IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Her Majesty the Queen* v. *Sharp,* 2003 YKSC 54

Date: 20031022
Docket: S.C. No. 01-00541A
01-00668C
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

Applicant

And:

THOMAS PAUL SHARP

Respondent

Publication of information that could disclose the identity of the complainant or witness has been prohibited pursuant to s. 486(4.1) of the *Criminal Code*

Appearances:
Edward J. Horembala, Q.C. and John Phelps — Counsel for the Attorney General of Canada

Gordon Coffin — Counsel for the Respondent

Before: Mr. Justice Veale

REASONS FOR JUDGMENT
(Dangerous /Long-Term Offender Application)

I N D E X

Page

1. INTRODUCTION

[1] This is a sentencing hearing. On November 7, 2002, after a trial, Thomas Paul Sharp was convicted of forcible seizure of T.H. on or about November 5, 2001, contrary to s. 279(2) of the *Criminal Code*. On November 12, 2002, on a guilty plea, he was convicted of sexual assault with a knife on T.A. on or about July 25, 2001, contrary to s. 272(2)(b) of the *Criminal Code*. Also on November 12, 2002, on a guilty plea, he was convicted of kidnapping T.A. on or about July 25, 2001, contrary to s. 279(1.1)(b) of the *Criminal Code*.

[2] The Crown has applied for an order pursuant to s. 753 of the *Criminal Code* to find Mr. Sharp to be a dangerous offender and imposing a sentence of detention in a penitentiary for an indeterminate period of time. In the alternative, the Crown seeks a finding of long-term offender pursuant to s. 753.1 of the *Criminal Code*.

2. FACTS

[3] The facts in this section set out the circumstances of Mr. Sharp's offences in the United States and the Yukon Territory, his treatment or lack thereof, and psychological assessments, much of which is based upon documentation admitted by Mr. Sharp. I find these facts to be proven beyond a reasonable doubt unless otherwise stated. The remaining evidence, from Mr. Sharp's arrival in the Yukon, up to and including the impact on the victim T.A., I find to be facts proven beyond a reasonable doubt unless otherwise stated. The expert evidence is opinion evidence, which I find relevant to the issue of Mr. Sharp's behaviour in the past and the future. I will be making findings of fact on Mr. Sharp's evidence as it arises.

(a) Youth and Adult Criminal Record

[4] The youth and adult criminal record of Thomas Paul Sharp has been admitted as follows:

Date of Conviction	Offence	Sentence
1979 December 20 Cayanorwalk, California	Burglary and Burning Personal Property	
1984 September 20 Casolos Angeles	Inflicting Corporal Injury Spouse/Cohabitation	90 days in Jail SS 3 years Probation
1986 April 24 Lake County, Oregon	Attempted Rape in the First Degree	Indeterminate Sentence of incarceration not to exceed 10 years and a minimum period of incarceration of 5 years
1986 April 24 Lake County, Oregon	Burglary in the First Degree	Suspended Sentence of indeterminate period not to exceed 5 years and probation with conditions not to exceed 5 years
Released on Parole with conditions on May 24, 1991 from the Oregon State Department of Corrections		
1992 August 28 Benton County, Wash.	Child molestation in the First Degree (2 counts) after a jury verdict of guilty on May 14, 1992	126 months on each count to be served concurrently
Released from the custody of the Washington State Department of Corrections and deported to Canada on May 14, 2001		
2002 November 12 Whitehorse, Yukon	Sexual assault with a Weapon contrary to s. 272(2)(b) of the *Criminal Code* and Kid-napping contrary to s. 279(1.1)(b) of the *Criminal Code*	Pending
2002 December 3 Whitehorse, Yukon	Assault with a Weapon contrary to s. 267(a) of the *Criminal Code*	Time served with credit being given for 6 months remand on a 2-to-1 basis

[5] The offences for the purpose of the dangerous offender application under s. 753(1)(b) and the long-term offender application under s. 753.1(1) and 753.1(2)(a) and (b)(ii) are the following:

1. Attempted rape in the first degree on a 78-year-old woman in Oregon on January 5, 1986, while on probation in California. He was sentenced for the crime of attempted rape to an indeterminate sentence not to exceed ten years and was required to serve a minimum of five years. He was released on parole on January 5, 1991.
2. Child molestation in the first degree on a four-year-old girl and a seven-year-old girl on March 22, 1992 in the State of Oregon. He was convicted by a jury on two counts of child molestation on May 14, 1992 and sentenced on August 28, 1992 to a period of incarceration of 126 months to run concurrently. His appeal was dismissed. Mr. Sharp was released from custody in the State of Washington on May 20, 2001 and immediately came to live in Whitehorse.
3. Sexual assault with a knife on a young woman on July 25, 2001 in Whitehorse, Yukon.

Attempted Rape on January 5, 1986

[6] Mr. Sharp did not receive any sex offender therapy while incarcerated for five years, from 1986 to 1991. He denied that the offence was sexual in nature. However, in this hearing, he admitted that he digitally penetrated the vagina of a 78-year-old woman to dehumanize her. The offence was described in the pre-sentence investigation as follows:

> Scope of Crime: On 1-5-86, at approximately 2:30 a.m., Sharp entered the residence of the victim … and attempted to rape her. Sharp gained

> entry into the residence through a side door, and proceeded into a bedroom, where the victim was sleeping. Sharp, wearing gloves, placed his hands over the victim's mouth, at which time the victim began screaming. Sharp attempted to conceal her screaming, resulting in a struggle. During the struggle, Sharp struck [the victim] several times in the face, causing bruises around both eyes, and a cut on her lip. [The victim] managed to turn on a light in the bedroom, but Sharp was able to immediately turn it off. Sharp managed to insert his finger in the victim's vagina, however, both Sharp and the victim stated that intercourse did not occur. Sharp did, however, ejaculate, although he reported that he did not have an erection during the incident.
>
> Sharp then told the victim that if she contacted the police, he would "blow his head off [sic]." Sharp then exited the residence through the same door he entered.

[7] Dr. Philip E. Humbert, Ph.D., prepared a psychological evaluation on Mr. Sharp's release in January 1991. It stated the following:

> Finally, there is the entire issue of sex offender therapy. While Mr. Sharp appears eager to dismiss the sexual nature of his current offense, the fact is that he violently attacked an elderly woman in her own bedroom and that his attack was specifically and maliciously sexual in form.
>
> Recommendations are that Mr. Sharp be viewed as potentially dangerous and that his request to receive additional anger management and impulse control counseling be honored in the context of a broader referral to a comprehensive sex offender treatment program. It is highly recommended that during his parole he be supervised at the highest possible level, that he be required to find and maintain full-time employment, and that his honesty and cooperation with treatment be monitored with periodic polygraph exams. It is unlikely that anger management counseling alone will be sufficient to prevent relapse in Mr. Sharp's future. At this time Mr. Sharp is seen as posing a significant risk to the community in terms of violence and/or sexually abusive behaviors.

[8] Mr. Sharp was released on parole on January 5, 1991 on the condition that he "enter and complete or be successfully discharged from a recognized and approved sex offender treatment program." He was also to complete a mental health treatment

program and an outpatient alcohol treatment program. It was a further condition that he have no contact with minor females or males or frequent any place where minors are likely to congregate.

[9] By February 28, 1991, he had violated his parole conditions by consuming alcohol and lying to his parole officer. As indicated in the revocation recommendation report, he apparently had four sessions with Peter Shannon, an approved sex offender treatment provider. Mr. Sharp acknowledged that “it’s all over if I drink.” His parole was revoked on March 14, 1991.

