# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Lawrence v Attorney-General (Qld)* [2017] QCA 27 |
| PARTIES: | **MARK RICHARD LAWRENCE**<br>(appellant)<br>**v**<br>**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**<br>(respondent) |
| FILE NO/S: | Appeal No 3393 of 2016<br>SC No 7468 of 2007 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | General Civil Appeal |
| ORIGINATING COURT: | Supreme Court at Brisbane – [2016] QSC 58 |
| DELIVERED ON: | 9 March 2017 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 21 September 2016 |
| JUDGES: | Fraser and Morrison JJA and Boddice J<br>Separate reasons for judgment of each member of the Court, each concurring as to the orders made |
| ORDERS: | **1. Dismiss the appeal.**<br>**2. Refuse the application to adduce new evidence.** |
| 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 appellant has been subject to a continuing detention order under division 3 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 since 2008 – where the primary judge affirmed the decision and ordered that the appellant continue to be subject to the continuing detention order – where the expert witnesses gave evidence that the appellant's risk level had decreased – where those assessments were based on the assumption that the appellant was being truthful about certain matters – where the appellant had given differing information to expert witnesses – whether the primary judge's decision was contrary to the expert evidence – whether in all the circumstances a supervision order could ensure adequate protection of the community<br><br>*Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld), s 13(4), |

s 27, s 30

*Abalos v Australian Postal Commission* (1990) 171 CLR 167; [1990] HCA 47, cited
*Attorney-General for the State of Queensland v Francis* [2007] 1 Qd R 396; [2006] QCA 324, cited
*Attorney-General for the State of Queensland v Lawrence* [2008] QSC 230, related
*Attorney-General for the State of Queensland v Lawrence* [2010] 1 Qd R 505; [2009] QCA 136, related
*Attorney-General for the State of Queensland v Lawrence* (2014) 244 A Crim R 184; [2014] QCA 220, related
*Attorney-General for the State of Queensland v Lawrence* [2016] QSC 58, related
*Devries v Australian National Railways Commission* (1993) 177 CLR 472; [1993] HCA 78, cited

COUNSEL: The appellant appeared on his own behalf
P Dunning QC SG, with J B Rolls, for the respondent

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

[1] **FRASER JA:** On 18 March 2016 a judge in the Trial Division made orders[1] under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act") affirming a decision made on 3 October 2008[2] that the appellant is a serious danger to the community in the absence of an order under division 3 of the Act, and ordering that the appellant is to continue to be subject to the continuing detention order.

[2] The grounds of the appellant's appeal, which are set out in [18] of these reasons concern factual questions. The appellant did not argue that the primary judge made any error about the applicable law.

[3] The hearing before the primary judge was regulated by s 30 of the Act. It provides:

> "(1) This section applies if, on the hearing of a review under section 27 or 28 and having regard to the required matters, the court affirms a decision that the prisoner is a serious danger to the community in the absence of a division 3 order.
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> (2) On the hearing of the review, the court may affirm the decision only if it is satisfied-
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> (a) by acceptable, cogent evidence; and
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> (b) to a high degree of probability;
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> that the evidence is of sufficient weight to affirm the decision.
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> (3) If the court affirms the decision, the court may order that the prisoner-
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> (a) continue to be subject to the continuing detention order; or

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1 *Attorney-General for the State of Queensland v Lawrence* [2016] QSC 58.
2 *Attorney-General for the State of Queensland v Lawrence* [2008] QSC 230.

(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; and

(b) the court must consider whether-

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

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

(5) If the court does not make the order under subsection 3(a), the court must rescind the continuing detention order.

(6) In this section-

***required matters*** means all of the following-

(a) the matters mentioned in section 13(4);

(b) any report produced under section 28A."

[4] The required matters are referred to in s 13(4):

"(4) In deciding whether a prisoner is a serious danger to the community… 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."

[5] The appellant did not suggest that the 2008 decision that the appellant was a serious danger to the community in the absence of an order for his continuing detention should not be confirmed. The primary judge recognised, however, that despite the absence of opposition it was necessary for her Honour to be satisfied under s 30(2) of the Act that the evidence justified affirmation of the original decision. The primary judge's decision that the evidence did justify affirmation of the original decision that the appellant is a serious danger to the community in the absence of a division 3 order is not in issue in this appeal. As the primary judge recognised, the evidence upon that topic was necessarily similar to the evidence bearing upon the question whether or not the Court should order the appellant to continue to be subject to the continuing detention order or instead to be released from custody subject to a supervision order.

