

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Gilchrist*  
[2012] QSC 287

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF  
QUEENSLAND**  
**(applicant)**

**AND**

**PHILIP ARTHUR GILCHRIST**  
**(respondent)**

FILE NO/S: 6933 of 2010

DIVISION: Trial

PROCEEDING: Hearing

ORIGINATING  
COURT: Supreme Court of Queensland

DELIVERED ON: 21 September 2012

DELIVERED AT: Brisbane

HEARING DATE: 20 August, 29 August and 20 September 2012

JUDGE: Daubney J

ORDER: **There will be a supervision order in the terms set out in  
Annexure A to this judgment.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING  
ORDERS – ORDERS AND DECLARATIONS RELATING  
TO SERIOUS OR VIOLENT OFFENDERS OR  
DANGEROUS SEXUAL OFFENDERS – DANGEROUS  
SEXUAL OFFENDER – GENERALLY – where respondent  
convicted of multiple violent and sexual offences – where  
respondent serving a continuing detention order – where  
respondent requires the assistance of a wheel chair – whether  
respondent remains a “serious sexual offender” for purposes  
of *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* –  
whether respondent to be released from prison subject to a  
supervision order – conditions appropriate and practicable to  
reduce the risk to the community – duration of order

*Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*, s 5,  
13

*A-G (Qld) v Francis* [\[2006\] QCA 324](#)  
*Fardon v Attorney-General for Queensland* (2004) 210 ALR  
50; [2004] HCA 46

*Attorney-General (Qld) v Van Dessel* [\[2006\] QCA 285](#)

COUNSEL: K Philipson for the applicant  
R East for the respondent

SOLICITORS: Crown Law for the applicant  
Legal Aid Queensland for the respondent

- [1] This is an application by the Attorney-General under s 27(1A) of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* (“the Act”) for the first annual review of a continuing detention order made by Phillipides J on 8 November 2010.
- [2] The Attorney-General seeks an order pursuant to section 30(3) of the Act. The effect of those orders is to subject the respondent, Philip Arthur Gilchrist, to continued detention, or in the alternative, release subject to supervision orders under the Act.
- [3] The Attorney-General’s initial submission was that a continuing detention order was the most appropriate order in the circumstances.
- [4] For the respondent it was submitted that the respondent should be released from custody subject to a supervision Order.

**Background**

- [5] The respondent was born on 31 July 1961, and is 51 years of age.
- [6] On 26 May 1998, the respondent was sentenced to 13 years imprisonment for entering a dwelling and committing an indictable offence and for two offences of indecent assault whilst armed with a dangerous weapon in circumstances of aggravation and rape committed on 17 November 1997.
- [7] The respondent’s full-term discharge date was 17 November 2010, but on 8 November 2010, Phillipides J ordered, pursuant to s 13(5)(a) of the Act, that the respondent be detained in custody for an indefinite term for control, care and treatment.
- [8] This is the first review of that continuing detention order.

**Respondent’s criminal history**

- [9] Counsel for the Attorney-General outlined the respondent’s criminal history in her written submissions. These matters were accepted as correct by the respondent.

“7. The following table outlines the respondent’s criminal history and includes the most recent convictions:

| Date                            | Description of Offence                   | Sentence  |
|---------------------------------|--|---|
| 11/11/1986<br>Rockhampton<br>SC | Rape (2 charges) on 16/03/85 & 10/04/86) | 1 <sup>st</sup> charge: convicted & sentenced 6 years imprisonment<br>2 <sup>nd</sup> charge: convicted & sentenced 7 years |

|                           |   |   |
|---------------------------|---|---|
|                           | Break & enter dwelling house with intent in the night-time (on 10/04/86)<br>Indecent assault on a female (on 10/04/86)  | imprisonment<br>Convicted & sentenced 4 years imprisonment<br>Convicted & sentenced 1 year imprisonment<br>Recommended whilst in custody to receive appropriate psychiatric counselling & to be eligible for parole after 18 months |
| 26/08/1998<br>Brisbane DC | Enter or in dwelling and commit indictable offence (rape) & break (on 17/11/97)<br><br>Indecent assault whilst armed with a dangerous weapon and circumstances of aggravation (on 17/11/97)<br><br>Indecent assault whilst armed with a dangerous weapon and circumstances of aggravation (on 17/11/97) | Conviction recorded<br>Imprisonment 13 years<br><br>Conviction recorded<br>Imprisonment 5 years<br><br>Conviction recorded<br>Imprisonment 5 years  |

#### **Previous offences of a sexual nature**

8. On 16 March 1985 the respondent raped a woman in a toilet block in Gladstone.

9. On 10 April 1986 the respondent broke and entered the flat of a young woman at about 3.00 am, placed a knife to her throat and made her perform oral sex on him and he raped her.

