SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Lawrence* [2014] QSC 77
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (Applicant) **v** **MARK RICHARD LAWRENCE** (Respondent)
FILE NO/S:	BS 7468 of 2007
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	2 May 2014
DELIVERED AT:	Brisbane
HEARING DATE:	14 February 2014
JUDGE:	Philip McMurdo J
ORDER:	**It will be ordered that:** **1. the decision made on 3 October 2008 that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 Part 2 of the Act be affirmed;** **2. the continuing detention order made on 8 October 2008 be rescinded; and** **3. the respondent be released from custody on 2 May 2014 and from that time be subject to the requirements which are set out in the reasons for judgment for a period of 15 years from the date of his release.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the respondent is a violent and sexual offender - where the respondent is subject to a continuing detention order – where an annual review is required under s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – whether the

respondent is a serious danger to the community – whether adequate protection of the community could be ensured by the supervised release of the respondent.

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 27, s 30

Attorney-General (Qld) v Beattie [2007] QCA 96
Attorney-General (Qld) v Fardon [2013] QCA 365
Attorney-General (Qld) v Francis [2007] 1 Qd R 396
Attorney-General for the State of Queensland v Lawrence [2008] QSC 230
Attorney-General for the State of Queensland v Lawrence [2010] 1 Qd R 505
Attorney-General for the State of Queensland v Lawrence [2011] QSC 291
Attorney-General (Qld) v Lawrence [2011] QCA 347
Attorney-General for the State of Queensland v Lawrence [2012] QSC 386
Attorney-General (Qld) v Lawrence (2013) 306 ALR 281
Lawrence v Attorney-General for the State of Queensland [2009] HCA Trans 244
Lawrence v Attorney-General for the State of Queensland [2012] HCA Trans 247

COUNSEL: J B Rolls for the applicant

J J Allen for the respondent

SOLICITORS: Crown Law for the applicant

Legal Aid Queensland for the respondent

[1] This is an application made pursuant to s 27 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act") for the review of the continuing detention of the respondent. The applicant, the Attorney-General, argues that the respondent should remain subject to the continuing detention order which is in place. For the respondent it is conceded that he would be a serious danger to the community in the absence of an order under Division 3 of the Act, but it is submitted that he should be released under a supervision order.

History

[2] The respondent was born in 1961 and is now aged 52. He has been in jail for more than 30 years.

[3] His criminal history commences in 1978, with a number of offences of assaulting male and female children. In 1979, he was ordered to undergo psychiatric treatment as his probation officer might direct, including treatment as an inmate of a psychiatric hospital. He became an involuntary patient in Wolston Park Hospital from which he absconded in 1981. With three other patients he then attempted to rob a taxi driver. For that he was sentenced to four months' imprisonment.

[4] Upon release from prison, he was returned to Wolston Park Hospital. It was there that he and another patient killed a fellow patient on 26 December 1983. The respondent had planned to rape and kill her. He was acquitted of murder and convicted of manslaughter on the basis of diminished responsibility. He was sentenced to 15 years' imprisonment.

[5] In 1991, he escaped from custody and was returned a few days later, resulting in a sentence of a further one years' imprisonment .

[6] In October 1999, he raped a fellow prisoner. He was twice convicted of that offence after a trial, the first conviction being quashed by the Court of Appeal. He was sentenced to seven years' imprisonment for that offence (and a concurrent term of three years for an associated assault). That sentence was imposed in April 2002 by which time his terms of imprisonment for the offences of manslaughter and escaping from custody had been served. The seven years imposed for the offence of rape expired on 7 February 2008. He has since remained in custody pursuant to orders made under the Act.

[7] On 3 October 2008, Fryberg J ordered that he be detained in custody under Division 3 of the Act.[1] His appeal against that order was dismissed on 22 May 2009.[2] An application for special leave to appeal was dismissed.[3]

[8] On 4 October 2011, P Lyons J ordered that he be released under supervision.[4] However, an appeal by the then Attorney-General was allowed on 2 December 2011,[5] with the consequence that he continued to be subject to the continuing detention order which had been made by Fryberg J. An application for special leave to appeal was dismissed.[6]

[9] On 6 December 2012, upon a review of the continuing detention order, Daubney J ordered that the respondent remain subject to the continuing detention order which had been made by Fryberg J.[7]

