SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Lawrence* [2008] QSC 230
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **MARK RICHARD LAWRENCE** (respondent)
FILE NO:	SC No 7468 of 2007
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court
DELIVERED ON:	3 October 2008
DELIVERED AT:	Brisbane
HEARING DATES:	29-30 January 2008, 25-27 March 2008, 21-23 July 2008
JUDGE:	Fryberg J
ORDER:	**The respondent be detained in custody for an indefinite term for control.**
CATCHWORDS:	Criminal law – Jurisdiction, practice and procedure – Judgment and punishment – Sentence – Miscellaneous matters – Other sex offenders – Application for respondent to be detained in custody pursuant to s 13(5)(a), *Dangerous Prisoners (Sexual Offenders) Act 2003* – Adequate protection of community – High risk of reoffending – Continuing detention order or supervision order – Onus of proof – Sufficiency of state resources *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) s11, s13, s16, s18, s19, *Mental Health Act 2000* (Qld) s46, s48, s108 *Attorney-General for the State of Queensland v Edwards* [2008] QCA 156 cited *Attorney-General for the State of Queensland v Francis* [2007] 1 Qd R 396; [2006] QCA 324 cited *Fardon v Attorney-General* (2004) 223 CLR 575 cited *Re CMM* [2005] MHC 027 cited

COUNSEL: Applicant: J Rolls
Respondent: K Greenwood

SOLICITORS: Applicant: L Evans (Crown Solicitor)
Respondent: Legal Aid Queensland

[1] **FRYBERG J:** Mark Lawrence is 47 years old. He looks much older. He is presently incarcerated under an interim order made pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* ("the Act"). He has been in jail since the beginning of 1984. For nearly three years before that he was an involuntary patient at the Barrett Psychiatric Centre. The Attorney-General has applied for an order under Division 3 of Part 2 of the Act for him to be detained in custody for an indefinite term.

Serious danger to the community

[2] Division 3 applies to Mr Lawrence if I am satisfied that he is a serious danger to the community in the absence of a Division 3 order.[1] He is a serious danger to the community if there is an unacceptable risk that he will commit a serious sexual offence if released from custody without a supervision order being made or if released from custody whether or not an order is made. If I am satisfied that there is a serious danger to the community in the absence of an order, I may make a continuing detention order or a supervision order.[2] Possibly I may be empowered to do neither of those things.[3]

[3] In deciding whether Mr Lawrence is a serious danger to the community I must have regard to a number of statutory factors.[4] I shall consider them individually or in conjunction, not necessarily in statutory order but using their statutory paragraph lettering, as may be convenient having regard to the evidence.

(g) Antecedents and criminal history

[4] Mr Lawrence's criminal history is as follows:

Date	**Description of Offence**	**Sentence**
09.05.78 Ipswich Childrens Court	• Aggravated assault on a male child under the age of 14 years (on 4.05.78)	Admonished and discharged
02.11.78 Ipswich Magistrates Court	• Aggravated assault on a male child under the age of 14 years (on 20.12.78)	Probation for a period of 2 years
23.02.79 Ipswich Magistrates	• Aggravated assault on a female child	Probation for a period of 3 years

1 Section 13(1).

2 Section 13(5).

3 See note 22.

4 Section 13(4).

Court	under the age under the age of 17 years (on 22.02.79)	To undergo any psychiatric treatment as directed by probation officer, including necessary institutional treatment
23.12.80 Ipswich Magistrates Court	• Aggravated assault on a male child under the age of 14 years (on 21.12.80)	Fined $75.00
03.09.81 Brisbane District Court	• Conspiracy to commit a crime (on 11.04.81) • Assault with intent to steal and threatened to use actual violence whilst armed with a dangerous weapon and in company (on 11.04.81)	On each charge: 4 months imprisonment, concurrent. In addition to the 2nd charge: probation 3 years.
07.02.85 Brisbane Supreme Court	• Unlawful killing on grounds of diminished responsibility (on or about 26.12.83)	15 years imprisonment
03.09.91 Beenleigh Magistrates Court	• Found in an enclosed yard without lawful excuse (on 2.09.91) • Escape legal custody (on 31.08.91)	Convicted and sentenced 2 months imprisonment Convicted and sentenced 1 year imprisonment
04.04.02 Brisbane District Court	• Rape (on or about 14.10.99) • Sexual assault including a circumstance of aggravation (on or about 14.10.99)	Imprisonment 7 years Imprisonment 3 years, to be served concurrently. Recommended not to be eligible for PPCBR. Declared to be a serious violent offender. Time spent in pre-sentence custody deemed as already served (07.02.01 – 04.04.02)

[5] The four aggravated assaults occurred when Mr Lawrence was aged from 16 to 19. Although Mr Lawrence denied to Dr Beech that they had any sexual component, a summary of them prepared in 1981 suggests otherwise.[5] In the absence of evidence from Mr Lawrence I accept that summary as accurate. The offences of conspiracy and assault in 1981 and escaping and trespassing in 1991 did not have any sexual component.

5 Exhibit KJF-1, p 445.

[6] According to Mr Lawrence the unlawful killing in 1983 occurred in the course of implementing a plan conceived by him and a fellow-inmate of the Wolston Park hospital to abduct, rape and kill a female patient. His plan, he told Dr Beech, was to act out a fantasy about rape and killing. In the event, the victim was not in fact raped, apparently because her level of resistance was such that Mr Lawrence felt obliged to kill her for fear of detection. He tried to choke her, then cut her throat with a broken bottle. At the time, he was aged 21.

[7] The 1999 rape was committed on a fellow prisoner. Mr Lawrence claimed and still claims that his conduct occurred with the consent of the victim. This offence occurred about a month after an application for parole was refused and some 14 months before his then full-time release date.

[8] To summarise Mr Lawrence's custodial history: in early 1979 he was sentenced to probation and ordered to undergo any psychiatric treatment directed by his probation officer, including necessary institutional treatment. That was provided, it seems, during a period as an inpatient at Wolston Park hospital. He was first imprisoned in 1981 for assault whilst armed with a dangerous weapon and in company and conspiracy and served a sentence of four months. By 1983 he was again an inpatient at Wolston Park, but was released from a secure ward, whereupon he killed a fellow patient. In 1985 he was convicted of manslaughter on the basis of diminished responsibility and sentenced to imprisonment for 15 years. He escaped in September 1991 and was at large for a few days. For that he was sentenced to a further year's imprisonment. In October 1999 he committed rape within the prison, for which he was sentenced to imprisonment for seven years in April 2002. Pre-sentence time in custody meant that his full-time release date was 6 February 2008. His detention since then has been pursuant to the Act.

[9] No direct evidence of Mr Lawrence's antecedents was placed before the court. That was unfortunate, since most of the indirect evidence relied heavily on Mr Lawrence's own accounts, given from time to time. On those accounts, Mr Lawrence had a dysfunctional upbringing. Abandoned by his biological parents, he was raised for his first seven years by a grandmother. After her death he was placed in an institution and in foster care for another five or seven years. During this period he was repeatedly the subject of violence and sexual abuse and he attempted suicide. Thereafter his biological father retrieved him. However the father was a violent man; and according to Mr Lawrence, he and his best friend repeatedly molested the boy until he was 16 or 17. The reporting psychiatrists appear to have acted on Mr Lawrence's account, but with allowance for a number of inconsistencies. I regard it with some scepticism.

[10] Mr Lawrence attended about 10 schools, finally being expelled from an opportunity school in Ipswich for continual truancy and running away. At the time he was expelled he could neither read nor write. He has been described as a person with borderline mental retardation. He had a poor relationship with teachers and with his peers. He was not close to his siblings. Since his imprisonment he has learned to read and write and has gained a year 10 certificate.

(a) Reports of and cooperation with psychiatrists under s 11

[11] Mr Lawrence was examined by Dr Basil James on 5 October 2007 for 3½ hours. He made an axis I diagnosis of sexual sadism and reported that the history was

indicative of an axis II diagnosis of antisocial personality disorder. Mr Lawrence apparently cooperated in the examination.

[12] Dr Michael Beech examined Mr Lawrence for four hours on 26 October 2007. He too diagnosed sexual sadism and he also diagnosed non-exclusive paedophilia; and on axis II he diagnosed antisocial personality disorder. Mr Lawrence cooperated in the examination.

[13] I shall refer to both reports in more detail below.

(b) Other medical, psychiatric, psychological or other assessment

[14] Professor Barry Nurcombe, a psychiatrist, interviewed Mr Lawrence for six hours on 4 December 2006. His purpose was to prepare a risk assessment report for use by the Crown solicitor in advising the Serious Sexual Offenders Review Committee of the Department of Corrective Services regarding a possible application under the Act. He diagnosed Mr Lawrence as exhibiting Sexual Sadism (axis I) and Antisocial Personality Disorder (axis II).

[15] Dr Phillip Morris, also a psychiatrist, examined Mr Lawrence for 2½ hours on 18 March 2008 on the request of Legal Aid Queensland. Under axis I he identified a long-standing history of sexual sadism but thought it now in partial remission. He observed some symptoms of post-traumatic stress disorder (denied by Mr Lawrence to Dr Beech) and some symptoms of depressive illness, but not sufficient to warrant a diagnosis of any additional psychiatric disorder. Under axis II he diagnosed antisocial personality disorder accompanied by borderline personality traits, but thought that the personality problems had abated over time, particularly over the last five years.