10. The claimant was sentenced to a total period of seven years imprisonment and in sentencing Demack J said:

[The first offence]...occurred in a relatively public place, the degree of fear that you were able to induce...meant that you were undetected until you had committed the second offence; so that in itself is a very serious rape. The rape of YYY was one that you appeared to have planned to some extent, that you thought about on a number of occasions during the evening before finally committing the burglary and then the rape. In itself this is a particularly serious rape, and if there were nor mitigating circumstances in your case it would attract a sentence in double figures.

11. The most recent sexual offences (and those for which he was serving a period of imprisonment prior to the continuing detention order) occurred on 17 November 1997, the respondent scaled a drainpipe and entered the bathroom window of a third level unit; he had a knife which he had taken from home; he had disguised himself with a handkerchief over his face.

12. In sentencing, Forde J noted that the offences were similar in nature to the previous offences for which Demack J had suggested psychiatric treatment, and said:

...being a resident of this three level set of units, [one] might have felt reasonably safe at that higher level, but that was not to be. This type of offence is chilling in nature in that others who are vulnerable living by themselves can be easy prey from someone such as yourself.

You had a knife that you held at the throat of the complainant who resisted you; you had, in a premeditated way, arrived; you were wearing a condom; you had the complainant perform oral sex upon you and you upon her which are the subject of counts two and three, and then the rape occurred. When you went outside the complainant attempted to arm herself and threw some weights at you which hit you and she bit your finger and she screamed and others heard her and you jumped out the window and you were injured when you fell.

...It was a protracted and persistent assault by you on her.

13. After he fell the respondent ran to his house and went to bed and in the morning walked to the Royal Brisbane Hospital ("RBH"), police were notified and he was later interviewed.

### **Personal History**

- [10] The respondent provided submissions relating to his personal history in the hearing before Philippides J. These submissions were relied on at the current hearing. The respondent is the second eldest of six children. His father passed away in 2009 and his mother lives in Brisbane with his sister. His older brother has been convicted of attempted murder and his next youngest brother is serving a term of imprisonment.
- [11] As a child, the respondent had speech difficulties and received speech therapy. He attended special school for his entire schooling and was described as being 'hyperactive' and 'aggressive'. He was treated with Ritalin.
- [12] When he was approximately 15 or 16 years of age he was institutionalised in a psychiatric hospital in Tasmania for approximately 4 to 6 years. He moved to Gladstone with his family in 1981. The respondent claims he was physically and sexually abused at the psychiatric facility by staff and other male patients.
- [13] Apart from the period of institutionalisation, the applicant has largely lived at home or in support accommodation. His only work has been with the Endeavour Foundation and volunteer work through the church. He had been on a disability pension for intellectual disabilities and described himself a "born again" Christian.

### **Medical and psychiatric history**

- [14] The respondent claims that during the most recent offence he fell five stories and injured his leg and back. He also claims he suffered some kind of head injury during the offence and now suffers memory problems. He claims he has pain in his arms, wrists and hands. He has a prosthetic device on his right foot and now mobilises with a wheel chair. The applicant's mobility became a prominent issue at the hearing.

### **Participation in programs**

- [15] The respondent participated in a number of psychological assessments and treatments programmes during his time in prison.