[10] After being paroled a second time, a second revocation recommendation was prepared on July 1, 1991. It reported that Mr. Sharp had left the Eugene Mission on June 24, 1991 without reporting a change of residence. The conformance/evaluation section concluded:

> Sharp is a convicted stranger-to-stranger rapist who has never participated in a sex offender treatment program. The victim in the rape case was an elderly female unknown to Sharp. Sharp has a history of physical acting out, including crimes against children, as well as arson. Sharp is an acknowledged alcoholic who has not involved himself in any type of treatment program since his release to the community. After failing his last parole for consuming intoxicants and failing to involve himself in treatment programs, Sharp has now absconded supervision. He should be seen as a significant threat to the safety and security of the community.

[11] On this recommendation, the Oregon correctional authorities issued a Final Order of Revocation of Mr. Sharp’s parole and issued a nation-wide warrant for his arrest.

Child Molestation on March 22, 1992

[12] Mr. Sharp absconded to the state of Washington.

[13] On March 22, 1992, Mr. Sharp sexually molested a four-year-old girl and a seven-year-old girl while on a fishing trip. He took the girls into the bushes and pulled down their panties, touched their “privates” and digitally penetrated them.

[14] On August 28, 1992, he was convicted of two counts of child molestation in the first degree. He was sentenced to a term of incarceration for 126 months on each count to run concurrently.

[15] He was incarcerated in the Washington State Penitentiary. Richard Jacks, Ph.D., licensed psychologist, reported on December 21, 1995 that Sharp denied his crime and felt only anger and resentment with no remorse. Dr. Jacks also reported a significant number of infractions of institutional rules and policies. He further reported:

> It should also be noted that he is clearly not ready to deal with the issue of the conditions surrounding and motivation for his most recent sexual escapades. It should be noted, however, that Mr. Sharp did admit to the attempted rape of a 78-year-old lady.

[16] Dr. Jacks made a further psychological report on June 17, 1996. He indicated that the purpose of the previous report had been to make recommendations regarding possible international transfer to Canada. He indicated that if Mr. Sharp were released from prison without completing the sexual offender treatment program, he must be considered an “untreated sex offender.” He repeated that “the concern for violence should be very high as should be the concern for sexual aggression.”

[17] However, Mr. Sharp, after refusing to enter the sex offender treatment program, changed his mind. In a letter dated September 2, 1998, he explained that he had been “in deep denial” but had come to accept that he “did do those crimes”. In this hearing, Mr. Sharp again denied the child molestation offences.

[18] He was allowed to participate in the Twin Rivers sex offender treatment program from June 6, 2000 to April 3, 2001.

[19] On April 2, 2001, a treatment summary was prepared by the Twin Rivers sex offender treatment program. The final paragraph of the overview states:

> Mr. Sharp participated in sexual deviancy treatment for approximately ten months. His risk to commit a new sexual offense based on actuarial assessment is relatively moderate to high. Particular risk factors could increase significantly Mr. Sharp's risk to reoffend [sic] they include anger, feeling helpless, deviant fantasies, conflict with authority, wanting revenge and holding resentment.

[20] As the Twin Rivers sex offender treatment program is the only sex offender treatment program Mr. Sharp has completed, I will quote extensively from the Risk Assessment and Release Plans sections:

[21] Under the Risk Assessment section, the report says:

> Mr. Sharp's actuarial risk assessments indicated he has a moderate to high probability of sexual recidivism with a slightly higher probability to violently reoffend. It should be mentioned that the risk levels are determined from actuarial assessments, which come from offenders with similar histories.
>
> It is difficult to determine Mr. Sharp's risk to reoffend. He has not been in the community more than 10 months prior to reoffending. It was difficult, at times, for Mr. Sharp to follow rules and show up for group consistently through out treatment. It was difficult for Mr. Sharp to demonstrate consistent changes in his attitudes toward authority figures. <u>The concern for Mr. Sharp would be when he is released and begins having relationship problems both with authority figures as well as interpersonal relations. In the past this would be a high-risk situation for him when he begins developing resentment and the "pay back" mentality that caused him to offend in the past. The SOTP treatment team believes that given the actuarial and dynamic factors his risk to reoffend is relatively high.</u> With particular risk factors present such as alcohol use Mr. Sharp's risk could increase significantly. There are concerns surrounding his release plans and not having the support when he gets to Canada. Specifically a lack of follow up services and ongoing support with supervision that he would have access to in the US, which will be discussed further in the next section. [My emphasis]

[22] In the Release Plans section, further concerns are noted:

> Mr. Sharp is planning to release to his fiancée's home in the Yukon Territory, Canada. This plan is currently under review by Washington State and the Canadian authorities. Mr. Sharp has spent much time and energy on this plan. He has no backup plan. It is unclear at what step in the process a potential release to Canada is at this point. Moreover Mr. Sharp is unclear with what supervision and notification level (if any) he will be released. He has stated if Canadian Officials use public notification he will leave to another country where there is no notification.
>
> Further, it is a concern that he thinks he will be better off without post treatment or any type of community notification. Mr. Sharp has stated he does not plan on attending any type of therapeutic setting when he is released. Mr. Sharp has stated that he will go to Alanon meetings. He stresses the importance of the relationship he has with his fiancée has [sic] he main support network. [My emphasis]

[23] Mr. Sharp testified in this hearing that he did not admit the sexual molestation offences. Rather, he said that he told the Twin Rivers program people what they wanted to hear. He stated that he was upset because they would not treat the underlying issues from his childhood. He admitted that he lied to them and "played the game".

[24] However, the Twin Rivers treatment summary pointed to positives and negatives of the treatment. For example, the program reported that he "did a good job toward the end of the treatment recognizing his cycle behaviour and began working on early intervention." At the same time, during treatment, "he spent a high percentage of his energy focused on potential guarantees about civil commitment and guarantees about a release to the Yukon Territory in Canada."

(b) Mr. Sharp's Arrival in the Yukon

[25] Mr. Sharp was released from a Washington prison on May 20, 2001. He immediately came to the Yukon to reside with his girlfriend.

[26] The Yukon has a Public Notification Committee, which encourages sex offenders to seek treatment on their release. The committee encouraged Mr. Sharp to seek treatment, as that was a factor to be considered in deciding whether there would be public notification. He met with a probation officer, who was also a treatment counsellor, on June 13, 2001. Although Mr. Sharp expressed the view that he had done his time and should be left alone, he agreed to participate in the sex offender risk management program.

[27] On or about June 16, 2001, a member or members of the RCMP mishandled classified information about Mr. Sharp, resulting in public notification of Mr. Sharp's name and photograph without the approval of the Public Notification Committee.

[28] On July 9, 2001, Mr. Sharp met with the treatment counsellor and the program coordinator for the sexual offender risk management program. At this meeting, Mr. Sharp indicated that he did not want to attend risk management meetings, and he did not believe in community based sex offender treatment. He further stated that he only attended the meeting because of the threat of public notification. He was advised that he was not compelled to attend the sexual offender risk management program and that the Public Notification Committee would be advised of his decision. He later claimed that he was "blackmailed" by the Public Notification Committee and told them "to go fuck themselves."

