SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v S* [2017] QSC 32
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) v **S** (respondent)
FILE NO/S:	BS2012 of 2015
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	13 March 2017
DELIVERED AT:	Brisbane
HEARING DATE:	6 February 2017
JUDGE:	Brown J
ORDER:	**The decision that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3, Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) be affirmed and orders that:** **1. The respondent, S, continue to be subject to the Continuing Detention Order.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – GENERALLY – where the respondent was detained under a continuing detention order under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the applicant applied for the order to be reaffirmed under section 30 of the Act – where psychiatrists opined that the respondent was a moderate to high risk of reoffending sexually if released under a supervision order –where the respondent had participated in a sexual offenders program but denied his sexual offending – where psychiatrists considered he was still in need of participating in sexual offending and violence programs and considered whether the respondent poses a serious danger to the community pursuant to *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – whether the applicant has discharged the onus to establish that the respondent should continue to be subject to a continuing detention order – whether the community could be adequately protected by a supervision

order

Dangerous Prisoners (Sexual Offenders) Act 2003, s 13(2), s 13(5)(a), s 27, s 29(1), s 30

Attorney-General for the State of Queensland v Francis [2006] QCA 324, cited
Attorney-General (Qld) v Kennedy [2016] QSC 287, cited
Attorney-General (Qld) v S [2015] QSC 157
Fardon v Attorney-General (Qld) (2004) 223 CLR 575, cited
R v S [2002] QCA 38, cited

COUNSEL: J B Rolls for the applicant
The respondent appeared on his own behalf

SOLICITORS: Crown Law for the applicant
The respondent appeared on his own behalf

[1] **BROWN J**: This is an application pursuant to s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ("the Act") for a review of the continuing detention of the respondent. The applicant seeks to have the decision made on 9 June 2015 that the respondent presents a serious danger to the community in the absence of a Division 3 order under the Act affirmed, and that a continuing detention order, consequentially, be made pursuant to s 30(3)(a) of the Act.

[2] On 9 June 2015, Philip McMurdo J (as his Honour then was) having been satisfied that the respondent was a serious danger to the community in the absence of a Division 3 Order under the Act made a Continuing Detention Order finding that there could be adequate protection of the community only by a continuing detention order.

[3] The respondent originally had legal representation in relation to the present application however he subsequently withdrew his instructions for his solicitors and counsel to appear. Counsel and his instructing solicitors attended before Court to seek leave to withdraw and such leave was given. As a result, the respondent represented himself at the hearing. Prior to his Counsel and instructing solicitors withdrawing they had filed written submissions on behalf of the respondent, contending that the respondent should be released under a supervision order. I have had regard to those submissions as well as the oral submissions of the respondent.

[4] The respondent is a man of 43 years of age. He has a history of substance and alcohol abuse. He has an extensive criminal history particularly from 1990 for offences in the nature of assaults and stealing, until May 2001 when he was convicted of multiple offences in the District Court, which included sexual offences. His criminal history was relevantly summarised in the judgment of Philip McMurdo J in the following terms:[1]

> "[2] In May 2001 the respondent was sentenced to several terms of imprisonment amounting to a period of 16 years which expires on 10 June 2015. He was sentenced to 10 years

[1] [2015] QSC 157.

imprisonment for maintaining a sexual relationship with a child with circumstances of aggravation over a six month period in 1988-1999. He was sentenced to concurrent terms of five and three years on a number of offences of assault occasioning bodily harm and the indecent treatment of a child who was under 12 years. He was sentenced to a cumulative term of six years for grievous bodily harm. Nearly two years of pre-sentence custody had been served. He was declared to be a serious violent offender.

[3] These offences were committed against the respondent's then partner and her young son. The offences were summarised by McPherson JA, in dismissing the respondent's appeal against conviction and application for leave to appeal against sentence, as follows:

> 'The victim of the physical assaults was at the time his de facto wife. Most of them took place after she had, at his insistence, performed indecent acts which the applicant filmed for the purpose of setting up a pornographic business. Some of those acts consisted of performing acts of multiple sex with other adults. The assaults, some of which involved the use or threat of use of a dangerous instrument such as a garden fork, were carried out by the applicant because he was dissatisfied with the standard of the complainant's performance during those indecent acts.
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> One of the persons with whom she was forced to commit some of the sexual acts was her own nine year old son, who was also the victim of the sexual offences committed against the child to which I have referred. To crown this career of appalling behaviour, the applicant finally subjected the woman complainant to a prolonged and savage beating inflicting grievous bodily harm on her, including brain damage, fractures to facial bones and a severe injury to her left ear requiring plastic surgery.
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> In the course of his submissions in this Court the applicant, it may be noted, admitted that he had committed that assault causing grievous bodily harm.
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> …
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> He showed no remorse whatever for what he has done. The learned sentencing Judge described his behaviour as depraved and despicable. Those are strong words, but they are in my opinion fully justified. In the 20 years in which I have been on this Court, I have not seen a case in which the conduct of the accused was worse than this.'

[4] The respondent has always maintained that he did not commit sexual offences against the child. He sought to explain his

violent assaults upon his partner as attempts to protect the son from sexual misconduct by her.

[5] … Prior to the matters already mentioned, he had a criminal history for offences of violence, dishonesty and breaking and entering a dwelling house, for which he received various terms, including one of three years imprisonment for which he was required to serve 12 months. The offence of breaking and entering a dwelling house with intent was committed in October 1992. The sentencing judge then remarked:

> 'I regard this as a very serious offence. Here we have a decent woman asleep in her own home where she should be safe. You come in the early hours of the morning and subject her to a terrifying ordeal. You say you went there for money, but from what she tells the police even if that were so your mind changed towards sexual matters. You told her to remove her knickers. She managed to escape you and she was punched as she eluded you.'

[6] There are several recorded breaches during the respondent's time in prison. Most involved disobeying the lawful direction of a corrective services officer. At least one involved an assault on another prisoner. Another, in 2013, involved an assault on a visitor."[2]

Decision of 9 June 2015

[5] In making an order pursuant to s 13(5)(a) of the Act on 9 June 2015, Philip McMurdo J referred to, inter alia, the evidence of Dr Sundin, Dr Grant and Dr Beech. In relation to the evidence of Dr Grant and Dr Beech he summarised it as follows:

> "[19] Dr Grant interviewed the respondent on 23 April 2015. It appears that the respondent did responsively participate in that interview.
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> [20] Dr Grant's diagnostic assessment was that the respondent does not suffer from any psychiatric disorder but has a serious personality disorder with narcissistic and antisocial traits. His psychopathy check list score indicates to Dr Grant that the respondent reaches the criteria for psychopathic personality disorder.
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> [21] Dr Grant wrote that he was unconvinced that the respondent suffered from any particular sexual paraphilia. It was possible that he suffered from Sadism, if the behaviour towards his former partner in making her carrying out sexual activities and be recorded on film doing so, was done to produce sexual arousal in himself rather than for some

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2 *Attorney-General (Qld) v S* [2015] QSC 157.

commercial purpose in establishing some kind of business in pornography. In his oral evidence, Dr Grant said 'the whole behaviour suggests that there was more to it than [establishing a pornographic business] and that there was a sexual gratification going on by inflicting that sort of humiliation on those people' which 'would amount to sadism'.