**Outline of the primary judge's reasons**

[6] Upon the latter question the paramount consideration is the need to ensure adequate protection of the community: s 30(4)(a) of the Act. The primary judge referred to this passage in *Attorney-General for the State of Queensland v Francis*:[3]

> "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."

[7] The primary judge derived her Honour's summary of the appellant's criminal history from the following summary given by Chesterman JA in *Attorney-General for the State of Queensland v Lawrence*:[4]

> "[5] The appellant is 48 years of age. He has been continuously in gaol since December 1983, more than 25 years.
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> [6] His criminal history begins with an appearance in the Ipswich Children's Court on 9 May 1978 when he was charged with the aggravated assault on a male child under the age of 14 on 4 May 1978. The appellant was admonished and discharged. He next appeared on 2 November 1978 in the Ipswich Magistrates Court charged with another aggravated assault of a male child under the age of 14. He was sentenced to two years' probation. (The date given for the offence was 20 December 1978 which must be incorrect given the date of his appearance.) He appeared again in the Ipswich Magistrates

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3 [2007] 1 Qd R 396 at 405 [39].

4 [2010] 1 Qd R 505 at 506-507 [5]-[11].

Court on 23 February 1979, this time charged with the aggravated assault of a female child under the age of 17, the day before, 22 February. He was sentenced to three years' probation and ordered to undergo any psychiatric treatment which the probation officer might direct including treatment as an inmate of a psychiatric hospital. On 23 December 1980 he appeared for a third time in the Ipswich Magistrates Court. The charge this time was aggravated assault on a male child under the age of 14 on 21 December. He was fined $75.

[7] On 3 September 1981 he appeared before the Brisbane District Court charged with conspiracy to commit a crime and assault with intent to steal with the threatened use of violence whilst armed and in company. The offences were committed on 11 April 1981. At the time the appellant was an involuntary patient in Wolston Park Hospital from which he absconded with three other patients. They caught a taxi and decided to rob the driver. One of them held a knife to the driver's throat. He was not harmed and refused to give up his takings. The appellant was sentenced to four months' imprisonment and required to undergo a further three years' probation.

[8] Having served the imprisonment he was returned to Wolston Park Hospital where, on 26 December 1983, he and another patient killed a fellow patient, a woman. On 7 February 1985 the appellant was sentenced to 15 years' imprisonment for manslaughter. That verdict rather than one for murder was returned on the basis of diminished responsibility. The appellant had compelling sexual fantasies about rape and murder. The young woman was killed as an enactment of the fantasies.

[9] In August 1991 the appellant escaped from custody. He had been allowed to leave the gaol to attend a tennis competition and did not return. He was found after a few days and on 3 September 1991 sentenced to one year's imprisonment, cumulative upon the 15 years, for escaping lawful custody.

[10] On 4 April 2002 in the Brisbane District Court he was convicted of rape and sexual assault with a circumstance of aggravation on 14 October 1999. It was a sodomitic attack on a fellow prisoner. He was sentenced to seven years' imprisonment for the rape and three years for the assault, to be served concurrently. An earlier conviction had been quashed and the appellant was retried in 2002. By the time he was convicted and sentenced the second time his previous sentences had expired. He was, however, kept in gaol and remanded in custody. That time, from 7 February 2001 until 4 April 2002, was declared to be time served under the sentence.

[11] The term of imprisonment imposed for the manslaughter expired on 6 February 2000. The year's imprisonment for escaping expired 12 months later. The seven years imposed

for rape expired on 7 February 2008. The appellant's confinement since then has been pursuant to the Act."

The primary judge also summarised the history of the detention orders made with respect to the appellant:

"[20] The first detention order under the DPSOA was made on 3 October 2008. The respondent appealed the making of that order and the appeal was dismissed by the Court of Appeal on 22 May 2009. An application for special leave to the High Court of Australia was refused on 2 October 2009.

[21] On 4 October 2011, a judge of this court, having been satisfied that the respondent was a serious danger to the community in the absence of a Division 3 order, decided that the respondent ought to be released upon the 'imposition of appropriate conditions'. An appeal by the Attorney-General was allowed by the Court of Appeal and the order for his release on a supervision order was set aside on 2 December 2011. It was ordered that the respondent continue to be subject to the continuing detention order that had originally been made. An application for special leave to appeal to the High Court was refused on 5 October 2012.

[22] On 6 December 2012, another Supreme Court judge who conducted a review under Part 4 of the DPSOA affirmed the decision that the respondent was a serious danger to the community in the absence of an order and ordered that he continue to be subject to the continuing detention order made on 3 October 2008.

