SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Henry* [2014] QSC 108
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **TRAVIS SCOTT JORDAN HENRY** (respondent)
FILE NO:	7342 of 2013
DIVISION:	Trial Division
PROCEEDING:	Dangerous prisoner application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	30 May 2014
DELIVERED AT:	Brisbane
HEARING DATE:	12 May 2014
JUDGE:	Daubney J
ORDER:	**The Court, being satisfied to the requisite standard that the respondent, Travis Scott Jordan Henry, 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, orders that:** **1. The respondent be detained in custody for an indefinite term for control, care or treatment.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the applicant seeks a Division 3 order under the *Dangerous Prisoner (Sexual Offenders) Act* 2003 (Qld) – where both parties acknowledge that the respondent is a serious danger to the community in the absence of a Division 3 order - where the court may order a continuing detention order or a supervision order pursuant to s 13(5) - whether a supervision order would ensure the adequate protection of the community pursuant to s 13(6) of the *Dangerous Prisoner (Sexual Offenders) Act* 2003 (Qld)

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 13, s16

Attorney-General v Francis [2007] 1 Qd R 396; [2006] QCA 324, considered

COUNSEL: J M Sharp for the appellant
J P Benjamin for the respondent

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

[1] This is an application by the Attorney-General for a Division 3 order under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act").

[2] An order may only be made under s 13 of the Act if the Court is satisfied that the respondent is a "serious danger to the community" in the absence of such an order. Counsel for the respondent expressly acknowledged that the evidence before the Court justified a finding to the effect that the respondent is a serious danger to the community in the absence of a Division 3 order.

[3] It was common ground that the real issue in the present case was whether, in the particular circumstances of this respondent, there should be a continuing detention order or whether the respondent should be released under a supervision order. The applicant's contention was that release of this respondent subject to a supervision order would not meet the paramount consideration of needing to ensure the adequate protection of the community, as required by s 13(6) of the Act.

Background

[4] The respondent was born in Cherbourg on 15 February 1983. His personal history is detailed in the psychiatrists' reports which are in evidence. The respondent's

background is neatly summarised by Dr Sundin in her report dated 30 September 2013:

> "This was clearly a serious sexual offence. It occurred in a young man from a prejudicial background with a substantive history of substance abuse and exposure to violence in the domestic sense. He was a young man who had engaged in a range of anti-social behaviours with a peer group that condoned such behaviour. His anti-social behaviour was then further aggravated by his consumption of disinhibiting intoxicants. He lived in an environment where both anti-social behaviour and violence between males and females appeared to have been normalised. He does not appear to have had any concept of fidelity within relationships."

[5] On 30 July 2002, the respondent pleaded guilty and was sentenced in respect of three counts of breaking and entering premises and stealing, one count of burglary with the circumstance of aggravation, four counts of rape and one count of stealing.

[6] The respondent was between 17 and 19 years at the time of the offending. At the time of sentence, he had a significant criminal history, comprising of mainly property and dishonesty offences.

[7] The sexual offending involved a home invasion and rape of a 21 year old mother of a ten month old baby. On 31 May 2001, the complainant was woken by the respondent, who smelt of alcohol and was armed with a knife. The complainant was told to "shut up" and the respondent used the baby's cot to seal the room. The complainant's de facto partner was sleeping in another room at the time.

[8] The respondent raped the complainant several times, including while she was bending over her son to protect him. She was told to "stop crying, or you'll be hurt". The complainant was told to assist the respondent to effect penile penetration of her vagina. The offending included digital penetration of the vagina, anal penetration and further vaginal penetration by the penis. During the course of the series of rapes, the respondent walked around the house, at one stage lighting a

cigarette before returning to the complainant's bedroom. He asked her to "ride him" while she held her son, but she refused.

[9] The respondent later stole a golf club that was ultimately located at a relative's house. He also asked the complainant to drive him to Cherbourg and she refused.

[10] Once she was sure he had left, the complainant woke her de facto and then went to the police. The respondent's wallet and key card were found at the scene, and DNA samples taken from the complainant matched the respondent's profile.