[22] Dr Grant wrote that the respondent had a history of polysubstance abuse having in the past heavily abused alcohol and having been a consistent user of marijuana and a user of intravenous amphetamines.

[23] Dr Grant wrote that the respondent clearly demonstrated a very strong interest in sexual matters, pornography, group sex, lesbian sexual activities and recording sexual behaviour on film, all of which demonstrated 'a degree of sexual deviancy and a high sexual preoccupation'.

[24] Dr Grant's overall clinical assessment of risk included the following:

> '[S] clearly represents a risk for non-sexual physical violence in the future. His potential victims are likely to be females with whom he is involved and also potentially other males with whom he gets into various altercations.
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> That behaviour is likely to be driven by his narcissistic and psychopathic personality traits as well as by distorting attitudes, particularly to women. The behaviour would also be facilitated by intoxication with substances such as alcohol or amphetamines.
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> In that regard to the specific risk for sexual violence in my opinion it is difficult to make clear predictions … However, given the extent of his personality dysfunction and relationship difficulties, along with demonstrated high levels of sexual preoccupation in the past, I believe that there would be a moderate risk of a recurrence of such offending. There might also be some risk of hands-on sexual offences with minors, but it is difficult to put a precise estimate on that risk, given the lack of any definite recorded history of any such behaviour.
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> One of the major concerns in this case is the fact that [S] gives a very inconsistent history, that he tends to minimise his previous behaviour and that he denies his guilt for the sexual offences for which he has been convicted.

> …
> It is difficult to see how he could be appropriately and positively supervised in the community under the [Act] when he holds such a degree of negativity, denial and minimisation in relation to the offences which he has been convicted for. … Overall I would see the risk for future violent offending of a general kind to be high whereas the risk for future sexual re-offending is more difficult to predict but probably moderate.'

[25] In Dr Grant's opinion, the respondent ought to undertake the HISOP before release. In his view, the respondent's relapse prevention plan was puzzling because it talked about support from family and friends but the respondent had had no family visitors for almost the entirety of his period in prison. There was a woman who had started to visit him but those visits stopped because of a conflict between them.

…

[28] Dr Beech interviewed the respondent on 16 April 2015 for approximately four and a half hours over two sessions. The respondent was apparently a cooperative interviewee.

[29] In his opinion, the respondent has a severe Antisocial Personality Disorder. Dr Beech expressed difficulty in interpreting the respondent's offences. He wrote:

> 'On the one hand they are callous and designed for pornography production, seemingly simply a commercial exercise. However, their nature, the violence and the use of a child raised the possibility of Sadism and even Paedophilia. It is impossible to explore this because [S] denies his guilt.'

[30] Dr Beech's report included these statements in his risk assessment:

> 'Apart from the passage of time, and the abstinence from substances in prison, he has not done anything to address his criminogenic needs, his sexual offending, and indeed his general violence. He continues to protest his innocence, and there is nothing to indicate any sense of remorse or empathy, apart from some self-serving regret. He has no social supports, and he has no practical release plans.
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> I believe that the risk of sexual violence is high. There are a number of scenarios. He could now settle down, remain abstinent, and while prone to some violence and general criminality, seek to find stability and work. He is though I believe poorly prepared for this.

> The other scenario is that he will enter into a domestic relationship, and there use violence to coerce sex. His partner is likely to suffer emotionally and physically. A third scenario is that he will attack a stranger and attempt to assault her; she too could suffer physical injury. I believe that any child within a relationship would be at high risk of exposure to sexual violence.
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> There has now been 16 years since his arrest. He is older, and he appears over time to have settled in that [t]here are now no major breaches, and he has been accommodated in the residential unit. He has remained abstinent. His risk could be lessened on a Supervision Order. However, I have concerns about his ability to comply. He has a poor history of compliance, many of his offences have occurred during supervised release, and he has no relapse plan. In my opinion he is at high risk of breaching an order, and I am uncertain to what extent the order would therefore reduce the risk.
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> In my opinion he would benefit from an intensive program, and the development of a relapse prevention plan. This would provide supervisors, and counsellors, with an insight into how they can monitor him, an understanding of risk factors around him, and a more fleshed out idea of the pro-social goals that he could aim for.' (emphasis added)

[6] In his decision of 9 June 2015, his Honour found, inter alia, that:

> "[35] I am satisfied that the respondent is a serious danger to the community in the absence of a division 3 order. It is clear, in my view, that there is an unacceptable risk that he would commit a serious sexual offence if released from custody without any such order. The respondent's offending behaviour, his antisocial personality, the possibility that there is in his case an element of sadism or paedophilia, his denial of his sexual offending and the fact that he has not engaged in necessary treatment programs together combine to present that unacceptable risk.
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> …
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> [41] It was argued for the respondent that the effect of the evidence of the psychiatrists was that there was no unacceptable risk from the supervision order on the conditions which, during their evidence, he asked them to consider. But that was not the effect of their evidence. They were not critical of the conditions. Their concern, in each case, was that the respondent would not comply with the order and that a serious offence might be committed before his non-compliance was detected and he was returned to

> custody. In my view, that is a substantial risk. It is a risk which exists especially from the likelihood, as the psychiatrists explained it, that the respondent would not engage with those supervising him and from the difficulties in supervising this prisoner without his having undergone what they regard as necessary treatment programs.
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> [42] In my conclusion, the Attorney-General has established that there could be adequate protection of the community only by a continuing detention order. It will be ordered that pursuant to s 13(5) of the Act, the respondent be detained in custody for an indefinite term for control, care or treatment." (emphasis added)

[7] Both Dr Grant and Dr Beech gave evidence in the present application. The respondent at the hearing and in his interviews with Dr Grant and Dr Beech denied he was guilty of any sexual offences. The evidence before me on this application supported the fact that the assessment of risk of the respondent reoffending such that he is a serious danger to the community in the absence of a division 3 order and the risks identified by the psychiatrists if he were released on a supervision order as referred to by his Honour have not materially changed. The original reports of Dr Grant and Dr Beech were in evidence for the purposes of this application and I have had regard to those reports.