[29] The Public Notification Committee decided to notify the public about Mr. Sharp's presence on July 10, 2001. RCMP Constable Flynn and Corporal Hrankowski were involved in the notification of between 80-100 homes in the neighbourhood where Mr. Sharp was residing.

[30] Constable Flynn and Corporal Hrankowski attended at Mr. Sharp's residence at 9:15 p.m. on July 10, 2001 to inform him of the public notification, a peace bond application and to conduct surveillance. They met Mr. Sharp and his girlfriend. Mr. Sharp invited them into his home. During the course of discussing matters, Mr. Sharp was agitated and said the following:

- If you are going to arrest me, bring body bags.
- If he received a peace bond application, he would leave as he had friends in Russia and the Middle East.
- He invited the police to put their pistols on the table and he would shoot himself.
- He had disdain for the reports and assessments from the U.S. and he didn't want to be involved in the sex offender programs here. His risk to re-offend, in his opinion, was nil.
- He was angry and frustrated about the leak of information that he was in Whitehorse before the matter was dealt with by the Public Notification Committee.

[31] Mr. Sharp committed the offence of sexual assault with a knife and kidnapping on July 25, 2001. He was not charged or formally connected with these offences until January 23, 2002.

[32] The peace bond procedure was commenced on July 30, 2001. Mr. Sharp was placed on a recognizance and had a curfew from 8:00 p.m. to 7:00 a.m. at his residence. He was prohibited from possessing or consuming alcohol, attending bars or being in the presence of young people 16 years of age or under. He had to report to his bail

supervisor twice a week. During one of the meetings with his bail supervisor on August 16, 2001, Mr. Sharp expressed a willingness to take sex offender treatment, if directed by the court.

(c) The Yukon Offences

Sexual Assault with a Knife and Kidnapping

[33] On July 25, 2001, a young woman was visiting a friend at the Capital Hotel. She left the hotel at approximately 10:30 in the evening to go home. She walked up Main Street to Third Avenue, when she turned north. She became aware that she was being followed and she stopped twice, hoping that the individual would go by.

[34] On Third Avenue, Thomas Sharp approached her from the rear and held a knife to the left side of her throat. He told her that as long as she listened to him, she would not get hurt. With the knife secreted in his sleeve, he told her to put her arm around him and they proceeded two blocks towards the trolley terminal near a wooded area beside the Yukon River. While holding the knife, he told her to undo her bra and he suckled her breasts. He told her to turn around and pull down her pants and panties. He unsuccessfully attempted to have sexual intercourse with her from the rear.

[35] The complainant realized he was using both hands and looked around for the knife. She saw it in the trees, was able to grab it and, after a struggle, throw it some metres away. Sharp ran for the knife. Unfortunately, the complainant was not able to escape because of her state of undress. Sharp caught her again and put the knife to her throat. He forced her to perform oral sex on him, and he ejaculated into her mouth.

[36] Sharp warned the complainant not to look at him and not to leave the area for two minutes. Sharp then fled.

[37] The complainant went to her brother's apartment where she had the wherewithal to spit some of Sharp's semen into a container and take it to the police station.

[38] The police were later able to match the DNA sample of Sharp's blood obtained through a DNA warrant. Sharp pled guilty to the sexual assault with a knife and kidnapping on November 7, 2002, after he had been convicted of forcible seizure.

Forcible Seizure and Breach of s. 810

[39] The complainant was a passenger on a bus on November 5, 2001. The bus left the downtown area at 3:00 p.m. and headed to a residential neighbourhood called Granger, where she was living.

[40] When she stepped off the bus, Mr. Sharp was following her closely, in her comfort zone. She stood momentarily to face him.

[41] He lit a cigarette and asked directions. She answered that she was new and did not know the location of the street he asked about. Mr. Sharp said, "Oh, really!" and after a few seconds grabbed the complainant by the shoulder. She described the grabbing as very forceful. Mr. Sharp said, "You're coming with me." He tried to pull her and she said, "Yeah, right" and swore at him. The complainant had karate training and did a hip throw of Mr. Sharp, who continued to hold her.

[42] Mr. Sharp then placed both his hands on the shoulders of the complainant and pushed her towards the bushes. She kept pushing towards the street. She began screaming and he grabbed her by the mouth area and moved behind her. The complainant continued to resist until she bit his finger and broke free. Mr. Sharp was saying, "Calm down. Don't make a scene." She was yelling, "Someone help me, I'm being attacked. I don't know this man."

[43] She finally ran to a vehicle and then a store to phone 9-1-1.

(d) Mr. Sharp's Suicide Attempt

[44] On June 23, 2003, Mr. Sharp admitted the facts contained in the documentation from the Whitehorse Correctional Centre found in Exhibit 5. I will only refer to Mr. Sharp's suicide attempt, which he relates to the sexual assault he committed on July 25, 2001.

[45] On January 19, 2002, Mr. Sharp attempted to commit suicide in his cell at the Whitehorse Correctional Centre. On January 18, 2002, a DNA sample was taken from Mr. Sharp. The medical staff person had assessed him as a suicide risk. He denied that he was a suicide risk, but could not understand why they would try to prevent a suicide. Mr. Sharp testified that his suicide attempt was his way of showing an apology to his sexual assault victim T.A. He said that it was his way of saying, 'I'm sorry for what I put you and your family through.'

[46] There is no objective support for this position in any of the medical records prior to or following the suicide attempt. Although he referred to a burned up letter he had written to T.A. and her family, I find as a fact that Mr. Sharp's suicide attempt had more to do with the RCMP executing a DNA warrant for sexual assault on January 18, 2002 than any empathy on his part for T.A.

(e) Victim Impact

[47] T.A. was sexually assaulted at knifepoint by Mr. Sharp on July 25, 2001. Although she had minor physical injuries, she continues to suffer serious emotional injuries from what can only be described as a brutal sexual assault. She felt that she might be killed. The fear that she felt as a result of the sexual attack has affected her life in many ways.

She was afraid to be alone and stayed with her sister for at least two weeks after the attack. She was unable to eat, had nightmares and cried for days. She is afraid of walking alone, working with the public and being alone at home. Her relationships with males have been adversely affected, as she is extremely cautious and avoids physical contact.

[48] She has been depressed and her self-esteem has been negatively affected, to the extent that she has wanted to die. She could not be sexually active because of testing for sexually transmitted diseases. Even after testing was completed, she experienced bad memories with sexual activity.

[49] She remains afraid of being attacked again, especially when she hears footsteps behind her. She continues to have nightmares and will not walk alone at night. She has trouble concentrating, which has affected her grades at school. She is still receiving counselling from Victim Services. She also confirmed, and I accept her evidence, that Mr. Sharp did not smell of alcohol when he attacked her.

(f) The Evidence of Mr. Sharp

[50] Mr. Sharp provided the following testimony. He is 41 years of age. He was born in Winnipeg, Manitoba in 1962. His parents had a problem with alcohol. On January 7, 1963, his mother was intoxicated and dropped him, causing a head injury. On April 10, 1963, he was made a permanent ward of the Children’s Aid Society.

[51] The majority of his life has been spent in the United States after he was adopted by the Sharp family. They did a lot of moving from state to state before ending up in southern California.

[52] At the age of four to five years, he suffered serious physical abuse from his adopted father. His father broke his leg, held him under water and beat him with a long switch until he bled.

[53] He then began to strike back and at age seven, he kicked a sister at a parochial school when she hit him with a classroom pointer. He was sent to the religious father's office at the parochial school and "tore it up". They left him in the office until the police were called.