[11] A head sentence of 11 years' imprisonment (with lesser concurrent terms for unrelated property offences) was imposed. That sentence was not disturbed on appeal.

[12] As already noted, the respondent had a prior criminal history. His history dates back to 1997, when he first received a detention order for break and enter. He then came before the courts on 14 further occasions, mostly in relation to property offences. He was subject to a probation order when he committed the rapes on 31 May 2001.

[13] During his time in prison, the respondent was "breached" on numerous occasions. Most of these breaches involved fights with other inmates and improper behaviour towards prison officers. In 2008, there was a serious breach by the respondent when he touched a female prison officer on the buttock.

[14] Although the respondent has completed a number of courses while in custody, he has refused to participate in sexual offender treatment programs. In February 2009,

he completed the Sexual Offending Preparatory Program, "Getting Started". The completion report for that program, dated 23 March 2009, describes the respondent as a reluctant and apathetic participant. The report did disclose, however, some willingness on his part to discuss his offending and respond to questioning. It was obvious that the respondent struggled with articulating his thoughts and feelings, and there seemed to be evidence of gratuitous concurrence. There was difficulty eliciting information from the respondent, and he was described as "withdrawn from the group, with no spontaneous comments made through the duration of the program". The upshot was that it was recommended that the respondent participate in the indigenous sexual offending program.

[15] After the completion report was furnished, the respondent was interviewed on 24 March 2009 regarding his willingness to participate in a sexual offender treatment program. The respondent was again interviewed on 20 July 2011 and 12 April 2012..

[16] The respondent was offered a place in the Indigenous Sexual Offenders Treatment Program, and initially accepted that offer. He remained on a waiting list for a significant period of time, but subsequently declined placement at all later interviews. He told Queensland Corrective Services officers that he would prefer to complete his full term than be relocated from Maryborough to Lotus Glen to complete a program. This reluctance was on the basis that such a move would take him away from family.

[17] In 2013, the Medium Intensity Sexual Offending Program was offered for the first time in Maryborough. The respondent was encouraged by Queensland Corrective

Services officers and a cultural liaison officer to participate in that program, but he declined to do so.

[18] The full-time release date for the respondent was 12 December 2013. Prior to that release date, the applicant filed this application, and it came on for hearing before Boddice J on 10 December 2013. The hearing of the application was adjourned on that day to enable the respondent to undertake a particular sexual offenders program specifically designed and run for Aboriginal and Torres Strait Island men. The transcript of the hearing before Boddice J on 10 December 2013 records that the respondent's counsel confirmed that the respondent understood that:

(a) his prospects of release would be greatly improved if he were to do a sexual offenders program, and

(b) in order to undertake that program, he would be required to transfer to Lotus Glen.[1]

[19] On that basis, and to enable the respondent to participate in that program, the hearing was adjourned.

[20] The respondent, however, subsequently declined to participate in the program. He has filed a brief affidavit in which he explains that he declined to participate in the program because he did not want to move from Maryborough, where his family were able to visit him. He also said that he did not believe that participation in the program would allow for his release, having been disappointed once before. Neither of these explanations is particularly compelling, in light of the express confirmations given by his counsel to the Court on 10 December 2013.

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1 Transcript 10.12.13, p 1-4, ll 1-16.

[21] As a consequence of the respondent's failure to participate in the course, the application came before me for final hearing.

[22] Expert reports by psychiatrists Dr Michael Beech, Dr Josephine Sundin, and Dr Donald Grant, had been made available for the December 2013 hearing. Each of those doctors provided brief supplementary reports for the purposes of the final hearing before me, and each of the doctors also gave brief oral evidence.