Legal framework

[8] The submissions of the respondent's Counsel prior to their withdrawal adopted the summary of the law in the applicant's submissions replicated below: paras 7 – 8 of the respondent's submissions. The respondent took no issue with respect to the law in his oral submissions. I am satisfied the applicant's submissions which are significantly set out below correctly summarise the law.

[9] The objects of the Act are to provide for continued detention or supervision of a particular class of prisoner and to provide continuing control, care or treatment of a particular class of prisoner to facilitate rehabilitation.[3]

[10] The Act establishes a scheme for the continued detention in custody or supervised release of prisoners who are deemed to be at risk of committing serious sexual offences if released at all, or if released without appropriate supervision. The Act makes provision for the Supreme Court to hear applications for orders under the Act. Section 5 of the Act places the responsibility for making the necessary applications on the Attorney-General.

[11] Once an order has been made under Division 3 of the Act, then the Attorney-General must make an application for a review to be carried out.[4] The application for review is governed by s 30 of the Act. This provision is as follows:

> "(1) This section applies if, on the hearing of a review under section

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3 See s 3 of the Act.

4 See s 27 of the Act.

27 or 28 and having regard to the required matters[5] the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order.

(2) On the hearing of the review, the court may affirm the decision 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 affirm the decision.

(3) If the court affirms the decision, the court may order that the prisoner –

(a) continue to be subject to the continuing detention order; or

(b) be released from custody subject to a supervision order.

(4) In deciding whether to make an order under subsection (3)(a) or (b) –

(a) the paramount consideration is to be the need to ensure adequate protection of the community;

(b) the court must consider whether-

(i) adequate protection of the community can reasonably and practicably managed by a supervision order; and

(ii) requirements under section 16 can be reasonably and practicably managed by corrective service officers.

(5) If the court does not make the order under subsection (3)(a), the court must rescind the Continuing Detention Order."

[12] Arrangements must be made for the respondent to be examined by two psychiatrists.[6]

[13] For the Court to make a Division 3 order, it must be satisfied that the prisoner is a serious danger to the community in the absence of such an order: subs (1). Subsection (2) defines what is a "serious danger to the community". There must be an unacceptable risk that the prisoner will commit a serious sexual offence[7] if released at all, or if released without a Supervision Order.

[14] The definition of "serious danger to the community" applies to the determination that is required to be made under s 30 of the Act.

[15] The expression *"unacceptable risk"* is undefined by the Act. It is incapable of precise definition but is an expression which requires the striking of a balance.[8] The

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5 Defined in ss (6) to mean the matters in s 139(4) and any report produced under s 28A.

6 See s 29(1) of the Act.

7 Defined in the Schedule of the Act. The offence must be of a sexual nature with the added requirement that it either involve violence or an offence against children.

8 See *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575 at [22], [60] and [225] and *Attorney-General (Qld) v Kennedy* [2016] QSC 287 at [23].

relevant risk is the risk of commission of a serious sexual offence i.e. an offence of a sexual nature involving violence or against children. Risk means the possibility, chance or likelihood of commission of such an offence. An unacceptable risk is a risk which does not ensure adequate protection of the community. This phrase was considered in *Attorney-General for the State of Queensland v Francis*[9] when the Court of Appeal observed:

> "[39] Insofar as his Honour was concerned that, if the appellant began to use alcohol or drugs, he might abscond, the risk of a prisoner absconding is involved in every order under s 13(5)(b). 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 should be constrained to no greater extent than is warranted by the statute which authorised such constraint."

[16] In determining whether the decision ought to be affirmed under s 30 of the Act, the matters mentioned in section 13(4) of the Act must be considered. Section 13(4) provides:

> "**13 Division 3 Orders**
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> (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—
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> (aa) any report produced under section 8A;
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> (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;

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9 [2006] QCA 324.

(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."

[17] If the court, on the review hearing, affirms a decision that the prisoner is a serious danger to the community in the absence of a Division 3 Order then the discretion granted by section 30(3) is enlivened.

[18] By s 30(3) of the Act, the Court may order the respondent to be subject to continuing detention or be released from custody subject to a supervision order.[10]

[19] In determining whether to make such an order the "paramount consideration" is to "ensure adequate protection of the community".[11]

[20] If the court declines to order continuing detention then the court must rescind the Continuing Detention Order.[12]

Further psychiatric reports

[21] Two reports were obtained and prepared pursuant to s 29 of the Act by Dr Grant and Dr Beech. Both had seen the respondent before and provided reports in the hearing before Philip McMurdo J.

Dr Grant

[22] The report provided by Dr Grant was dated 19 September 2016. Dr Grant had previously provided risk assessment dated 10 May 2015.[13]

[23] In his report of 19 September 2016[14] Dr Grant saw the respondent for the purposes of the assessment at Wolston Correctional Centre on 15 September 2016. He indicated that the respondent understood the purpose of the assessment and the fact that there would be no confidentiality as he would be providing the report to the courts. Dr Grant noted the rather confused position in relation to courses that had been undertaken by the respondent. At the time that Dr Grant did his report he understood that the respondent had not progressed to doing the Getting Stared: Preparatory Program for Sexual Offenders (Pathways Program "Getting Started") nor had he done the Pathways Program nor the Preventing Violence Program during the last period of his detention order.[15]

[24] Dr Grant noted that the respondent's attitude to his index offending is unchanged since he had previously seen him. He strongly maintains his innocence for all the offences apart from the fact he assaulted his partner. However he claims to have

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10 See s 30(3)(a) and (b) of the Act.
11 See s 30(4) of the Act.
12 See s 30(5) of the Act.
13 Exh 4.
14 Affidavit of Donald Archibald Grant affirmed on 17 October 2016 (Doc CFI22) DAG-2.
15 Affidavit of Donald Archibald Grant (CF122) p 8 DAG-2.

assaulted her because she was sexually abusing her son. He denies all of his convictions that indicate any sexual offending.[16]

[25] The respondent indicated to Dr Grant that he sees it as completely unjust that he is being told that he must do a Sexual Offender Treatment Program when he is innocent and he would have to lie about his offending and make things up in order to complete the program. The respondent's general account to Dr Grant was one of placing blame everywhere but on himself accusing everyone of lying and at one stage saying it is all to do with race.[17]

[26] According to what the respondent told Dr Grant he has not had any contact with any family members since Dr Grant previously saw him and had no recent news of them.