### **The report of Mr Everett**

- [16] The respondent participated in the Inclusion Sexual Offending Program (“ISOP”) and a completion reported was compiled by Mr Everett, dated 20 September 2011. Mr Everett’s report indicated that, although the respondent had “regularly espoused” and was engaged in a number of discussions and activities, he did not gain or learn anything from attending the program. The respondent struggled to self-regulate his emotions and did not use the program to develop strategies to manage them. The respondent focused on strategies such as reading the Bible and following “Godly principles” but failed to recognise that his thoughts and feelings have become “mal-adaptive”. While the respondent did make some gains from the program, he was considered not to have adequately addressed intervention targets.
- [17] The respondent showed some anxiety about returning to the community after some 14 years in custody because of the “bad things that could happen to you on the outside” and related that in some ways he felt safer in prison.
- [18] Mr Everett concluded that the respondent would need to be closely monitored and supported until he is able to make a satisfactory transition to living back in the community and has established some effective pro-social connections and involvements. Mr Everett anticipated that the respondent will remain under the provisions of the Act and be initially accommodated in the Wacol Precinct post-release. The respondent was aware of the possible conditions that may be placed upon him should he secure any form of release however given his cognitive capacity, Mr Everett expressed that it was important that those were explained to him in a manner that he was fully able to comprehend the conditions, and was able to understand the implications should he not adhere to them
- [19] Mr Everett noted that due to the respondent’s disability and being wheelchair bound, it was unlikely he would be considered for any form of employment and the respondent reported he intended to obtain the Disability Support Pension as his source of income.
- [20] During the interviews, the respondent expressed plans to continue with his strong interest in Christianity and be involved in a suitable church. He reported building rapport with pastors who may be able to assist him reintegrate back into the community and stated that he was going to live his life according to the scriptures.
- [21] Mr Everett recommended that the respondent participate in the Staying on Track: Sexual Offending Maintenance Program in the community in order to maintain his awareness of high risk factors, coping skills and appropriate interventions. It was recommended that he be supervised by probation and parole officer and that the officer be familiar with the respondent’s offences, goals for a new life, and have some knowledge or experience in the engagement with offenders who are intellectually challenged.

### **The report of Doctor Beech (dated 4 March 2012)**

- [22] Dr Beech interviewed the respondent on 12 November 2011 and 9 December 2011.

- [23] Dr Beech noted that in his earlier report<sup>1</sup> he was of the opinion that the respondent had significant antisocial personality traits, and in particular pointed to a passive, dependant, avoidant and manipulative personality style. Objective tests of the respondent's intellect placed his intellectual functioning within the realm of low average which was confirmed by an assessment of Dr Lucille Douglas on 1 November 2010, however in the interviews, he acted at a lower level of intellectual functioning. Dr Beech noted:

He presents in a manner that suggests mild mental retardation and claims significant memory disturbance and disability. As well he is wheel chair bound. There is nothing that I can reliably find that documents the cause of his lameness other than perhaps now the atrophy arises from disuse. Formal testing of his cognitive functions gives lie to his claim of mental incapacity.

I consider that he shows many behaviours, inconsistencies, and patterns of avoidance that are seen in those who are malingering. I would strongly suggest that an opinion be obtained about his physical impairments. For the moment I believe that he has contrived his physical state to avoid work, rehabilitation, and simple personal responsibility. I believe he has similarly feigned cognitive dysfunction in a self-serving [sic] way to avoid treatment, therapy, and responsibility.

- [24] Dr Beech noted that the respondent came to both interviews in a wheelchair and from the outset, tried to control the interviews. He insisted that he read his prepared statement, which essentially said that he was 'mentally retarded', that psychiatrists twist his words, that he has had learning problems since birth and that he had no memory for events between 1982 and 1997. Dr Beech noted Philippides J's remark, when making the 2010 continuing detention order, that the respondent had attributed his reported physical disabilities to the fall in the offending incident in 1997, despite the fact he had managed to run away from the scene of the crime.
- [25] During the interviews the respondent wished to keep his own notes and often referred to 'legal advice' before answering questions. When asked in general terms how that 'legal advice' would affect his ability to answer questions, he seemed evasive. He made allusions to legal advice to only say things that would put him in a good light and stated that there were certain things that his lawyer had told him not to say.
- [26] Dr Beech noted that at times it seemed as though the respondent used pauses in the interview to prepare what seemed ambivalent questions, and many questions were answered by him simply returning to his pre-prepared statements and reading quotes. A number of questions were answered by him saying he had no memory of the years under discussion. When Dr Beech referred the respondent to the ISOP Completion Report, the respondent often said he could not recall specific factors in it. Dr Beech noted that the effect of the respondent's interview style was to give an impression of at least of contrived answers. This tactic dispelled spontaneity to allow himself opportunity to carefully craft his answers, to control the interview and prolong it. He also seemed to adopt these tactics to avoid answering probing questions about his progress and the gains he had made from the ISOP.