Dr Beech

[23] Dr Beech's primary report is dated 17 November 2013. He interviewed the respondent on 27 September 2013. Dr Beech's report records in detail the statement of background given to him by the respondent, and describes the doctor's observations, assessment and diagnoses. Under the heading "Mental state examination" Dr Beech said that he could see no evidence of mental illness, but there seemed to be evidence of poor social reasoning. Dr Beech stated that there was nothing to indicate the presence of a paraphilia. Dr Beech continued:

> "It was difficult to assess Mr Henry's intelligence. Clinically he seemed to be of low average intelligence but with poor education. It is possible that the restlessness, history of impulsivity and lability indicated a Hyperactivity Disorder.
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> He described a very poor understanding of the nature of his offending. He seemed to have limited insight into the risks for further offending. He also seemed to voice unrealistic plans for the future."

[24] Dr Beech administered a number of instruments for the purposes of performing a risk assessment, and concluded:

> "It is my opinion that overall the risk of further sexual violence is high, even though Mr Henry has had only one episode of sexual violence. The risk is elevated by his youth, his limited understanding of the issues, his psychopathy, and his overall lack of progress in prison. He has very limited plans for the future and no sense really of how to avoid further risks.

> ...
>
> In my opinion it is difficult to know how the risk would be affected by a supervision order. Of concern is that he has no real plan or strategy for living in the community. I think that it is very likely that he will breach conditions and be returned to prison for contraventions. He is likely to get into trouble in social situations with women.
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> The risk could be reduced by his participation in an intensive offender program that assisted with cognitive therapy, problem solving, victim empathy, self awareness, and planning. From there he could develop a better relapse prevention strategy that could then be supported within the community on release."

[25] For the purposes of the hearing before me, Dr Beech provided a supplementary report dated 10 March 2014. This report noted that the respondent had declined to take up the place on the sexual offending program for indigenous males at the Lotus Glen Correctional Centre.

[26] In his further report, Dr Beech said:

> "My risk assessment in 2013 was that he was at high risk of further sexual violence even though there had only been a single episode of sexual violence. I noted his relative youth, his limited understanding of the issues, his limited progress and his limited progress in the prison setting. He had limited plans for the future and limited understanding of how to reduce his risk. As well, he scored high on measures of Psycopathy.
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> ...
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> Given that he has now refused to participate in the program, it is my opinion that risk of sexual violence remains high notwithstanding that it was his only sexual offence. I would assume that a supervision order would reduce that risk simply to the extent that he would be monitored, his movements would be restricted, and interactions with the public would be curtailed. Monitoring of his drug and alcohol use and it would assist in ensuring abstinence.
>
> However, it is difficult to see that the risk would be substantially reduced because Mr Henry has not displayed a willingness to co-operate generally with authorities and program staff. He has not displayed a willingness to engage in treatments that might assist him to reduce his risk and to contain that risk in the community. Supervising staff would have limited knowledge of how to manage the risk other than to place restrictions on him. In that event, it would be difficult to see how he might progress through a supervision order beyond simple containment. His inability to progress from a high secure section of the prison to the residential section is in my opinion, a proxy indicator of his ability to settle into community

> living. I have a concern that his unwillingness to engage in treatment would generalise to supervision and community treatment.
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> Ultimately, I have significant concerns that his risk of re-offending remains high and this could not be adequately reduced by supervision in the absence of treatment and a well-developed relapse prevention plan."

[27] In his oral evidence before me, Dr Beech confirmed that the importance of completing the program lay not merely in treatment for the respondent, but also in the fact that his completion of the program would provide important information for those responsible for managing the respondent in the event that he were to be released under supervision. Dr Beech said that he thought an "overarching concern" was that the respondent had not participated in a program where insight had been made available into how the respondent might be supervised or how a relapse prevention plan could be tailored beyond a form of high level supervision which would amount to a home detention order.

