SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v M* [2018] QSC 198
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (Applicant) **v** **M** (Respondent)
FILE NO/S:	BS No 5182 of 2018
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	31 August 2018
DELIVERED AT:	Brisbane
HEARING DATE:	27 August 2018
JUDGE:	Lyons SJA
ORDER:	**The Court makes the orders in terms of Schedule 1 attached to these reasons.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT SEXUAL OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where the applicant seeks orders under Section 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where the respondent has been convicted of multiple sexual offences – where the respondent has significant mental impairments – whether the respondent is a serious danger to the community in the absence of a Part 2, Division 3 order – whether a continuing detention order or a supervision order should be preferred – whether the community could be adequately protected by a supervision order – whether the supervision order should be five or ten years in duration *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) s 13, s 16

A-G (Qld) v Lawrence [2009] QCA 136

Attorney-General v Sutherland [2006] QSC 268

COUNSEL:	J Tate for the Applicant K E McMahon for the Respondent
SOLICITORS:	Crown Law for the Applicant Legal Aid Queensland for the Respondent

This Application

[1] This is an application by the Attorney-General for the State of Queensland for orders pursuant to Part 2 Division 3 (s 13) of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) ("the Act") in relation to M. The applicant seeks an order that the respondent either be detained in custody for an indefinite term for control, care or treatment, or be released from custody subject to a Supervision Order.

[2] M is 30 years of age. On 21 March 2013 he pleaded guilty and was convicted of three counts of rape. He was sentenced in the District Court by Judge Griffin to five years, eight months imprisonment for each offence, to be served concurrently. A parole eligibility date of 4 January 2015 was set. His full-time release date is 6 October 2018.

Criminal History

[3] The respondent's criminal history began in 2002 when he was 13. Whilst he had other convictions in 2009, 2011 and 2012 including offences of entering a dwelling without consent, public nuisance, breaching orders, assault or obstruct police, receiving tainted property, fraud, forgery and attempted forgery, his relevant criminal history for the purposes of this application is as follows:

Date	Description of Offence	Sentence
Brisbane Childrens Court 17/04/2003	• 8 x Indecent treatment of children under 16 with circumstances of aggravation (between 01/01/2002 and 23/05/2002)	2 years' probation, no conviction recorded. Special condition that the offender attend any programs as directed.
Brisbane Childrens Court 11/09/2006	• 2 x Rape (between 01/08/2003 and 19/09/2003)	Proceedings discontinued following a determination by the Mental Health Court on 15 August 2006 that the Respondent was of unsound mind at the time of the offences.
Brisbane District Court 21/03/2013	• 3 x Rape (on 08/11/2011)	5 years and 8 months imprisonment. 46 days of pre-sentence custody declared. Parole eligibility date: 04/01/2015.

[4] On 17 April 2003, he pleaded guilty to eight charges of indecent treatment of a child under 16 with a circumstance of aggravation and was sentenced to two years' probation with a condition requiring he attend programs as directed. He was 13 years at the time of the offences and 14 at the time of sentence. The two victims were his younger sisters who were aged 5 and 8, and the offending comprised him forcing the victims to perform oral sex on him as well as touching them on the bottom. He also touched the victims on the outside of the vagina, and simulated sexual intercourse while clothed.

[5] On 12 October 2003, he was charged with two offences of rape. The victim was his younger brother who was 8. The offences were alleged to have occurred when the brothers were residing together at a foster home in August or September 2003. The respondent forced the complainant to perform oral sex on him and then penetrated him anally.

[6] The matter was referred to the Mental Health Court and on 15 August 2006 the Mental Health Court found he was of unsound mind, given he was deprived of the capacity to know the acts were wrong. On 11 September 2006 the charges were formally discontinued at the Brisbane Children's Court.

[7] In relation to the current offences, they occurred in September 2011. The respondent and the complainant had been in a relationship for a number of months. Police were called to an incident at their home during which the Respondent has threatened the complainant with a knife. A domestic violence order was put in place and the respondent moved out of the house but remained in contact. In November 2011, it would seem that there was some prospect of a reconciliation but then on 7 November the complainant asked the respondent to take his furniture out of the house so she could move on with her life. He responded by sending a series of threatening text messages and indicated that he was going to come to her house. He stated that he had taken amphetamines.