---

<sup>1</sup> Dated 2 October 2010

- [27] Dr Beech also noted that the respondent had claimed a lack of memory for the crimes due to the head injury sustained during the fall. Dr Beech noted there was nothing in the nature of the head injury or in his inconsistent memory function that would fit within the normal understanding of organic brain dysfunction but, despite that, the respondent had resisted participating in a Sexual Offender Program, using the excuse of memory problems as a result of a head injury.
- [28] During the interviews the respondents repeatedly stated that he was a born again Christian and that this was important, otherwise his responses to the ISOP would give the impression that he had learned nothing from the course. He stated that the course had reiterated beliefs he had previously held such as to ‘love one another’, ‘put yourself in other people’s shoes’ and ‘to treat others as you would like yourself to be treated’. When asked what he had learned about his offending, the respondent replied that he had learned that it was wrong and when asked why it was wrong, he demurred before eventually stating that it was against the consent of his victim. When the respondent was asked what he thought were the factors that had led to his offending and facilitated it, the respondent said it was because of what happened to him in his youth and when asked what those things were, he cited legal advice not to mention them, but nonetheless said that there was a link between his past and his offending and he returned to his prepared statement that he was a victim of sexual abuse in the mental hospital.
- [29] Dr Beech pointed out to the respondent that in the ISOP Report it said that he used to think that he could force himself on others because it had happened to him. The respondent said he could not remember that part of the ISOP, but that he thought he offended because of what had happened to him and he could not come up with a better answer than that. The respondent claimed he could not remember the 1997 offences and when told of the essence of the allegations he returned to his prepared notes and cited his memory loss. The respondent was unable to give an understanding of what was happening to him at that time, what he was thinking, and what ultimately led to the offending.
- [30] The respondent accepted responsibility for the offending, but referred to the injury that had occurred and contradictions in the Prosecution’s case. The respondent tempered his acceptance of responsibility by stating that he accepted responsibility “*until I find out otherwise*”. He then referred to difficulties in the evidence and made allusions to the police having falsely charged him. Dr Beech gave the opinion that, superficially, the respondent accepted responsibility for the offending but any probing led to evasive answers. Ultimately Dr Beech did not believe that the respondent accepted responsibility for the 1997 offences. He concluded his “memory disturbance” around that particular event was inconsistent, and on the face of it, self-serving. The respondent could not recall anything of the actual offending, but was able to say that at that time there was a New Farm rapist and police were trying to pin those on him and there was also another rape after he was arrested and that seemed to be an allusion to his innocence.
- [31] Dr Beech noted that the respondent had a very limited plan for his release and he seemed to have abdicated much of the planning and logistics to a transition officer. When asked about supports, he could point to his mother and the church, but was unable to specify in what way they would help, other than in more general terms. The respondent stated that he would find a church, see church counsellors, spend time with his family, read the Bible and attend Bible groups. In terms of reducing

his risk of reoffending the respondent claimed he would ‘hang around the right people’, keep away from pornography, and put the Bible into practice. Dr Beech considered it was an overly optimistic plan that was shallow and without any real strategies other than an assertion that his Christianity and association with the church support networks would be enough.

[32] In conclusion Dr Beech stated:

‘He is a repeat sexual offender. It is difficult to say now whether he is an untreated one. I believe that he had the mental capacity to participate in the HISOP [sic]. That he obtained such a poor report from the ISOP speaks to his avoidance, lack of engagement, and lack of responsibility.

His recidivism, lack of meaningful engagement, and personality disorder are all factors that point to a high risk of re-offending.

However, he has completed the ISOP, he is now 51 years old, and there is no real history of significant criminality. He does not rate in the realm of Psychopathy although he has substantial manipulative and conning traits.

Irrespective of the cause of his physical problems, he is at least temporarily incapacitated. This would impede but by no means prevent him from assaulting a woman.

I doubt he has gained much from the ISOP. I also doubt that there is much therapeutically to be gained by forcing him to do a higher-level program. It is a matter of regret that the ISOP did not really shed much light on his offending, its antecedents, and his psychological drives. The earlier concern about possible sadistic traits is neither confirmed nor dispelled. **No inroads have been made that would really inform others of how to manage his risks.**

**I consider the overall risk of re-offending is in the moderate.** It comes from his history of offending, his lack of insight, his lack of any realistic plan for the future, and his history of using manipulation to get his way.

...

The real concern is that once released, he will not hold onto his disabilities and he will recover both his physical and mental functions. He will be once again attracted to the fantasy of raping a woman and will either contrive a situation or manipulate a woman where she will be in a vulnerable setting. From there he will attack her and notwithstanding his lameness he will overpower her and assault her[sic].

A supervision order that could be adapted to monitor Mr Gilchrist might be able to reduce the risk of reoffending further.

It would require in the first instance an assessment of his physical condition, and a realistic appraisal of the prospect of his recovery.

It would need to act in such a way as to limit his access to vulnerable women. This might simply mean that he is not initially to have unsupervised contact

with women or that they are well informed of his physical and mental potential.