Dr Sundin

[28] Dr Josephine Sundin interviewed the respondent on 20 September 2013. Her principal report is dated 30 September 2013. The report sets out details of the respondent's personal background as derived from the doctor's interview with the respondent and from extrinsic material. Under the heading "Mental state examination at interview" Dr Sundin describes the respondent's presentation, noting that, while he was pleasant and affable through most of the interview, he was at times "quite inappropriate". Dr Sundin observed:

> "96. Mr Henry's insight into the index offence appears very limited. He was able to provide a very limited explanation of the potential impact upon the victim, but demonstrated and expressed little remorse with regard to his actions. His understanding of his motives was quite simplistic. He did not appear to have any great appreciation of the triggers for his offending behaviour. He did not appear to have any realistic comprehension of future of risk factors or their management. His relapse prevention plan was both simplistic and unrealistic. It

> was founded on the apparently false premise that he would be able to move back in with his former partner, despite not having had any regular contact with her during his period of incarceration. As noted previously, he did not see that there was any need for any engagement with a sexual offenders treatment program and did not see that he needed to engage in any form of ongoing treatment for his pre-existing alcohol and illicit substance abuse."

[29] Dr Sundin administered a number of formal risk assessment tools. The doctor expressly noted the caution that needs to be undertaken in the interpretation of those instruments "as they are primarily derived from the North American prison population and similar material has not been developed from the Australian prison population", and that no such material has been standardised for the Australian indigenous population. Dr Sundin also observed that risk assessment in this case was made more difficult by the fact that the respondent was a young man at the time of his offence, and it was the first sexual offence on his criminal record.

[30] Having had regard to those cautionary aspects and with reference to the Static-99 guideline, Dr Sundin concluded, that the respondent represents a moderate to high risk of future sexual recidivism. On the Hare Psychopathy Rating Scale, the respondent presented as having strong psychopathic personality traits which were of significance for future general reoffending. On administering the risk for sexual violence protocol, Dr Sundin considered that the respondent's risk of future sexual recidivism is moderate to high, if unmodified.

[31] Dr Sundin's conclusions stated:

> "109. It is in Mr Henry's favour that he has no significant history of sexual offences prior to the index offence. While he has a history of involvement in fighting, he does not have a substantive history of interpersonal violence in the past. Of concern, however, has been misinterpretation and inappropriate behaviour towards a female prison guard since his incarceration in prison. This suggests that the previously noted impulsivity has not as yet entirely abated.

110. He presents with vague, poorly formulated, unrealistic plans for life outside of prison.

111. In my opinion, without the benefit of a supervision order Mr Henry represents an unacceptable risk to the community for general recidivism and a moderate to high risk for further sexual recidivism.

112. I consider that it would be to his advantage and that of the community for him to participate in a sex offender's treatment program. Given his difficulties with comprehension, it may indeed be better for him to participate in the Inclusion Sexual Offenders Program rather than the sexual offenders program for indigenous males (SOPIM). I am cautious as to his capacity to adequately comprehend the SOPIM.

113. **In the absence of such treatment, I consider that he represents at least a moderate or moderate to high risk of a future sexual offence. Successful completion of such a program would have not only the capacity to help Mr Henry develop a greater insight into his offending pattern, it would help him to recognise his risk factors and potential triggers and assist him to develop a robust relapse prevention plan. Successful completion of such a program would reduce his risk of future sexual recidivism to moderate to low.**

114. Should the Court place Mr Henry on a supervision order, I would recommend that this needs to be quite strict with implementation of a curfew, requirement for absolute abstinence from mood altering licit and illicit substances, frequent regular monitoring of alcohol and other intoxicants, engagement with an alcohol and drug treatment program within the community and referral to a forensic psychologist to further assist in the evolution of his comprehension and development of an appropriate relapse prevention plan. He will need assistance with housing and employment, and engagement with a range of recreational activities so that he does not lapse back into a state of boredom wherein his risk of recidivism is increased. Linkage through an indigenous elders program to appropriate cultural supports would also be beneficial.

115. Given Mr Henry's youth, I would recommend that a supervision order should be in place for at least five years." (emphasis added)

[32] Dr Sundin provided a brief further report dated 11 March 2014, noting that the respondent had refused to participate in a sexual offenders treatment program. Dr Sundin said that, from an actuarial perspective, this non-participation did not raise the respondent's risk appraisal in the way that a dropout from a therapy program would. She confirmed the opinions she had previously given concerning the respondent's risks of recidivism and her advice concerning ongoing management.