[54] Prior to that incident, he went after his mother with a baseball bat for hitting him on the head with a wooden spoon. He went after his father with a knife, but it was taken away by his father.

[55] After these episodes, he was in a state hospital, where he was sexually abused. He eventually began to run away and was placed in a foster home from approximately 11 to 14 years of age.

[56] He made this remark in his evidence:

> I remember telling myself when I ran away the last time, the very last time I ran away, I remember telling myself never again will I listen to an adult, never again will they tell me what to do. And I pretty much remember telling myself, as well, that I will do what I want to do from now on. And I think that's still with me to this day.

[57] Mr. Sharp generally agreed with what Dr. Humbert and Dr. Singh stated about his background in their reports.

[58] Mr. Sharp now admits that he needs sexual offender treatment, but it must be on his terms:

> I need treatment, <u>treatment which I feel that's going to best suit me, not what others feel that they feel I should need</u>. It's a problem I … in my last treatment … yeah, I went to treatment, but it's taken me 41 years to

> get where I am now, and if this court really has any sense, they'll understand that a mere nine months is not going to change a person who's taken 41 years to get where they're at. [My emphasis]

[59] He went on to explain that in the Twin Rivers sex offender treatment program he wanted to work on his past, but they stated he was using it as a crutch. He described his response as follows:

> … So I exploded and told them to go screw themselves, and I walked out of treatment for approximately four days.
>
> I returned after speaking with the members in my group. I returned to the group. And to be quite honest, the rest of my treatment, I just played the game. I figured if they're not going to allow me to deal with what I feel is important, what's the use of having this treatment. It was their way or the highway.

[60] In cross-examination, he admitted that "he told them what they wanted to hear and lied to them" in the Twin Rivers treatment program. He stated:

> A I feel that my true underlying issues are more important than what they wanted me – on their risk factor, what they call risk factors –
>
> Q So you went in and played the game and lied to them, and told them what you thought they would want to hear, correct?
> A That's correct.
>
> . . .
>
> Q Well, I say on your terms in this sense, Mr. Sharp: If you don't like what they want to talk about, you tell them what you think they want to hear. So sometimes you cooperate in your counselling, sometimes you don't, correct?
>
> A That's pretty much it, yeah.

[61] On the issue of trust in the justice system, or any system, Mr. Sharp said:

> Q Okay. You don't trust anyone in the justice system, do you, Mr. Sharp?

A That's not entirely true.

Q For the most part, you don't?

A For the most part, I don't trust any government, anybody with authority, no, I do not.

Q That includes the justice system, doesn't it?

A Don't matter what system it is. Like I just said, I do have a problem with trusting. I always have.

[62] Mr. Sharp was also cross-examined on his written admission in September 1998 that he committed the child molestation in 1993. It is clear that this admission was to get him into the Twin Rivers sexual treatment program. However, on April 16, 2001, after the treatment and prior to his release from prison, he denied that he had digitally penetrated the two little girls. He denied those offences in his evidence in this hearing.

[63] He acknowledged that he told Corporal Hrankowski on July 10, 2001 that he had little faith in the evaluations done in the U.S. He stated that he didn't believe in the pre-sentence report system in Canada because the probation officers are prejudiced against him.

[64] However, he testified that he was willing to work with the Yukon sex offender risk management program until the unauthorized leak of information occurred. After that, he felt betrayed by the system. Two weeks later, he sexually assaulted a woman with a knife to her throat. Although he takes responsibility for the sexual assault and kidnapping of T.A., he questioned why the authorities put him in a predicament to make him act out like that.

[65] He expressed interest in the evidence of Dr. Lohrasbe to the extent he referred to his childhood issues. He stated:

> … This is where I feel that I need to deal with these issues. And until that's dealt with, I'm going to continue being the person I am.

[66] He also expressed interest in taking the treatment program described by Dr. Lohrasbe as being available in the federal penitentiary system. Mr. Sharp assumed Dr. Lohrasbe was referring to "that very specific type of treatment that I felt I needed."

[67] However, he had this caution if he didn't get that kind of treatment:

> Yeah, I'm concerned, absolutely. I know if I don't get the help for this underlying anger, a problem which I feel is stemming from my childhood, when I'm backed in these corners or I feel I'm backed in a corner where I have conflict with authority and stuff, it's the little boy coming out of me, that's what it is, that's what I believe it is, who's fighting back. Yes, it's very beneficial to me, and it's not going to take some little poobah nine-month course. I mean, especially that kind – I mean, it was literally a crash course.

[68] Mr. Sharp testified that he did not stay in the courtroom for the evidence of T.A. "for fear of me further humiliating her and possibly traumatizing her both mentally and emotionally …".

[69] Mr. Sharp was very frank when asked by his counsel how he felt about the restrictions that would be imposed on him at the time of release were he found to be a long-term offender. He answered as follows:

> No one likes restrictions, do they? Especially me, I have a history of it, not following orders. But then, again, to be honest, <u>I feel that if I get the help and the treatment in the area in which I believe has great importance</u>, and them issues, if they could be resolved, then I really don't believe I would have that conflict with authority anymore, revenge or payback attitude. <u>But until that happens, it will continue.</u> [My emphasis]

[70] Mr. Sharp further addressed the issue of abiding by restrictions on release if he were found to be a long-term offender:

> Again, like I had stated earlier, if I were to get out right now today, probably not. If I were to sit here and say, oh, yeah, I would abide by it, I would be lying. There's no two ways about it, I'd be lying, because I wouldn't. But, in all honesty, once I – if I'm allowed to deal with these issues, which I feel it's important, like I said before, no one knows me better than I know myself. I know where I need to change. I know what kind of treatment that I need. And I believe once I establish that and start working with these – and I ain't talking about something that's going to take a few months, we're talking about years, it's going to take a long time – but once I believe these issues are somewhat resolved – they'll never completely be resolved, but where I could still function as a person, a normal person in society, I don't think I'd have a problem. I wouldn't have a problem with following them, because I wouldn't have that – like I said, I wouldn't have that conflict, I don't believe I would have that conflict with authority. Therefore I'd be able to work with people. Understand what I'm saying? [My emphasis]

[71] I find the following facts from Mr. Sharp's statements and evidence:

1. He has had an abusive childhood. He has been physically and mentally neglected and sexually abused as a child.
2. He participated in the Twin Rivers sex offender treatment program to avoid "civil commitment". He became angry when they would not deal with his childhood issues and thereafter he lied and "played the game".
3. He has previously stated that he doesn't believe the U.S. reports and assessments are of any value.
4. He has stated that his risk to re-offend is nil and that he didn't want to participate in treatment after release from prison in Washington.
5. He did indicate a willingness to be involved in the Yukon sexual offender treatment program, but refused to do so after the unauthorized notification.

6. He now admits that he needs lengthy sexual offender treatment that includes dealing with his childhood issues and treatment that he feels best suits him. If he does not get the treatment he wants, his conflict with authority, revenge and pay-back attitude will continue.

3. THE EXPERTS

(a) Dr. Singh

[72] Dr. Singh was ordered by the court to provide an assessment of Thomas Sharp. Dr. Singh is a psychiatrist in the forensic psychiatric services of the Alberta Hospital in Edmonton, in charge of the remand assessment unit. He has done almost 20 assessments for dangerous offender applications. There was no challenge to the qualifications of Dr. Singh and he was qualified to give his report on his assessment of Thomas Sharp.