[8] The complainant left her home but returned later and found that items had been stolen from her home and that there was a hole in the sliding door at the back of the house. The respondent called the complainant telling her that he had sent people to her house to scare her but they had ended up stealing items which was not part of the plan. The respondent threatened the complainant with a bullet through her head, and also threatened to burn down her house. He told her, however, he could come to her home to return the items that had been stolen. The respondent gave the complainant back the items that had been stolen, telling her that he had taken speed. He entered the house with her and remained there for the night during which he had slapped her a few times. The complainant eventually went to sleep. The complainant woke around 5.30 in the morning to find the respondent straddling her and grabbing her by the wrists. He had tried to remove her underwear and masturbate whilst on top of her. The complainant struggled and resisted but the respondent removed her underwear and began having sex with her. He then grabbed her ankles and pulled her towards the end of the bed and began having sex with her again. The respondent subsequently stopped, took the complainant's dress off and began having sex with her again.

[9] The sentencing judge noted that at the time the respondent committed the offences he was attempting to reconcile his relationship with the complainant but due to his limited

intellectual functioning, he had done that by attempting to frighten her and by using the violence against her. He had, however, committed three separate acts of rape against her. In passing sentence, the judge noted the respondent's low level of intellectual functioning and the fact he had pleaded guilty and been cooperative. He was also punished in relation to a breach of a domestic violence order. He was sentenced to 5 years and 8 months imprisonment and given a parole eligibility date of 4 January 2015. He has not been granted parole and will have served the entirety of his sentence prior to his release.

[10] Given that the respondent has a diagnosis of an intellectual impairment I consider that the earlier reports which were provided to the Mental Health Court are of significance as they outline the respondent's initial assessments and his intellectual functioning at that point in time.

Historical Psychiatric Reports

Dr Luke Hatzipetrou – 9 February 2004

[11] Dr Hatzipetrou prepared a report in relation to the offences that were referred to the Mental Health Court. He noted an extensive history of abuse and neglect by the respondent's parents and he also noted adolescent sexual offenders often have a background of family dysfunction with implications for socio-sexual development, personal boundaries, psychological function and moral development. He considered that that background, together with his intellectual impairment resulted in an impaired capacity to understand the perspective of other people and engage in reciprocal relationships.

[12] Dr Hatzipetrou concluded that the respondent's intellectual functioning was within the mentally deficient range and that his full scale IQ was in the range of 53-64 which was in the bottom 0.2 percentile. His verbal IQ score was 57-72 and his performance IQ score of 56-69 meant that both those scores fell within the mentally deficient range. Dr Hatzipetrou considered that the respondent's non-verbal and verbal reasoning age was approximately 8 and a half years when he was about 15 years of age.

Dr Michael Beech – 12 April 2016

[13] Dr Beech also provided a report to the Mental Health Court and he also noted the respondent's history of prejudicial circumstances, abuse and neglect as well as witnessing sexual abuse of his siblings. Dr Beech considered the respondent developed a conduct disorder and that he became deviantly sexualised due to that background.

[14] Dr Beech considered that the respondent had mild mental retardation and considered this would limit his ability to understand the wrongfulness of his behaviour but not substantially impair his ability to control his behaviour or know what he was doing. He considered he was not of unsound mind and was fit to proceed to trial despite his intellectual difficulties.

Dr Peter Fama – 23 April 2006

[15] Dr Fama considered the respondent was of unsound mind when he committed the offences as he was deprived of the capacity to know he ought not do the acts, given his mild mental retardation and significant impairment.

Recent Psychiatric Reports for the purpose of this Application

[16] A number of psychiatric reports have been prepared for the purposes of this hearing namely the reports of Dr Scott Harden, Dr Jane Phillips and Dr Karen Brown.

Dr Scott Harden – 7 December 2017

[17] Dr Harden provided a written report and also gave evidence at the hearing. He considered that the respondent had been convicted of committing sexual offences against three of his younger siblings while he was a teenager, and considered that they occurred in the context of a family environment where there was a presence of child abuse including sexual abuse from a number of adults including his father and older step-brother as well as neglect and violence from his mother. Those sexual offences against his siblings occurred in the context when he was aware that at least one of the male adults in the house was having sexual relations with his female siblings. Dr Harden continued:

> "He has then gone on as an adult to commit a rape offence against his ex-partner in the context of relationship breakdown in a domestically violent and chaotic relationship. The most recent sexual offence has occurred in the context of substance intoxication with alcohol and amphetamines. The offence was associated with profound jealousy and insecurity as well as significant impulsive threats of violence and harm in a relationship characterised by previous domestic violence and his recurrent breaches of domestic violence orders."[1]