[16] The affidavit material contains a large amount of documentary evidence, including medical, psychiatric and psychological opinions. The Act envisages that the reporting psychiatrists will have regard to this material.[6] I am unconstrained in the weight which I give it if I am satisfied that it is acceptable, cogent evidence[7]. The authors were not called to give evidence and no explanation for the failure to do this has been advanced. The records contain some particularly pejorative statements attributed to members of Mr Lawrence's family. Again, there was no explanation for the failure to call any of these persons. In these circumstances I have tended to discount that documentary evidence, particularly insofar as it was challenged on behalf of Mr Lawrence. In the case of Dr Alroe, I have completely ignored it. However the file material has played a significant part in the opinions of the reporting psychiatrists. Ordinarily this would lead me to discount their evidence to some extent. However Mr Lawrence, after due consideration, was not prepared to give evidence himself. That has necessarily limited his opportunity to challenge the file material. In these circumstances I am not prepared to reduce the weight which I give to the psychiatric testimony.

[17] A report on Mr Lawrence's performance during his participation in the High Intensity Sex Offenders Program (HISOP) was also tendered. I refer to that below.[8]

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6 Section 11.

7 Section 13(4)(a).

8 Paragraph [31].

(h) Risk of committing another serious sexual offence in the future: Professor Nurcombe

[18] Professor Nurcombe carried out an analysis of the risk of violent sexual reoffending by Mr Lawrence (if released). He did so using a combination of clinical and actuarial predictive methods, the latter involving both static and dynamic evaluation.[9] He summarised his opinion:

> "When static, historical risk factors are considered, Mr Lawrence must be regarded as at ***high*** risk of violent sexual re-offending. If so, the risk to the community would be very great. When recent dynamic factors are considered, he appears to be at ***moderate*** risk of re-offending. How much reliance can be placed on improvements professed by the offender, and how much improvement would be possible in treatment given Mr Lawrence's psychopathic traits, his difficulty coping with the concepts of relapse prevention, and his borderline intelligence. Questions have been raised whether offenders high in psychopathic traits are capable of benefiting from sex offender treatment, or whether they merely learn to recite the jargon of relapse prevention. I would like to give Mr Lawrence the benefit of the doubt, for I feel he is genuine in his attempt to address sex offender treatment; however, reason suggests the need for caution. I consider him, overall, to be at ***high*** risk of re-offending."[10]

[19] Professor Nurcombe's interview occurred before Mr Lawrence completed the HISOP in June 2007. He subsequently read the report on his performance in that program it. He provided a supplementary opinion:

> "I am concerned abut Mr Lawrence's continuing danger to the community. My opinion was and remains that he has a sadistic paraphilia, with borderline intelligence and an antisocial personality disorder of psychopathic type. In my opinion, extreme caution should be exercised before Mr Lawrence is considered for release. I am pessimistic about his prognosis, given his diagnosis.
>
> I do not consider that Mr Lawrence's sexual sadism was, or could have been, adequately addressed by the HISOP. I am not confident that sexual sadism could be adequately addressed by expert individual psychotherapy. In effect, Mr Lawrence is unlikely to respond to treatment other than antiandrogenic medication under psychiatric supervision."

(h) Risk of committing another serious sexual offence in the future: Dr Beech

[20] Dr Beech also carried out a risk assessment, using similar tests to those used by Professor Nurcombe. He reported:

> "There are significant psychopathic traits and indeed it is likely that I would have scored him within the psychopathy range when he was first incarcerated. With time he has mellowed to some extent and he

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9 There is a helpful description of the assessment instruments used by all of the psychiatrists in appendix C to Dr Beech's report (ex 1).

10 Exhibit BN-3, p 25 (emphasis in the original).

> is now able to speak with some remorse about some of his offending. He no longer seems impulsive and reports suggest that earlier sexual predatory behaviour has diminished.
>
> His personality [disorder] can be seen to have arisen in the context of his highly prejudicial childhood of abandonment, loss, neglect and abuse. It is aggravated by his limited intelligence and poor schooling. It is associated with a life of poor attachments and social relationships. He has also spent nearly all his adult life in one form of institutional care for another. To some extent he has benefited from the structure this has given him but it also has meant he is very limited in his experience within the normal community.
>
> … .
>
> Based simply on his past behaviour, I would see him as presenting a high a risk of violent sexual offending if released into the community without supervision. He is relatively young and has a substantial history of sexual offending even in institutional care and prison. His offending has been gravely serious.
>
> The file material points to some changes over the years. In particular, he has developed the capacity for some remorse, has developed some insight into his offending and has appeared to be motivated in learning from the programs he has attended. As noted, files suggest that his behaviour has improved and notably his sexual probation has ceased and there have been no breaches for some time and no evidence of impulsivity or continuing violence. It would be helpful to receive the exit report from his most recent high intensity sexual offender course. However, in my opinion, in order for the risk of re-offending to be reduced to moderate levels, he will need close supervision on release and he will need significant support.
>
> From the outset he will need practical support of a moderately intense nature given that he has never really lived in the community or supported himself. He will need stable accommodation and he will need assistance in making the transition to life outside. He has very few supports and efforts should be made to link him into community agencies and supports.
>
> He will require close monitoring and oversight from an experienced officer. I would recommend he wear a bracelet and that he regularly plans his activities with the officer in advance. He should initially have a curfew.
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> His contact with children should be restricted and closely supervised.
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> He should attend for psychological counselling and he should participate in the maintenance program for sexual offenders.
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> These conditions would reduce the risk to moderately high.
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> They will need to continue for at least ten years."

[21] Dr Beech later read the exit report from the HISOP, and he saw nothing in it to cause him to change his opinion; but he did testify during his cross-examination:

> "A report from his High Intensity Sexual Offenders Program indicates progression. I believe it shows in the beginning, you know, not as good a participant, more prone to be influenced by the others

> but he progressed through that. I think that shows two things. With, you know, he has done the program and I believe that would show that he has been able to gain from that program but I believe it also shows that somehow he must have mellowed - I believe he would have mellowed over the years because the sexual offender program, his participation in that went for about 93 sessions and much of it, I believe, would be challenging for him. And yet he stayed with it. He completed the program. So, I think that that shows, in terms of I guess impulsivity or aggressive, you know, frustration tolerance, that he has, you know, his personality is improving with age."

(h) Risk of committing another serious sexual offence in the future: Dr James

[22] Dr James also assessed Mr Lawrence using both static (or actuarial) tests and dynamic considerations. The former indicated that Mr Lawrence presented a high risk of recidivism. In the latter context he made several points:

- "Although Mr Lawrence was found at his trial to be under diminished responsibility … there appears to have been no indication that he had been suffering from a diagnosable or treatable mental illness; and there were then, and are now, no markers (such as the presence of psychotic thinking such as diffusion is or hallucinations; or treatment compliance) which with confidence could be seen as more objective signs, and thus of indicators of fluctuating risk with regard to his mental health status
- Personality elements such as subjectively experienced strong and poorly controlled sadistic impulses, together with a lack of capacity for empathy, were more relevant factors in the killing than Mr Lawrence's limitation in intelligence. Of particular concern was the fact that he was able to act out his impulses while being able to present himself quite normally for a few days prior to and after the event, to professional observers
- There is doubt whether Mr Lawrence's self reports should be seen as indicative of fundamental change or whether they represent his aspirations or his response to what he perceives as being expected of him. His 'tendency to be strongly influenced by a group culture raises important questions with respect to the solidity and consistency of any seeming improvement'. His underlying fantasies of sadistic sex are dormant rather than extinct. Although he describes having developed strategies by which they are better controlled it is unclear to what extent his imprisonment contributes to that sense of greater control
- The discrepancies in Mr Lawrence's various accounts of his history raised the possibility that he may have a tendency to be facile in his reporting of his experiences
- "The long duration of Mr Lawrence's institutional experience also raises particular challenges with respect to his release. In my opinion, when a decision is reached that Mr Lawrence is a sufficiently low risk to commence community reintegration, it would be highly desirable for this to be done in a very gradual fashion. I do not consider that a simple release into a community setting, no matter how vigilant the supervision, would provide the degree of safety that I believe to be necessary. It would be preferable, in my view for Mr Lawrence's re-exposure to the community to take place initially in very small steps, beginning, for example, with escorted leave for a matter of hours, gradually being extended, over a period of at least six

> months, in terms of time and lessened restriction. It would be important for this process to occur also within the context of a psychotherapeutic relationship. I note in the HISOTP Exit Report (page 8, third dot point), that during the course, 'deviant fantasy was not directly targeted'. Whilst there may be a very good reason for this in the programme referred to, it would be a matter, in the context of any community exposure, for detailed monitoring within the therapeutic framework referred to."

Dr James concluded that considerable weight should be given to the results of the actuarial assessments rather than the dynamic considerations, although the latter did not rate the risk of reoffending is less than moderate. He concluded:

> "In the overall matrix of risk assessment, the nature of the killing leading to his conviction for manslaughter is a central consideration, and combining all factors, I would estimate his overall risk of re-offending, were Mr Lawrence to be released from prison, as being "High."