[73] Dr. Singh travelled to Whitehorse to interview Mr. Sharp at the Whitehorse Correctional Centre. He found Mr. Sharp to be cooperative and there was no evidence of major depression or psychosis.

[74] Mr. Sharp made the following statements to Dr. Singh:

- I always want revenge on people who have done me wrong. I would go after those who hurt innocent people. If people left me alone, I wouldn't pose any threat. Normally, I am quite passive but, when I'm provoked, I become quite mean and mouthy.

- When asked whether he ever had the desire to be humiliated, beaten, bound or otherwise made to suffer during sexual activity, his answer was, "All my life. It has been there, because I feel dirty. I don't belong. People don't want me. It's the suffering part is what I want to feel. If I'm not suffering about something, I have to find it. I have to jump back into the mire.

- When asked if he was a danger to society, Mr. Sharp stated, “No, I would like to think I am not. As long as I’m not instigated, I’m not threatened, I’m not backed into a corner, or I’m hit physically, or belittled emotionally, I’m okay.”

[75] Dr. Singh found Mr. Sharp to be reasonably articulate and able to understand the system. However, he concluded that: “It is also reasonably evident that Mr. Sharp is unable to demonstrate remorse in relation to serious misdemeanours. His anti-social behaviour has shown little foresight and is not associated with guilt because he seems to have a keen capacity for rationalizing and for blaming his behaviour on others.” Dr. Singh used the term “serious misdemeanours” to refer to Mr. Sharp’s criminal history.

[76] Dr. Singh stated that Mr. Sharp’s criminal profile “paints a picture of a man who obviously has serious sexual deviancy.”

[77] Dr. Singh agreed with the Twin Rivers treatment summary dated April 2, 2001 that Mr. Sharp’s risk to commit a new sexual offence based on actuarial assessment is relatively moderate to high. From his perspective, the best indicator for future violence is past behaviour. Dr. Singh concluded the following:

1. Incarceration has had no deterrent effect to reduce Mr. Sharp’s sexual deviancy.
2. He has not learned from treatment and is not someone to be trusted in the community.
3. His history indicates a consistent pattern of disregard and disrespect for the opposite gender and an inability to refrain from sexual offending.
4. Mr. Sharp demonstrates “a poor development of conscience, lack of concern for the effects of his behaviour on others, indifference to suffering, failure to

profit from experience, inability to comprehend how easily people can be hurt not only physically but also mentally."

5. He concludes that "Mr. Sharp's anti-social personality, and his aggressive and hostile sexual deviancy, is likely to continue and his paraphilic [sic] behaviour raises serious concern for the safety of others around him."

[78] Dr. Singh resisted suggestions that Mr. Sharp was at a high or extreme risk of re-offending. He did say that he posed a significant risk and a substantial risk. But he would not say that he was at a high risk, which he interpreted to mean he would re-offend at "a graver level."

[79] Dr. Singh clearly stated that if Mr. Sharp had not been convicted of forcible seizure, his opinion would remain the same.

[80] Dr. Singh stated that treatment could not occur in the community. He was not optimistic about treatment in custody being successful, with either behavioural or chemical interventions. He stated that treatment often does not show any effect. Sexual offenders like Mr. Sharp have to undergo treatment programs several times and even then it may be difficult to say he would be ready for return to the community under structured conditions. Dr. Singh did not say successful treatment of Mr. Sharp is impossible, but rather quite difficult as it did not work in the past.

[81] Dr. Singh stated treatment interventions depend significantly on the person's honesty, sincerity and willingness to change. He described these qualities as "rare commodities" in a person who has a sexual deviancy problem.

[82] He indicated that chemical treatments may dissipate sexual fantasies in six months or be completely ineffective. From his point of view, the anti-libidinal drugs are

not a panacea or cure, but must be accompanied by counselling and psychotherapy. He pointed out that the anti-libidinal drugs may have side effects and a person may simply refuse to taken them when in the community.

[83] Dr. Singh was questioned about the “burn-out theory”. He described it as the blunting of the aggressive propensity of an individual when they reach their fifties. He did not make any specific statement about the theory as it related to Mr. Sharp.

(b) Dr. Lohrasbe

[84] Dr. Lohrasbe is a forensic psychiatrist who has worked on a sessional basis at the Forensic Psychiatric Institute in Port Coquitlam, B.C. He is in private practice and has assessed more than 5,000 individuals as a forensic psychiatrist. Between one-quarter and one-third of those individuals have been sexually aggressive men. He has testified in about 40 dangerous offender hearings.

[85] Mr. Sharp did not wish to be interviewed by Dr. Lohrasbe, who is a Crown witness. Dr. Lohrasbe was of the view that because of the extensive documentation available, including repeated mental health assessments, and Dr. Singh’s report of May 12, 2003, he was able to offer opinions on risk assessment.

[86] I have not admitted Dr. Lohrasbe’s opinion on page 23 of his August 6, 2003 report regarding whether Mr. Sharp should be a dangerous offender.

[87] However, I found Dr. Lohrasbe’s risk assessment for future sexual violence to be useful. He prefers the use of structured clinical guidelines as opposed to depending entirely on rigid actuarial instruments or unstructured clinical judgments. He uses actuarial instruments as a check on a clinical assessment. Dr. Lohrasbe applied the SVR-20 risk assessment tool that uses 20 items to determine sexual violence risk.

[88] For example, one factor to be considered is sexual deviation. In contrast to Dr. Singh's finding that Mr. Sharp has a "serious sexual deviancy," Dr. Lohrasbe could not assume this factor to be present, but neither could it be dismissed.

[89] Dr. Lohrasbe summarized as follows:

> An application of the SVR-20 to Mr. Sharp therefore demonstrates that 13 risk factors are clearly present, and 7 are neither clearly present nor clearly absent. A striking finding is that not a single risk factor is clearly absent with Mr. Sharp. Such a risk factor "profile" indicates that the risk he poses for sexual violence in the foreseeable future is high.

[90] Dr. Lohrasbe was unable to provide a clinical risk assessment that is based upon an exploration of the relevant data with the offender. Thus, he cannot provide Mr. Sharp's perspective on past actions, current mental status and future plans in the same way that Dr. Singh could.

[91] Dr. Lohrasbe did offer a risk assessment based upon Mr. Sharp's known sexual offences. He found the role of anger and revenge to be a striking feature as a motivator of his sexual violence. He stated that Mr. Sharp "has persistently displayed a sense of entitlement" usually found in adolescents or young adults. Dr. Lohrasbe stated:

> With maturity, there is typically a decline in the demands based on childhood trauma. Mr. Sharp, on the other hand, at age 40, continues to feel entitled to act out his frustrations and anger, and justifies these behaviours on the basis of his sense of entitled self-pity, which provides continuing cognitive support to anger, revenge, and hatred, and subsequent violence. There is nothing that I have read that suggests to me that Mr. Sharp is willing to take responsibility to change his position that he is entitled to violence.

[92] Dr. Lohrasbe states that Mr. Sharp does not accept responsibility in the physical, psychological and moral responsibility sense of the words. He still takes a blaming stance after a treatment program. He concludes:

> It is noteworthy that there is nothing in the available information to suggest that the risk in the future is lower than it has been in the past. On the contrary, his rapid re-offending even after engaging in a sex offender treatment program indicates that prior risk assessments of his potential for future sexual violence should be revised, in the direction of increased risk.