[18] Dr Harden considered that he had a prejudicial upbringing which was influenced by not only his intellectual impairment, but also a dysfunctional family environment. Dr Harden considered that it was notable that given his intellectual impairment and his developmental immaturity in 2006, in recent years his activities of daily living did not appear to be impaired and Dr Harden considered that though the respondent had cognitive difficulties, they were not of such a magnitude to indicate that he could not appreciate his legal situation or run his own finances and make decisions. He concluded:

> "It seems likely that there has been a degree of maturity that has improved his ability to understand situations and make good decisions."[2]

[19] Whilst Dr Harden noted it was concerning that he had not abided by domestic violence orders and when on to breach them, he considered that:

> "…however, period of maturation seems to have occurred and he seems to have reasonable insight into his previous offending both sexual and nonsexual and his need to alter his behaviour. This of course remains untested as yet in the community."[3]

[20] He diagnosed impaired intellectual function and he conducted a number of risk assessments:

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1 Affidavit of Dr Scott Harden sworn 24 April 2018, Exhibit SH-2, 20.
2 Affidavit of Dr Scott Harden sworn 24 April 2018, Exhibit SH-2, 20.
3 Affidavit of Dr Scott Harden sworn 24 April 2018, Exhibit SH-2, 20.

- On the Static 99R, the respondent scored 8, placing him in the "Well Above Average" risk category;

- On the Stable 2007, he scored 8/28, which placed him in the moderate needs group;

- Sex Offender Risk appraisal guide (SORAG): he scored 22, placing him in category 7, representing a 58% rate of violent or sexual violent re-offending in 7 years, and 80% at 10 years;

- SVR-2- - the respondent scored positive for 5/20 items, and he was placed in the moderate risk category on this measure of sexually violent risk.

[21] Dr Harden concluded that the ongoing unmodified risk of sexual re-offence if released into the community was moderate to high. He considered that was a compromise position given that his static risk was in the high range, but his dynamic risk factors appear to be in the more moderate range. He noted that the respondent's greatest risk factors are his intellectual difficulties, his history of sexual offending, and his history of dysfunctional response to relationship problems leading to domestic violence and rape.

[22] Dr Harden considered that if the respondent was to re-offend, it would be in a situation of relational stress and substance intoxication and that the victim would likely be known to him. He also considered that if he was released without support structures in place, it would destabilise him emotionally. Whilst he had some family support, he considered that given the history of his father and step-brother previously sexually offending against his sisters, it would be inappropriate for him to reside with them. He considered if he was released from custody without a Supervision Order, his risk of sexual re-offence would be in the moderate to high range, but if he was released under a Supervision Order, that would be reduced to low to moderate.

[23] In his evidence at the hearing, Dr Harden stated that he considered that the appropriate term for the Supervision Order would be five years due to his concern that the order would become onerous. He was of the view that a 10 year order was not required to ensure the adequate protection of the community. He noted the concern that due to the respondent's cognitive difficulties he would take longer to acquire some of the cognitive skills associated with remaining offence free but stated that in terms of community reintegration he thought that there was a point "where these orders stop being a help and start being a hindrance. The prediction of that point, of course, at this – is very difficult."[4]

[24] Dr Harden's view was that it was important the respondent abstains from alcohol and other illicit substances. As to whether it was necessary for the Supervision Order to contain a condition that he not have any contact with children under 16, Dr Harden stated that such a condition as contained in draft Condition 22 was not necessary as "He is not paraphilic. Any offences that were committed against young people were committed at a time when he was also a juvenile and in circumstances where he lived in an environment where all the adults in the environment were also having sexual contact with various of the young people as well. So I don't – I don't think 22 is necessary in

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[4] T 1-11: 9 – 11.

this or – in this order."[5] He did not consider that there was any history of the respondent seeking out people who were age inappropriate in terms of his relationships and there was no reason to suggest that it was a problem.

Dr Karen Brown – 30 July 2018

[25] Dr Brown also stated that the respondent had a diagnosis of mild intellectual disability, with an IQ which she considered was around 60, as well as a substance use disorder and Cluster B Traits. In terms of the actuarial assessments, Dr Brown made the following findings;

- On the Static 99R he scored 9, placing him well above average for sexual re-offending.
- In relation to the Psychopathy checklist (PCL-R), he scored 13/40, which meant he does not reach the criteria for psychopathy.
- In relation to the Risk for Sexual Violence Protocol (RSVP), Dr Brown noted the respondent had demonstrated evidence of chronicity and physical coercion in association with sexual offending and that there was evidence possibility of psychological coercion.

