However, he denies most of the offences with which he has been associated but not charged, and continues to maintain his innocence regarding the early assault of his daughter and the index offences. While the benefits of such statements are obvious, acceptance of the findings of the courts results in the equally obvious conclusion that Mr. Brown has, in fact, been less than fully open and honest during the course of the present assessment. Dr. Utendale's 1997 negative opinions regarding the successful treatment of Mr. Brown would therefore appear to be valid insofar as failure to recognize the existence of a problem pre-empts any attempt to treat it.

Mr. Brown's failure to fully recognize the risk of him re-offending, his history of impulsive behaviour and the limited control he plans to place on his contact with children on his release from jail would be a substantial problem should the court consider treatment in the community.

DISCUSSION

[117] It is difficult to add to Dr. Coles' assessment.

[118] Mr. Brown continues to deny much of his offending. He still does not acknowledge that he has a sexual deviancy that includes offending against children. His understanding of the effect of his conduct on his victims is minimal and he shows little, if any, remorse.

[119] He has also shown little, if any, interest in changing his behaviour. That behaviour is impulsive, opportunistic and histrionic. It stems from a severe antisocial personality disorder that includes paedophilia. He does not appear to understand his need for ongoing treatment to control his impulsive behaviour.

[120] Unfortunately, treatment of Antisocial Personality Disorder continues to be problematic. Mr. Brown's past treatment, which has included counselling, numerous assessments by psychologists, courses in anger management, and the multi-faceted RPC Program that is geared to cognitive behavioural treatment and relapse prevention, has proven unsuccessful. After being released into the community, within five years of completing the RPC Program, Mr. Brown had re-offended on two occasions and continued to be preoccupied with sexual behaviour involving young adolescents and children. He was not motivated to receive treatment from Dr. Utendale and was not motivated to change his behaviour.

- [121] At this time there are no other available treatment programs for Mr. Brown to take even if he was motivated to change his behaviour. Furthermore, there is no fixed time within which he could likely be released into the community and have his behaviour effectively controlled with supervision. His lack of insight into his offending, along with any real motivation to change, continues to make him a very high risk to re-offend especially against young, pre-pubescent children and young adolescents.
- [122] In short, at this time Mr. Brown is one of a small percentage of individuals whose pattern of behaviour or conduct is "substantially or pathologically intractable". His conduct is unquestionably "deep-seated and difficult to cure". There is substantial likelihood that in the future he would continue to cause harm by reason of his inability to restrain his behaviour. The evidence overwhelmingly supports a finding that Mr. Brown is dangerous and meets the criteria in ss. 753(a)(i) and s. 753(b) of the Code.
- [123] Accordingly, there shall be a declaration that Mr. Brown is a dangerous offender. By operation of s. 753(4) of the Code he must receive an indeterminate sentence.
- [124] However, this indeterminate sentence is subject to s. 761(1) of the Code which provides:
- 761.(1) Subject to subsection(2), where a person is in custody under a sentence of detention in a penitentiary for an indeterminate period, the National Parole Board shall, as soon as possible after the expiration of seven years from the day on which that person was taken into custody and not later than every two years after the previous review, review the condition, history and circumstances of that person for the purpose of determining whether he or she should be granted parole under Part II of the Corrections and Conditional Release Act and, if so, on what conditions.
- [125] There will also be an order pursuant to s. 760 of the Code ordering disclosure to the CSC of all reports and testimony given by psychiatrists, psychologists, criminologists and other experts, these Reasons for Judgment, together with a transcript of the trial of the offender.

"D.M. Smith, J."

The Honourable Madam Justice D.M. Smith

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/02/05/2002bcsc0567internet.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-w-g-brown-2002>

Prepared on 28 October 2026 · Esheria