[93] Dr. Lohrasbe found nothing to suggest that Mr. Sharp was a good candidate for risk management strategies in the foreseeable future.

[94] As to chemical treatment, Dr. Lohrasbe said that anti-libidinal drugs are most useful in a small number of men who have a high sexual desire and may be brain-damaged or mentally handicapped. But it was his opinion that sexual drive is a small component of sexual offending. These drugs also have serious side effects on the heart and liver and cause breast enlargement and testicle shrinkage, side effects that usually result in patients refusing to take them.

[95] Dr. Lohrasbe stated that there is no such thing as a cure for sexual violence or sexual deviancy.

[96] In cross-examination, Dr. Lohrasbe indicated that whether Mr. Sharp were found to be a dangerous offender or a long-term offender, he would first be assessed at the Regional Health Centre in British Columbia. He would then be offered a treatment program at the Regional Health Centre. There is generally one month for assessment and another month for debriefing, followed by a one-year program. The program might be done two or three times.

[97] Dr. Lohrasbe was of the opinion that Mr. Sharp’s prospects of successful treatment are poor and likely to fail. However, he stated if treatment succeeded, it would reduce his risk to re-offend. He did not find Mr. Sharp’s reaction to the leak of

information unexpected, but he found the speed that he converted it into violence towards a victim somewhat unusual.

[98] Dr. Lohrasbe admitted that Mr. Sharp had made some progress in the Twin Rivers treatment program. The use of the drug Gabapentin improved his mood. He observed that Mr. Sharp had periods when he could control his behaviour.

[99] Dr. Lohrasbe was also asked if the concept of burn-out applied in this case. He described the concept as being both complex and controversial as it arose in the context of violence in general, not sexual violence. With respect to sexual violence, he said he could elaborate on theories, but “we really don’t know” and it is a hard concept to apply in a specific case. He did not apply it to Mr. Sharp.

[100] I note that neither Dr. Singh nor Dr. Lohrasbe had the benefit of hearing the evidence of Mr. Sharp.

4. THE LAW

[101] A dangerous offender and long-term offender hearing is part of the sentencing process. The accused has been convicted and is now an offender. The dangerous offender and long-term offender proceedings are sentencing provisions on specific convictions. They do not constitute a separate charge (*R.* v. *Jones*, [1994] 2 S.C.R. 229 at para. 106).

[102] Sentencing hearings are not subject to the strict rules that apply in trials. Section 723(5) of the *Criminal Code* states that hearsay evidence is admissible at a sentencing proceeding. Section 726.1 requires the court to consider any relevant information placed before it, including representations or submissions made by or on behalf of the prosecutor or the offender.

[103] Thus, hearsay evidence may be accepted where found to be credible and trustworthy. The judge has a wide latitude as to the sources and types of evidence upon which to base a sentence (*R.* v. *Gardiner*, [1982] 2 S.C.R. 368 at 414).

[104] However, despite the informality of the sentencing hearing and the wide discretion given to the trial judge, the criminal standard of proof beyond a reasonable doubt applies (*R.* v. *Gardiner*, *supra*, at 415).

[105] In this case, the experts have focused upon the sexual violence of Thomas Sharp. Thus, I will consider the sexual assault sections of the dangerous offender and long-term offender provisions as being most relevant.

[106] Sections 752 and 753 state, in part:

> 752.
>
> … "serious personal injury offence" means
>
> . . .
>
> (b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).
>
> 753.(1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find the offender to be a dangerous offender if it is satisfied
>
> . . .
>
> (b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any sexual matter including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

[107] A plain reading of the text of s. 753(1)(b) indicates that evidence may be heard about conduct in any sexual matter beyond the conviction that triggered the dangerous offender hearing. The evidence can include previous convictions and other incidents where there has been no conviction so long as they are relevant (*R.* v. *Dicks*, [1995] N.S.J. No. 159, paras. 18 and 19 (S.C.); *R.* v. *Sharrow* (1999), 133 C.C.C. (3d) 467 at para. 26 (Ont. C.A.)).

[108] Expert evidence of psychiatrists is admissible to explain and understand the conduct of the offender. However, it is not the opinion of the expert, but the actual conduct of the offender that determines whether a dangerous offender finding should be made (*R.* v. *Neve* (1999), 137 C.C.C. (3d) 97 at para. 127 (Alta. C.A.)). As stated in *R.* v. *Lyons*, [1987] 2 S.C.R. 309 at para. 97, the test for admissibility of expert evidence is relevance, not infallibility. Thus, it is not scientific evidence, nor can it be assumed to be an accurate future prediction. It is simply relevant as to how a person is likely to behave in the future.

(a) The Dangerous Offender Provisions

[109] Section 753(1)(b) creates two requirements to find an offender to be a dangerous offender:

1. The Crown must establish that the offender has committed a “serious personal injury offence,” which is defined in s. 752(b), to include all forms of sexual assault; and
2. The trial judge must be satisfied beyond a reasonable doubt that there is a “likelihood” that the offender will cause “injury, pain or other evil to other persons through his failure in the future to control his sexual impulses.” It does

not require proof beyond a reasonable doubt that he will re-offend (*R.* v. *Currie*, [1997] 2 S.C.R. 260 at para. 25).

[110] *Currie* goes on to establish that in s. 753(1)(b) there is no requirement to focus on the convictions that give rise to the dangerous offender application. Thus, conduct in any sexual matter may be considered. In *Currie*, the sexual assaults giving rise to the application were not as violent or as grave as earlier offences and Lamer C.J. said at para. 24:

> I cannot imagine that Parliament wanted the courts to wait for an obviously dangerous individual, regardless of the nature of his criminal record and notwithstanding the force of expert opinion as to his potential dangerousness, to commit a particularly violent and grievous offence before he or she can be declared a dangerous offender.

[111] The Supreme Court of Canada has recently ruled on an extensive review conducted by the British Columbia Court of Appeal in light of the August 1, 1997 amendments to the dangerous offender provisions and the addition of the new category of long-term offender. *R.* v. *Johnson*, [2003] S.C.C 46 concluded that a sentencing judge must take into account the possibility of a long-term offender designation when considering a dangerous offender application.

[112] In *R.* v. *Johnson*, the court set out the following principles:

1. The sentencing judge retains the discretion not to declare an offender dangerous even if the statutory criteria for that designation are met (para. 18).
2. The primary purpose of the dangerous offender regime is the protection of the public which is elevated over other purposes of sentencing (para. 19).

3. One factor that a sentencing judge must consider is the possibility that the long-term offender provisions will be sufficient to achieve the objectives of the dangerous offender provisions (para. 27). Put another way, are the sentencing sanctions of the long-term offender provisions sufficient to reduce the threat that the offender poses to an acceptable level, despite the fact that the statutory criteria of the dangerous offender provisions have been met (para. 29)?
4. Almost every offender who satisfies the dangerous offender criteria will satisfy the first two criteria in the long-term offender provisions. For some of these offenders, there may be a reasonable possibility of eventual control of their risk in the community and thus, they satisfy the criteria in both the dangerous offender and long-term offender provisions (para. 31).
5. If the public threat posed by the offender can be reduced to an acceptable level through either a determinate period of detention or a determinate period of detention followed by a long-term supervision order, a sentencing judge cannot properly declare an offender dangerous and sentence him or her to an indeterminate period of detention (para. 32).