[23] In his testimony Dr James expressed the view that Mr Lawrence also suffered from an impulse control problem which, coupled with his fantasies, reinforced the opinion which he expressed in his report. This problem was enduring, albeit affected by the level of stimuli in the environment in which he was living and possibly reducing with age. He thought that in addition Mr Lawrence required one-to-one more focused therapy. He felt that there was little evidence to show that lowering testosterone by medication lowers the level of fantasy and action. However psychotherapeutic programs over an extended period would be desirable:

> "What sort of treatment are you anticipating?-- Well, I would think that it would be first one-to-one rather than group treatment; secondly, that it would be exploratory rather than the kind of treatment theory that governs the sexual offenders treatment programs which is cognitive behaviour therapy, so I think it should be exploratory in particular as I mentioned exploratory with respect to fantasy. It would be relationship based, and although it became caught up in Mr Lawrence's fantasies at the time I think he did perform a very good relationship with the one opportunity that he had years ago to have a one-to-one relationship. So I think those would be the qualities, one-to-one, exploratory, sustained and relationship based."

Providing such treatment in prison was problematic.

(h) Risk of committing another serious sexual offence in the future: Dr Morris

[24] Dr Morris was engaged on behalf of the respondent after the hearing of the present application commenced. He examined Mr Lawrence for 2½ hours on 18 March 2008 and reviewed a number of documents including the reports of the other psychiatrists. He carried out an assessment of the risk of Mr Lawrence's reoffending if released using three of the instruments used by other psychiatrists and his own clinical assessment. On the former basis he reported that Mr Lawrence was "a high risk of recidivism to violent sexual offending". Turning to clinical considerations he continued:

> "However, in considering his demonstrated attempts to improve himself, further his education, and participate willingly, conscientiously and through to completion in the Sexual Offender Treatment Programs he has been offered, in addition to the lowered intensity of his sexually sadistic fantasies, I consider that on these dynamic factors there has been a definite improvement in his risk profile.
>
> On the basis of the dynamic and clinical changes that have occurred I would rate his risk of recidivism of being in the upper end of the moderate range."

Combining the results of the tests and his clinical judgment, Dr Morris concluded:

> "I regard Mark Lawrence as being in the high end of the moderate range of risk of sexual violence recidivism. While I regard Mark Lawrence as having an elevated risk for sexual violence, I consider that this could be managed with the development of an appropriate risk management plan that also includes provision for a systematic reassessment of his risk. With this in place I recommend that Mark Lawrence be considered for release from jail under an appropriate supervision order."

(d) Pattern of offending behaviour

[25] I discern no pattern in Mr Lawrence's offending behaviour and none was suggested to me.

(c) Information regarding propensity

[26] Apart from Mr Lawrence's criminal history and antecedents and the reports of the four psychiatrists, no specific information regarding whether or not there is currently a specific propensity on Mr Lawrence's part to commit serious sexual offences in the future was put before me.

(e) and (f) Rehabilitation programs: pre-1998

[27] Before the 1998 offences Mr Lawrence had completed the following programs:

- 1993 -- Sexuality and Relationships
- 1994 -- Alternatives to Violence
- 1994 -- Stress Management
- 1994 -- Anger Management
- 1994 -- Interpersonal Communication Skills
- 1997 -- Anger Management.[11]

He had attempted the Sex Offenders Treatment Program, but had limited success, apparently due to low intelligence and poor literacy levels. In 1999 he completed the cognitive skills program and was given individual psychotherapy by a psychologist for approximately 20 sessions, based loosely on the principles and concepts of the SOTP.[12]

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11 Exhibit MC-1, p 105.

12 *Ibid*, p 12.

[28] The evidence regarding the effect of these programs varies. For the sexuality and relationships program there is only a certificate of attendance for six 2-hour sessions.[13] For the Alternatives to Violence course he was awarded certificates showing that he completed workshops at the first and second levels and a first-step workshop toward recognition as an Alternative to Violence Project facilitator.[14] The report on the Stress Management Course contained the following:

> "Mark demonstrated a sound understanding of the concepts covered by this course. … Mark currently displays a satisfactory level of application of stress management techniques. It is recommended that Mark concentrate on expanding the number and variety of stress management techniques that he uses."[15]

The report on the Interpersonal Communication Skills course contained the following:

> "Mark displayed a limited ability to understand the concepts covered by this course. … Mark is motivated to apply these concepts where necessary but his ability to do so is regulated by his limited concept understanding. … it is recommended that Mark would benefit from repeating this course."[16]

There is no evidence that he repeated the course. The report on the 1994 Anger Management course contained the following:

> "Concept understanding: Limited, due to Mark's literacy difficulties and the lack of group participation. Mark, however, did continually try to improve his understanding. … Mark's limited understanding hindered his ability to always apply anger management techniques appropriately. … Mark would benefit from individual counselling in the application of anger management techniques to related aspects of his life. … Mark was motivated and made every attempt to increase his understanding but made limited progress in such a short period of time."[17]

However second time around his performance improved considerably:

> "Mark participated at quite a high level. He consistently completed in-class tasks and participated in group discussions to the best of his ability. … Mark's comprehension of the presented concepts and strategies was of a sound level. In most instances, Mark was able to apply the concepts to his own experiences. (He did a good job on the victim empathy section once the facilitator helped him to understand the concept.)"[18]

[29] The individual psychotherapy given in substitution for the SOTP led to a report by Mr W. Jacklin, Psychologist, which is undated but was prepared sometime in 1999. Mr Jacklin reported:

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13 *Ibid*, p 221.

14 *Ibid*, p 141-3.

15 *Ibid*, pp 228-9.

16 *Ibid*, pp 230-1.

17 *Ibid*, pp 232-3.

18 Exhibit SC-2, pp 558-9.

"**Summary of Recent Intervention**

As agreed in a Sentence Management Review dated 22 January 1999, Mr Lawrence has engaged in psychotherapy to address his sexual offending behaviour over a five months period following his last review. During this time Mr Lawrence attended therapy on a weekly basis for a total of approximately 20 sessions. The therapeutic process was based loosely the principles and concepts of the Sex Offender Treatment Program.

Throughout the course of individual psychotherapy Mr Lawrence maintained a high level of motivation to address his offending. This was demonstrated by his willingness to disclose relevant information related to his life history and offending. Furthermore, he completed all homework tasks that were set during the period of intervention.

Based on Mr Lawrence's written work and verbal report it appears that the treatment process has facilitated his understanding of many of the factors associated with his previous offending, including the impact of his own abuse, significant cognitive distortions about women, and the association between his deviant sexual fantasy process and his offending.

Treatment Outcome and Risk Assessment

It should be acknowledged that regardless of Mr Lawrence's positive response to treatment he should be considered a **high risk of re-offending**. The risk assessment has been based on static factors including the nature of his offence, and a previous pattern of highly entrenched deviant sexual behaviour and fantasy.

However, based on his response to treatment it appears that Mr Lawrence has made a number of significant advances. Specifically an independent assessment interview was conducted on the 23/07/99 with Mr Lawrence to assess the outcomes of the five month intervention process. The following observations were made by the independent assessor and acting SOTP co-ordinator:

> '*Mr Lawrence is a 37 year old man … His response to one on one counselling whilst at Moreton B Correctional Centre has enabled him to understand some of the factors contributing to his crimes and to develop some strategies and tactics to minimize his risk of reoffending. However, his strategies are inadequate and partial, given that his distortions about young women have not been addressed, and his lack of adult life experience in society precludes Mr Lawrence from having realistic ideas and expectations of how he will behave and how others will treat and relate to him once he is released from custody. In addition, his personality assessment (MMPI 2) may indicate psychological deficits or pathology. Hence Mr Lawrence remains at high risk of reoffence. Intensive support and intervention from community agencies is essential to assist Mr Lawrence to establish a life with reduced risk for reoffending.*'"[19]

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[19] Exhibit MC-1, pp 12-13.

(e) and (f) Rehabilitation programs: post-1998

[30] Following the 1998 offences, a considerable time passed before Mr Lawrence participated in any further rehabilitation programs. From 9 May to 1 September 2005 he attended a Violence Intervention Program. The exit report was favourable to him:

> "Provision of Feedback: Mark was a quieter, shy member of the group who listened attentively when not actively involved in group activities. He willingly took part in activities and contributed when called upon. He provided useful and thoughtful feedback to the other participants when requested to do so. He is an affable and calm participant who was able to disclose personal information and take risks in group in order to develop his understanding and learn. He was always respectful and supportive of the other participants and the facilitators.
>
> Receiving Feedback: Mark was able to receive and consider challenging feedback from facilitators without become defensive. He would check his understanding of concepts or share his observations with facilitators in the breaks. His response was always one of interest, never hostility or aggression.
>
> Disclosure: Although Mark was one of the more reserved members of the group; he was prepared to take risks with his disclosures and was perhaps the one of the most courageous participants in this regard. Mark is to be commended for his willingness to take risks with disclosing painful experiences from his past, both from the perspective of developing his own insight, but also from the perspective of leading by example for other participants. Mark had no difficulty coming to terms with his offences, and this was reflected in his level of disclosure. Mark's acceptance and disclosure of personal responsibility remained consistently high throughout the program.
>
> Overall Participation: Mark was enthusiastic and genuine in his participation and was prepared to give his opinion on topics and was self-motivated to take on additional challenges. He followed discussions with interest and attention, but was also active and forthcoming in all group activities. Mark demonstrated a positive and attentive attitude to the program and proved a mature and stable presence in the group. His attendance and punctuality were excellent and he was always co-operative and courteous. He took part in all activities, including role-plays and other group activities and his written work was of a very high standard. Mark was a reliable and valuable group member who contributed significantly to the success of the group process and the overall commitment of group members.
>
> Insight into Offending Cycle
>
> Mark was able to identify the phases involved in his violent patterns of behaviour and general offending. His offence cycle detailed patterns which were associated with significantly distorted social and moral awareness and values, arising from dysfunctional childhood experiences and manifesting in habitual aggressive acts. This, when combined with the sexual fantasies he developed and maintained, has

resulted in convictions for two separate sexual offences, with one victim being murdered (manslaughter conviction) in an attempt by Mark to avoid identification for the rape. Other contributing factors to his violent offending included his inability to be assertive with others which made him vulnerable to explosive, uncontrolled violent outbursts when he could not longer suppress his frustrations and resentments.