[26] Dr Brown considered that whilst the respondent accepts responsibility for sexual offending, he minimises the violence that was used in regard to the offences. She did not consider he supported or condoned sexual violence, but has poor understanding of his own sexual needs and drives and lacks self-awareness. She considered he had limited awareness of his own vulnerabilities, particularly regarding the anti-social influence of others and noted he had limited coping strategies other than substance use although he had learned some strategies in prison. She noted that whilst the respondent's history in prison indicates he can be engaged in planning and treatment, she was concerned that he was engaged in therapy from his mid-teens but continued to offend, so considered that there was a history of treatment failure. She also noted he continued to offend whilst on bail for the index offence and breached a domestic violence order in the past.

[27] In terms of risk, Dr Brown noted that there were a number of static factors which elevated his unmodified risk of sexual re-offending to well above average, or high, but there were some risk factors which were not present, particularly there was absence of sexual deviance, psychopathy, mental illness and personality disorder. Dr Brown considered that due to his intellectual disability, he had difficulty managing the complexities of social judgment and communications which were required to navigate sexual relationships. She also considered he had personality traits which included a difficulty in coping with rejection and abandonment and problems managing frustration which could lead to anger and impulsive violence. She also noted that he was vulnerable to the influence of others, particularly family members and that that increased his propensity to engage in anti-social behaviours and the use of substances.

[28] Dr Brown referred to the respondent's lack of appropriate social support and pro-social influences. She was also concerned that whilst he has engaged in sexual offender

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[5] T 1-11: 28 – 32.

treatment in the past, both as a child and as an adult, his ability to understand, retain and use the therapy was limited and had not prevented repeat sexual offending. She considered that with a stable routine his behaviour had improved, particularly when he was in a pro-social environment with a stable routine, noting that his behaviour had improved and he had not sexually offended whilst in foster care between 16 and 18 and when he was in the prison environment.

[29] Dr Brown concluded that should the respondent be released without any supervision, the relative risk of sexual re-offending was high but there were a number of modifiable dynamic factors which could be addressed in order to reduce the risk. She considered that a return to the community with restrictions, appropriate monitoring and offender treatment would reduce the risk to a low-moderate and manageable level. Dr Brown also confirmed the importance of a condition that he not take drugs or alcohol.

[30] In her evidence to the Court, Dr Brown stated that the order should be for 10 years and that in the community the respondent would need ongoing psychological therapy to address any cognitive distortions, poor self-awareness and anger management. She considered that he would also need assistance with his problem solving and social skills. Dr Brown also stated that the respondent would need a number of maintenance programs and reminders around the skills he had learned in custody because the respondent's ability to assimilate that information into his actual behaviour will be limited. She also stated that:

> "…for that reason – and that brings me on to the need for other types of monitoring as I've detailed in my report. I think that he is requiring external supervision rather than reliance on internal acquisition of cognitive skills. That is the – the main reason why I think he needs the supervision order and why I think he needs a supervision order for 10 years rather than five."[6]

[31] Dr Brown stated that the aim was that over a period of time, with input from psychologists and QCS he would be able to self-manage but that would need to be based on his own external supports. She considered that in 10 years' time, by the age of 40, his risk will have decreased and continued that putting an appropriate support structure was important but relaxing it was also important so that it could be risk tested. She would foresee that the second five years would be more relaxed and allow him to use the external support structures he had established for himself so he could demonstrate that he would not reoffend.

[32] In terms of the need for a condition that he report romantic relationships and other significant associations, especially family members with a criminal history to a CSO, Dr Brown's view was that such a clause would mean he would get support and was not designed to restrict him but rather "to give him support around those relationships and allow him to practice being assertive, being independent, being able to have relationships with family and other people without then decompensating in his own behaviour and offending."[7]

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6 T 1-22: 2 – 6.
7 T 1-23: 44 – 47.

[33] In terms of the need for draft Condition 22 which restricted his contact with children under 16, Dr Brown stated that she was not convinced it was required but she would not strongly oppose it. She considered that there were a number of other clauses within the order which meant that the respondent's relationships would be notified and he would be supported within those relationships. Her concern was not that he had any sexual deviance or paedophilia but that he was vulnerable to other people within relationships. She did not consider that there was enough evidence clinically to support such a condition.