He should be monitored and give an account of his day-to-day activities.

I would advocate for his placement in a maintenance program.

Supervisors would need to be alive to his capacity for manipulation and avoidance. [Emphasis added]

### **Report of Dr Harden (dated 11 April 2012)**

- [33] Dr Harden interviewed the respondent on 9 October 2009 and 21 February 2012.
- [34] Dr Harden characterised the respondent as a 'poor historian'. He stated that the respondent displayed a 'patchy' and inconsistent memory recollection and that this pattern was present at both interviews.
- [35] In respect of the ISOP the respondent stated he benefited in that he had learned from his mistakes but prefaced this statement by saying a lot of what he learned he had been taught already by his pastor. He stated that it was very important for his future plan to 'always having things to occupy my mind' and gave the example of drawing. He struggled with the course component called 'the four stages of offending' because he maintained there was no planning involved in his offences.
- [36] The respondent reported that he had been sexually abused during his stay at the psychiatric facility, from about the age of 19 years. He reported that a male nurse would take a male and female patient into one of the back rooms and make them do sexual things together while he watched.
- [37] The respondent stated all sexual activity outside marriage was 'sexual immorality'. He regarded masturbation in the same way and stated that he did not 'do this at all'. However he admitted prior to his last offences he had used prostitutes whenever he 'could afford it'.
- [38] When asked about his attitude towards his offending he expressed no emotional identification or empathy towards his victims. The respondent displayed a great deal of denial and made comments such as "when I got out of the hospital I was pretty violent anyway at certain times. He appeared in 2009 to have very significant minimization of his offences and externalization of responsibility, stating such things as "they should have got me help in prison the first time and it wouldn't have happened".
- [39] The respondent reported in 2009 that during his last offence he had fallen five stories, which was 'my own fault'. The respondent claimed that the fall caused injuries to his legs and back which has resulted in him requiring the aids of crutches, walker and wheelchairs over the last 14 years. He was unable to describe the medical mechanism or injury that had caused his alleged disability. The respondent also claimed he suffered head injuries during the fall.
- [40] The respondent admitted in 2009 that he could mobilise without a wheel chair with the assistance of crutches or similar devices but he found this tiring and preferred to use a wheel chair if he needed to be mobile for any length of time.

- [41] In 2012 the respondent stated that he had ongoing back, leg, arm and finger pain and required the wheelchair 24 hours a day. He stated that his left side would not support his weight. He claimed he was blind in his right eye and deaf in his right ear. He also reported problems with his right shoulder. The respondent described a gradual deterioration in his level of mobility.
- [42] In concluding, Dr Harden put forward the following opinion:

### **OPINION**

At the time of the 2012 review Mr Gilchrist was a 50 year old man who had most recently been incarcerated for climbing a drainpipe, breaking into a woman's residence, threatening her with a knife and sexually assaulting her. This follows a past history of an almost identical sexual offence of breaking into a women's residence, waking her from her sleep with a knife and sexually assaulting her and another sexual assault on an adult female stranger in a public toilet which involved rape.

He had then gone to be placed on a continuing detention order under the Dangerous Prisoners (Sexual Offenders) Act.

He has a further past history of other criminal offences as a juvenile including stealing and some kind of allegedly nonsexual assault on an eight-year-old girl.

...

### **Diagnoses**

There is a marked similarity in two of the offences which involved invading the home of an adult woman and sexually assaulting her and given the difficulties in obtaining a clear account from him it is hard to completely exclude some sort of sexually deviant arousal as being part of these crimes.

He has **Personality Disorder NOS** under DSM IV TR criteria with antisocial and dependant features. It was notable that he had significant elevation of his scores on the facet 2 of the PCL –R which is reflective of a callous and unemotional style of relating to other people consistent with some aspects of psychopathy.

He has most likely in the past met diagnostic criteria for **alcohol abuse** but is abstinent partly by choice and partly because of incarceration.

Objective testing of his **intellectual function** when able to be reliably performed has consistently identified his intellectual function as being in the low average range with weaknesses in attention, memory and speed of information processing. Many professional assessors have noted a consistent pattern of him exaggerating his cognitive difficulties.

### **Risk**

The actuarial and structured professional judgment measures I previously administered would suggest that **his future risk of sexual reoffence is high**. My assessment of this risk is based on the combined clinical and actuarial assessment.

**This risk is literally reduced somewhat by his physical incapacity although no formal assessment of his physical capacity was available to me.** [Emphasis added]

He participated in a sexual offender preparatory program. He maintained in 2009 that there was no point in doing further programs as his memory was too poor to make use of them. He had begun a high-intensity sex offender program but was removed from this because of difficulty in completing the work.