[33] In evidence before me, Dr Sundin confirmed her opinion that successful completion by the respondent of a sexual offenders program would not only have the capacity to help the respondent develop a greater insight into his offending pattern, but would help him recognise his risk factors and potential triggers and assist him in developing a robust relapse prevention plan. Successful completion of a program would have the effect of reducing the respondent's risk of sexual recidivism to a moderate to low level. Dr Sundin considered that, whilst releasing the respondent on a strict supervision order would have some impact, it would have less effectiveness than a supervision order developed out of the knowledge obtained after the respondent had completed a program. Dr Sundin said:

> "A sexual offenders treatment program helps not only the offender, but also those in Corrective Services who have to work with him, so that they can understand what are the signs or behaviours that are indicative of increasing risk. And therefore, participation in a program and development of a supervision order that was – evolved out of such a program, would be of greater benefit to Mr Henry and to the community."[2]

Dr Grant

[34] The respondent was seen by Dr Donald Grant on 17 January 2013. Dr Grant's principal report is dated 20 January 2013. Again, Dr Grant's report contains an extensive recitation of the respondent's personal background and the background to the offending, and the respondent's presentation to Dr Grant at the time of interview. Dr Grant describes in detail the risk assessment instruments that he applied for the purposes of forming an opinion as to the respondent's risk of recidivism and concluded:

> "The overall assessment of risk in Mr Henry's case is made difficult by the fact that he has committed only one sexual offence but that that is a serious offence. While it is clear that there is a high risk in his case for general non-sexual offending the risk for sexual offending is less clear because of the young age at the time of the offence, the lapse of 11 years of

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2 T 2-17 ll 13-18.

imprisonment since the offence and the lack of a detailed understanding of Mr Henry's emotional life, sexual motivations and general behavioural insights. The young age of the offence, for example, can be interpreted in different ways. It could be seen that beginning at a young age makes the future risk higher. On the other hand it might be seen that the immaturity and impulsivity of youth might have been major factors, which could be ameliorated as he ages.

Despite the difficulty with prediction, if a sexual offence was to occur it would likely take the form of an assault or rape of a female at night, perhaps motivated by a combination of sexual drive, anger and other emotional issues, with likely disinhibition from intoxication (with alcohol, paint fumes or cannabis). **To further clarify Mr Henry's risk and assist with decision making about future treatment or supervision, it would be very helpful for him to undergo an intensive sexual offender treatment program during which his attitudes and motivations could be explored in detail and during which efforts could be made to increase his insights, empathy and understanding of risk factors. At the end of such a program he ought to be able to produce a detailed and realistic relapse prevention plan, which is currently lacking.** Given Mr Henry's background and ethnicity, the most appropriate program would be the Sexual Offender Program for Indigenous Males (SOPIM) conducted at Lotus Glen Correctional Centre. If that proved impossible, in my opinion the alternative possibility of the HISOP conducted at Wolston Correctional Centre could be utilised.

Mr Henry currently has very vague and unrealistic plans and expectations for his future outside prison.

Given the lack of detailed information and difficulties assessing risk as things currently stand, it would in my opinion be important for Mr Henry to successfully complete such a sexual offender treatment program before release into the community. In the absence of such treatment he represents at least a moderate or moderate to high risk of a future sexual offence and a high risk of general offending. Hopefully, upon completion of a sexual offender program, the risk would be reduced to low or low to moderate.

I note that Mr Henry has to the present declined participation in the SOPIM and his motivation in future may continue to be lacking, or related solely to achieving release form prison. In that case lasting benefit from any sexual offender program may not be achieved.

If Mr Henry were to be released from prison without undergoing a sexual offender program, then in my opinion **risk for the offending in a sexual way would be at least moderate to high**. In those circumstances I believe a strict supervision order would be indicated to assist him with social rehabilitation and the maintenance of sobriety. Such a supervision order would hopefully act as a reasonable means of protecting the community. Without considerable assistance and supervision he would be likely to revert to substance abuse, association with antisocial peers and descend into social chaos, with an escalating risk of general offending and potentially sexual re-offending.