[23] On 2 May 2014, another Supreme Court judge affirmed the decision that the respondent was a serious danger to the community in the absence of an order under the DPSOA but ordered that the continuing detention order be rescinded and the respondent be released from custody subject to the requirements set out in his Honour's reasons for judgment. On 2 September 2014, the Court of Appeal allowed the appeal against those orders and ordered that the respondent continue to be subject to the continuing detention order which had been made on 3 October 2008. An application for special leave to the High Court by the respondent was dismissed.

[24] The hearing before me was the hearing of a further annual review on an application made by the Attorney-General. The written evidence consisted of a number of affidavits, two volumes of psychiatric reports and transcripts, an article from a local newspaper and a report as to the respondent's testosterone level. In addition, oral evidence was called from a psychologist Dr Lars Madsen, psychiatrists Dr Joan Lawrence and Dr Grant, a general practitioner Dr Hayman, and the respondent Mr Lawrence. After the hearing, Dr Grant and Dr Lawrence provided further reports having perused a transcript of Mr Lawrence's evidence.

> [25] It is necessary to review the written and oral evidence adduced in this case to determine whether or not to make any of the orders set out in s 30 of the DPSOA."

[8] So far as is relevant in this appeal, the most significant evidence at the hearing before the primary judge was given by Dr Madsen (a forensic clinical psychologist who had been seeing and treating the appellant regularly for more than five years), Dr Joan Lawrence (a psychiatrist who had assessed and given reports about the appellant on many occasions since 2009), Dr Grant, (a psychiatrist who had seen and given reports about Mr Lawrence on many occasions since 2012) and the appellant himself.

[9] The primary judge detailed their evidence (including numerous reports given by the medical witnesses) in paragraphs [26] – [141] of her Honour's reasons. The appellant did not contend that there was any error in this analysis.

[10] The primary judge recorded that in view of matters which the appellant raised in his oral evidence, the Court asked for further reports from Dr Grant and Dr Lawrence. Each of them provided a supplementary report. Dr Lawrence provided a further addendum to her supplementary report in which she agreed entirely with the opinion expressed by Dr Grant in his supplementary report.

[11] Dr Grant and Dr Lawrence both diagnosed the appellant as suffering from paraphilia (sexual sadism) with an anti-social personality disorder and psychopathic traits. Both psychiatrists were of the view that whilst the risk of harm to potential victims of the appellant remained severe, the risk that the appellant would reoffend has reduced over time mainly as a result of Dr Madsen's individual treatment of the appellant.

[12] The risk of the appellant reoffending is associated with the risk that he will continue to have violent sexual fantasies of raping and killing a woman. Important issues concerned the frequency of any such sadistic fantasies and the appellant's response to them. These issues dominated Dr Grant's supplementary report with which Dr Lawrence expressed agreement. The primary judge accurately paraphrased Dr Grant's supplementary report in the following passage:

> "[145] Dr Grant's supplementary report is dated 2 December 2015. He said that Mr Lawrence's evidence amply demonstrated his intellectual limitations, his difficulty in understanding some language or words and his rather concrete thinking style. He said it also demonstrated his naive and limited understanding of the challenges that were going to face him if and when he leaves prison. Dr Grant said his answers to questions in court illustrated the difficulties involved in getting a precise understanding from him as to the prevalence of his deviant fantasies. Dr Grant said he clearly prevaricates as to whether he actually made different statements or as to whether his statements were misinterpreted by Dr Grant or Dr Lawrence. Dr Grant said that Mr Lawrence appears to understand the risk involved in entertaining and reinforcing sadistic sexual fantasies. He also appeared to illustrate that he was now aware of the risk of such fantasies and the need to report them, use strategies to avoid them developing and to recognise triggers

so that he could short circuit the process of fantasies developing and being reinforced.

[146] Dr Grant expressed the opinion that Mr Lawrence experienced potential triggers for sadistic fantasies on an infrequent basis but had developed increased insight into this and was working in therapy on avoiding those infrequent thoughts developing into dangerous fantasies or actions. Dr Grant said that the question in regard to risk revolved around whether it could be accepted that Mr Lawrence now had sufficient motivation and insight to continue that process whereby he avoids the development of frequent mature fantasies which might lead to offending. He remained of the opinion that a carefully-applied, detailed supervision order combined with continued close individual therapy and supervision would have the effect of reducing the risk to low if he were released into the community. Given that the risk if he were to allow the fantasies to develop to a point where he acted upon them meant that the potential offence would be catastrophic Dr Grant was of the opinion that a low threshold must be maintained for Mr Lawrence to be returned to custody under circumstances where the risk was seen to be increasing."