[113] It is important to note that the finding of dangerous offender requires the imposition of a sentence of detention in a penitentiary for an indeterminate period. This does not mean that the offender is necessarily incarcerated forever. Section 761 of the *Criminal Code* requires the National Parole Board, after the expiry of seven years from the day on which a person was taken into custody and every two years thereafter, to review the condition, history and circumstances of that person for the purpose of

considering whether that person should be granted parole and, if so, on what conditions. However, it does not provide that the label of “dangerous offender” be removed or altered. The parole process does ensure that a dangerous offender’s sentence is tailored to fit the circumstances of the particular offender (*R.* v. *Lyons*, [1987] 2 S.C.R. 309 at paras. 48 and 49).

[114] Therefore, unlike the long-term offender provisions which require a determinate or finite sentence followed by a supervision order, the dangerous offender finding does not have an automatic end or termination of the sentence.

(b) The Long-Term Offender Provisions

[115] Under s. 753.1, the court may find an offender to be a long-term offender if satisfied, among other things, that:

a) it would be appropriate to impose a sentence of two years or more for the offence for which the offender has been convicted;
b) there is a substantial risk that the offender will re-offend; and
c) there is a reasonable possibility of eventual control of the risk in the community.

[116] The court shall be satisfied that there is a “substantial risk” that the offender will re-offend if the offender has been convicted of sexual assault with a weapon and by conduct in any sexual matter, the offender has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences.

[117] If the court finds the offender to be a long-term offender, it must impose a sentence, which must be a minimum punishment of imprisonment for a term of two years

and order the offender to be supervised in the community for a period not exceeding 10 years.

[118] The Supreme Court of Canada concluded in *R.* v. *Johnson*, *supra*, at para. 40 that:

> For the above reasons, the British Columbia Court of Appeal was correct to conclude that a sentencing judge must take into account the long-term offender provisions prior to declaring an offender dangerous and imposing an indeterminate sentence. If a sentencing judge is satisfied that the sentencing options available under the long-term offender provisions are sufficient to reduce the threat to life, safety or physical or mental well-being of other persons to an acceptable level, the sentencing judge cannot properly declare an offender dangerous and thereupon impose an indeterminate sentence, even if all of the statutory criteria have been satisfied.

[119] In my view, the Supreme Court of Canada decision in *R.* v. *Johnson* requires the sentencing judge to consider treatment prospects for the offender to determine if the long-term offender provisions will be sufficient to reduce the threat to public safety to an acceptable level. Ryan J. discussed the treatment issue in *R.* v. *Johnson* (2001), 158 C.C.C. (3d) 155 (B.C.C.A.). Treatment prospects include the consideration of cure, the concept of burn-out and whether treatment prospects, both chemical and behavioural, will reduce the threat to public safety to an acceptable level.

[120] In other words, the dangerous offender designation is reserved for those persons whose conduct is deep-seated or difficult to cure and therefore present an unacceptable threat to the safety of the public. Courts often refer to the offender's conduct as being "substantially or pathologically intractable" in order to be found to be a dangerous offender. I prefer the more understandable wording that the offender's conduct must be untreatable, deep-seated or difficult to treat.

5. ANALYSIS

(a) Long-Term Offender

[121] At the outset, I should indicate that the conditions have been met to proceed to a dangerous/long-term offender hearing. Firstly, the consent of the Attorney General of Canada, dated January 13, 2003, has been filed pursuant to s. 754(1)(a). Secondly, a notice dated July 7, 2003 and an amended notice of the application dated September 2, 2003 have been filed setting out the basis of the application pursuant to s. 754(1)(b) and (c). Thirdly, pursuant to s. 752.1, an assessment has been performed on Mr. Sharp by Dr. Singh and filed in this court.

[122] Finally, Mr. Sharp was present at the hearing pursuant to s. 758, except for two occasions when victims testified and, at his request, I permitted Mr. Sharp to be out of the court, although his counsel remained present.

[123] Mr. Sharp has been incarcerated almost continuously since 1986, except for 14 months of parole in 1991-92 and two months in 2001 before he was placed on a peace bond. Although his criminal history pre-dates 1986, that date represents the commencement of his sexual violence. In 1986, in Oregon, he was convicted of attempted rape in the first degree. He served five years in prison without any treatment. He was paroled on conditions on January 5, 1991.

[124] Mr. Sharp breached his parole and went to the State of Washington where he sexually molested a four-year-old girl and seven-year-old girl in March 1992. He did not complete a sex offender treatment program as required and had re-offended a mere 14 months after his release from prison. He was sentenced to incarceration for 126 months, or over 10 years, for the child molestation convictions. He has never truthfully

admitted to the child molestation convictions to this day, except for the purpose of being admitted to the Twin Rivers sex offender treatment program, which took place from June 2000 to April 3, 2001.

[125] Mr. Sharp openly admitted in this court that his participation in the Twin Rivers sex offender treatment program was a sham, in that he merely “played the game,” lied and told them what they wanted to hear.

[126] In his treatment summary dated April 2, 2001, his risk to re-offend was assessed as moderate to high, with a slightly higher probability to violently re-offend. It was reported that he had difficulty following rules and consistently failed to show up for group treatment. In discussing his release plan, Mr. Sharp thought he would be better off without follow-up or relapse treatment or any type of community notification.

[127] However, when it was suggested by the Public Notification Committee in Whitehorse that he take relapse treatment, he initially indicated his willingness. But his presence in Whitehorse was made public by someone in the RCMP before the Public Notification Committee could deal with the matter. He reacted angrily and, unfortunately, predictably by rejecting treatment. Within two months of his release from prison, he had kidnapped and sexually assaulted a young woman at knifepoint, representing a significant escalation of his sexual violence.

[128] The two experts who testified, Dr. Singh and Dr. Lohrasbe, have very similar opinions, although from a different perspective. Dr. Singh is of the opinion that Mr. Sharp is a person who has a serious sexual deviancy, who has not learned from his treatment and who is not someone to be trusted in the community. He described Mr. Sharp’s risk to re-offend as significant or substantial.

[129] Dr. Singh was of the view that successfully treating Mr. Sharp would be difficult, as it had not worked in the past and he would need to undergo treatment programs several times to determine if he is ready to return to the community. Dr. Singh said that treatment interventions depend on honesty, sincerity and a will to change — rare commodities for a person with a sexual deviancy.

[130] Dr. Lohrasbe did not have the benefit of a clinical interview, but he conducted an SRV-20 risk assessment and concluded Mr. Sharp's risk for sexual violence in the foreseeable future was high.

[131] With respect to the past sexual offences of Mr. Sharp, Dr. Lohrasbe found a persistent sense of entitlement to act out violently on his frustrations and anger. He saw nothing that indicated Mr. Sharp was willing to change his position that he is entitled to violence. He found that the rapidity of his re-offending after sex offender treatment increased his potential for sexual violence.

[132] Dr. Lohrasbe found Mr. Sharp to be at a high risk for sexual violence in the future. He described Mr. Sharp's anger and revenge to be a striking motivation. He found a persistent sense of entitlement to violence based on childhood trauma that would normally be found in adolescents or young adults.

[133] Dr. Lohrasbe concluded that he found nothing to suggest that Mr. Sharp was a good candidate for risk management strategies in the future.

[134] It is significant that neither of these experts heard Mr. Sharp's admission of lying and "playing the game" in his sex offender treatment program. In my view, that evidence supports the experts' view that Mr. Sharp is not a good prospect for sexual offender treatment or risk management in the future.