[27] The respondent denied having used any alcohol or drugs since Dr Grant had previously seen him and had last tested for drugs in general in June or July and all tests had been clear. Dr Grant noted that the respondent was well spoken and generally polite. Dr Grant however stated that the interview was at times tense because of the respondent's pressured and insistent account of his innocence and the injustice of his current situation. Dr Grant found that was quite difficult to divert from those things.[18]

[28] Dr Grant considers that the respondent does not suffer from any psychiatric disorder nor does he have any history of having a psychiatric treatment. He considers he has a serious personality disorder with prominent narcissistic and anti-social traits. On the psychopathy checklist he exceeds the cut-off point for psychopathy personality disorder.[19]

[29] Dr Grant noted that the respondent has quite an extensive history of polysubstance abuse, although his history in that regard is inconsistent. He has previously abused alcohol, been a consistent user of marijuana and for at least some periods used intravenous amphetamines particularly in the period leading up to his incarceration. There is an inconsistent history as to whether he has ever used heroin. In prison there has been no evidence of him abusing illicit drugs or alcohol.

[30] Dr Grant said in terms of sexual paraphilia, the most relevant issue is whether he suffers from sexual sadism. The convictions for which he served his long sentence (for which he was convicted in 2001) would suggest that that was likely and he has shown diverse sexual interest and a high sexual drive. However, Dr Grant indicated it was difficult to be certain about such a diagnosis because the respondent is continuing to claim innocence for the behaviour for which he has been convicted and does not readily discuss subjective aspects of sexual interest or sadistic ideation. His offending history indicates that he links violent behaviour with sexual behaviour and that suggests sadism is likely. Significantly Dr Grant considered that if the respondent does have sadistic sexual drives then that combined with high scores on the psychopathy checklist would indicate a high risk combination.[20]

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16 Ibid, p 8.
17 Ibid, p 8.
18 Ibid, p 10.
19 See p 11 of DAG-2.
20 Ibid p 11.

[31] Dr Grant indicated that there had been no developments since his previous report which alters his assessments using the formal risk assessment instrument. He made note in his report and also in oral evidence that the fact that STATIC 2002R, an instrument using purely static historical factors, resulted in the respondent scoring the low to moderate risk group for future sexual offending. In that regard Dr Grant considered that it probably provided an underestimate of the risk for two reasons. First the respondent's most serious offences were all clustered into his index offences and therefore only counted as one and secondly, that the 1991 offence was not officially a sexual offence. He considered however that given there was sexual motivation for that offence, if included, it would suggest a risk higher than low to moderate.

[32] In the 1991 offence, the respondent had broken into a residential home and asked the female occupant to remove her underpants. She managed to escape and was punched as she eluded him.[21]

[33] In terms of the other scores for the assessments,[22] the respondent scored 32 out of 40 for the HARE PCL-R indicating he had a psychopathic personality disorder. In relation to HCR-20, Dr Grant indicated that he had a high risk for future violence. In that regard the risk for general violence was greater than for sexual violence. In terms of the risk for sexual violence protocol (RSVP) the results indicated a high risk of general violence with some uncertainty in predicting the future degree of sexual violence, but with various factors that indicate significant risk in that area. Dr Grant stated that, using that instrument, it was difficult to predict the likelihood of hands-on sexual offending against children but the risk for violence towards women was high and in that context there was significant risk for sexual violence.

[34] Dr Grant considered that the respondent represents a high risk for non-sexual physical violence in the future.[23] However, Dr Grant indicates that while the risk for sexual violence is less clear, it is likely to be at least moderate. In that regard he states:

> "[The respondent's] violent behaviour towards women has been linked with sexual behaviour in the index offending and this makes the risk for future sexual violence to females at least moderate to severe. The index offending would also indicate there is at least a moderate risk of future sexual violence involving children, certainly by exposure to sexual matters but also potentially by direct sexual abuse."[24]

[35] Dr Grant considered that the precise instrument of risk in the respondent's case continues to be complicated by his entrenched denial of sexual offending and therefore his refusal to participate in any meaningful explanation of his offending pathways, motivations and attitudes. Dr Grant considered in essence nothing had changed since he had last assessed the respondent. The respondent continued to adamantly assert his innocence and had no formulated plan for his future or how he

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21 This is recorded in [5] in *AG for the State of Qld v S* [2015] QSC 157, taken from the sentencing judge's remarks for the offence (which was actually committed in 1992).

22 See p 12 of DAG-2 Affidavit of Donald Archibald Grant (CF122).

23 That does not however constitute a serious danger to the community as defined which is the relevant matter that must be established by the applicant under the Act.

24 Page 12 DAG-2 Affidavit of Donald Archibald Grant (CF122).

would prevent any future offending. He has a suspicious and agnostic attitude towards authority, albeit maintaining acceptable behaviour in custody. [25]

[36] Dr Grant indicated that while the supervision order in the community could outline a range of conditions that would help to moderate the risk of potential sexual offending, the difficultly remains as to whether or not the respondent would be willing to cooperate with a supervision order. He considered that his attitudinal stance and past history would suggest that he is unlikely to cooperate with supervisors and in that respect Dr Grant considered a breach of the supervision order would be very likely.[26]

[37] He further commented:[27]

> "The risk of breaching a Supervision Order would be that such breaches might involve use of alcohol or drugs and in the context of any involvement with females that could rapidly escalate into a situation of interpersonal violence and potential sexual assault. It may be difficult for a Supervision Order to operate in the sense of preventing a rapid deterioration and re-offence.
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> It remains my opinion that it would be highly desirable for the respondent to complete a High Intensity Sexual Offender Treatment Program whilst in custody, prior to release into the community. Completion of such a program would enable him to closely consider his risk factors and offending pathway and to work out a Relapse Prevention Plan. The program would also assist in defining the risk factors that would assist supervisors in the future in helping [the respondent] stay offence free. However, I note that his entrenched position is that he is innocent and this may represent an insuperable barrier to him undergoing sexual offender treatment programs… "

[38] Dr Grant noted that if the respondent was to be released into the community it would appear he would have few supports, if any at all. He has poorly formulated ideas about what to do if he were released. Dr Grant considers that the respondent is institutionalised and would require a lot of support and assistance if he were released under any supervision order. Dr Grant comments in conclusion:

> "Overall I am pessimistic that a Supervision Order would satisfactorily contain risk to the community because of [the respondent's] likely lack of cooperation and commitment to living within the boundaries of the Supervision Order. Completion of appropriate programs addressing violence, substance abuse and sexual offending would all assist in increasing confidence that risk could be contained under a Supervision Order after release from custody."[28]

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25 Page 13 of DAG-2 Affidavit of Donald Archibald Grant (CF122).
26 Page 13 of DAG-2 Affidavit of Donald Archibald Grant (CF122)
27 Page 13 of DAG-2 Affidavit of Donald Archibald Grant (CFI 22)
28 Page 14 DAG-02.