[13] The primary judge concluded, and, as I have indicated, the appellant does not seek to challenge this conclusion, that there was "acceptable, cogent evidence of sufficient weight to persuade me to a higher degree of probability that the decision first made on 3 October 2008 and subsequently confirmed on many occasions that in the absence of a Division 3 order Mark Lawrence remains a serious danger to the community should be affirmed."[5] The primary judge went on to address each of the matters in s 13(4) of the Act which are relevant in the present case. The primary judge took into account the following matters, amongst others:

(a) Dr Lawrence considered that the most significant factor in terms of risk was the presence or absence of ongoing deviant sexual fantasies which the appellant denied having, and Dr Lawrence formed the opinion that the appellant's risk of reoffending had been reduced to moderate or even moderate to low.[6] In the report given by Dr Grant after he had read the appellant's oral evidence (with which Dr Lawrence agreed), Dr Grant opined that "a carefully applied, detailed supervision order combined with close individual therapy and supervision would have the effect of reducing the risk to low if [the appellant] were released into the community, although a low threshold should be maintained and monitored such that he should be returned to custody if his risk was seen to be increasing… because the potential offence, if Mr Lawrence acted on his fantasies, would be catastrophic."[7]

(b) The appellant had made progress since the commencement of Dr Madsen's treatment about four years earlier.[8]

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5 [2016] QSC 58 at [153].
6 [2016] QSC 58 at [163].
7 [2016] QSC 58 at [166].
8 [2016] QSC 58 at [167].

(c) Dr Madsen considered that the appellant's paraphilia was not curable but would be manageable if he disclosed the development of fantasies, however Dr Madsen recognised that the appellant was aware that such disclosure might lead to his incarceration, which the appellant did not desire.[9]

(d) Before 2000 the appellant had committed a variety of violent and sexual offences which usually involve sexual deviancy and violence to vulnerable people, but in more recent years his behaviour in prison had been stable and he was able to engage in a consensual sexual relationship with another prisoner.[10]

(e) In addition to treatment by Dr Madsen, the appellant had completed the High Intensity Sex Offender Treatment Program in 2007, in respect of which Dr Madsen opined that the appellant appeared to have gained some benefit from it but retained attitudes supportive of offending, and the appellant had completed the Sexual Offending Maintenance Program in 2013.[11]

(f) There were some indications that those programs had not been entirely effective, but the appellant's participation in them and particularly the individual treatment by Dr Madsen had a positive effect on the appellant.[12]

[14] In the concluding section of the primary judge's reasons, paragraphs [178] – [194], her Honour addressed the question whether the appellant would commit another serious sexual offence if released. The primary judge first observed that if the appellant committed a serious sexual offence the consequences would be catastrophic. Having regard to the appellant's pattern of offending behaviour and the nature of his sadistic fantasies, that could not be controversial.

[15] Similarly, the expert evidence supported the primary judge's further conclusion that the appellant's paraphilia meant that there would always be a risk that the appellant would have violent sexual fantasies of raping and killing a woman. The primary judge observed:

> "[180] If he allows himself to indulge in violent sexual fantasies and masturbates to those fantasies, members of the community, particularly vulnerable women, will be at serious risk from him.
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> [181] The method of obviating that risk is for him to recognise triggers that may cause him to have thoughts which could develop into such a fantasy and use strategies to prevent the fantasy from developing. He is aware that if he starts to develop such fantasies he must inform his psychologist or supervising Corrective Services officer. He also knows that if he does so he is likely to be returned to prison. That is a real disincentive to disclosure and to the necessary honest and open recording of his fantasies. It would be in these circumstances in his interests not to disclose the development of a fantasy. There is

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9 [2016] QSC 58 at [169].
10 [2016] QSC 58 at [171]-[172].
11 [2016] QSC 58 at [173].
12 [2016] QSC 58 at [175]-[176].

a real risk, therefore, that he would not make the necessary disclosure.

[182] The psychiatrists' reports were, to a large extent, based on his own reports of his internal thinking and masturbatory habits. …

[183] There were a sufficient number of inconsistencies in his accounts as to various matters for me to entertain doubt as to his credibility and finally to conclude that where his version was the only evidence, it lacked the honesty and reliability necessary for me to be able to accept it. …"[13]

[16] After giving examples of the matters the primary judge considered undermined the appellant's credibility and reliability, the primary judge referred to these further matters:

(a) The appellant's difficulty in maintaining an erection and masturbating to non-deviant fantasies led him to discuss with his general practitioner the possibility of being prescribed erectile dysfunction medication on the basis that he was experiencing erectile dysfunction because his testosterone levels had dropped; but whilst those levels had decreased they were in fact still within the normal range and Dr Lawrence expressed the firm view that the appellant should not be prescribed such medication.[14]