Report of Dr Jane Phillips – 7 August 2018

[34] Dr Phillips also diagnoses the respondent as suffering from a mild intellectual disability, an alcohol misuse disorder and anti-social personality traits. In relation to the actuarial assessments, Dr Phillips assessed the respondent as follows:

- Static 99R – he scored 8, placing him in the high risk category;
- Stable 2007 – he scored 11, indicating he was a moderate risk of sexual re-offending with problems in the areas of social influences, capacity for relationship, impulsivity, poor problem solving skills, sex as coping, hostility towards women, general social rejection, negative emotionality and deviant sexual preference;
- Psychopathy checklist (PLC-R) - he scored 19/40 which was not elevated;
- HCR-20 – it indicated he was a high risk of future violent offending;
- Risk for Sexual Violence Protocol (RSVP) – Dr Phillips considered he was in the moderate risk groups.

[35] In relation to sexual violence history, she noted he had a definite evidence of four of the five items, including chronicity of sexual violence; diversion of sexual violence; escalation of sexual violence and physical coercion in sexual violence. In addition, she considered there was partial evidence of psychological coercion. She also noted his psychosocial adjustment indicated he had evidence of the three of the five items, including problems with self-awareness, stress or coping, and problems relating from child abuse. She also noted that there was extreme minimisation or denial of sexual violence and attitudes that support or condone sexual violence. She also considered that there was a concern in relation to his substance abuse and major mental illness, being an intellectual disability, as well as partial evidence of a risk of violent or suicidal ideation. She also noted the problems he had with planning.

[36] In relation to an overall assessment of risk, she considered that his risk of future sexual re-offending was in the moderate to high range if released without a Supervision Order, and his risk of future physical violence was in the high range. She considered that a Supervision Order would assist with the risk of re-offending by offering assertive monitoring and intervention to target the risk factors for sexual and physical violence. She considered if he was released from custody with a Supervision Order, in the context of psychological interventions, abstinence from alcohol and substances and robust supervision, his risk of sexually re-offending would be in the moderate range. She noted that his risk of sexual re-offending would increase in the setting of alcohol or

substance use and psycho-social stressors including relationship breakdowns or perceived rejections and loss of social supports. She considered:

> "The victim of future sexual offending would most likely be an adult female, who would most likely be a current or former intimate partner. Given the nature of the index sexual offence, there is the potential for future sexual offending to be of a serious nature, including forced penile vaginal rape, with physical violence and/or threats of physical violence. Psychological harm to the victim is likely."[8]

[37] Dr Phillips considered that a 10 year order was required and also gave evidence at the hearing as to what was essential in a Supervision Order as follows:

> "So in terms of what I think is required and is beneficial is a period of monitoring and supervision in the community to be able to test how I (sic) copes with implementing the strategies that he's learnt in the various programs that he's done into real life in the community, and I think that that will require supervision by QCS. I think he would benefit from ongoing psychological interventions with somebody who's got experience with managing people who have got an intellectual disability, and that's really for repetition and reinforcement of the materials that he's learnt during the previous programs that he's done, but also to be able to guide him during real-life stressors when he's in the community, because obviously when somebody's in custody and doing the programs, that's sorts (sic) of stressors they may face may be quite different to those that somebody faces once they're in the community. So I think that that will be important. I think he needs ongoing intervention in terms of monitoring his substance use and reducing the risk of him relapsing to substance use, because I think that is a very important factor in terms of increasing his risk of future sexual violence, but I don't think that he requires any formal psychiatric follow-up and I certainly don't think that anti-libidinal medications are indicated in this case."[9]

[38] Dr Phillips also stated that it would also be very important as part of his transition to the community that there be consideration given to increasing his supports and accessing systems that are available to people who have an intellectual disability such as a package through the National Disability Insurance Scheme (NDIS). She stated:

> "I think it would also be very important as part of his transition to the community to be able to look at increasing his supports and – not just through the criminal justice system, but rather through the systems that are available to all people who have an intellect disability. So that – going forward that would be an application to the National Disability Insurance Scheme to be able to look at putting supports and structures in place which I think will also be helpful for reducing his recidivism. Unfortunately, at this stage we don't really know what that application process would look like, what he might be offered." [10]

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8 Dr Phillips' Report dated 7 August 2018, 23.
9 T 1- 14: 18 – 34.
10 T 1-14: 39 – 46.

[39] Dr Phillips agreed that the respondent did not have a paraphilic disorder but indicated that sexual offending against children is not limited to people who have a paraphilic disorder. In her view it was unclear how he would express himself if he wasn't in a sexual relationship with an adult and that the benefit of draft Condition 22 was that it would allow those who were monitoring him to be mindful of the appropriateness of all sorts of relationships. She did not however consider that there was the need for a blanket condition not allowing contact with children but rather those monitoring him needed to be aware the significance of his relationships.