The Act

[10] Section 27 of the Act requires the court to review periodically a continuing detention order. The hearing of the first review must be completed within two years from the day on which the order first had effect and thereafter there must be annual reviews, each to start within 12 months from the completion of the hearing of the previous review. The judgment of Daubney J was given on 6 December 2012. The present application for review was filed on 29 October 2013. The delay in the hearing of the application is apparently explained by a hearing in the Court of Appeal of certain constitutional questions, which were decided in the present respondent's favour, last December.[8]

---

1 *Attorney-General for the State of Queensland v Lawrence* [2008] QSC 230.
2 *Attorney-General for the State of Queensland v Lawrence* [2010] 1 Qd R 505.
3 *Lawrence v Attorney-General for the State of Queensland* [2009] HCA Trans 244.
4 *Attorney-General for the State of Queensland v Lawrence* [2011] QSC 291.
5 *Attorney-General (Qld) v Lawrence* [2011] QCA 347.
6 *Lawrence v Attorney-General for the State of Queensland* [2012] HCA Trans 247.
7 *Attorney-General for the State of Queensland v Lawrence* [2012] QSC 386.
8 *Attorney-General (Qld) v Lawrence* (2013) 306 ALR 281.

[11] Upon a review hearing, there is a threshold question of whether the prisoner is a serious danger to the community in the absence of a division 3 order. As already noted, it is conceded for the respondent that the court should affirm the previous decision that he is such a serious danger to the community. Still, as to that threshold question, the court must be satisfied by "acceptable, cogent evidence" and "to a high degree of probability" that the evidence is of sufficient weight to affirm the decision.[9]

[12] If that threshold question is decided against the prisoner, the court may order that the prisoner continue to be subject to the continuing detention order or be released from custody subject to a supervision order.[10]

[13] Section 30(4) provides:

> "(4) In deciding whether to make an order under subsection (3)(a) or (b) —
>
> (a) the paramount consideration is to be the need to ensure adequate protection of the community; and
>
> (b) the court must consider whether—
>
> (i) adequate protection of the community can be reasonably and practicably managed by a supervision order; and
>
> (ii) requirements under section 16 can be reasonably and practicably managed by corrective services officers."

[14] As the Court of Appeal, in the case of this prisoner, held in 2011, there are two factors to be considered in deciding whether a supervision order would "ensure adequate protection of the community", namely the likelihood of conduct which will endanger the community and the result of such conduct if it ensues.[11] There also is the need to consider the effect upon the prisoner of a continuing detention order. In *Attorney-General (Qld) v Francis*,[12] the Court of Appeal (Keane and Holmes JJA and Dutney J) said, in relation to the like discretion to be exercised under s 13(6) of the Act:[13]

> "The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principle, be preferred to a continuing detention order on the basis that the intrusions of the Act upon the liberty of the subject are exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the statute which authorised such constraint."

---

9 s 30(2).

10 s 30(3).

11 *Attorney-General (Qld) v Lawrence* [2011] QCA 347 at [90] citing *Attorney-General (Qld) v Beattie* [2007] QCA 96. See also *Attorney-General (Qld) v Fardon* [2013] QCA 365 at [34].

12 [2007] 1 Qd R 396.

13 Ibid 406 [39].

[15] In his oral submissions, counsel for the Attorney-General placed a particular emphasis upon the word "ensure" and seemed to suggest that it requires an especially high level of satisfaction that an order would protect the community. This submission does not appear to have been considered previously. Of course the word "ensure" must be given effect. But what must be ensured is the *adequate* protection of the community. As the Court of Appeal said in *Francis*, the Act does not contemplate that such orders should be "watertight" or (put another way) risk free, for otherwise an order for supervised release would never be made.[14]

[16] As the respondent has always agreed, the offence of manslaughter which he committed in 1983 was effectively his bringing into reality what had been his fantasies of a sadistic sexual nature. He had fantasised about the rape and killing of a woman and then set about doing so. He had in mind a particular victim but when that person was not available, he simply chose another. The respondent says that he has not experienced these fantasies for many years and that he has the means to control them should they re-emerge. In previous hearings, as in the present hearing, there was a doubt about the accuracy of those assurances.

Previous judgments

[17] It is unnecessary to discuss each of the previous judgments concerning the operation of the Act upon this prisoner. It is sufficient to refer to the more recent of the judgments of the Court of Appeal and the most recent judgment in the Trial Division.