He has now completed an "Inclusion Program" aimed at individuals with intellectual difficulties. The outcome report from this program would be regarded as mixed in that he has made some significant gains however he has not successfully addressed all of the intervention targets that the program facilitators and others had identified.

If he were to reoffend based on his past behaviour it would most likely be in a similar pattern to the last two offences which are virtually identical and involve breaking into a female's (stranger) dwelling place and using a weapon to threaten her into complying with sexual assault. His ability to do this may be decreased by his physical limitations however the degree of decrease is unclear to me.

**It is my opinion that his risk of recidivism in the community could be decreased by a strict supervision order and a high level of community support and reintegration. This would need to be sustained over a substantial period as many of the risk factors that appear to be associated with his offending have been lifelong in nature.** [Emphasis added]

He still has limited internal and external resources to assist him in producing a satisfactory lifestyle that will lead him away from offending behaviour apart from the support of his mother and the church. It would be important that his involvement with the Church be facilitated if he were in the community, but supervised in such a way as to minimise the potential risk to community members.

### **Recommendations**

I would recommend that he either be placed on a continuing detention order or be closely monitored in the community by means of a supervision order.

I would recommend that he be required to be abstinent from alcohol and undergo an appropriate random testing regime whatever placement is decided on.

He has identified that he would avoid exposure to pornography and I would support him in this.

If he is placed on a supervision order he will require a high level of community support sustained over some years.

### **Report of the occupational therapist**

- [43] The material before me also included a report by Gordon Seibel, occupational therapist, dated 31 July 2012. The purpose of the report was to assess the respondent's functional capacity and provide advice on his support requirements when he eventually makes a transition into the community.
- [44] The respondent made similar statements to Mr Seibel as he had the psychiatrists. Mr Seible could find no specific reference to intellectual disability or to a definitive medical diagnosis for the respondent's spine and lower limb conditions in his medical file and based most of his determinations on information which was self-reported by the respondent.

### **Oral evidence of the Doctors**

- [45] Doctor Beech and Doctor Harden gave evidence before me. The examination of the doctors went principally to the respondent's actual and perceived physical and cognitive difficulties.
- [46] Doctor Beech's evidence at the hearing was that the atrophy of the legs was caused by disuse and that the respondent has used his alleged condition over time to 'shirk work'.
- [47] Dr Beech also considered the respondent's asserted 'memory disturbances' and 'mental retardation' were at odds with the psychometric tests and IOMS reports conducted and that the respondent again used these perceived conditions as a tool to 'skirt work'. Dr Beech said:

"My concern is that he seeks, demands and, in fact, manages to cajole more support than he really does need and again that comes through in the IOMS, you know, when he's had a special diet that he didn't really need."

- [48] Dr Beech did concede at the hearing that whatever caused the respondent's atrophy of the legs, 'it's pretty clear that, no matter what has caused it, at the moment he is incapacitated'. However he warned that the respondent could re-gain mobility upon his release if he chooses to become more active. The Doctor commented that 'you can't take Mr Gilchrist at face value' and gave the following warning about the respondent being placed in mixed accommodation:

"I think he's still at least a moderate risk of reoffending and I think what the – all the material in my mind shows in that he has ability to manipulate people, to con, to be deceptive and put forward that he is more vulnerable mentally, psychologically and physically than he really is and I think then he would – his – he would be able to use that, if he wanted to, to entice people into vulnerable positions, vulnerable situations and then use that to sexually assault them. Though I would think if he were placed in mixed accommodation, it is likely to be with vulnerable people, then it's likely to be in some form of sheltered or secure or supported accommodation where people would be vulnerable generally, perhaps because of mental infirmity or other things and I think that Mr Gilchrist could take advantage of them. I

would think, given that he has now, in his life, sexually assaulted – well, it's think raped three women, he should be kept from vulnerable women.

- [49] Dr Harden expressed a similar opinion, reiterating his reported position that many professional assessors have noted a consistent pattern of the respondent exaggerating his cognitive difficulties. The Doctor expressed concern over the difficulty to draw proper conclusions in relation to the respondent's rehabilitation, stating 'Mr Gilchrist has total denial and disavowal with regard to sexual behaviour, he essentially says there is none.' The doctor stated 'I think that the – **one of the most important functions of a supervision order, particularly in someone like Mr Gilchrist, where there's a lack of certainty about having met treatment goals, is restriction of access to potential victims in the community** [emphasis added].'
- [50] Beyond highlighting these concerns both Doctors ultimately concluded, in the evidence before me that the respondent could be managed appropriately under a strict supervision order.
- [51] Each of the doctors was also pressed as to his opinion as to the appropriate duration of a supervision order and, each recommended that, in the circumstances of this case, a duration of ten (10) years was appropriate.