Strategies to Manage Aggression

Mark demonstrated a very good understanding of the techniques and strategies presented to manage aggression. He was able to identify his personal triggers and apply appropriate coping strategies to deal with anger-provoking situations.

Relapse Prevention Plan

Mark's detailed and comprehensive RPP indicated that he has a clear understanding of his aggressive patterns of behaviour with others. These patterns were associated with habitual aggressive reactions and violent role models in childhood. He described being suspicious and mistrustful of others but 'bottling' up his feelings and intensifying them by withdrawal and social isolation. He had little regard for himself or others. Mark identified unemployment, negative emotional states, social isolation and lack of support as risky situations for him in the future. He listed a range of appropriate alternatives to deal with these situations. Mark selected a number of significant and realistic goals for the future, including reintegration into society, accommodation, employment and self respect. He detailed well thought through plans to achieve his goals.

Current Attitude To Offending

Mark appears motivated to avoid re-offending and to maintain the changes and improvements he has achieved in his life over rent years. He appears genuinely remorseful for his violent offending and ashamed of the harm he has done. His more recent institutional behaviour and motivation throughout the program positively supports his commitment to avoid re-offending.

Acceptance of Responsibility for Offending

Mark's hypothetical letters to and from his victim and his disclosures in group clearly demonstrated that he has accepted responsibility for his violent offending. Mark made no attempt to blame anyone else, nor does he attempt to minimise or justify what he has done.

Attitude Towards Victim(s)

Mark's hypothetical letters to and from his victim's family and his disclosures in group clearly demonstrated that he has accepted responsibility for his violent offending. He demonstrated a good understanding of the emotional and psychological harm suffered by his victim's family. He was remorseful and apologetic for the harm he has done. Mark demonstrated a clear understanding of the physical and psychological harm suffered by his victims, and the broader consequences of his violent offending for those around him. He acknowledged the need to make changes in his life and was able

to demonstrate his commitment to take control of his life and to become a more responsible person.

Part C. INTERVENTION RECOMMENDATIONS
Programs/Interventions for addressing offending behaviour for the next review period.

As identified in the VIP Exit Summary, the following recommendations are made:

Problem Areas Requiring On Going Attention

Given the significant role deviant sexual fantasy has played in his violent behaviour, Mark would benefit from a current assessment to identify residual risks and needs in the area of sexual offending and referral to the appropriate level of intervention. Another identified issue for Mark is that despite his stated commitment to not reoffend, he presents as an individual who may be at a higher risk of reoffending if insufficient external inhibitors are in place. It is considered that this matter would be dealt with appropriately via a detailed release plan and ongoing support to assist him in monitoring his high risk factors and modify his maintenance plan accordingly.

Recommendations for Follow-up Interventions

Mark's response to the program was very positive and encouraging. In an effort to address the issues identified above, it is recommended that Mark would benefit from assessment and if considered appropriate, supplementary intervention to further reduce his risk of sexual reoffending. Accordingly, a referral has been made to Linda Bennett, Regional Coordinator, Southern Offender Programs Unit, to conduct a specialised assessment of prisoner Mark Lawrence in order to determine what additional program allocation may be required. Based upon the outcome of this assessment, Mark may be required to undergo either the High Intensity Sexual Offending Program (HISOP) the Medium Intensity Sexual Offending Program (MISOP), or a Maintenance Program.

Mark impresses as highly suitable to proceed to lower levels of supervised custody when eligible. He is an appropriate candidate for the graduated release process and is likely to respond well to community supervision options which included the type of close monitoring and support provided by the Maintenance Program."

Despite these recommendations he has been kept as a high security prisoner since he became subject to an order under the Act. As a matter of policy all prisoners subject to such orders are given a high security classification, which cannot be reduced.

[31] Mr Lawrence commenced the HISOP on 25 September 2006 and completed it on 19 June 2007. His attendance comprised 93 sessions. The program, which comprised cognitive behavioural therapy, was conducted by several counsellors, psychologists and social workers who collectively completed what was described as

an "Intervention Program Outcomes Table".[20] They summarised the outcome in the following terms:

> "Mr Lawrence is a 46 year old male currently serving a seven year sentence for rape and sexual assault. Prior to the current offence he was convicted for Unlawful Killing on grounds of diminished responsibility. Mr Lawrence has a history of violent sexual offending both in custody and the community.
>
> - Mr Lawrence has been proactive in accessing community resources to assist his transition from a custodial environment although he will have a greater opportunity to further develop positive social influences upon release. He has demonstrated some gains in his identified treatment area of intimacy deficits, with improvement in his ability to communicate his emotional responses and more accurately interpret social cues from others. Similarly he demonstrated some improvement in his ability to empathise with others and identify the consequences for the victims of his offending and the wider community.
> - With regard to Sexual Self-Regulation Mr Lawrence openly acknowledged having equated sex with violence and was able to articulate the processes that reinforced deviant sexual fantasy and sexual offending. He was able to generate potential strategies that included accessing professional and social supports. Although deviant fantasy was not directly targeted with the program he acknowledged the need for ongoing vigilance and accessing professional assistance should there be a recurrence of deviant sexual fantasy. In relation to the identified treatment need of attitudes supportive of sexual assault Mr Lawrence openly acknowledged having previously used intimidation and violence as a means of gaining sexual gratification. At an intellectual level he evidenced an understanding of the benefits of a mutually satisfying relationship, additionally he appeared highly motivated to avoid a further period of incarceration. This external motivation, whilst based on self interest should continue to be promoted as it serves as a deterrent to offending.
> - Mr Lawrence expressed a positive attitude towards supervision and has complied with all requirements of the program. He demonstrated the ability to recognise and actively seek solutions for various problem situations rather than acting impulsively to stressors. He identified a range of problems associated with his lengthy incarceration however appeared robust in his determination to actively seek assistance and utilise his support network when problems arise.
>
> Mr Lawrence was assessed as a High risk of re-offending in the Identification of Risk, Needs, Exclusion and Responsibility Factors for Sex Offender Program Allocation and Preparation Intervention

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[20] Exhibit 3.

> Decision – Version 1.1 (dated 07/06/05, 08/06/05; 10/06/05 and 24/01/06). This risk level is likely to be reduced if Mr Lawrence adheres to the restrictions and interventions he identified in his New Future Plan. The degree to which he is motivated and his willingness to access appropriate supports will impact on his risk of re-offending. A high level of support and supervision will be required in the early stages of Mr Lawrence's return to the community."

They made the following recommendations for follow-up:

> - "It is recommended that Mr Lawrence is supervised upon his release and that he comply with all parole conditions.
> - The supervising officer should be familiar with Mr Lawrence's work on the HISOP, and in particular his New Future Plan.
> - Mr Lawrence's activities, relationships and life circumstances should be monitored by the Parole Officer.
> - Mr Lawrence should continue to consolidate his learning and gain further assistance through participation in Sexual Offenders Maintenance Program whilst in the community.
> - Continue to undertake relevant educational/vocational programs to further enhance his self esteem and broaden his social network.
> - Access professional support in the community to provide ongoing supportive intervention and objective monitoring of his coping.
> - Undertake further intervention and training with an appropriately qualified professional to address any recurrence of difficulties in sexual self-regulation and specifically deviant sexual fantasy."

Implicit in those recommendations was the opinion that the high risk of reoffending on the part of Mr Lawrence could be satisfactorily dealt with by the imposition of appropriate requirements on his release, including a high level of support and supervision in the early stages of his return to the community.

[32] The weight which I can give to this report is diminished by the fact that the individual authors are not linked to particular parts of the report, their qualifications have not been given any extensive consideration and they have not been called to give evidence. Presumably neither side thought their case would be advanced by calling such evidence. The witness through whom the report was tendered, Ms Wiezcorkowski, supervised those who prepared the report, but not in any detail. She was able to explain the report, but was not in a position personally to verify its complete accuracy.

(i) Need to protect members of the community

[33] Neither party made any submissions on the question of how the need to protect members of the community from the risk that Mr Lawrence would commit another serious sexual offence if released into the community is relevant to the question whether he is a serious danger to the community in the absence of a Division 3 order. Doubtless this was because both accepted that he was such a danger. He

constitutes such a danger if there is an unacceptable risk that he will commit a serious sexual offence if released.[21] Perhaps the need to protect members of the community from the risk bears upon its acceptability. In any event, even if it be assumed that this need is somehow relevant, no evidence was led in this case to establish the magnitude of the need. For these reasons I do not give any weight to this factor.

Conclusion on serious danger to the community

[34] There is abundant evidence to support the proposition that Mr Lawrence is a serious danger to the community if released without a Division 3 order being made, and there is no evidence to the contrary. The psychiatric evidence of high risk of his committing another serious sexual offence if released into the community unconditionally is overwhelming. Having regard to his antisocial personality disorder and sexual sadism, and his past offending, I am satisfied that risk is unacceptable. I find that he is such a danger.