(b) In light of the appellant's expressed difficulty of maintaining an erection and obtaining sexual satisfaction from non-deviant fantasies, about which he was sufficiently concerned to discuss inappropriate medication with his medical practitioner, it appeared likely that the appellant would be tempted to use deviant fantasies, with the consequent reinforcement of his paraphilia leading him to act out his sadistic fantasies as he had done in the past; if he were no longer in prison he would have the time and opportunity to do so without observation or checking, and no degree of supervision could prevent that occurring, the only safeguard being disclosure of the development of the fantasies by the appellant himself.[15] If the appellant did not disclose the development of the fantasies they likely would not be apparent to a supervisor, so that the fantasies could develop without them being detected before he acted upon them, with disastrous consequences.[16]

(c) The stresses and frustrations the appellant would experience after release from custody had been identified as likely triggers for the fantasies. The feeling of being valued which the appellant derived from his work in prison would be unlikely to be replicated outside the prison. The primary judge considered that notwithstanding the appellant's denials, this would likely make the appellant frustrated and

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13 [2016] QSC 58 at [180]-[183].
14 [2016] QSC 58 at [189].
15 [2016] QSC 58 at [190].
16 [2016] QSC 58 at [191].

angry, and thus more vulnerable to using sexual fantasies to elevate his mood.[17]

(d) The appellant was aware that if he revealed that he was developing deviant fantasies that could lead to his reincarceration, which he was desperate to avoid.[18]

(e) The appellant's lack of trust in professionals was demonstrated by his disagreement in oral evidence with statements made by Dr Madsen, Dr Lawrence and Dr Grant. That was of concern because the appellant would need to be honest with Dr Madsen if the appellant were to be safely managed on a supervision order. The primary judge found that the appellant would not be honest with Dr Madsen in those circumstances, having regard to the appellant's "demonstrated history of lying and suspiciousness and his knowledge that such disclosure would be likely to return him to prison".[19]

[17] The primary judge was persuaded that the only way to protect the public from the risk posed by the appellant was to affirm the decision that he was a serious danger to the community in the absence of a division 3 order and for him to be subject to a continuing detention order.[20]

**Consideration**

[18] The grounds of the appellant's appeal against the order that the appellant continue to be subject to the continuing detention order are as follows:

> "A. The learned primary judge erred in concluding that adequate protection of the community could not be ensured by the appellant's release from custody subject to a supervision order.
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> B. The learned primary judge's conclusion that adequate protection of the community could not be ensured by the appellant's release from custody subject to a supervision order:
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> a. was contrary to the uncontradicted expert evidence of Drs Lawrence and Grant;
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> b. was against the weight of the evidence;
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> c. was unreasonable and not supported by the evidence."

[19] The appellant expressed his main point as being that the opinions of both psychiatrists and of the appellant's treating psychologist supported a conclusion that it was appropriate for the appellant to be released into the community under a supervision order. He argued that, insofar as their expert opinions were based upon the truthfulness and reliability of his self-reporting to them, he should have been accepted as truthful and reliable; in particular, the appellant argued that his evidence that he was willing and able to manage deviant sexual fantasies by deploying and maintaining strategies to contain them should have been accepted. The appellant argued that the evidence did not support a view that a sexual thought triggered in

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17 [2016] QSC 58 at [192].
18 [2016] QSC 58 at [193].
19 [2016] QSC 58 at [194].
20 [2016] QSC 58 at [195].

one of the ways identified by the experts (such as a television show or the appellant seeing a woman in an isolated location), "would lead immediately to [the appellant] acting out a deviant sexual fantasy", and that the evidence was to the contrary. The appellant argued that the following factors rendered it irrational to surmise that he would regress into sexual offending: firstly, he had completed the sex offender treatment programs mentioned in [13](e) of these reasons; secondly, the appellant had a strong support network committed to assisting him in his transition from prison back into the community; and thirdly, upon release of the appellant he would be willing to utilise the conditional structure of the Act, enabling the court to obtain a high level of control and receive a greater level of assurances that the appellant was suitably monitored and adequately supervised whilst living in the community.

[20] The appellant emphasised that whereas in earlier times Dr Lawrence had assessed his risk of sexual violence as being high, she now regarded the risk as being moderate or even moderate to low, and that she concluded that the risk could adequately be managed by conditions under a supervision order. The appellant also emphasised Dr Grant's opinion that use of a detailed supervision order, together with close individual therapy and supervision, would reduce that risk to low. The appellant also pointed out that he has completed all of the sex offender courses available to him in prison and was willing to continue being treated by Dr Madsen, there was no evidence that the supervision regarded by Dr Madsen, Dr Lawrence and Dr Grant as being appropriate could not be provided, and the appellant would be able to establish a better support network in the community than he has so far been able to establish whilst in prison.