If Mr Henry was to undergo a sexual offender program successfully it is likely that a supervision order would still be indicated upon release but be

> more effective in reducing the risk. After completing a program it would be clearer what conditions would need to comprise an order and easier for supervisors to be informed as to the precise issues for Mr Henry and the measures that might be best applied to assist him.
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> If a supervision order was applied, in my opinion it should be in place for at least five years." (emphasis added)

[35] In a brief supplementary report dated 11 February 2014, Dr Grant confirmed the opinions that I have just set out at length and continued:

> "[The respondent's] refusal is likely to maintain his risk of sexual re-offence at Moderate to High and make a strict supervision order necessary to contain that risk if he is released from custody. His supervisors will be working to reduce risk without the insights that might have been gained by Mr Travis and the course co-ordinators, had he participated in the SOPIM."

[36] In evidence before me, Dr Grant further explained the importance of completion of the sexual offenders management program, both from the perspective of the respondent's treatment and also to assist in effective supervision. The following evidence is relevant[3]:

> "Now, the issue is whether, given Mr Henry's attitude to participation in that sex offender treatment program, his risk in the community might be adequately managed by a strict supervision order. Can you explain for his Honour why, in the present circumstances, that option, that is, release subject to supervision, is inadequate to adequately manage the risk?--- Yes. I think when a sex offender is trying to confront their future and work out how not to commit an offence and how the court is trying to help with that process, **I think it's important to distinguish between internal understandings and controls and external controls. A supervision order can provide external controls in terms of curfews and not going to certain places and not drinking alcohol. That's – they're the external, sort of, controls, and has not necessarily much to do with what the person's thinking or wanting to do. Internal controls are all about the person understanding their issues, understanding why they've assaulted somebody sexually, how it might happen again, in what circumstances, what they have to understand about their attitudes and beliefs and about women's rights and so in order to prevent themselves acting in that way again.** It's in the internal control section that [indistinct] the course will be helpful in helping him understand how he can work it, take – how he can work at controlling it, how he can take ownership of those issues, and deal with them in the future, and develop a good relapse prevention plan which he's committed to. That's the important thing for long-term prevention of sexual offending. If he just has external controls, then it's in the absence of all of that, and it's just – has been described already today just like home detention or something

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3 T 2-22 ll 7-48.

> which tries to put barriers around him and his potential for sexual offending.
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> Yes. You heard Doctor Beech and I think Doctor Sundin mention too the advantage for those managing Mr Henry in the community some time in the future of him having completed the SOPIM course?--- Yes. Yes. That's - - -
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> In order to give ---? That's very important. **I think another aspect of why you do the course is not only does the person learn why they did it, what was in their mind, what they can do to prevent it happening, what are the factors that cause risk, but also the supervisors come to understand those factors as well, and they can assist with devising appropriate supervision and watching for appropriate risk factors. Otherwise, they're working to some extent blind and just applying general factors and general restrictions without really understanding the nuances of this particular man's needs.**
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> And they're the people who provide the external controls?--- And they're the people that provide external controls. But if they know more about him and work with him on those issue that he's become aware of , then it's likely to be much a more effective supervision program in producing long-term rehabilitation." (emphasis added)

Discussion

[37] By s 13(1) of the Act, a Division 3 order may only be made if the Court is satisfied that the respondent is a serious danger to the community in the absence of a Division 3 order. The onus of proof in this regard rests on the applicant.[4]

[38] For the purposes of determining whether it has been established to the requisite standard that a person is a "serious danger to the community", s 13 relevantly provides:

> "(2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence –
>
> (a) if the prisoner is released from custody; or
>
> (b) if the prisoner is released from custody without a supervision order being made.

[4] s 13(7).

(3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied –

(a) by acceptable, cogent evidence; and

(b) to a high degree of probability;

that the evidence is of sufficient weight to justify the decision.