The appropriate order

[35] The Attorney-General seeks a continuing detention order. Mr Lawrence does not oppose a supervision order and has instructed his lawyers that he wishes to have an appropriately structured order to facilitate his reintegration into the community. Neither party submits that I should make no order. Having regard to the fact that the discretion under s 13(5) of the Act only arises once the court is satisfied that the prisoner is a serious danger to the community in the absence of an order (ie that there is an unacceptable risk that the prisoner will commit a serious sexual offence), it is difficult to envisage circumstances in which no order would be made. In my judgment it remains an open question whether the s 13(5) discretion extends to making no order.[22]

The party's submissions

[36] The Attorney-General accepted, I think rightly, that the starting position ought to be that a supervision order ought to be made in preference to a continuing detention order unless there is reason to do otherwise.[23] However I do not think that this is the same as saying that the Attorney-General has the onus of proving that a supervision order would still result in the prisoner being a serious danger to the community in the sense of an unacceptable risk that he would commit a serious sexual offence. I reject Mr Lawrence's submission to that affect. Nor is it the same as saying that the Attorney-General has the onus of proving that any supervision order is unreasonable, ie that it is impossible to devise an practicable supervision order, if he is to obtain a continuing detention order. I reject Mr Lawrence's submission to that effect. In my judgment s 13(5) confers a discretion to be exercised having regard to all of the evidence. In that context it is unhelpful to talk in terms of onus of proof or standard of proof.

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21 Section 13(2).

22 *Fardon v Attorney-General* (2004) 223 CLR 575 at pp 592 and 597 (Gleeson CJ), (McHugh J). The matter is not decided by what was said in *A-G (Qld) v Edwards* [2008] QCA 156 at [27].

23 *Attorney-General v Francis* [2007] 1 Qd R 396.

[37] In essence the submission on behalf of the Attorney-General was: the risk that Mr Lawrence will commit another serious sexual offence if released into the community unconditionally is high; it is not practicable to frame a supervision order which would ensure the adequate protection of the community from this risk; therefore Mr Lawrence should be detained in custody indefinitely; there was very little evidence in relation to any treatment that would be given or could be usefully given; therefore Mr Lawrence should be detained in custody indefinitely for control. If on the evidence it appeared that this position was unlikely ever to change, the result would be his detention for the rest of his life; that was what the Act required.

[38] On behalf of Mr Lawrence, the first step in the Attorney-General's submission was tacitly accepted. The second was not. It was submitted, in effect, that it was possible to devise a supervision order with requirements appropriate to deal with the level of risk presented by Mr Lawrence. Such an order should initially provide for high levels of supervision; but it should also provide for the gradual reduction of that supervision in line with the graduated release of Mr Lawrence into the community. The requirement for supervision was closely related to the question of Mr Lawrence's accommodation. A requirement that the State provide supervised accommodation was practicable and not unreasonable. The order should be similar to a limited community treatment order such as is available to mental health patients. A draft order was handed to me during counsel's address. It was not then marked but I shall have it marked "C" for identification.

Mr Lawrence's psychiatric condition

[39] To resolve those submissions it is necessary to make some findings regarding Mr Lawrence's psychiatric condition. All four psychiatrists who examined Mr Lawrence for the purposes of the application agreed with the diagnosis of sexual sadism and antisocial personality disorder. Dr Beech also diagnosed non-exclusive paedophilia. Dr Morris diagnosed borderline personality traits which had abated over time, particularly over the last five years. The diagnostic differences between the doctors are not significant for the purposes of the case. I find that Mr Lawrence has sexual sadism and antisocial personality disorder.

[40] There are some differences among the doctors regarding the weight which should be given to the apparent improvement in Mr Lawrence's condition reflected in the reports of the 2005 Violence Intervention Program[24] and the 2006-7 HISOP.[25]

(a) Professor Nurcombe thought that as a result of those programs his attitudes to himself and to other people may have improved, but that there was no way of knowing whether this had in fact happened or whether it only appeared to have happened because Mr Lawrence himself believed there had been such changes. He accepted that Mr Lawrence's capacity to control his urges may also have improved, but thought that those programs would not necessarily have changed his pleasure in hurting other people. Professor Nurcombe differentiated his view from that of Dr Morris but thought, correctly, there were no substantial differences between it and those of Dr Beech and Dr James.

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24 Paragraph [30].

25 Paragraph [31].

(b) Dr Beech thought that participation in these programs and the earlier programs had produced a small but important reduction in the risk of reoffending if unsupervised. However he placed the caveat on this view that the change had occurred in prison.

(c) The views of Dr James set out above.[26] He thought that his opinions and the observations recorded in the exit report of the HISOP were congruous:

> "I think what actually has happened was that Mr Lawrence has improved in certain aspects of himself, and I think I described that as a consolidation of his sense of self, which I think is true. He probably has more thoughtfulness to bring to bear on the problem. I think the actual core issue, though, of sexual impulse in the particular direction and the fantasy that underlies it hasn't really been addressed, or if it has certainly not sufficiently."

(d) Dr Morris thought that Mr Lawrence had participated in the programs "willingly, conscientiously and through to completion" and had "demonstrated attempts to improve himself". Mr Lawrence told him that the intensity of his sexually sadistic fantasies had diminished over the last decade and were further diminished by his participation in the HISOP and its preparatory program. Dr Morris accepted the truth and accuracy of what he was told. He thought that Mr Lawrence's experiences in prison, the passage of time and his improved education also contributed to the reduction. He accepted that Mr Lawrence now has no fantasies of wanting to kill victims and that his main sexual fantasies of consensual heterosexual sex with adult women with occasional fantasies of rape, which Mr Lawrence is able to control.

[41] I accept that Mr Lawrence has been genuine in his participation in the programs and in his reporting of his attitudes subsequent to them. I also accept that, in conjunction with the passage of time, they have brought about some improvement in his condition.

[42] Counsel for Mr Lawrence also relied upon an incident which he alleged to the four psychiatrists occurred in Rockhampton in 1990 or 1991 (the date varied in different consultations) as demonstrating that improvement. I was not referred to anything in the prison records which verified the occurrence of the incident and one would expect the records to contain some corroboration at least of the alleged transfer to the detention unit and the reason for it. Mr Lawrence chose not to give evidence. I am not satisfied that the incident occurred.

[43] I am satisfied that in Mr Lawrence's case it would be a mistake to take the apparent improvement reflected in his performance in the programs at face value. I reach that conclusion because of the discrepancies referred to by Dr James (which I find alarming), the lowered level of confidence which one can have in results when the testing outcomes can be observed only in a high security prison and the manner in which the evidence was introduced[27]. I do not mean by that finding to detract from my previous finding that there has been some improvement in his condition.

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26 Paragraph [22].

27 Paragraph [32].

Future treatment

[44] Another matter relevant to Mr Lawrence's condition is the possibility and availability of future treatment. Again there was some variety of opinion among the doctors:

(a) Dr Beech testified that there were three levels of treatment for sexual sadism. They were medication to reduce testosterone, cognitive behaviour therapy and maintenance of the results of cognitive behaviour therapy by further therapy and supervision. He had not considered the utility of the first option in Mr Lawrence's case. Mr Lawrence had completed all of the (full) cognitive behaviour therapy programs available. It would be desirable for Mr Lawrence to participate in maintenance programs, which were available both inside prison and outside it. His continued detention in prison had no therapeutic value and there would be no point in ordering it for the purpose of treatment.

(b) Professor Nurcombe gave evidence that he knew of no psychotherapy treatment for sexual sadism that had been reported to be effective and that Mr Lawrence's sexual sadism was not specifically addressed by the HISOP. In his view Mr Lawrence was unlikely to respond to treatment other than anti-androgenic medication. He thought the possibility of using such medication should be considered but details of its use were not something within his expertise. Somewhat inconsistently, he also thought that Mr Lawrence could, if released, benefit from supportive psychotherapy and a community-based maintenance program for sex offenders; and in his oral testimony he said that if anti-androgen medication were taken faithfully, "it is very clear that the frequency and intensity of sadistic fantasies of a sexual nature would be reduced". He reported that there was no therapeutic reason to keep Mr Lawrence in prison; the only reason to do so would be for the protection of the community.

(c) Dr James regarded anti-androgen medication as "a treatment of hope rather than expectation". If Mr Lawrence came to him as a clinical patient it would not be his first or possibly even his second line of treatment. The sexual sadism had become ingrained, which made it a personality disorder. As such it would not get better with medication, but it was treatable. It required a very slow psycho-therapeutic and environmental process. Attending a (psycho-therapeutic) maintenance program after his release would be helpful to Mr Lawrence, but before that happened he needed more treatment in his present setting, where it was more likely to be successful. He described that treatment:

> "I think it really requires more one-to-one therapy and perhaps a little more intense as well and a little more focused, and I think the exit program itself acknowledged that, and I would certainly endorse that idea that he does need more focused one-to-one therapy."

The therapy should be exploratory and relationship-based with respect to the fantasising rather than cognitive behaviour therapy. Special provision would have to be made for delivery of such treatment in prison, but it would be (theoretically) possible to do that. It could also be obtained outside prison. Dr James was aware of only one occasion when such treatment had been attempted. In that case it had begun inside prison and been continued

outside. It had been very difficult for the outside psychiatrist to get to the prison regularly and to negotiate access to the prisoner when it was needed.