[21] The respondent's argument may be reduced to these propositions:

(a) The expert opinions of the psychiatrists were premised upon factual bases which were largely dependent upon the accuracy of the appellant's self-reporting to the psychiatrists about the occurrence of deviant sexual fantasies and the appellant's response to them.

(b) The primary judge did not make any error such as would justify appellate correction in the primary judge's finding that the appellant's reports to the psychiatrists about his internal thinking and his response to that thinking should be rejected as lacking honesty and reliability.

(c) Accordingly, to the extent to which the psychiatric opinions favour the release of the appellant on supervision, those opinions are deprived of a force.

(d) There was also no error justifying appellate correction in the primary judge's conclusion that the appellant could not be relied upon to honestly disclose to Dr Madsen any development of deviant fantasies.

(e) Because the management of the risk of the appellant re-offending whilst in the community under a supervision order would depend upon such disclosure, the primary judge was correct in finding that a supervision order would not provide adequate protection to the community.

[22] For the following reasons I accept the substance of the respondent's argument.

[23] In *Attorney-General for the State of Queensland v Lawrence*,[21] the Court observed:

> "[87] However, whilst Dr Lawrence and Dr Grant, and Dr Madsen for that matter, could give opinion evidence about their assessment of the respondent and his motivation and ability to control his sexual and other behaviour in the face of his concerning fantasies, they could not give probative evidence upon the question whether the respondent had truthfully informed them of his own state of mind with reference to which they had formed those opinions; and as we have explained, the experts' opinions were based upon the truthfulness of the respondent's accounts in important respects.
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> [88] Resolution in the respondent's favour of the questions relating to his ability to manage the risk of re-offending associated with his concerning fantasies necessarily required acceptance of the relevant aspects of the respondent's accounts upon which the expert evidence was based. That was quintessentially an issue for the primary judge. The Act intrudes upon the liberty of the subject, the offender, because of the exceptional circumstance that the offender has been found to be a serious danger to the community in the absence of a Div 3 order. The expressed rationale for that intrusion is the need to ensure adequate protection for the community from that risk. Where the nature and extent of the risk, and therefore the assessment of the issue of adequate protection, depends in a material way upon a prisoner's account to an expert witness, it is the Court, not an expert, which must make the necessary findings about the truthfulness of the account. The experts' opinions on the issue may be helpful, but they cannot be determinative."

[24] Those principles remain applicable, although of course the evidence with reference to which those principles must be applied has changed.

[25] The last substantial report prepared by Dr Lawrence for the annual review conducted by the primary judge was the report dated 14 October 2015. (Dr Lawrence subsequently prepared an addendum report dated 21 October 2015, in which she advised that reports provided by Dr Madsen dated 18 May and 9 October 2015, and some updated prison materials, were consistent with information provided to her at the interview and did not alter the opinions expressed in her 14 October 2015 report.) Dr Lawrence stated in the 14 October 2015 report that the appellant's credibility "is relevant in the evaluation of his statements about sexual fantasies…", "…the most significant risk factors are the presence or otherwise of ongoing deviant sexual fantasies which he now denies" and "Mr Lawrence's credibility, i.e., the reliability of the truth of his statements has always been a factor under consideration and thrown doubt upon the reliability of his statements relating to such matters as masturbatory fantasies". In Dr Lawrence's further addendum report dated 4 December 2015, after she had been supplied with the transcript of the appellant's oral evidence and a copy of an affidavit upon which he was cross-

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[21] [2014] QCA 220 at [87]-[88] (myself, Gotterson and Morrison JJA).

examined at the hearing, Dr Lawrence expressed opinions about the effect of the appellant's oral evidence and stated:

> "In my opinion, but based on Mr Lawrence's account, he has made genuine attempts at addressing his deviant fantasies and wishes to avoid activities which may adversely affect his wellbeing as well as that of society. Thus, I believe that the risk of re-offending has decreased from its former high level."[22]

[26] Those statements in Dr Lawrence's most recent reports confirm that her expert opinions about the decrease in the risk of sexual offending, and also necessarily her opinions about the effect of a supervisory order, depend upon acceptance of the appellant's statements concerning sexual fantasies and his responses to them.