[18] In the Court of Appeal, the principal judgment was given by Muir JA. His reasons for concluding that the respondent should remain in detention were as follows:[15]

> "[97] I do not consider that the 'paramount consideration' of 'adequate protection of the community' could be met by a supervision order. In so concluding, I have in mind the likely consequences of re-offending: the committing of a life threatening violent sexual offence. That risk would be substantial. Dr Lawrence regarded it as high. For the reasons discussed earlier, Professor Nurcombe's moderate risk evaluation was made on the premise that the respondent provided a generally accurate history and that, in particular, he no longer experienced fantasies of a sadistic sexual nature. As also discussed earlier, there was a substantial body of evidence which required the respondent's account to be treated with the utmost caution. I would not be prepared to accept it without more corroboration than was provided at first instance. The matters pointed to by Dr Lawrence amply illustrate the unreliability of the respondent's assertions as to his condition and none of the medical experts knew of any means of determining their accuracy.
>
> [98] Another significant feature of Professor Nurcombe's appraisal of risk, which is relevant to the assessment under s 30 of the Act now being undertaken, is the nature and

---

14 *Attorney-General (Qld) v Francis* [2007] 1 Qd R 396 at 406 [39].

15 *Attorney-General (Qld) v Lawrence* [2011] QCA 347 at [97] – [99].

> likely occurrence of the matters which Professor Nurcombe thought could trigger a return of the respondent's fantasies if they were in fact dormant. Dr Lawrence's report also points to the likelihood of significant triggers for the fantasies occurring subsequent to any release of the respondent under a supervision order.
>
> [99] Dr Lawrence's unchallenged evidence that the respondent is probably continuing to experience fantasies and the primary judge's finding to that effect also assist my conclusion that a supervision order would not provide adequate protection of the community."

[19] In the most recent review, Daubney J found that the risk that the respondent would reoffend was high and that the nature of the offence that the respondent was likely to commit was potentially life threatening.[16] He wrote:[17]

> "[63] It is clear enough that a reactivation of the respondent's fantasies would not be immediately apparent to any person who would supervise him on release, and could be acted upon quickly with disastrous consequences. As Dr Grant observes, whether there are an amelioration of the sexual fantasies depend upon the respondent's honest and open reporting of his fantasy life. None of the psychiatrists identify any basis upon which an objective assessment can be undertaken which could determine whether or not the respondent is having sexual fantasies. No one knows when the respondent is having a fantasy - he does not talk about it to anyone else. No triggers and no identifiable class of victim can be identified. These factors alone make it clear that, in his present state, monitoring under a supervision order would not ensure adequate protection of the community. The only way that adequate protection of the community can be ensured is to detain the respondent."

[20] Of course those judgments were upon the basis of evidence which is not identical to that in the present application for review. This application must be determined upon the present evidence. The evidence here consists of more up to date opinions provided by the psychiatrists, Dr Lawrence and Dr Grant, and the psychologist, Dr Madsen. I go then to their evidence.

Evidence

[21] Dr Madsen's previous report was given in November 2012, after he had seen the respondent on seven occasions. He there referred to the respondent's denial of any recent deviant fantasies, a denial which Dr Madsen found difficult to assess. In the same way, Dr Madsen said, it would be difficult to assess whether the respondent would experience those fantasies if and when released into the community.

[22] In this hearing, Dr Madsen's more recent report of November 2013 was tendered and he gave oral evidence. Since his earlier report, he has seen the respondent on

---

16 *Attorney-General for the State of Queensland v Lawrence* [2012] QSC 386 at [59].

17 Ibid [63].

approximately a fortnightly basis for therapy. He conducted a number of assessments over those sessions. He noted, as he had previously written, that on "actuarial tools, Mr Lawrence would score highly [for risk of reoffending]", possessing "many of characteristics related to increased risk of recidivism". He said that at the time of his offending "there were problems with sexual self-regulation [and that] in addition to dominant deviant sexual interests and arousal to violence, there were marked antisocial and psychopathic features to his personality, not least a problematic level of impulsivity".[18] He then contrasted that with the present, writing that:[19]

> "35. At this time, there is evidence that he has some capacity to form and sustain relationships with others within the custodial environment. His behaviour within the prison also appears to have stabilised somewhat, and he does not appear impulsively aggressive, reckless or display other evidence of poor self-regulation. At this time Mr Lawrence does not obviously appear to endorse pro-offending attitudes, nor from his self report is there 'evidence' of sexual deviancy, although it was not clear whether this has dissipated, is lying dormant or he is simply being dishonest about the frequency and intensity of his deviant fantasies. Mr Lawrence was well able to acknowledge a hypothetical risk for himself, although he felt fairly confident that he would not reoffend."