[39] Dr Grant in oral evidence noted that to try and make an accurate estimate of risk, it was very important to have some understanding of the motivation for the respondent's offending; what went on at the time of offending, what was going on in the person's mind and exactly what the behaviour was and the motivation and to know whether there is sexual paraphilia driving those offences or whether it simply related to personality. If behaviour is driven by sexual paraphilia, then it is more sinister and it is more likely that an offence if the respondent reoffends will be specifically sexual rather than a sort of accident or opportunistic offence that might occur in a more general personality disorder.[29]

[40] Given the respondent's maintenance of innocence and his denial of what happened in terms of sexual offending Dr Grant noted that it is not possible to explore motivations, what went on and what happened so as to be able to diagnose a paraphilia with any certainty. He considered that there was a real possibility, quite a strong possibility that the respondent may be sexually sadistic.[30] As there was less evidence that the actual violence involved the child, there was less possibility that it was a paedophilic sadism.[31]

[41] If the respondent was sexually sadistic that is a very serious risk factor in terms of reoffending.[32]

[42] If the respondent had psychopathic personality traits plus a tendency to be sexually sadistic then it is a much higher risk that he will act in a sexually violent way.[33]

[43] Dr Grant gave evidence that he considered it would be very important for the respondent to engage in the HISOP Sexual Offender Program and Violence Program before he can be released under a supervision order to give the respondent insight into his offending pathways and because without those programs, one could not actually identify properly the risk factors and how they might be addressed through an order.[34]

[44] Dr Grant also stated in oral evidence that somebody who personally denies any criminal conduct is more difficult to supervise, since if a person accepts that they have behaved in a particular way and they want to stop doing that and they want to change their lives, then they can work within the framework of the order and use that framework positively to help them not be put in situations of temptation. If they do not have that basic wish to change and do not have any acceptance of their behaviour and their problems, then they are going to see the supervision order as a cage that they resent and will try to resist and stretch the limits all the time.[35] That risk is heightened by somebody with an anti-social personality as they tend to live by their own rules rather than those that might be existing around them.[36]

[45] Dr Grant considered that while a supervision order would reduce the risk to some extent, the absence of real understanding of the risk pathways and exactly what's

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29 T1-33/23-34.
30 T1-40/36
31 T1-41/4-5.
32 T1-41/9.
33 T1-34/ 10-14.
34 T1-40/18-19.
35 T1-35/37-43.
36 T1-36/1-2.

going on and the potential for breaching a supervision order was such that he considered the risk of the respondent sexually reoffending was a significant risk.[37] He considered the risk would be moderate to high risk of some violent and sexual offending behaviour.

Dr Beech

[46] Dr Beech has provided a report dated 5 December 2016 which is annexed to his affidavit of 17 January 2017 and marked MGB-2.

[47] Dr Beech had previously seen the respondent at Wolston Correctional Centre and provided an assessment of the respondent which was contained in his earlier report of 26 April 2015.[38]

[48] Dr Beech interviewed the respondent at the Wolston Correctional Centre on 7 October 2016. In his interview with Dr Beech, the respondent continued to maintain his innocence in terms of sexual offending and indicated that he had been falsely convicted. He also claimed that in relation to his undertaking a sex offender's course, he had begun a six week preparatory sex offender course in 2013 but had been removed after five days because he maintained his innocence in relation to the alleged sexual offending. In that regard he thought that QCS had given evidence that he could do the course notwithstanding his maintenance of innocence. In this regard, he claimed that he had assaulted the woman the subject of the index offences but said he did so because she was hurting their child.[39]

[49] Dr Beech found that the respondent was a well-presented, groomed, heavy set indigenous man who came to the interview with an envelope of material that was related to 2012/2013 courses and matters and what appeared to be FOI material from the original charges. He offered those papers to explain his innocence and miscarriage of justice and attempts by QCS to prevent him in engaging in courses. Dr Beech however found the respondent evasive when questioned about the courses and programs and his intentions.[40]

[50] Dr Beech noted that in 2015 it was recommended that the respondent participate in a number of programs and in particular a high intensity sexual offenders program, a violence program and a substance misuse program. He noted that the respondent's continual denial of his offending acts was a stumbling block to his enrolment in the high intensity sexual offenders program although he considered it is not insurmountable.[41]

[51] Dr Beech on the basis of the material in the interview with the respondent formed the view that the respondent had resisted attempts by QCS to engage him in programs but he had done this in an evasive and manipulative manner and he offered insight-less, trivial or irrelevant excuses. He considered on the basis of his review of, inter alia, the QCS material provided and his interview with the

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37 T1-37/41-44.
38 Exh 1.
39 Page 8 MJB-2 lines 269 to 274.
40 Page 8 MJB-2.
41 Page 13 MJB-2, lines 556-560.

respondent, that the respondent was not genuine when he said that he wished to engage in courses but offers disingenuous excuses to explain the lack of progress.[42]

[52] Dr Beech considers that there is nothing much in fact that has changed since his early assessments. He states that:[43]

> "[The respondent] shows strong psychopathic traits and these continue. They interfere in his program engagement. He has managed in fact during the course of a continuing detention order to be removed from the residential section and be placed in the secure section and he does not seem to have attempted to return to the residential section. He has few if any external supports. In my opinion the actuarial and dynamic factors that were present in 2015 persist into 2016. Nothing has actually occurred that has remedied or altered the situation except perhaps that the offers from program involvement had become more open to him and he has become more steadfast in a roundabout way, in his refusal.
>
> In my opinion his risk of reoffending in a sexual manner remain high. The risk of violence generally remains high and intimate partners would be in a particular risk."