[27] Similarly, in a report dated 22 August 2015, Dr Grant stated that, "the dilemma for the Court remains the extent to which Mr Lawrence's assertions about change, improvement and increased insights can be accepted as valid, and whether appropriate supervision and ongoing treatment strategies will be adequate to deal with any significant recurrence of active deviance that might lead to violent sexual behaviour. Mr Lawrence has in the past demonstrated dishonesty and unreliability in his history and it remains a matter of judgement as to whether he has matured and changed sufficiently to know except the validity of his assertions." Dr Grant also noted that monitoring the appellant's sexual fantasy life under a supervision order to address any early indications of increase in deviant fantasy "would be reliant to a considerable extent upon Mr Lawrence's willingness and ability to co-operate with such supervision and treatment and reported changes in his inner fantasy life". In the evidence given by Dr Grant at the hearing, he confirmed that his assessment of risk depended upon the accuracy of Mr Lawrence's statements: "…if Mr Lawrence is currently having intrusive, frequent, dangerous, sadistic fantasies – and we don't know about that – then clearly my assessment would be wrong in terms of risk."[23] In Dr Grant's supplementary report commenting upon the evidence given by the appellant, Dr Grant expressed the opinions, concerning the prevalence of deviant fantasies, that the appellant's answers to questions in court "illustrate the difficulties involved in getting a precise understanding from him as to what is occurring and illustrates why there were apparent discrepancies between accounts he has given to his therapist, Dr Madsen, and to myself and Dr Lawrence as assessing psychiatrists. He clearly prevaricates as to whether he actually made different statements or as to whether his statements were misinterpreted by myself or Dr Lawrence." Dr Grant offered a number of explanations or possible explanations for differences in the appellant's accounts and the vagueness in his evidence. One such opinion was that the appellant "wanted to make a good impression to assessing psychiatrists, perhaps minimizing to some degree the extent of existing fantasy life regarding his sadistic offending."[24]

[28] Again, it seems clear that Dr Grant's opinions about the reduction of the risk of re-offending and the efficacy of a supervision order necessarily depend to a significant extent upon the accuracy of the appellant's statements concerning the occurrence of deviant fantasies and his responses to them.

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22 Further addendum report dated 4 December 2015 at paragraph 3.11.

23 AB 75.

24 Supplementary report dated 2 December 2015, AB 1487.

[29] The appellant's arguments in support of his contention that the primary judge should have accepted his evidence largely comprise assertions rather than the identification of any error made by the primary judge. For example, the appellant stated in his 15 page outline of argument that:

(a) "Over a 4 week period I was asked to record Deviant and Non-Deviant fantasies. I had to write about a past deviant fantasy because I did not have a current one to write about. …I would like to state clearly that it was a Past Fantasy, one which I would never entertain now."[25]

(b) "My sentence expired in 2007 and even with the added stresses and ongoing frustrations prompted by and the Courts decision to prolong my imprisonment, I have not engaged in deviant sexual fantasies."[26]

(c) "I state that I have not masturbated over deviant sexual fantasies for many years…"[27]

[30] Those assertions are not reconcilable with the evidence, but the present point is that statements by the appellant in argument about his own state of mind have no bearing upon the question whether the primary judge erred in finding that the appellant's accounts should not be accepted as honest and reliable.

[31] The primary judge gave a number of examples of matters that served to undermine the appellant's credibility and reliability:[28]

> "[184] The information Mr Lawrence gave as to his upbringing to various professionals while he was in prison was quite different from the information given to Dr Lawrence by his sister in 1985. His version of his upbringing was self-serving in that it presented him as a victim of a brutal and sexually violent environment as a child after the age of seven and as a teenager. There was no independent confirmation of the story he told about his upbringing and the only collateral information contradicted it.
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> [185] Mr Lawrence was initially frank in expressing his lack of empathy for victims of his offences when he committed them and in the aftermath. More recently he has expressed empathy for the victims of his offences and others affected by him but it must be doubted whether that empathy is real. It is more likely that it is expressed as a learned response and not actually expressed as a true response. All of the medical professionals have noted on occasion his apparent indifference to the consequences to others of his crimes. He continues to deny that he raped a vulnerable fellow prisoner notwithstanding two jury verdicts of guilty and his second conviction being upheld in the Court of Appeal.

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25 Appellant's outline at p 6.
26 Appellant's outline at p 13.
27 Appellant's outline at p 12.
28 [2016] QSC 58 at [184]-[188].