### **Order under Part 3 of the Act**

- [52] In *Fardon v Attorney-General for Queensland* (2004) 210 ALR 50 Gummow J summarised the purpose of Part 3 as follows:
- “[112] The purpose of Pt 3 ‘is to ensure that a prisoner’s continued detention under a continuing detention order is subject to regular review’: s 26. That statement of purpose guides the construction of the balance of Pt 3. That which is affirmed under s 30 is the primary decision ‘that the prisoner *is* a serious danger to the community in the absence of a division 3 order’ (emphasis added): s 30(1). The phrase ‘is a serious danger’ involves the use of the continuous satisfaction by the means and to the degree specified in s 30(3), the prisoner presently is a serious danger to the community in the absence of a Div 3 order. Upon the reaching of that decision, the court may order further subjection to a continuing detention order or release subject to a supervision order (s 30(3)); in making a choice between those orders, the court is to have as ‘the paramount consideration .... the need to ensure adequate protection of the present to require a decision that, by reason of the attainment of community’ (s30(4)).”
- [53] In relation to the present application, the scheme of the relevant provisions of the Act was outlined by the Court of Appeal in *A-G (Qld) v Francis* [2006] QCA 324 at paras 25-29:
- ‘[25] The order which may be made by the court under s 13(5) of the Act, and confirmed under s 30 of the Act, is, in terms, an order made for “control, care or treatment” of a dangerous prisoner. By virtue of s 13(2) of the Act, such an order may be made only if the court is satisfied that a prisoner would constitute a serious danger to the community in the form of “an unacceptable risk that the prisoner [would] commit a serious sexual offence”. As an alternative to a continuing

detention order, under s 13(5)(a), the court may order, under s 13(5)(b), that the prisoner be released from custody subject to appropriate conditions.

[26] The objects of the Act are expressed in s 3 of the Act as being:

“(a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and

(b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.”

[27] Section 13(6) provides that, in deciding whether to make an order under s 13(5)(a) or (b), “the paramount consideration is to be the need to ensure adequate protection of the community”.

[28] Section 13(5)(a), in speaking of a continuing detention order as an order “for control, care or treatment”, identifies the three purposes for which an order may be made: control of the dangerous prisoner, care for the dangerous prisoner, or treatment of the dangerous prisoner. These purposes are identified as alternatives. The phrase “control, care or treatment” must, as a matter of ordinary language, be read disjunctively.

[29] This disjunctive reading suggests that there may be cases where the basis for an order may be, either

- the control of an incorrigible offender, or
- the care of an offender whose propensities endanger the offender as well as others, or
- the treatment of an offender with a view to rehabilitation.

It will often be the case that more than one of these considerations will inform the making of an order.’

[54] The respondent conceded that on the hearing of the review the Court would affirm the earlier decision of Phillipides J in the following two respects:

“1. that the respondent is a serious danger to the community in the absence of a Division 3 Order.

2. that the evidence presented at the review hearing is acceptable, cogent and to a high degree of probability is of sufficient weight to affirm that decision.”

[55] Having noted that concession, I also record, lest there be any doubt, that the evidence before me is acceptable, cogent evidence which persuades me to a high degree of probability that the evidence is of sufficient weight to justify me making a

decision that the respondent represents a serious danger to the community. Pursuant to s. 30(1) of the Act, I affirm the decision that the respondent is a serious danger to the community in the absence of a division 3 order.

- [56] Counsel for the respondent pressed for the making of a supervision order. Counsel for the applicant initially submitted that a continuing detention order was the most appropriate form of order, but conceded, having regard to the psychiatric evidence and other matters required to be taken into consideration under the Act, that the risk that the respondent presents is capable of being managed by a supervision order.
- [57] In light of the expert psychiatric evidence before me, which I have detailed above, and the submissions and concessions made in the hearing before me, I am of the view that it is appropriate now to order that the respondent be released from custody subject to a supervision order. I reach that conclusion, noting that the paramount consideration is the need to ensure adequate protection of the community. At the very least, a strict supervision order is necessary to facilitate ongoing treatment of the respondent with a view to rehabilitation. It is also relevant to consider that, despite Dr Beech's scepticism, the respondent is actually confined to a wheelchair. The necessity to source appropriate accommodation which also meets the requirements of a suitability assessment by the Department of Corrective Services caused some delay in the finalisation of this matter, but I have now been informed that suitable wheelchair accessible accommodation will be available from 24 September 2012.
- [58] A supervision order has effect in accordance with its terms for the period stated in the order. A supervision order must be made for a definite term.<sup>2</sup> Having regard to the evidence of the psychiatrists, I am of the view that the term of the supervision order in this case should be for ten (10) years.
- [59] There will, therefore, be a supervision order, in the terms set out in Annexure A to this judgment.