[53] Dr Beech noted in his report that the respondent had accepted an offer to participate in the Getting Started Preparatory Program. He considered that showed he may be amenable to further intervention but that much more needed to be done before any great sense of progress could be seen to be achieved.[44]

[54] In oral evidence, Dr Beech was asked about whether his recommendation that the respondent participate in the High Intensity Sexual Offender Program was affected by the fact that the respondent had performed in the Getting Started Preparatory Program at the end of 2016. Dr Beech considered that the respondent's stance of categorical denial of sexual offending in the Getting Started Preparatory Program indicated to Dr Beech that the respondent was not going to be able to be involved in the High Intensity Sexual Offender Program. This was because there is really nothing for the facilitators to work with and the High Intensity Sexual Offender Program is a group program and the categorical denial as it persists through the program has a deleterious effect on the program itself.[45] Dr Beech did not consider the respondent's denial removed the need for the respondent to undertake the program but indicated that it was not a treatment option available at this time.[46]

[55] Dr Beech did however consider that the Intensive Violence Program may be able to help the respondent address the views that he has about the use of violence, coercion and those risk factors in his lifestyle and that they may be used to moderate a number of factors which co-occur in sexual violence.[47] His concern however was that the Violence Program may not specifically go into paraphilias in circumstances

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42 Page 13 MJB-2, lines 572-7.
43 Page 13 MJB-2, lines 579-591.
44 Page 14 MJB-2 lines 599-601.
45 T1-7/22-25.
46 T1-1/35-36.
47 T1-7/45-47.

where there was some indication that there may be paraphilia in terms of paedophilia or a sexual deviance of sadism.[48]

[56] In terms of paraphilias, the High Intensity Sexual Offender Program would cast more light on what paraphilias may operate in relation to the respondent and what drives them.[49] The findings of such a program would affect matters which the community or supervisors would need to know and there would need to be ongoing treatment in that area.[50] Dr Beech considered it would be an assistance to anyone who subsequently treats him under a supervision order.[51]

[57] Dr Beech explained the differing ways of looking at the conduct of the respondent in terms of the offences that involved the child and the mother which the respondent videotaped. He said it could either be a simple commercial pursuit creating child exploitation material as part of the respondent's pornography business, although there were times when the child was not being filmed and he helped the child look at videos and things of that like, so it may have reflected a sexual paraphilia or may have reflected both.[52] In either case Dr Beech considered it was a no-win situation in the sense that the respondent's behaviour was either psychopathic, or it was representative of a paraphilia, and it is someone who's then a psychopathic paedophile who is high risk of continuing with paedophile activities or it could be both.[53]

[58] Dr Beech noted that if a sexual offender has a high psychopathy rating the risk of reoffending is high.[54]

[59] Dr Beech however considered that a diagnosis could not be made because of the respondent's denial of his offending behaviour.[55] Dr Beech indicated that the respondent is an untreated man and it would be difficult to know how to provide any ongoing treatment.[56] Dr Beech considered that because of the respondent's antisocial personality and high levels of psychopathy in terms of supervision he could not be trusted in what he says, he would have to be monitored more highly and it would be hard to draw up programs or plans. He said there would be a concern that he is just going to keep on breaking rules.[57] He considered that the respondent needed to be involved in some programs which would help him address the issue and inform people who would supervise him.[58] Dr Beech indicated that until the respondent was treated and people knew how to supervise him, there was nothing to reduce the risk of reoffending whilst on a supervision order. The respondent is at high risk of reoffending and there is nothing which is active to reduce it.[59]

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48 T1-8/7-16.
49 T1-8/18-23.
50 T1-8/25-27.
51 T1-8/37-40.
52 T1-9/25-30.
53 T1-10/3-6.
54 T1-9/42-44.
55 T1-10/8-11.
56 T1-10/45-46.
57 T1-11/12-20.
58 T1-10/3-6.
59 T1-11/44-46 and T1-12/4-7.

[60] Dr Beech indicated that the risk of the respondent sexually re-offending would remain high on a supervision order even though it may reduce the risk somewhat because he would be monitored such as having a bracelet and being given accommodation.[60] When asked about the frequency that surveillance officers would be required to keep checking on the respondent, Dr Beech indicated it was hard to envisage how they could let the respondent out of accommodation because the risk is that he would breach other parts of his Supervision Order about contact and perhaps substance abuse and he could not be trusted to be where he would say that he would in fact go and that he would do what he says he is going to do.[61]

Programs

[61] The respondent has engaged in a number of rehabilitative programs since 1997.[62] Until the Getting Started Sexual Offenders Program undertaken in late 2016, none addressed his sexual offending.

[62] The lack of engagement by the respondent in key rehabilitation programs identified by Dr Grant and Dr Beech is a matter which both Dr Grant and Dr Beech regarded as critical in being able to identify the deciding factors for the respondent's offending behaviour and how they can be treated and addressed for the purpose of reducing the risk of re-offending should the respondent be released on a supervision order. Even though the respondent engaged in the Getting Started Sexual Offenders Program, both psychiatrists considered that has proved to be of little benefit in this regard because of the respondent's categorical denial that he engaged in sexual offending.

[63] The respondent undertook the Getting Started: Preparatory Program for Sexual Offending Program in October 2016 which was completed on 4 November 2016. The exit report in relation to that matter was put into evidence by both the applicant and the respondent.[63] The report notes that while the respondent had positive strengths identified such as being caring, independent, loyal to family, commitment, sporting achievement, healthy, persistent, patient, humble and genuine, he consistently expressed a level of confusion and frustration about processes associated with Wolston Correctional Centre and his inclusion in the program. He did not demonstrate a commitment to change or willingness to participate in future sexual offending programs due to his denial of sexual offences. On that basis the recommendation was given, due to his current stance of categorical denial in relation to the current offences that the respondent is not suitable for participation in future sexual offending treatment programs.

[64] The respondent in his cross-examination of Dr Grant and Dr Beech brought attention to the fact that he had engaged in drug and alcohol abuse programs. He provided some evidence in this regard, in the form of an extract from a Corrective Services Report "Integrated Offender Management Strategy" which referred to him having completed the Substance Abuse Education Program and Substance Abuse:

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60 T1-12/11-17.

61 T1-12/35-44.

62 See Affidavit of Cassandra Cowie CFI 28 at CC-3.

63 See report "Getting Started: Preparatory Program for Sexual Offending (GS:PP) Completion Report" Exh 2 and; Annexure A AO-1 to the Affidavit of Annette O'Brien (CFI-26). Ms O'Brien was the writer of the Exit Report that held the opinion stated in that report.

Preventing and Managing Relapse Program at dates unable to be ascertained.[64] The Program history indicates that he engaged in a Managing Addiction and Stepping Up program in 2011 and 2013 although he had declined undertaking the Getting Smart and Pathways program.[65] While Dr Grant and Dr Beech accepted that if that the respondent had undertaken an appropriate substance abuse program that may indicate that he did not need to redo such a program they still considered it appropriate for him to engage in a maintenance program, given his history of alcohol and substance abuse.