(d) Like Professor Nurcombe, Dr Morris thought that the possibility of using one of the newer anti-androgen medications on Mr Lawrence should be explored. This could be done in or out of prison. He also thought that Mr Lawrence should take part in a maintenance program to preserve the gains of the HISOP. He thought there should also be ongoing management of his sexual sadism and his personality problems by an experienced psycho-therapist or psychiatrist, focusing on the content of his sexual fantasies and on coping with the frustrations and temptations associated with gradual reintroduction to the community. He agreed with Professor Nurcombe that there was no therapeutic reason to keep Mr Lawrence in prison and that the only reason to do so would be for the protection of the community.

[45] After Mr Lawrence's case was closed, I permitted the Attorney-General to reopen his case on another issue. That necessitated a four month adjournment of the proceedings. After more than a day of additional evidence, the Attorney again closed his case. Counsel for Mr Lawrence then made an application to reopen her case to introduce fresh evidence. Eventually most if not all of that evidence was tendered by consent. It included the results of testosterone testing of Mr Lawrence carried out during the adjournment. No expert evidence was given in relation to the results and I am unable to tell whether they suggest that Mr Lawrence has a high level or a low level of testosterone. The evidence is therefore of no assistance in determining whether the use of anti-androgen medication would be desirable.

[46] I make the following findings.

(a) Anti-androgen medication is a form of treatment capable of reducing sexual fantasising in a man suffering from sexual sadism. Thereby it is capable of reducing the risk that the man will commit a sexual offence. It is not possible to determine on the evidence whether its use by Mr Lawrence would be beneficial. Regardless of which type of order is made in these proceedings, it is desirable that exploratory investigations be carried out to determine whether the use of such medication is appropriate in Mr Lawrence’s case.

(b) Regardless of which type of order is made in these proceedings it is desirable that Mr Lawrence take part in a maintenance program to ensure the continuation of the benefit of the HISOP.

(c) To further Mr Lawrence's rehabilitation it is desirable that he also take part in one-on-one treatment of the sort envisaged by Dr James and Dr Morris. However it cannot confidently be predicted that such treatment will necessarily have any effect.

(d) Practical difficulties flowing from imprisonment as a high security inmate are likely to mean that such treatment cannot be made available to Mr Lawrence if a continuing detention order is made. I am fortified in this conclusion by the fact that the Attorney-General called no evidence to the contrary and did not submit otherwise. In any event such treatment would more easily be available if Mr Lawrence were released under a supervision order.

(e) The court has no power to impose a requirement that Mr Lawrence receive such treatment if it makes a continuing detention order.

(f) There is no therapeutic reason to make a continuing detention order for Mr Lawrence.

Appropriate requirements if released

[47] Dr Nurcombe reported:

> "The risk of re-offending is likely to occur soon after release, particularly if he experiences rejection, loneliness, or boredom. The risk of violence is chronic. Mr Lawrence has committed violent offences of this type on several occasions, most recently four years ago. He has made genuine attempts to change the psychological bases for these offences, particularly by suppressing sadistic sexual fantasy and enhancing his capacity for remorse and empathy. Risk-aggravating factors would include rejection and exclusion by others. Protective factors would involve close professional supervision by a trusted person, and the development of a genuine intimate relationship with an adult male or female. The best way to monitor warning signs of the possibility of re-offending, would be for the prisoner to live in supervised housing, with frequent and regular probationary supervision, and supportive psychotherapy by a clinician experienced in the treatment of sexual offenders. He could also benefit from the COMT, a community-based maintenance program for sex offenders."

In cross-examination he accepted that Mr Lawrence had demonstrated capacity to have close professional supervision by a trusted person. He agreed that the best way to monitor warning signs of possible reoffending would be for Mr Lawrence to live in supervised housing with frequent and regular probationary supervision and supporting psychotherapy by an experienced clinician. He added that he would also include an electronic monitoring and curfew and consideration of anti-androgen medication. Those measures (including the medication) would reduce the risk of reoffending "very considerably", to a level he described as moderate.

[48] Dr Beech also referred to the requirements for reducing the risk of reoffending in the event of release. I have set out the relevant passage from his report above.[28] In his testimony he emphasised the need for a highly structured, highly supervised transition into the community. Initially Mr Lawrence would need 24 hour a day supervision with an escort when he went into the community. His return to the community should be graduated, ie with gradually reducing levels of security from his present high security status. It would be necessary to monitor and observe his reactions to being in the community, something which cannot be done while he remains in prison. He was mellowing with age.

[49] Dr James also emphasised the desirability of community reintegration occurring in a very gradual fashion. His report is quoted above.[29] He testified that it would be difficult to the point of being impossible to put sufficient restrictions on a person in Mr Lawrence's position; but he based this on his understanding of the resources available in the Department of Corrective Services. He testified:

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28 Paragraph [20].

29 Paragraph [22].

> "MR ROLLS: Doctor, if his Honour were minded to order - contemplate something in the lines of 24-hour supervision would you, in your opinion, having regard to the risk that you perceive Mr Lawrence as presenting, perceive that as being an adequate, a preferable way to manage the risk?-- I'd have two concerns about that way of doing it: Firstly there would be other aspects of Mr Lawrence's rehabilitation which might have to do with his occupation, might have to do with his social relationships and his recreational activities, and the only way that security could be so guaranteed, I think, to a degree that I believe is necessary, is if somebody were with him at all times, and that would actually make successful transition into some of these other activities which he can currently enjoy more or less in prison, pretty impossible. The only other alternative to security, I think, is actually physical security of the kind that now exists in the Correctional Services Department. The other thing is it is a question of then if this were to be implemented with minders day and night, or at all times, how long would that go on, and I think that's a very difficult question to answer, but I think it is one that should be posed, I would actually say that kind of security needs to be in place for at least a year, probably more. And the last thing is that it certainly is more easier than to give security of a personal kind the slip and Mr Lawrence has already shown his capacity to do that."

[50] As noted above Dr Morris considered that the risk posed by Mr Lawrence could be managed under a supervision order. He described an appropriate management plan:

> "He should be released only to supervised accommodation in the first instance. Supervision would need to be 24 hours a day and his movements should be monitored by close probation officer supervision, as well as a monitoring device such as an electronic bracelet. A curfew preventing his movements beyond the supervised accommodation at night and during the day if unescorted should be included in the supervision orders. Initially his movement into the community should be supervised one to one, or in a group supervision situation, by Corrections officers. It would be important to provide close supervision in the first phase of his release in the form of one to one supervision and escorted leave for community visits away from the supervised accommodation because he has demonstrated in the past a capacity to abscond from custody and because his behaviour with other members of the public (especially young adult males and females) will need to be monitored quickly.
>
> He should be required to attend the outpatient follow-up Sexual Offender Treatment Program for the maintenance of gains he has established in completing the High Intensity Sexual Offender Treatment Program.
>
> He should be provided with an experienced psychologist therapist or psychiatrist to monitor and provide ongoing management of his sexual sadism and his anti-social/borderline personality problems. In the immediate period after release he should be seen weekly and the content of his sexual fantasies should be one focus of the monitoring and treatment process. In addition, his coping with gradual

> reintroduction to the community and the associated frustrations and temptations that that brings should be a focus of treatment. Improving his social skills and developing a socialisation plan would be a task of therapy as well.
>
> A corrections officer or case manager should be engaged to assist him develop appropriate social contacts and access vocational assistance in order to ultimately obtain work in an assisted or supported employment situation, or in part time (and perhaps later full time) open employment.
>
> Part of his supervision orders should prohibit him from being in places where he could interact with people who are vulnerable and likely to be easily intimidated by him. He should avoid being in contact with high schools or places where adolescents and young adults congregate.
>
> Unless he suffers from a serious mental illness and needs hospital treatment for that, I do not consider it appropriate for him to be sent to a psychiatric hospital for residential care.
>
> The hospital environment is likely to put him in contact with individuals who are very vulnerable while they are unwell and this would be a temptation for him to re-offend and would be a risk to those patients.
>
> His psychologist/psychiatrist therapist, in association with his Corrections case manager should develop a weekly schedule of activities that keeps him busy and allows him little time for unsupervised activities. Development of a social network around his church affiliations, and contacts through other organisations that care for released prisoners, would be an important part of his rehabilitation into the community, as long as these contacts were with mature adult individuals rather than young adults or older teenagers.
>
> Individual therapy as outlined earlier and case management by a Corrections officer should occur on a weekly basis over the first year of his release.
>
> He should be seen by an independent psychiatrist for reassessment of risk and review of the treatment plan on a three to six monthly basis initially. I expect that he will need ongoing support and close supervision for at least 2-3 years after release.
>
> I would recommend a supervision order to continue for a 10 year period."

By the time Dr Morris first testified, the issues were becoming somewhat more precisely defined. He was asked about how he would implement this plan in some detail. He had not formulated the plan at a level of detail sufficient to enable the requirements of a supervision order to be delineated. Perhaps for this reason a further report by him was tendered after an adjournment and was admitted by consent. He made further management recommendations:

> "Other states in Australia and the USA are grappling with the challenges of providing appropriate accommodations and supervision arrangements for prisoners who come under similar Dangerous Prisoners (serious sexual offenders) acts to the one in Queensland.