> [186] Dr Madsen referred to internal contradictions in the history Mr Lawrence gave as to when he stopped masturbating to deviant fantasies with at one extreme suggesting, Dr Madsen concluded, that he had his fantasies under control for as much as seven years before November 2012; that is, in 2005. Dr Madsen expressed reservations about whether Mr Lawrence was being honest with him. By late 2015, Mr Lawrence told Dr Madsen that he experienced deviant sexual fantasies infrequently and denied ever masturbating to them.
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> [187] In 2009, he told Dr Lawrence that he had had no deviant sexual fantasies since 2006 and masturbated only once a week. He told Dr Lawrence in October 2013 that he masturbated once or twice a week but was starting to get bored with it and had difficulty maintaining an erection. In October 2015, he told Dr Lawrence that he had not masturbated for some time, giving her the impression that it was for more than a year because he had difficulty getting an erection using whatever stimulus he was using.
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> [188] He told Dr Grant in August 2012 that he had not had any violent sexual fantasies for a long time but then admitted having thoughts of raping and killing for "about a minute" if he saw some violent stimulus on television. He said he masturbated about once a week."

[32] In relation to the last example, concerning Dr Grant, the appellant's statement to Dr Grant in August 2012 that he had not had any violent sexual fantasies for a long time may also be compared with Dr Grant's statement made as recently as 22 August 2015 in which he denied any "recent deviant fantasies" and, specifically in relation to deviant fantasies which were relevant to his previous offending, "said that he has not had any such fantasies for the last couple of years."[29]

[33] The respondent referred also to the differing accounts given by the appellant about the frequency of masturbation: Dr Madsen reported on 18 May 2015 that the appellant claimed that he was "rarely masturbating (once per week or fortnight) and does not utilise deviant fantasies…".[30] Dr Lawrence reported on 14 October 2015 that the appellant stated that he "virtually never masturbates and has not done so for some time. …in recent times (the impression was possibly for a year or more), he had lost interest in masturbation…",[31] and Dr Grant reported on 22 August 2015 that the appellant reported that his sexual drive and sexual interest had decreased over the last two years and "masturbation has reduced to fortnightly or monthly".[32]

[34] The inconsistencies in the evidence to which the primary judge referred concerned the critically important question of the extent to which, at all, the appellant entertained deviant sexual fantasies and his responses to them. The primary judge carefully analysed the evidence in considerable detail and identified the features of it which created concern about the credibility and reliability of the appellant's

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29 Report dated 22 August 2015 at pp 7-8, AB 307-308.
30 Report dated 18 May 2015 paragraph 10, AB 427.
31 Report dated 14 October 2015 at paragraph 6.4, AB 117.
32 Report dated 22 August 2015 at p 7, AB 307.

evidence upon those topics. In my opinion, no basis appears for thinking that the primary judge misused her Honour's advantage in seeing and hearing the evidence unfold. I am not able to identify any fact established by the evidence which is inconsistent with the primary judge's findings adverse to the appellant. It follows that there is no basis upon which this Court might find that the primary judge made an error in her assessment of the appellant's evidence such as would justify interference by this Court.[33]

[35] The psychiatrists' opinions about the efficacy of supervision orders were predicated upon the appellant disclosing the occurrence of sexually deviant fantasies and his responses to them. Putting aside the appellant's argument that his evidence upon the critical topics should have been accepted, the appellant's arguments do not identify any error in the primary judge's reasons (summarised in [16] of these reasons) for concluding that adequate protection of the community could not be reasonably and practically managed by a supervision order under s 30(3)(b) of the Act. That conclusion was supported by the evidence to which the primary judge referred and by her Honour's adverse findings about the appellant's credibility and reliability.

[36] The appellant submitted that the primary judge made two specific errors, namely, failing to take into account the evidence of the psychiatrists and the psychologist favouring a supervision order and failing to take into account the work that the appellant had done in prison, the improvement in his prison behaviour, and his completion of many beneficial programs. It will already be apparent that these matters were taken into account. There is no reason for thinking that the primary judge overlooked any of the evidence upon those topics. In that respect I should refer also to the appellant's application to admit into evidence a document headed "Employment Statement" and dated 3 November 2015. This document records that the appellant performed various duties in a prison workshop and it includes favourable remarks about the appellant's attendance and his conduct in the workshop. The document is not relevant to the issues in this appeal. For that reason it should not be admitted in evidence.

**Proposed orders**

[37] I would refuse the appellant's application to adduce new evidence in the appeal and I would dismiss the appeal.

[38] **MORRISON JA:** I have read the reasons of Fraser JA and agree with those reasons and the orders his Honour proposes.

[39] **BODDICE J:** I have read the reasons of Fraser JA. I agree with those reasons and the proposed orders.

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33 See *Abalos v Australian Postal Commission* (1990) 171 CLR 167 and *Devries v Australian National Railways Commission* (1993) 177 CLR 472 at 479.