[23] Dr Madsen noted that the respondent was "acutely aware of the potential negative consequences to himself should he disclose experiencing deviant fantasies presently".[20]

[24] Dr Madsen wrote that the respondent had "engaged well in the one to one treatment" and that "bearing in mind his low cognitive functioning, his poor educational history and the time that has passed since his offence, the quality of his work could be considered reasonable".[21] He concluded his report as follows:[22]

> "49. Mr Lawrence's presentation within sessions and also his progress within the prison environment suggests that his behaviour has stabilised somewhat and he has developed some personal strengths (most notably, his work ethic, good self regulation). Concerns remain regarding sexual deviancy and his capacity to conceptualise risk factors and risk management strategies."

[25] In his oral evidence, Dr Madsen was asked why the possibility of deviant sexual fantasies was important. He answered that his fantasies about "stalking and killing women was very, very strong for him when he committed his … offence in the early eighties, and that seemed to have been a driving factor to his behaviour at that particular time". He noted that the respondent reported to him that "throughout the eighties and nineties", he had had "these kinds of fantasies very intensely". Dr Madsen said that "having these kinds of fantasies would, of course, be problematic and of concern, because in the sense that they provide the motivation

---

18 Report of Dr Madsen, para 34.
19 Ibid 35.
20 Ibid 38.
21 Ibid 48.
22 Ibid 49.

and the drive to perhaps act them out" and that because the respondent had "acted on them previously", Dr Madsen would be "extremely concerned if he was experiencing these kinds of thoughts in an intense way currently …".[23]

[26] He gave further evidence that the respondent's behaviour had stabilised over the 30 years in which he had been in custody but what would happen to him when removed from that custodial environment was "a very hard question to answer".[24] He acknowledged the possibility that if and when released, the respondent might be experiencing deviant fantasies, which could be "a driver for the commission of further offences" including "the killing of a young woman", in circumstances where those fantasies would not be observable.[25]

[27] Dr Lawrence wrote a report dated 31 October 2013 and gave oral evidence. Dr Lawrence has a long history of assessing the respondent, having assessed him in relation to his defence of diminished responsibility for the 1983 offence. She saw him for a period of more than two hours shortly prior to writing her most recent report. The respondent reported to her that he was not experiencing any deviant fantasies and volunteered that if he was exposed to something which could trigger such fantasies, such as a scene on television, he would walk away, a strategy which he had developed as a result of his sessions with Dr Madsen.[26]

[28] Dr Lawrence explained her method of assessment which was based upon "a structured clinical assessment and interview, a review of all available corroborative information incorporated into the assessment and an actuarial assessment utilising recognised actuarial and risk assessment scales".[27]

[29] Dr Lawrence now expresses an opinion which is somewhat different from those provided to previous hearings involving this respondent. In the respondent's favour, she wrote in her most recent report as follows:[28]

> "12.3 During that 30 year period, I have observed and described changes in the mental state and functioning of Mark Lawrence. I have also observed and experienced changes in Psychiatry's understanding of and ability to treat serious mental disorders, including some with aberrant behaviour. I have also experienced significant changes in the medicolegal and forensic interface of Psychiatry and the Law. These statements preface my opinion in order to point out that my opinion at the present time has changed and to an extent that I would not previously have anticipated.
>
> 12.4 In my most recent and current risk assessment of Mark Lawrence, I believe that there is evidence of change in his understanding, belief systems and ability to understand his own behaviour, as well as his emotional and impulsive responses greater than previously, and that he has also learnt

---

23 T 1-7, 8.
24 T 1-9.
25 T 1-10.
26 Report of Dr Lawrence, para 8.6.
27 Ibid 12.1.
28 Ibid 12.3 - 12.7.

> strategies to assist him in managing those emotional responses and drives in an appropriate and prosocial fashion.
>
> 12.5 As he himself acknowledges, the most significant agent of change for him, and in my opinion, has been the individual therapeutic interventions and counselling he has received from Psychologist, Dr Lars Madsen, in the prison situation over the past 2 years. This individual counselling has, in my opinion, been such as to amplify his understanding, and the incorporation into his psychic functioning of that understanding of concepts, previously addressed in the group Sexual Offending Programs which he has undertaken (HISOP and SOMP) in recent years. It is apparent that he has benefited from the establishment of a therapeutic relationship with an individual Psychologist, skilled in the treatment of sexual offenders, including those with some intellectual limitations.
>
> …
>
> 12.7 I believe also that credit must also be given to Mark Lawrence himself, since the psychological changes which he has apparently achieved can only reflect his motivation and active involvement in those therapeutic endeavours. He himself appears to recognise the need for, and willingness to continue with, those endeavours if he were to be released on a Supervision Order. In my opinion, it is vital that they should continue if he were to be released under a Supervision Order."