[65] Both Dr Grant and Dr Beech however recommend that the respondent to engage in a High Intensity Violence Program and a High Intensity Sexual Offender's Program whilst in custody prior to release, as they had done in their assessments before the Court in 2015. Given the continual denial of the respondent that he had engaged in any sexual offending which prevents him presently being suitable for the High Intensity Sexual Offender's program, both Dr Grant and Dr Beech consider that participation in a High Intensity Violence Program may break the impasse and result in the respondent developing some insight into his sexual offending such that he may be able to participate in a High Intensity Sexual Offender's Program.

[66] The respondent in cross-examination of Dr Beech and in his submissions to the Court raised that he had been trying to participate in programs but had not been permitted to do so by prison authorities. Dr Grant could not form a view on whether or not the respondent had been prevented from participating in the programs or had chosen not to engage in them. Dr Beech formed the impression that the respondent was not genuine about wishing to engage in programs and had created excuses as to why he had not participated in them. The affidavit of Cassandra Cowie at CC-3 annexes an updated copy of the prison files relating to the respondent up until 10 January 2017 at CC-3. That refers to engagement with the respondent about undertaking the programs which were recommended previously by psychiatrists and which was the subject of evidence in the decision of this Court on 9 June 2015. It is evident from the QCS file that the respondent did on occasions indicate a willingness to participate in the High Intensity Sexual Offenders and High Intensity Violence programs but then would decline. In the case of the High Intensity Violence Program, while the respondent indicated that he was willing to complete such a program he would not agree to transfer to another correctional centre in order to undertake programs such as the Cognitive Self Change High Intensity Violence Program (CSCP) which addresses the question of violence. That history also reveals the respondent refusing to accept he had engaged in sexual offending and to participate in sexual offending programs. In terms of the programs for sexual offending, the respondent's expressed belief was that he could not engage in such a program because he was innocent and it would jeopardise his appeal. In this regard leave to appeal had been sought by the respondent and refused.

[67] The respondent submitted that he cannot get on the programs that he is required to undertake. While there is evidence that he has indicated a willingness to engage in at least the High Intensity Violence Program it is evident that he has refused offers to engage in that program because it required relocation to another correctional centre.

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64 Exh 3.

65 Affidavit of Cassandra Cowie exh CC-3 p 2 and 3.

[68] While the respondent did engage in the Getting Started Program for sexual offenders at the end of 2016, it has not resulted in any real progress in his treatment or the identification of risk factors that could trigger his sexual reoffending as he continued to deny having committed the offences or having engaged in any sexual offending. His cross-examination of Dr Beech reflected that position where he sought to challenge Dr Beech about matters which he considered could establish his innocence.

[69] In that regard, I note that he had previously applied for leave to appeal his conviction and sentence. That leave was denied by the Court of Appeal. The Court of Appeal in the course of considering leave considered that there was no prospect of success in the respondent's appeal against conviction or sentence.[66]

[70] The evidence from Mr Phelan[67] and from both Dr Beech and Dr Grant indicate that the appropriate way to try and progress addressing the respondent's offending behaviour given his intransigence in relation to any admission of sexual offending is for the respondent to engage in the CSCP. This had been offered to the respondent as a possibility in March 2016 but he indicated that he would not be prepared to transfer to another correctional centre.

[71] I note in this regard that Mr Phelan has indicated that the CSCP Program will be offered in August/September 2017 and if the respondent presents as ready willing and able to participate in the program, an offer for the program will be made to him. He notes that the CSCP is not offered at Wolston Correctional Centre.[68]

[72] Participation in the CSCP is not regarded by Dr Grant or Dr Beech as abrogating the need for the respondent to participate in the HISOP. They consider that it may have however facilitated the respondent not only addressing the factors which give rise to his violent behaviour but also give him some insight into his sexual offending and open him to the possibility of meaningfully participating in a HISOP. Mr Phelan said the respondent is currently not a suitable candidate to participate in and benefit from the HISOP since he maintains complete denial of all aspects of sexual offending and is resistant to discussing the offences. If the respondent changes his view or participates in the CSCP Program the earliest he can now be offered a place in the HISOP would be early 2018.

[73] The difficulty for the respondent is that until he meaningfully engages in these programs such that his offending behaviour can be discussed and his motivation and the triggers for that behaviour ventilated, the respondent cannot progress forward and appropriate treatment, and management to avoid his risk of sexual reoffending cannot be implemented.

[74] While it may be true as submitted by the respondent that he did not consider that he had to participate in such programs in order to obtain parole and had participated in a drug and substance program, it is plain that from his own correspondence that he was aware that the result of the decision last year of this Court that he needed to participate in the Getting Started: Preparatory Program, High Intensity Sexual Offending Program and Cognitive Self Change High Intensity Violence Program. The respondent's own correspondence in ex 2 dated 8 October 2015 indicated he

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66 *R v S* [2002] QCA 38.
67 CFI-21.
68 Affidavit of Ashley Spencer Phelan (CF29) at [20] and [21].

needed to become part of the Getting Started Program, the Pathways Program and the Violence Program.

[75] The weight of the evidence supports the fact it is largely the respondent's own conduct and positional stance that has resulted in him not participating effectively or at all in any of the programs that were recommended as necessary to address his sexual offending behaviour and the risk factors giving rise to sexual reoffending.

Consideration

[76] The first question is whether the respondent is a serious danger to the community in the absence of a division 3 order under the Act. I am satisfied to a level of high degree of probability that there is acceptable cogent evidence that has been presented to me, particularly with respect to the psychiatric evidence and the evidence of Ms O'Brien, Mr Phelan and Ms Cowie as to the respondent's history and conduct in undertaking or being offered various rehabilitation programs, of sufficient weight to affirm the decision that the respondent continues to be a serious danger to the community in the absence of a division 3 order under the Act, having regard to the required matters I am to consider.

[77] While the respondent's former legal advisors submitted that the use of amphetamines and or intoxicating substances were present at the time of the index offending and were a factor in his offending, it is clear from the evidence of the psychiatrists referred to above that they did not consider the respondent's behaviour in terms of offending could be attributed substantively to the presence of intoxicating substances.

[78] Nor, is the evidence of the psychiatrists focussed on the risks of violence[69] rather than the risk of commission of sexual offences, although Dr Grant considers the former to be a higher risk.

[79] The evidence of Dr Grant and Dr Beech supported the fact that there is a moderate to high risk of the respondent sexually assaulting a woman and possibly a child if released. Unfortunately, there has been no significant change in the assessment of risk of the respondent by Dr Grant and Dr Beech since the matter was considered by this Court at the time of making the Continuing Detention Order in June 2015.