---

<sup>2</sup> *Attorney-General (Qld) v Van Dessel* [2006] QCA 285.

**ANNEXURE A**

THE COURT, being satisfied to that the requisite standard that the Respondent, Phillip Arthur Gilchrist, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (the Act),

ORDERS THAT:

1. The decision made on 8 November 2010, that the Respondent is a serious danger to the community in the absence of an order pursuant to Division 3 of the Act, be affirmed;
2. The continuing detention order made on 8 November 2010 be rescinded;
3. The Respondent be released from custody on 24 September 2012 and from that time be subject to the following requirements until 24 September 2022:

The Respondent must:

- i report to a Corrective Services officer at the place, and within the time, stated in the order and advise the officer of his current name and address;
- ii report to, and receive visits from, a Corrective Services officer as directed by the court or a relevant appeal court;
- iii notify a Corrective Services officer of every change of his name, place or residence or employment at least two (2) business days before the change happens;
- iv be under the supervision of a Corrective Services officer;
- v comply with a curfew direction or monitoring direction;
- vi comply with any reasonable direction under section 16B of the Act given to him;
- vii comply with every reasonable direction of a Corrective Services officer that is not directly inconsistent with a requirement of the order;
- viii not leave or stay out of Queensland without the permission of a Corrective Services officer;
- ix not commit an offence of a sexual nature during the period of the order;

- x seek permission and obtain approval from a Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
- xi notify a Corrective Services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed at least two (2) days prior to commencement or any change;
- xii reside at a place within the State of Queensland as approved by a Corrective Services officer by way of a suitability assessment and obtain written approval prior to any change of residence;
- xiii if this accommodation is of a temporary or contingency nature, comply with any regulations or rules in place at this accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed for suitability by Queensland Corrective Services;
- xiv not reside at a place by way of short term accommodation including overnight stays without the permission of a Corrective Services officer;
- xv not commit an indictable offence during the period of the order;
- xvi respond truthfully to enquiries by an Corrective Services officer about his activities, whereabouts and movements generally;
- xvii not to have any direct or indirect contact with a victim of his sexual offences;
- xviii disclose to a Corrective Services officer, upon request, the name of each person with whom he associates and respond truthfully to requests for information from a Corrective Services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;
- xix notify a Corrective Services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;
- xx submit to and discuss with a Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
- xxi if directed by a Corrective Services officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by a Corrective Services officer who may contact such persons to verify that full disclosure has occurred;

- xxii abstain from the consumption of alcohol and illicit drugs for the duration of this order;
- xxiii submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Corrective Services officer;
- xxiv disclose to a Corrective Services officer all prescription and over the counter medication that he obtains;
- xxv not visit premises licensed to supply or serve alcohol, without the prior written permission of a Corrective Services officer;
- xxvi attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by a Corrective Services officer, at a frequency and duration which shall be recommended by the treating intervention specialist;
- xxvii permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;
- xxviii attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;
- xxix notify a Corrective Services officer of any computer or other device connected to the internet that he regularly uses or has used;
- xxx supply to a Corrective Services officer any password or other access code known to him to permit access to such computer or other device or content accessible through such computer or other device and allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;
- xxxi allow any other device including a telephone or camera to be randomly examined. If applicable, account details and/or phone bills are to be provided upon request of a Corrective Services officer;

- xxxii advise a Corrective Services officer of the make, model and phone number of any mobile phone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use, including reporting any changes to mobile phone details;
- xxxiii not access pornographic images on a computer or on the internet or purchase or obtain pornographic material in any other format without the prior written approval of a Corrective Services officer in consultation with the treating psychiatrist or psychologist;
- xxxiv not own, possess or regularly utilise more than one mobile phone except with prior written approval from an a Corrective services officer.

Signed:

.....  
Registrar of the Supreme Court of Queensland