[30] However, there remains, in her view, the uncertainty of whether the respondent is being truthful in saying that he does not experience deviant fantasies and has "strategies for dealing with potential precipitants" of such fantasies which he has used successfully. Dr Lawrence wrote in this respect:[29]

> 12.8 "The 'elephant in the room' (so to speak) remains the issue of the continuance in frequency and the nature of Mr Lawrence's deviant fantasies. We are entirely dependent on his own articulated statements for any assessment of these. He is quite aware of this and understands their significance. His motivation for change and for release is strong and commendable but one must remain cautious about the degree of veracity of his statements regarding his deviant fantasies. Currently, he asserts no such deviant fantasies 'for years.' He indicates strategies for dealing with potential precipitants of fantasies and claims to use them successfully. If this valid, the risk is reduced. If he has falsely represented this very personal experience, the risk remains high and unknowable."

---

[29] Report of Dr Lawrence, para 12.8

[31] Dr Lawrence wrote that the respondent, "in more recent years", has "consistently revealed pro-social attitudes and behaviour in self care, compliance and employment and shown leadership qualities which have earned him recognition within his peer group". She noted that within the last five years he had been involved in more intensive therapeutic programs directed at his sexual offending behaviour, which "would appear to have been able to effect evidence of change in emotional and cognitive states as well as improving, through cognitive means, his apparent ability to manage the more aberrant and harmful of his moods and impulses". In addition, he appears to have developed a better understanding of his own motivations and improved control of his aberrant impulses. She concluded:[30]

> "13.7 In my opinion it is more likely than not that his level of risk of offending violently or sexually has moderated as a result of these efforts, to the extent that I believe a Supervision order could be compiled in such a way as to ensure that the level of risk can be supervised and monitored adequately."

Dr Lawrence continued:[31]

> "14.7 He appears to have benefited significantly from this individual attention with evidence of change in attitudes, such that, when combined with an absence of evidence of behaviours of an antisocial kind, continued compliance and high level of achievement and employment in the prison situation, it is my opinion that the evidence suggests that a high risk of re-offending based primarily on historical past factors has been modified by recent therapeutic changes to lower the risks now to a moderate level.
>
> 14.8 In contrast to my previous opinion, I believe that a Supervision Order could be constructed for Mark Lawrence such as to monitor and supervise his return to the [community]."

[32] In her oral evidence, Dr Lawrence acknowledged the likelihood that the respondent would still experience deviant fantasies, so that if they were not well controlled or avoided by him, it was possible that "he could act on those fantasies again at some point in time".[32] And she acknowledged the motivation which the respondent would have to "present well [to her and other professionals] in order to give himself the best opportunity to perhaps lessen the impact of [the Act] upon him".[33] Nevertheless, Dr Lawrence believed that "there had been evidence of real change or greater understanding of his difficulties and evidence of very genuine attempts to deal with his problems".[34] She acknowledged that she could be wrong in that assessment but added that "one would hope that one's clinical knowledge and skills can be applied to be of assistance in these matters".[35]

[33] Dr Lawrence acknowledged that there could be things which would destabilise the respondent in the outside world and which could increase the risk of his acting on

---

30 Report of Dr Lawrence, para 13.7.
31 Ibid 14.7 and 14.8.
32 T 1-18.
33 T 1-19.
34 T 1-20.
35 T 1-20.

deviant fantasies and that because the respondent had been so long in custody, "we don't know the effect of his moving into a very knew and strange and potentially threatening environment".[36]

[34] Dr Grant's most recent report is dated 28 October 2013, after seeing the respondent on 17 October 2013. As he there wrote (and as Dr Lawrence had written), "the respondent has a diagnosis of Sexual Sadism and an underlying Antisocial Personality Disorder with prominent psychopathic traits", but there was "no evidence of any other significant psychiatric disorder".[37]

[35] Like Dr Lawrence, he noted improvement over the 12 months from his previous report. He wrote in this 2013 report:[38]

> "It would appear that over the last 12 months, with the assistance of the treatment that he has undergone, he has become more willing to discuss those fantasies and their relevance to future offending and more open to working on strategies to deal with such fantasies should they become more prominent in the future."