> Correction services and mental health services in other states and the USA are taking responsibility for providing these services so as to allow prisoners with moderate and high risk profiles to be allowed to return to the community under close supervision and in accommodations with appropriate level of support and security.
>
> For the protection of the community and for a successful return to community living Mark Lawrence requires a closely supervised and graduated re-entry to the community. He would be best placed initially in supervised accommodation where Corrections officers would be available during the day to monitor his progress, accompany him to community visits and make sure he attended the community-based sexual offender rehabilitation courses and the clinical counselling and medical treatment he requires as recommended in my previous report. The supervised accommodation may not need to be provided through the night as a monitoring device could be used to check that Mark Lawrence abided by a curfew to stay in the supervised accommodation each night. This type of supervised accommodation would not require the level of security of a prison.
>
> As he gains more independence and does not need to be accompanied on community visits Mark Lawrence should be required to submit on a continuing basis an activity diary of planned activities for approval by Corrections officers. After completion of these activities he should be required to report on the activities to the Corrections officers before approval of ongoing activities should be given.
>
> After consistent demonstration of compliance with management plans and supervision orders Mark Lawrence could gradually be allowed more latitude to increase his community involvement, and at some stage move from closely supervised supported accommodation to more conventional supported accommodation in the community. This phase may take 12 to 24 months to achieve."

[51] A number of the psychologists' reports also dealt with this question. The more recent of them did not differ greatly from the opinions which I have already described and I shall not set them out in detail. Some idea of their tenor can be obtained from what has already been set out.[30]

[52] Only Dr James thought that continued detention of Mr Lawrence with treatment in prison would reduce the risk which he poses to the community. I reject that view. I prefer the evidence in particular of Dr Beech. I am satisfied that continued detention of Mr Lawrence is antithetical to the creation of a set of requirements for his release in circumstances where the risk to the community would be acceptable. If he is to continue to be detained it must be for the purpose of control. From the therapeutic point of view the risk to the community cannot be reduced by his continued detention. Indeed such detention places at risk the gains which have been made until now.

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30 Paragraphs [20], [22] and [31].

[53] The evidence of the psychiatrists and of psychologists placed before the court has uniformly emphasised the need for any release into the community to be gradual and closely supervised. I infer that all of the consultants who gave evidence would prefer a system that enabled Mr Lawrence to begin supervised re-entry into the community while still in custody. Unfortunately, that is no longer possible. The various schemes which enabled it were abolished by the *Corrective Services Act 2006*. Unless it is possible to devise a set of requirements for a supervision order which in the first instance will have effectively the same result, Mr Lawrence cannot be released until he is much older, and possibly can never be released. The need to ensure the adequate protection of the community would prevent it. Unless an adequate order can be devised, the fact that he has undertaken all available programs for his rehabilitation and that they have had a positive effect upon him can avail him naught. Can such requirements be devised (as Mr Lawrence submits) or not (as the Attorney-General submits)?

Supervision, accommodation and employment

[54] From what I have already written it will be apparent that any supervision order must deal with three related and complex questions: how would Mr Lawrence be supervised; how and where would he be accommodated; and how and where would he be employed. Supervision must deal not only with containment and control but also with treatment and medication. Accommodation must deal not only with physical housing but also with the relationship between that housing and the necessities of daily life. It must be compatible with the security requirements yet not unreasonable to either Mr Lawrence or the State in terms of its cost and effect. If it is to be shared accommodation risks to others living in it must be assessed. Employment must be concerned not only with how Mr Lawrence gets money to live, but also with how he occupies his time.

[55] I am satisfied that for a period which might be as short as six months but which might extend to two years or more, any supervision order must provide for close physical supervision of Mr Lawrence by corrective services officers. During this period Mr Lawrence must be confined to his place of residence and mechanisms must exist to ensure that he does not leave it without permission of his supervising officer.[31] When he has such permission he must be escorted by a corrective services officer and a report of his behaviour and activities must be created. He must undertake the maintenance program and individual therapy described above.[32] His therapist should be consulted in relation to any excursion and must review the report of it.

[56] In my judgment it is neither necessary nor appropriate for me to deal with requirements which might be imposed at a later time, after Mr Lawrence demonstrates that the risk to the community has been reduced. If and when circumstances change, an application for amendment of a supervision order can be made.[33] I am satisfied that Mr Lawrence would need to be subject to a supervision order for at least 10 years.

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31 Section 16(1)(d).

32 Paragraphs [23], [44] and [50].

33 Sections 18 and 19.

[57] To implement supervision orders the Government has established the Sexual Offender Dangerous Offender Unit within the Department of Corrective Services. The purpose of the unit is to oversee the supervision and surveillance of offenders released on supervision orders, with the focus on community protection and reducing reoffending. This involves ensuring that appropriate case management processes are undertaken by staff to ensure offenders comply with the requirements of this supervision. The Acting Director of that unit, Mr Smith, described that process as an operational approach to tailoring responses to the individual needs of the offender. He testified that tailoring the management to the individual was one of the main concepts of the process. In March 2008 he estimated that there were about 40 persons subject to supervision orders and six to eight in continuing detention.

[58] Qualitatively the SODO unit is capable of providing 24-hour supervision of the sort just described. It can do this not only by providing personnel, but also by electronic monitoring, the enforcement of curfew restrictions, random testing for alcohol and drugs and use of closed-circuit television. However it is not presently funded by the Treasury to do so. There are limitations inherent in each of these techniques. For example, existing electronically monitoring equipment generates an alarm if the user leaves a prescribed area, such as a zone inside a place of residence. It does not indicate where the person has gone. On the other hand, the limitations can be overcome. To stay with the example, monitoring devices using GPS technology are available. It was not suggested that they are exorbitantly expensive. It is arguable, even probable, that if the department does not provide such devices, it is failing to carry out the statutory purpose specified by s 16A(1) of the Act: "to enable the *location* of the released prisoner to be monitored" (emphasis added).

[59] The reasonableness and feasibility of providing such supervision is another matter. It is closely related to the question of accommodation. It is convenient to deal with it after dealing with that question.

[60] The evidence of Professor Nurcombe, Dr Beech and Dr Morris satisfies me that in the immediate aftermath of any release Mr Lawrence's accommodation must have provision for his supervision, including installed monitoring devices, exit controls and closed-circuit television. I accept the evidence of Dr Morris that a level of security equivalent to a prison is not necessary. Mr Lawrence's behaviour and the assessments made of him in prison since at least 2002 demonstrate that he does not need to be classified as a high security inmate. He is currently so classified only because all prisoners detained under the Act are so classified as a matter of policy, and the classification is inhibiting his rehabilitation. I am satisfied that placing him in low security accommodation would not pose an unacceptable risk to the public. Placing him directly into accommodation in the community would do so.

[61] The Department of Corrective Services accepts some responsibility for housing prisoners released under supervision orders; it had capital funding of $650,000 to purchase such accommodation in centres outside Brisbane in the last financial year. It also operates low security accommodation outside prison but within the Wacol prison reserve. That is presently used when difficulties in housing persons subject to supervision orders arise; consequently those who are housed there tend to be temporary residents. Mr Smith believed it had 11 residents when he gave evidence in March 2008. The capacity of the facility is 21. Unfortunately the evidence is vague as to the facilities within that accommodation and the level of supervision

which is or could be provided at it. It does not presently provide the level of security envisaged as necessary by Dr Beech. No plan of the premises nor any description of them was led in evidence or sought in cross-examination of witnesses called on behalf of the Attorney-General. If further works are required to bring the accommodation to a suitable standard, there is no evidence of how long such works would take to carry out. There is no evidence of how much rent residents must pay. Counsel for Mr Lawrence told me that her instructions were that rent was 25% of the resident's income, but Mr Lawrence chose not to give evidence and no other witness was asked about the point. Finally, there is no evidence of the desirability or otherwise of housing Mr Lawrence in close proximity to others who are subject to supervision orders.

[62] Until a fairly late stage in the trial it seemed to my untutored mind that a logical place to house a person diagnosed as suffering sexual sadism and antisocial personality disorder would be as an involuntary patient in a secure mental health facility. A similar thought evidently occurred to McPherson J when sentencing Mr Lawrence in 1985:

> "Now, it has occurred to me as the matter has progressed with counsel discussing it that your incarceration in an ordinary prison along with other people who do not suffer either your disadvantages mentally or your difficulties in relation to sexual control would not be desirable, either from the point of view of other prisoners or from your own point of view. Unfortunately, there does not seem to be specific power which would enable me to direct what should happen to you. … The most I can do, and what I will do, is to recommend that the prison authorities give consideration at an appropriate time to the transfer of each of you to a security patients' hospital, and both before that time and after, that so far as it can be done, you receive whatever kind of psychological and other medical assistance can be given to you with a view to improving both your present condition, if that can be done, and making it less likely that you will reoffend."

The Government provides such facilities for the accommodation and management of forensic patients (and others) considered to be high risk patients. Issues such as the level of observation of the patient and restrictions on movement are decided on the basis of clinical indicators. The State Director of Mental Health, Dr Groves, described these facilities as "not quite of the degree of security of a prison". Unfortunately (at least as Dr Groves currently interprets the *Mental Health Act 2006*), a psychopathic sexual sadist would not qualify for involuntary admission to a security ward.[34] On his approach there is nothing in that Act to prevent psychopathic sadists from wandering around in the community.[35] Dr James described the thinking underlying that approach:

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[34] Under s 46 of the *Mental Health Act*, an authorised doctor from the secure facility must make an assessment of an involuntary patient as soon as practicable to decide whether the "treatment criteria" apply to the patient. If they do the doctor may make an involuntary treatment order: s 108. If no such order is made the patient ceases to be an involuntary patient: s 48. One of the treatment criteria (all of which must apply) is that the person's illness requires immediate treatment: s 14(1)(b). A person like Mr Lawrence, upon whom it cannot confidently be predicted that treatment will necessarily have any effect, is not regarded by Dr Groves as satisfying s 14(1)(b).