History and custody

[40] The respondent has completed the Getting Started: Preparatory Program for sexual offending, with a completion report dated 27 September 2013. It noted he had attended the course successfully but that his level of engagement was limited and cognitive responsivity issues were noted. An assessment under the STABLE 2007 noted that his intervention needs were high which included his capacity for relationship stability, hostility towards women, lack of concern for others and poor cognitive problem skills. It was recommended that he undertake further programs. He then participated in and completed the Inclusion Sexual Offending program in 2014. He also completed the Choices Recovery from Substance Abuse program. The completion report issued on 29 August 2014.

[41] A report by the forensic psychologist Ms Therese Ellis-Smith dated 19 January 2015 was prepared for the parole board for the purposes of assessing an application for parole. She noted that whilst he was motivated to comply with parole, he had not had community based supervision in the past, and his capacity to comply with restrictive conditions had not been tested. She also noted the previous breach of domestic violence orders. She considered he was well under the cut-off for a psychopathic personality disorder and on the SORAG, which assessed sexual recidivism, she considered the risk of further sexual offence was 75% in 7 years and 89% in 10 years. In relation to the specific scale of Sexual Violence Risk (SVR-20), he scored 16, which placed his risk of committing a further violent offence at 55% within 7 years and 64% within 10 years.

Statutory Scheme

[42] The Act establishes a comprehensive scheme for the continued detention in custody or release under supervision in relation to prisoners who are considered to be at risk of committing serious sexual offences if released.

[43] The primary orders which can be made under the Act are called Division 3 orders, and are set out in s 13 in the following terms:

> **"13 Division 3 orders**
>
> (1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a "serious danger to the community").
>
> (2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence—

(a) if the prisoner is released from custody; or

(b) if the prisoner is released from custody without a supervision order being made.

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

(a) by acceptable, cogent evidence; and

(b) to a high degree of probability;

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

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

(aa) any report produced under section 8A;

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

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

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

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

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

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

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

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

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

(j) any other relevant matter.

(5) If the court is satisfied as required under subsection (1), the court may order—

(a) that the prisoner be detained in custody for an indefinite term for control, care or treatment ("continuing detention order"); or

(b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order ("supervision order").

(6) In deciding whether to make an order under subsection (5)(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.

(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

[44] Accordingly, the first issue for the Court is to ascertain whether the respondent is a serious danger to the community in the absence of a Division 3 order. The question is whether there is an unacceptable risk that the prisoner will commit a serious sexual offence if released without a Division 3 order. In deciding whether to make an order under the Act, the paramount consideration is the need to ensure the adequate protection of the community and in that regard the Court must consider whether the adequate protection of the community can be reasonably and practically managed by a Supervision Order and whether the requirements under s 16 can be reasonably and practicably managed by Corrective Services officers.

[45] In hearing an application the Court is required to be satisfied by acceptable cogent evidence to a high degree of probability that the evidence is of sufficient weight to justify the decision. In determining whether a prisoner is a serious danger to the community, the Court needs to consider the matters set out in s 13(4) which includes reports prepared by the psychiatrists, the prisoner's antecedents and criminal history as well as a consideration of efforts the prisoner has made to address the cause or causes of his offending behaviour including whether he has participated in rehabilitation programs.

[46] The respondent has been examined by three psychiatrists as required by the Act.

Is the respondent a serious danger to the community in the absence of a Division 3 Order?

[47] The first question which must be determined is whether the respondent is a serious danger to the community in the absence of a Division 3 order. That is an order which either places him under continued detention or a release into the community subject to a Supervision Order. The statutory test is whether there is an unacceptable risk that he will commit a serious sexual offence if released without a Division 3 order.

[48] Counsel for the respondent initially submitted that the psychiatric reports were insufficient to meet the test under the Act which is that the respondent must be a serious risk of committing a serious sexual offence rather than a sexual offence. A serious sexual offence is an offence involving violence or an offence involving a child. As the respondent's Counsel notes the Act is specifically directed at a consideration of risk of serious sexual offending. As Counsel pointed out, the reports of the psychiatrists do not particularly refer to the risk of committing a serious sexual offence but rather referred to sexual re-offending.

[49] Having considered the reports of the psychiatrists, together with an examination of the history of the respondent's prior offences, it is clear that his prior offences, particularly the rape in 2013, involved violence. There can be no doubt that his offences in 2002 and 2003 involved children. Whilst the violence might not be at the more serious end of the spectrum, it was violence nonetheless. I also note that the psychiatrists did consider his risk of sexually violent re-offending given the assessment by both Dr Phillips and Dr Brown in particular in relation to the RSVP which relates to sexual violence history. I also note Dr Phillips' particular conclusion that given the nature of the index sexual offence, there was the potential for future sexual offending of a serious nature which included forced penile vaginal rape with physical violence and/or threats of physical violence. Dr Brown also considered that the respondent had demonstrated physical coercion in association with sexual offending but that he considered to minimise that violence was used.