[36] Dr Grant said that the respondent might be correctly reporting that "the fantasies are currently under control" but that the respondent nevertheless recognised the possibility of them recurring.[39] Dr Grant wrote that the major concern in terms of future offending revolved around the recurrence of sadistic sexual fantasies, the respondent's ability to detect and deal with them, and the ability of supervision and therapy to both recognise the presence of fantasies and assist him in dealing with them. He noted that if the respondent was to act on those sadistic sexual fantasies the results could be "quite catastrophic".[40]

[37] Dr Grant wrote that the respondent is "very institutionalised" and would require a "great deal of support and assistance in adjusting to life in the community" so that it remained to be seen "to what extent the very constructive and controlled behaviour he exhibits in custody will translate to life in the community".[41]

[38] Dr Grant concluded in his report as follows:[42]

> "Overall, in my opinion, the actuarial high risk of reoffending as exhibited on formal instruments is reduced by dynamic factors such as his age, lessons he has learned from treatment and his current response to therapy, to a moderate level of risk which has the potential to be reasonably contained by a strict program of supervision and support outside custody. … The major issue will be monitoring Mr Lawrence's fantasy life and detecting recurrence of any prominent sexual sadistic fantasies. Mr Lawrence does appear to have become somewhat more open about discussing such fantasies and I believe that if his treatment continues to be satisfactorily progressed and his supervision be delivered by experienced and dedicated personnel, it is likely that he will report the recurrence of

---

36 T 1-22.
37 Report of Dr Grant, p 13.
38 Ibid p 14.
39 Ibid.
40 Ibid.
41 Ibid 15.
42 Ibid.

> risky sexual fantasies. While this cannot be guaranteed, I believe that he has now reached the point where the risk is containable by appropriate supervision and treatment in the community."

[39] Those conclusions are in marked contrast with the report of Dr Grant of August 2012 in which he had concluded that there were "too many concerns and uncertainties to recommend that Mr Lawrence could safely be released into the community at this stage, even with the benefit of a comprehensive supervision order".[43]

[40] In his oral evidence, Dr Grant agreed that a supervisor could not tell whether these fantasies were occurring and that to a large extent, there would be a reliance upon honest and consistent reporting by the respondent about those matters.[44] And it was possible that the respondent might not be so candid about these matters if they had the potential to bring an end to his supervised release.[45] Dr Grant added that "hopefully, he can understand that talking about them is going to be necessary in terms of achieving long-term adjustment in the community".[46]

The threshold question

[41] Section 30 of the Act applies only if, on the hearing of a review such as this and having regard to the "required matters", the court is of the view that the prisoner is a serious danger to the community in the absence of a division 3 order.[47] The "required matters" are those mentioned in s 13(4) (and any report produced under s 28A, which is not presently relevant). Neither of the psychiatrists who gave evidence in this hearing considered that the respondent should be released without a supervision order. Clearly, the respondent has a propensity to commit serious sexual offences which appears to have been reduced or better managed thus far by a combination of circumstances, but most significantly by the intensive therapy which he has received from Dr Madsen. But absent any order under division 3, he would not be required to engage in that therapy or otherwise be assisted in his release into the community. I am satisfied by acceptable and cogent evidence, and to a high degree of probability that the court should affirm its previous decision that he is a serious danger to the community in the absence of a division 3 order.

Detention or supervised release?

[42] I go then to the question which was debated, namely whether he should be released under supervision. In the 2009 appeal in the case of this respondent,[48] Chesterman JA (with whom Margaret Wilson J agreed), said that in cases where the Attorney-General contends that the community will not be adequately protected by a prisoner's release on supervision, the burden of proving the contention is on the Attorney, adding that "the exceptional restriction of the prisoner's liberty, after he has served the whole of whatever imprisonment was imposed for the crimes he committed, and for the protection of the public only, should not be imposed unless the inadequacy of a supervision order is demonstrated".[49]

---

43 Report of Dr Grant, 6 August 2012, pp 26-27.
44 T 1-38.
45 T 1-40.
46 T 1-44.
47 s 30(1).
48 *Attorney-General for the State of Queensland v Lawrence* [2010] 1 Qd R 505.
49 Ibid 512 [33].