[35] It is difficult to understand the logic of this approach, given that many of the people in the high security unit have significant long-term psychotic illnesses that are slow to get better if they get

> "The philosophy that governs admissions to hospital now is coloured particularly by the history of the old asylums and it was a benevolent movement that went wrong and became overcrowded and harmful, and that was the push towards the so-called the deinstitutionalisation and the dissolution of the large institutions, and a very strong emphasis on therapy rather than custody, and there are persons who would see the kind of slow stream treatment that Mr Lawrence needs as not the function of the health service, for better or worse. I think that is now what colours the philosophy of mental heath care.
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> …
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> I should say, your Honour, that I came to Queensland in the wake of one of the scandals in Queensland in ward 10B in Townsville and was concerned also in my role in New Zealand with a series of scandals and the scandals arose because, in my opinion, the conflict of the ideology of the health service as it changed from its previous more custodial role and a lot of social pressure, civil libertarian pressure, and to become therapeutic rather than custodial, and I think that legacy still governs the philosophy of hospital care, so that providing custodial care and security is not seen as a proper function of hospitals."

[63] Whatever the correctness of Dr Groves' interpretation, it is plainly not feasible for Mr Lawrence to be held in a secure facility as an involuntary patient while that interpretation controls admissions. No such difficulty would attend housing Mr Lawrence in such a ward as a voluntary patient, but no such proposal was advanced during the hearing and it would face logistical difficulties. Its feasibility is unknown.

[64] A third aspect of the problem is Mr Lawrence's employment if released under a supervision order. Although he has improved his standard of education during his incarceration, Mr Lawrence still is suited for only a limited range of occupations. Mr Lawrence's own plans, written before the present application was made, envisaged that he would subsist on Centrelink benefits until he obtained employment. His goal was employment in the fencing or laundry or computer industry.[36] How Mr Lawrence might go about searching for work when subjected to a supervisory regime of the type already described when required to be escorted by a corrective services officer whenever away from his accommodation was not addressed. Presumably he would be required to look for work as a condition of obtaining any Centrelink benefit. Nor was there any evidence of how Mr Lawrence would attend the employment while subject to supervision, or of the impact such supervision might have on the likelihood of his getting work. No attention was paid to how Mr Lawrence might occupy his days until he obtained employment. Hobbies, visits to psychiatrists and psychologists and attendance at sporting events could hardly keep him fully occupied.

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better at all. Such people will be patients for many years - one has been a patient for 25 years. Apparently such people can be detained to ensure that they take their medication.

[36] Exhibits 11 and 12.

[65] Both parties accepted that the cost of the requirements in a supervision order were a relevant consideration.[37] Both Mr Smith and more particularly Mr Udemans gave evidence about costs. By and large I did not find that evidence particularly helpful. First, in dealing with available resources it was generally restricted to what was provided to the Department of Corrective Services in the current budget. In my judgment reasonableness is not to be set by reference to what has already been provided, nor limited to what has been provided to a particular department. Applications under the Act are made by the Attorney-General, but they are made on behalf of the State of Queensland. It is the resources of the State which are relevant, not the resources which the Treasury chooses to provide to a particular department. Second, at its most extreme some of the evidence assumed that the regime was being established in complete isolation, with no overlap to existing facilities, no sharing of any costs with others on supervision orders and all on-costs attributable to Mr Lawrence. In a less extreme form it tended to ignore incremental costs and omit relevant comparisons. On the other hand the witnesses had understandable difficulty in focusing their evidence because no detailed set of requirements was put to them in advance.

[66] Much of the case for Mr Lawrence was driven by evidence from the psychiatrists of his need for a graduated release from custody. While I did not understand them to use that expression as a term of art or to refer to any particular form of graduated release, I have no doubt that something akin to the forms of release which existed until the enactment of the *Corrective Services Act 2006* would have satisfied what they had in mind. Absent such a regime, any supervision order must be so constructed as to achieve similar outcomes. This case therefore raises in a much more acute way the problem noticed in *Attorney-General of Queensland v Edwards*.[38] The abolition of the previous regime for graduated release means that the cost of such arrangements must now be considered on an individual (or small group) basis rather than as part of the cost of administration of the prison system. As a general proposition it seems unlikely that the cost of doing what used to be done as a matter of course would be so extravagant as to make the development of a program of graduated release unreasonable. That proposition is supported by the fact that the Department has made submissions to Treasury to increase its case management capacity, its treatment capacity and its surveillance capacity to achieve the equivalent of graduated release. That included the expansion of capacity at the Wacol housing facility.[39] However what is true as a general proposition is not necessarily true in a particular case. It is necessary that I be satisfied that an appropriate regime can be established for Mr Lawrence. From the evidence which was given by Mr Udemans I suspect that a suitable regime could be put in place at a not unreasonable cost, but I am not prepared so to find. On the evidence there are too many variables and unknowns.

[67] Mr Lawrence sought to overcome the deficiencies in evidence by a submission that the order should be similar to a limited community treatment order such as is available to mental health patients. Some indication of the nature of such an order

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37 The Court of Appeal has accepted that reasonableness and practicability are relevant: *Attorney-General v Francis* [2007] 1 Qd R 396 at p 404.

38 [2008] QCA 156.

39 Regard may also be had to the Government's willingness to recruit and train nine staff to be devoted solely to the care and supervision of one mentally deficient patient subject to a forensic order under the *Mental Health Act 2006*: see *Re CMM* [2005] MHC 027 at [9].

is given in the booklet *Forensic Patient Management Policy and Procedures*, published by the Queensland Government. A forensic patient is a person who is or who is liable to be detained in an authorised mental health service under a forensic order[40], as distinct from an involuntary treatment order. Such orders are ordinarily made by the Mental Health Court after a finding of unsoundness of mind at the time of an alleged offence or unfitness for trial. Limited community treatment may be ordered or approved for such patients. It is the only mechanism by which such patients have access to community treatment and rehabilitation. Dr Groves agreed that that the principles involved in such treatment were the same as the graduated release described by Professor Nurcombe and Dr Beech in respect of Mr Lawrence. I am satisfied that such a regime of graduated release is reasonable and feasible; but that does not overcome the problems relating to Mr Lawrence's supervision, accommodation and employment.

[68] The omissions in the evidence are significant, as in her address, counsel for Mr Lawrence submitted that a requirement of a supervision order should be that Mr Lawrence reside at the Wacol accommodation under supervision. The draft order handed to me during counsel's address[41] contained those and a number of other requirements. That draft was evidently not available at an earlier stage; it was not put before the psychiatrists for comment.[42] I am not confident that in the absence of more detailed evidence relating to supervision, accommodation and employment, the doctors would find that the risk of reoffending was substantially reduced.

[69] Mr Lawrence presents an extreme and difficult case. The risk that he will reoffend if not adequately supervised and controlled on his release from prison is high. The evidence before me is insufficiently detailed and precise to permit the confident formulation of requirements for a supervision order, particularly requirements relating to supervision, accommodation and employment. In the absence of such requirements a supervision order would not ensure adequate protection of the community.

[70] In my judgment that is sufficient reason to make a continuing detention order. The starting position[43] of a supervision order has been displaced.

[71] As is evident from the foregoing reasons, that decision is particularly dependent upon the state of the evidence. The court must review the order at the end of the year from now. The State of Queensland and the Attorney-General as its representative will doubtless be aware that the evidence may be more focused at that time. It will no doubt be conscious of what was said by Dr James regarding accommodation for persons such as Mr Lawrence:

> "Prisons are not the right place and I think in the spectrum of care there is a gap and the gap is of the kind of institution … where it is both secure and therapeutic, both those goals are rich and salient."

The evidence before me does not suggest that it would be impractical or unreasonable for the Government to make suitable facilities available for housing Mr Lawrence (if they are needed and do not already exist), at least after a year from

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40 *Mental Health Act 2000*, schedule 2.

41 MFI "C".

42 I have made my finding as to the question of onus of proof: see para [36].

43 See para [36].

now. The Government has a positive obligation to implement the preventive objects of the Act:

> "It is possible, too, that the view taken by Gummow J in *Fardon v Attorney-General for Queensland* supports an argument that executive government repudiation of the preventive objects of the Act in a particular case (as, for example, by the refusal of any treatment to a prisoner clearly capable of, and amenable to, rehabilitation) could lead the court to refuse to make any order at all. If it were to appear to the court that any further detention would be truly punitive in character and, thus, contrary to the intention of the legislation, there would be no basis for the court to make an order of any kind under the Act. The conditions of further restraint upon the detainee's liberty would be out of character with the intention of the legislature: that such restraint is preventive. The character of the detention authorised by the Act is, as was explained in the reasons of the High Court in *Fardon v Attorney-General for Queensland*, not punitive but preventive."[44]

An unreasonable failure to provide suitable facilities might constitute another example.

Order

[72] There is no evidence of any need to detain Mr Lawrence for care or treatment. The order of the court should be that he be detained in custody for an indefinite term for control.

[73] I shall hear the parties on costs.

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[44] *Attorney-General v Francis* [2007] 1 Qd R 396 at pp 401-2.