[50] I also note that Dr Harden particularly noted that the offence of rape was committed in the context of a relationship breakdown in a "domestically violent and chaotic relationship".[11] He also noted there were significant impulsive threats of violence and harm in the relationship which was characterised by violence and his recurrent breaches of domestic violence orders.

[51] It is clear that the court can only be satisfied as required under s 13(1) upon the basis of acceptable cogent evidence and if satisfied, to a high degree of probability that the evidence is of certain weight to justify the decision. Those requirements are contained with s 13(3) and relate to the decision which must be made under s 13(1). It is clear that the paramount consideration under s 13(6) is a need to ensure the adequate protection of the community.

[52] I am satisfied that the evidence before me including the reports of the psychiatrists, is that the respondent is a serious danger to the community in the absence of a Division 3 Order.

Should the respondent be subject to a Supervision Order or a continuing detention order?

[53] In this regard, the Attorney-General has the onus of proving the matter. I accept the submissions of Counsel that there is, under the Act, a preference for a Supervision Order over a continuing detention order and I endorse the view of Chesterman JA in *A-G (Qld) v Lawrence*[12] that in cases where the Attorney-General contends that the community will not be adequately protected by a prisoner's release on supervision, the

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[11] Affidavit of Dr Scott Harden sworn 24 April 2018, Exhibit SH-2, 20.
[12] [2009] QCA 136.

burden of proving that contention is on the Attorney. The exceptional restriction on the prisoner's liberty, after having served the whole of whatever imprisonment was imposed for the crimes they committed, and for the protection of the public only, should not be imposed unless the inadequacy of a Supervision Order is demonstrated. There is no doubt that the liberty of the subject and the wider public interest are best protected by insisting that the Attorney-General as applicant discharges the burden of proving that only a continuing detention order will provide adequate protection to the community.

[54] As McMurdo J noted in *Attorney-General v Sutherland*[13] essentially the Attorney General must show that the adequate protection of the community could only be ensured by a continuing detention order and that a Supervision Order would not suffice. The Attorney-General must prove more than a risk of re-offending should the prisoner be released under a Supervision Order. A Supervision Order need not be risk-free because otherwise such orders would never be made. What must be proved however is that the community cannot be adequately protected by a Supervision Order. Adequate protection is as McMurdo J considered a relative concept and it involves the same notion which is within the expression "unacceptable risk", within s 13(2):

> "In each way the statute recognises that some risk can be acceptable consistently with the adequate protection of the community."[14]

[55] In this case there is no evidence that a continuing detention order is required. The unanimous evidence of the psychiatrists is that the adequate protection of the community can be ensured by the making of a Supervision Order under s 13(5)(b) of the Act.

[56] In terms of the length of the Order, I consider that given the evidence of both Dr Phillips and Dr Brown in relation to the respondent's level of intellectual impairment and his successful engagement in the past in a structured environment that a longer Order is called for in the circumstances of this case. Whilst I note Dr Harden's view that a 10 year order may become too onerous I note the evidence that the respondent will take some time to acquire the cognitive skills necessary to self-manage in the community and he will need external supports. In this regard, I would endorse Dr Phillips' advice that an application for an NDIS package should be explored and whilst I note this would not ordinarily be within the ambit of QCS, it would be of assistance if the respondent could be encouraged to engage the services of Queensland Advocacy Incorporated in this regard.

[57] I do not consider that there is a requirement for draft Condition 22 which would restrict his contact with children under 16, given he has no diagnosis of paraphilia. None of the psychiatrist were strongly of the view that this was required and it is important, given the significant restrictions on a person's liberty that a Supervision Order only include the conditions which are necessary to ensure the adequate protection of the community. I consider that a requirement in the terms of the draft Condition 22 would be unduly restrictive and not necessary given the already onerous requirements in Conditions 18 to 21 that he report all romantic relationships and other associations to both his case manager and his therapist.

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13 [2006] QSC 268.

14 *Attorney-General v Sutherland* [2006] QSC 268 at [29].

[58] I am otherwise satisfied that the terms of the Supervision Order be in the terms of the Draft as set out in Schedule 1 to these reasons.