[43] The case of the Attorney-General is not as strong as that which resulted in orders for the continuing detention of the respondent in previous judgments. There has been a marked shift in the opinions of Dr Lawrence and Dr Grant.

[44] In particular, the psychiatrists have now expressed views which are favourable to the respondent's prospects of managing his sexual behaviour. It remains doubtful whether the respondent does not experience any deviant sexual fantasies now. Dr Lawrence said that it was unlikely that the occurrence of these fantasies had been eliminated entirely. The important point in her view was that the respondent now appeared to be genuinely minded to control the risk from those fantasies and was developing the means to do so. Therefore, the unknown is not so much whether the respondent will experience the onset of these fantasies but rather whether he will remain willing and able, outside the custodial environment, to avoid their development and their potentially dangerous consequences. It is that uncertainty which results in some ongoing risk that the respondent would commit a serious sexual offence and perhaps a life threatening offence.

[45] Relevant also is the fact, as the witnesses explained, that there is no means for reading the respondent's mind as to the extent to which he experiences the onset and controls of the influence of deviant fantasies. It is possible that even his treating psychologist would be unable to detect some dangerous development in that respect. Rather the importance of ongoing therapy as provided by Dr Madsen is just that: it would be therapeutic for him to develop or further develop strategies for managing this risk.

[46] Then there is the consideration, as earlier discussed, of the potential consequences of further offending. In this case, the consequences could be most serious.

[47] The opinions of Dr Lawrence and Dr Grant must be given substantial weight. Overall they are supportive of an order for supervised release. Their opinions do admit of the prospect, contrary to their own perceptions about the respondent, that he has not yet developed the motivation and the ability to control his sexual and other behaviour. But as Dr Lawrence said, her view is assisted by her clinical knowledge and skills.[50]

[48] It is remarkable that each of the psychiatrists has so changed her or his view since the previous review of the respondent's detention that each believes the level of risk is moderate and able to be "contained" (as Dr Grant put it) by an appropriate supervision order. As I see it, that is also now the effect of Dr Madsen's evidence.

[49] The respondent's willingness and ability to manage his aberrant behaviour, with the assistance of appropriate supervision, and in turn the extent of the risk of his reoffending, are questions of fact for determination by the court. The respondent did not give evidence in this hearing. But it is unlikely that such evidence would have placed the court in a better position to determine those factual questions than the position it enjoys with the benefit of the evidence of these three professionals, and it was not submitted otherwise. Whilst the court is not bound to accept their evidence, in this case there is no reason not to do so. Each has had the benefit of assessing or (in Dr Madsen's case) treating the respondent for some years. Each has seen fit to substantially revise her or his earlier opinions. The evidence of

---

50 See [32] above.

Dr Lawrence has particular weight because of her very long experience in assessing the respondent.

[50] Section 30(4) of the Act provides that the paramount consideration is the need to ensure adequate protection of the community. The court must consider whether that protection can be reasonably and practicably managed by a supervision order: s 30(4)(b)(i). The effect of the opinions of at least each of the psychiatrists is that that protection of the community can be reasonably and practicably managed by a supervision order. But again, this is a question for the court. It is a question upon which the Attorney-General bears the onus, as was said in 2010 in the respondent's case in the Court of Appeal in the passage which I have set out at [42]. This question ultimately requires a value judgment by the court about what risk should be accepted against the alternative of the deprivation of a person's liberty.

[51] Upon the evidence which I have discussed, I am persuaded that adequate protection of the community can be reasonably and practicably managed by a supervision order. Section 30(4)(b)(ii) requires the court to consider whether requirements under s 16 of the Act can be reasonably and practicably managed by Corrective Services officers. There was no argument about this matter. In particular, it was not argued for the Attorney-General that there would be some management difficulty in relation to the conditions of supervision which are required by s 16.

[52] For these reasons I am persuaded to rescind the continuing detention order and make an order for the respondent's supervised release. There was no argument about the terms of the supervision order being according to a draft handed up by counsel for the respondent. There will be an order according to that draft.