[80] In Dr Beech's view, the respondent may be even slightly worse given he appears to have become even more entrenched in his view that he is innocent of any sexual offences and that his offending was of a sexual nature.

[81] There is also evidence that the respondent is not addressing the cause or causes of his offending behaviour given his continual refusal to acknowledge that he is guilty of any offences of a sexual nature notwithstanding that he has participated in the Getting Started Program. It is plain from the Exit Report of the Getting Started Program, which was relied upon by the respondent that his participation in that program does not appear to have had a positive effect on him. In terms of the psychiatric evidence none of which was subject to serious challenge by the respondent and which I accept it supports the fact that the respondent is a serious danger to the community in the absence of a Division 3 Order.

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69 As submitted by the respondent's legal team in the submissions dated 31 January 2017 at [14] and [17].

[82] None of the respondent's cross-examination of Dr Beech seriously challenged his opinions nor his assessment that the respondent is at high risk of sexually reoffending.

[83] Dr Beech had the material that was presented by the respondent in ex 2 and ex 3 put before him. He indicated that he had seen most of that material and it did not cause him to change any of the opinions that he had given. Dr Grant also indicated that none of the material in ex 2 and ex 3 raised matters which caused him to change his mind.[70]

[84] In the present case, I am also satisfied on the evidence before me that the position remains as was described by this Court in the reasons of Philip McMurdo J at para [40], cited above[71] that while there is uncertainty as to whether there is in his case sexual sadism or even paedophilia, there is a real possibility that the respondent may have a paraphilia which is sexual sadism which raises a high risk of sexual reoffending, particularly having regard to his antisocial personality and psychopathic traits. The absence of a clear determination in this regard due to the respondent's unwillingness to engage in such a program does not suggest that the respondent is not a serious danger to the community. It supports a finding of unacceptable risk.

[85] I am satisfied that the court should affirm the decision that the respondent is a serious danger to the community in the absence of a Division 3 Order. The respondent's offending behaviour in the past in relation to sexual offences, his anti-social personality, the fact that he has psychopathic traits and that there is a real possibility that there is an element of sexual sadism in his offending and possibly paedophilia, satisfies me that there is unacceptable risk that the respondent would commit a serious sexual offence if released without a division 3 order. That risk is further heightened by the fact that he is not engaged in necessary treatment programs previously recommended, save for the Getting Started Program. While he did participate in that program, his denial of sexual offending has meant the respondent has not responded positively as it has provided no insight into the nature of his behaviour or motivations and the relevant triggers for his sexual offending such that it could be treated. Presently his attitude indicates that a High Intensity Sexual Offending Program which both psychiatrists considered he would need to engage in is not open given his denial.

[86] Having affirmed the decision of this Court on 9 June 2015, the question I then have to consider is whether the Court may make a supervision order or continuing detention order. In this regard the paramount consideration is whether adequate protection of the community can be ensured by a supervision order. The applicant contends it cannot and carries the onus in that regard.[72] Conversely, as was stated by the Court in *Attorney-General v S*,[73] the task of the court is to consider the nature and extent of the risk as well as the potential consequences of that risk eventuating in order to assess whether the risk is acceptable in the sense of providing adequate protection to the community. That risk has content not only from what can be found as a fact about the respondent but also what constitutes real possibilities. Both Dr

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70 T1-38/29-36.
71 [2015] QSC 157.
72 *Attorney-General (Qld) v Lawrence* [2009] QCA 136.
73 [2015] QSC 157 at [40].

Beech and Dr Grant were of the view that there was an unacceptable risk that the respondent would breach any supervision order. Given his psychopathic tendencies, Dr Beech indicated a supervisor could not place trust in what the respondent said he was going to do. Dr Beech considered that in order to avoid the risk of the respondent breaching the supervision order he could not in fact be let out of the accommodation. That is neither reasonable nor practicable. Dr Grant also expressed the view that given the respondent's denial that he had offended in a sexual way, it was unlikely that he would accept the terms of an order which sought to restrain him and his actions on the basis that he was such an offender.[74] This was supported by the evidence of Dr Beech.

[87] Dr Grant indicated that the fact that a supervision order puts forward some 30 requirements and puts a straight-jacket on the respondent in various ways would be expected to have some effect on reducing the risk posed by the respondent's release. However, he indicated that in the absence of a real understanding of the risk pathways of the respondent and exactly what is going on and given the potential for breaching supervision orders, the risk of reoffending posed by the respondent would still be significant. While the risk would not be as high, it would still be quite significant.[75] His view is that there would still be a moderate to high risk of some violent sexually offending behaviour. Dr Grant was of the view that the respondent needs to undertake the High Intensity Sexual Offender Program prior to release and also the Violence Program. He said completion of programs addressing violence, substance abuse and sexual offending would all assist in increasing confidence that the risk can be contained.[76] Those matters presently cannot be addressed by any supervision order. In that regard, Dr Grant's evidence does not support a finding that a supervision order would be efficacious in constraining the respondent's behaviour by preventing the opportunity for the commission of sexual offences as submitted by the respondent's previous legal team.

[88] While the psychiatric evidence acknowledged that electronic monitoring under a Supervision Order could assist in containing the risk, it doesn't provide information such as who he is seeing and the kind of relationships he is developing. Given the respondent's antisocial behaviour and psychopathic traits no trust could be placed in the respondent to reliably inform any supervisor of these matters. Both Dr Beech and Dr Grant considered this increased the risk of reoffending significantly. According to Dr Grant the risk arises if they are not reporting what they are doing and that is particularly important in terms of addressing the behaviour.[77]

[89] It is evident therefore that there is a significant risk that the respondent would not comply with any supervision order and that he may commit a serious offence before his non-compliance is detected. Moreover presently no supervision order can be formulated to properly address the risks posed by the respondent to ensure adequate protection of the community, given the failure of the respondent to engage in programs that would enable that to occur. In the circumstances, I consider that the imposition of a supervision order cannot reasonably and practically manage the adequate protection of the community, because it presently cannot contain the risk posed by the respondent to provide such adequate protection.

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74 T1-35/40–45 - T1-36/1-2.
75 T1-37/38-44.
76 T1-38/10-15.
77 T1-37/7-10.

[90] Given the above and taking into account the paramount consideration is the need to ensure protection of the community, I am satisfied that the Attorney-General has established that there could not be adequate protection of the community by a supervision order and there can only be adequate protection of the community by a continuing detention order.

[91] I therefore affirm the decision of this Court of 9 June 2015 that the respondent is a serious danger to the community in the absence of a division 3 order. I order that the respondent continue to be subject to the Continuing Detention Order.