[135] Counsel for Mr. Sharp conceded that Mr. Sharp met the first two conditions for finding him to be a long-term offender. The defence suggests that an appropriate determinate sentence would be between 10 and 14 years incarceration, thus meeting the first condition that it would be appropriate to impose a sentence of two years or more.

[136] Second, defence counsel also submits that it has been established that there is a substantial risk that Mr. Sharp will re-offend and cause injury, pain or other evil to other persons through similar sexual offences. I find the evidence to be overwhelming in establishing that Mr. Sharp's conduct satisfies the first two conditions for finding him to be a long-term offender.

[137] The crucial question is whether there is a reasonable possibility of eventual control of the risk Mr. Sharp poses to an acceptable level. The answer to this question focuses on whether the long-term offender provisions of a determinate sentence followed by a supervision order for as long as ten years, are sufficient to reduce the threat Mr. Sharp poses to an acceptable level.

[138] Counsel for Mr. Sharp submits that a ten- to fourteen-year determinate sentence would provide the opportunity to treat Mr. Sharp for his childhood issues and risk management. This would provide the basis for a reasonable possibility of eventual control of his risk in the community by the terms of a supervision order for as long as ten years.

[139] Counsel for Mr. Sharp submits the following:

1. Mr. Sharp is prepared to engage in sexual offender treatment and undergo the work required to succeed in reducing his risk to an acceptable level.

2. The factor of burn-out must be considered as Mr. Sharp would be in his late forties or early fifties upon release. This factor would reduce his risk.
3. There is the potential that the treatment as put forward by Dr. Lohrasbe would be embraced by Mr. Sharp as it would include dealing with his anger and childhood abuse in addition to behavioural and chemical treatment. In other words, it would be a broader treatment program than the Twin Rivers treatment.
4. The Twin Rivers treatment program, despite its failure to control his sexually assaultive behaviour, did have some positive impact on Mr. Sharp in terms of improving his behaviour during the treatment and Mr. Sharp recognizing his cycle of sexually assaultive behaviour.
5. Mr. Sharp's decision not to be in the courtroom during the evidence of his victims indicates some degree of remorse.

[140] On the other hand, the following facts indicate that Mr. Sharp is not a good candidate for treatment that would reduce his risk in the community to an acceptable level:

1. His only treatment program in almost sixteen years failed. He has generally denied that he needs treatment.
2. He lied and "played the game," to use his words, during the treatment because it did not address the issues that he feels are important and best suit him.
3. When he was released from incarceration, he sexually offended within fourteen months in 1991 and two months in 2001.

4. The violence has escalated in his July 25, 2001 sexual assault with a knife.
5. He acknowledges that until he gets treatment “in the area that I believe is important,” the revenge or payback attitude will continue, i.e. he will continue to be the person he is today.
6. He acknowledges that he has taken 41 years to get where he is and it will take years to overcome his problems.

[141] Finally, it is significant that Dr. Singh was of the view that treatment, although not impossible, would be difficult as it had failed in the past. Dr. Lohrasbe’s analysis found nothing to suggest that Mr. Sharp was a good candidate for risk strategies in the future. He stated that Mr. Sharp’s treatment prospects were poor and likely to fail.

[142] In my view, the factors favouring the reasonable possibility of eventual control of Mr. Sharp’s risk in the community are highly speculative. I am persuaded by the experts and Mr. Sharp’s own evidence that his sexual assaults arise from a very deep-seated anti-social behaviour that will be difficult to treat. There is no evidence from the experts to suggest that treatment for a finite period of time would reduce his risk to an acceptable level. As a result, I am not satisfied that there is a reasonable possibility of eventual control of Mr. Sharp’s substantial risk in the community. I do not find Mr. Sharp to be a long-term offender.

(b) Dangerous Offender

[143] For the purposes of this analysis, there are three offences to be considered under s. 753(1)(b) of the *Criminal Code*: the sexual assault with a weapon on July 25, 2001; the child molestation on March 22, 1992; and the attempted rape on January 5, 1986. I

do not find it necessary to consider the alternative dangerous offender provisions under s. 753(1)(a).

[144] The finding that an offender is a dangerous offender requires two steps:

1. The Crown must establish that Mr. Sharp has committed a “serious personal injury offence.” This is easily established as Mr. Sharp has been convicted of sexual assault with a weapon, which by definition in s. 752(b) is a serious personal injury offence.
2. The Crown must prove beyond a reasonable doubt that:
    (a) his conduct in any sexual matter has shown a failure to control his sexual impulses; and
    (b) there is a likelihood that he will cause injury, pain or other evil to other persons through a failure to control his sexual impulses in the future.

[145] Defence counsel submits that Mr. Sharp’s conduct has not shown a failure to control his sexual impulses, but rather a failure to control his anger and rage. Thus, he argues that s. 753(1)(b) does not apply to any impulse, but only a sexual impulse. I do not find this submission persuasive as Mr. Sharp’s impulses clearly have a sexual character.

[146] The three sexual offences that he has committed over a period of fifteen years, in the brief periods when he was not incarcerated, indicate a clear failure to control his sexual impulses.

[147] The issue to be determined is whether the Crown has established beyond a reasonable doubt that there is a likelihood of Mr. Sharp causing injury, pain or other evil to other persons in the future through his failure to control his sexual impulses.

[148] Both Dr. Singh and Dr. Lohrasbe recognize that past acts are the best predictor of future conduct. Even with parole conditions in the United States, Mr. Sharp continued his sexually assaultive behaviour. Within two months of his release into the Yukon, despite attempts by the authorities to get Mr. Sharp involved in preventive treatment, he committed his most violent sexual offence. Dr. Singh is of the opinion that there is a substantial or significant risk that Mr. Sharp will re-offend. Dr. Lohrasbe says that the risk he poses for sexual violence in future is high and Mr. Sharp's rapid re-offending, even after engaging in a sexual offender treatment program, indicates increased risk of re-offending.

[149] In my view, Mr. Sharp has a deep-seated commitment to sexual violence. In the only sexual offender treatment program that he took in fifteen years of incarceration, he sabotaged it by lying and playing the game. Mr. Sharp was very clear in his own evidence that until he gets the treatment he feels he needs, his conflict with authority, revenge and pay-back attitudes, and his sexual violence will continue. There is no evidence from the experts to indicate that this behaviour can be treated in a finite period of time.

[150] I do not say that there is no glimmer of hope. However, that is all it is at the moment and that is not sufficient for this court to exercise its discretion against a dangerous offender finding. As stated in *R.* v. *Johnson*, [2003] S.C.C. 46, the primary purpose of the dangerous offender regime is the protection of the public, which is

elevated over other purposes of sentencing. Mr. Sharp's sexual assault of women constitutes a profound interference with their physical integrity and results in long-term psychological injury. It is the ultimate violent violation of personal safety (*R.* v. *McCraw*, [1991] 3 S.C.R. 72).

6. DECISION

[151] I am satisfied beyond a reasonable doubt that Mr. Sharp has failed to control his sexual impulses in the past and there is a likelihood that he will cause injury, pain or other evil to other persons through his failure to control his sexual impulses in the future. Therefore, I find Mr. Sharp to be a dangerous offender and sentence him to detention in a penitentiary for an indeterminate period.

[152] Pursuant to s. 760 of the *Criminal Code*, I order that a copy of all exhibits, which includes the expert reports, a transcript of the evidence and these Reasons for Judgment be forwarded to the Correctional Services of Canada.

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VEALE J.