[53] It will be ordered that the decision made on 3 October 2008 that the respondent is a serious danger to the community in the absence of an order pursuant to Division 3 Part 2 of the Act be affirmed, the continuing detention order made on 8 October 2008 be rescinded and that the respondent be released from custody on 2 May 2014 and from that time be subject to the following requirements:

The respondent must:

(i) be under the supervision of an authorised Corrective Services Officer (Authorised Corrective Service Officer) for the duration of this order;

(ii) report to an authorised Corrective Service Officer at the Queensland Corrective Service Probation and Parole Officer closest to his place of residence within 72 hours of the day of release from custody and at the time advise the officer of the respondent's current name and address;

(iii) report to, and receive visits from, an authorised Corrective Service Officer at such time and at such frequency as determined by Queensland Corrective Services;

(iv) notify and obtain the approval of the authorised Corrective Service Officer for every change of the respondent's name at least two business days before the change occurs;

(v) notify an authorised Corrective Service Officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed;

(vi) seek permission and obtain approval from an authorised Corrective Services Officer prior to entering into an employment agreement or engaging in volunteer work paid or unpaid employment;
(vii) reside at a place as approved by a Corrective Services Officer by way of a suitability assessment;
(viii) not reside at a place by way of short term accommodation including overnight stays without the permission of the authorised Corrective Service Officer;
(ix) not leave or stay out of Queensland without the written permission of an authorised Corrective Service Officer;
(x) not commit an offence of a sexual nature during the period of this order;
(xi) not commit an indictable offence during the period of this order;
(xii) comply with every reasonable direction of a Corrective Service Officer under section 16B of the Act given to him;
(xiii) comply with every reasonable direction of a Corrective Service Officer that is not directly inconsistent with a requirements of the order;
(xiv) respond truthfully to enquiries by a Corrective Service Officer about his whereabouts and movements;
(xv) not have any direct or indirect contact with a victim of his sexual offence or a relative of the victim;
(xvi) notify an authorised Corrective Service Officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;
(xvii) attend upon and submit to assessment and/or treatment by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by an authorised Corrective Service Officer at a frequency and duration which shall be recommended by the treating professional, the expense of which is to be met by Queensland Corrective Services;
(xviii) agree to open communication and full co-operation between himself and the treating person and that if either party deems it advisable for that party to contact an authorised Corrective Service Officer;
(xix) agree to undergo medical testing or treatment (including the testing of testosterone levels by an endocrinologist) as deemed necessary by the treating psychiatrist or an authorised Corrective Service Officer, and permit the release of the result and details of the testing to Queensland Corrective Services, if such a request is made for the purpose of amending the supervision order or for ensuring compliance with this order, the expense of which is to be met by Queensland Corrective Service;
(xx) attend and participate in any program or course conducted by a psychologist, counsellor, or other professional, in a group or individual capacity, as directed by an authorised Corrective Service Officer in consultation with any treating medical, psychiatric, psychologist or other mental health practitioner where appropriate, with any expense of such program to be met by Queensland Corrective Services;
(xxi) submit to and discuss with an authorised Corrective Service Officer a schedule of his planned and proposed activities on a weekly basis or at such other intervals as directed by an authorised Corrective Service Officer;
(xxii) develop a risk management plan in consultation with a treating psychologist or psychiatrist and discuss it as directed with an authorised Corrective Service Officer;

(xxiii) not initiate or maintain any supervised or unsupervised contact with any child under 16 years of age, except with the prior written approval of an authorised Corrective Service Officer;

(xxiv) not join, affiliate with, attend on the premises of or attend at the activities carried on by any club or organisation in respect of which there are reasonable grounds for believing there is either child membership or child participation without the prior written permission of an authorised Corrective Service Officer;

(xxv) not visit or attend the premises of any place where there is a dedicated children's play area or child minding area without the prior written approval of an authorised Corrective Service Officer;

(xxvi) not without reasonable excuse be within 100 metres of a school or child care centre without the prior written approval of an authorised Corrective Service Officer;

(xxvii) not to be on the premises of any shopping centre, without reasonable excuse, between 8am to 9:30am between 2:30pm and 4:30pm on school days other than for the purpose of:

a. approved employment;

b. attending an approved bona fide pre-arranged appointment with a Government agency, medical practitioner or the like without the prior written approval of an authorised Corrective Service Officer;

(xxvii) comply with every reasonable curfew direction or monitoring direction of a Corrective Service Officer;

(xxix) abstain from the consumption of alcohol unless with the prior written permission of an authorised Corrective Service Officer;

(xxx) abstain from the consumption of all intoxicating substances.

(xxxi) submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by an authorised Corrective Service Officer, the expense of which is to be met by Queensland Corrective Services.