(4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following –

(aa) any report produced under section 8A;

(a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;

(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(g) the prisoner's antecedents and criminal history;

(h) the risk that the prisoner will commit another serious sexual offence if released into the community;

(i) the need to protect members of the community from that risk;

(j) any other relevant matter."

[39] It is relevant for present purposes that the factors to which the Court must have regard in making this assessment includes efforts made by the respondent to address the cause or causes of his offending behaviour "including whether [the respondent] participated in rehabilitation programs".[5]

[5] s 13(4)(e).

[40] It is made clear throughout the reports and evidence from the psychiatrists that absent completion of a sexual offenders management program, this respondent presents a moderate to high risk of violent sexual re-offending.

[41] As already noted, it was conceded on behalf of the respondent that the evidence established that he does present a "serious danger to the community" (as that term is defined in s 13(2)) in the absence of a Division 3 order. For completeness, I should record that I consider that the applicant has established this by acceptable cogent evidence and to a high degree of probability such that the evidence is of sufficient weight to justify the Court being satisfied that the respondent is a serious danger to the community in the absence of a Division 3 order.

[42] Being so satisfied, then, the question is whether, under s 13(5) there should be a continuing detention order or a supervision order. Section 13(6) provides:

> "(6) In deciding whether to make an order under subsection (5)(a) or (b) –
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> (a) the paramount consideration is to be the need to ensure adequate protection of the community; and
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> (b) the court must consider whether –
>
> (i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
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> (ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers."

[43] As to the first of the factors enumerated in s 13(6), it is appropriate to recall the oft-cited observations made by the Court of Appeal in *Attorney-General v Francis*:

> "The Act does not contemplate that arrangements to prevent such a risk must be 'watertight'; otherwise, orders under s 13(5)(b) would never be made. The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate

> protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principle, be preferred to a continuing detention order on the basis that the intrusions of the Act upon the liberty of the subject are exceptional, and the liberty of the subject could be constrained to no greater extend than is warranted by the statute which authorised such constraint."[6]

[44] In the circumstances of the present case, I am not satisfied that protection of the community could be adequately ensured by the release of this respondent under a supervision order. Each of the psychiatrists emphasised the importance of the respondent needing to complete the sexual offenders management program not only as an important step in his rehabilitative therapy, and to assist in enabling him to formulate plans for the future and have insight into the mechanisms necessary to reduce his risk, but, just as importantly, to provide information and insight for supervising staff to enable them to properly and adequately supervise and manage the risk which would undoubtedly be presented by the respondent upon his release. This is directly relevant to the considerations required under s 13(6)(b)(i). Moreover, and for similar reasons, it seems to me that the respondent's failure to undertake a sexual offenders management program and thereby equip the relevant Corrective Services officers with the information and insights obtained as a result of the respondent having completed that course, would present a significant obstacle to the capacity of Corrective Services officers to reasonably and practicably manage the conditions which s 16 requires to be included under a supervision order. That is a relevant consideration which must be considered under s 13(6)(b)(ii).

[45] In considering these issues, it is relevant again to refer expressly to the opinions stated by the expert psychiatrists, which I have set out above. Their concerns are fairly summarised by Dr Beech's ultimate conclusion that he had "significant concerns that [the respondent's] risk of re-offending remains high and this could not

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6 [2007] 1 Qd R 396 at [39].

be adequately reduced by supervision in the absence of treatment and a well-developed relapse prevention plan".

[46] In view of the expert evidence before me, I have reached the conclusion that, as matters presently stand with this respondent, adequate protection of the community could not be ensured, nor could it be reasonably and practicably managed by a supervision order.

[47] Accordingly, having been satisfied as required under s 13(1), there will be an order pursuant to s 13(5)(a) of the Act.

[48] There will be an order in the following terms:

> The Court, being satisfied to the requisite standard that the respondent, Travis Scott Jordan Henry, 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, orders that:
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> 1. The respondent be detained in custody for an indefinite term for control, care or treatment.