SCHEDULE 1

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS 5182/18

Applicant	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
	AND
Respondent	**M**

SUPERVISION ORDER

Before:	Lyons SJA
Date:	31 August 2018
Initiating document:	Originating Application filed 15 May 2018 (CFI No. 1)

THE COURT, being satisfied to the requisite standard that the respondent, M, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*, ORDERS THAT:

1. The respondent be subject to the following conditions until 6 October 2028:

The respondent must:

General terms

1. report to a corrective services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9am and 4pm on the day of release from custody and at that time advise the officer of his current name and address;

2. report to, and receive visits from, a corrective services officer at such times and at such frequency as determined by Queensland Corrective Services;

3. notify a corrective services officer of every change of his name, place of residence or employment at least two business days before the change happens;

4. be under the supervision of a corrective services officer for the duration of this order;

5. comply with a curfew direction or monitoring direction;

6. comply with any reasonable direction under section 16B of the Act given to him;

7. comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of this order;

8. not commit an offence of a sexual nature during the period of this order;

9. not commit an indictable offence during the period of this order;

Employment

10. seek permission and obtain written approval from a corrective services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;

11. notify a corrective services 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 at least two days prior to commencement or any change;

Residence

12. not leave or stay out of Queensland without the written approval of a corrective services officer;

13. reside at a place within the State of Queensland as approved by a corrective services officer by way of a suitability assessment and obtain written approval prior to any change of residence;

14. comply with any regulations or rules in place at the accommodation and demonstrate reasonable efforts to secure alternative, viable long term accommodation to be assessed

for suitability by Queensland Corrective Services, if such accommodation is of a temporary or contingency nature;

15. not reside at a place by way of short term accommodation including overnight stays without the permission of a corrective services officer;

Contact with victims

16. not have any direct or indirect contact with a victim of the 3 offences of rape for which he was convicted on 21 March 2013;

Requests for information

17. respond truthfully to enquiries by a corrective services officer about his activities, whereabouts and movements generally;

Disclosure of plans and associates

18. disclose to a corrective services officer upon request the name of each person with whom he associates and respond truthfully to requests for information from a corrective services officer about the nature of the association, address of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;

19. submit to and discuss with a corrective services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;

20. if directed by a corrective services officer, make complete disclosure of the terms of this order and the nature of his past offences to any person as nominated by the corrective services officer, who may contact such persons to verify that full disclosure has occurred;

21. notify a corrective services officer of all personal relationships entered into by him;

Contact with children

22. not establish or maintain any supervised or unsupervised contact including undertaking any care of children under 16 years of age except with prior written approval of a corrective services officer;

Motor vehicles

23. notify a corrective services 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;

Alcohol & other substances

24. abstain from the consumption of alcohol and illicit drugs for the duration of this order;

25. submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a corrective services officer;

26. disclose to a corrective services officer all prescription and over the counter medication that he obtains;

27. take prescribed drugs as directed by a medical practitioner and disclose details of all prescribed medication as requested to a corrective services officer;

28. not visit pubs, clubs, bars or nightclubs without the prior written approval of a corrective services officer;

Treatment and counselling

29. attend upon and submit to assessment, treatment, and/or medical testing by a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by a corrective services officer at a frequency and duration which shall be recommended by the treating intervention specialist;

30. permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health professional to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if a request is made for the purpose of updating or amending this order and/or ensuring compliance with this order;

31. attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a corrective services officer in consultation with

treating medical, psychiatric, psychological or other mental health practitioners where appropriate;

32. develop a risk management plan in consultation with a treating psychologist or psychiatrist and discuss it, as directed with a corrective services officer;

Mobile telephones and other devices

33. advise a corrective services officer of the make, model and telephone number of any mobile telephone owned, possessed or regularly utilised by him within 24 hours of connection or commencement of use and this includes reporting any changes to mobile telephone details;

34. not own, possess or regularly utilise more than one mobile telephone without the prior written approval of a corrective services officer;

35. allow any other device including a telephone or camera to be randomly examined. If applicable, the respondent must provide to a corrective services officer his account details or telephone bills upon request;

36. notify a corrective services officer of any computer or other device connected to the internet that he regularly uses or has used;

37. supply to a corrective services officer any password or other access code known to him to permit access to such computer or other device or content accessible through such computer or other device and allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process;

38. supply to a corrective services officer the details of any email address, instant messaging service, chat rooms, or social networking sites, which he uses, including user names and passwords; and

Behaviour

39. not engage in or demonstrate interpersonal violence or threats against any other person, excluding acts of self-defence.

Signed: . . . . . .
Registrar of the Supreme Court of Queensland