

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Overton, 2010 NSPC 61

Date: October 5, 2010

Docket: 1904212, 1904213, 1904214

Registry: Halifax

Her Majesty the Queen

v.

Kirsten Marie Overton

DECISION

Judge: The Honourable Judge Jamie S. Campbell

Heard: August 9, 2010; August 10, 2010; August 11, 2010;
August 12, 2010; August 20, 2010; August 25, 2010

Decision: October 5, 2010

Charges: s. 433(a); s. 733.1(1)(a); s. 811

Counsel: Ron Lacey - Crown Attorney
Nicole Campbell - Defence Counsel

By the Court:

1. Kirsten Overton is a highly intelligent and very articulate young woman. She also has a very serious and long standing mental illness. Yet, she is in jail and will be for some time to come. She is facing sentencing with respect to serious criminal charges and an application that she be sentenced as a dangerous offender. There is something about the sad story of her life so far that makes this situation very troubling. It is perhaps that the word “sad” is so appropriate. It is not a story where most people, I hope, after hearing it, would think as much about punishment or retribution as they would about helping this young woman to deal with the problems she has faced for so long. What she did brings this matter into a criminal court. How she is dealt with seems in some way to be an issue for which an adversarial court system is less than ideally equipped.

2. She burned down a women’s shelter, Barry House, in Halifax. She pleaded guilty to arson and said that she’d do it again. That wasn’t the first time. She had already set a fire in a motel in Kansas. She was convicted of arson. She spent five years in jail there for the offence.

3. Over the last number of years, both while in prison and out, Ms. Overton has made serious threats and acted violently. There are sound

reasons to be very concerned about her. That all prompted this application to have her designated as a dangerous offender.

4. It is trite to say that this case is “unique”. All cases are. There is though a combination of things about Kirsten Overton that sets this case quite apart.

5. The first is that she is a woman. Dangerous offender applications with respect to women are very rare. That has a few implications. The availability of services for women is more limited. As the psychiatrists who have assessed and treated her have noted, there are limits as well the applicability, to a woman, of some assessment tools.

6. A second issue is that the offence that prompted this application was arson. The instrument intended to measure the likelihood of recidivism on an actuarial basis is not designed to deal with arson. It is not the same as crimes where violence is directed specifically against a person.

7. The third complicating factor is the combination of above average intelligence and mental illness. While psychiatric conditions and high intelligence are not incompatible, the number of people who are treated who have those conditions and who are also highly intelligent is

comparatively small. That creates a rather perplexing problem in this case. Ms. Overton's psychiatric condition makes it exceedingly difficult for her to function independently. She knows that. She has at times expressed the desire to spend the rest of her life in prison. There, at least, she has her basic needs of housing, food and security looked after. She is so smart and well spoken that she can act and speak in ways that seem very much to confirm her dangerousness.

8. Here, a dangerous offender application has been brought with respect to a person who has, in many respects, acted and spoken very much like a dangerous offender. To what extent can a court, or anyone else, effectively "second guess" what she has said and done? Is she saying things because she is dangerous or because she wants to appear to be dangerous?

9. The Crown maintains that Ms. Overton should be declared to be a dangerous offender. Mr. Lacey, for the Crown argues that if the dangerous offender provisions are not met, Ms. Overton should at the very least be designated as a long term offender.

10. Counsel on behalf of Ms. Overton has agreed that she meets the criteria as a long term offender. If, on the other hand, the criteria for a dangerous offender designation are met, Ms. Campbell, on behalf of Ms.

Overton asserts that I should use my discretion to designate her instead as a long term offender. The reasoning is that the long term offender provisions provide sufficient assurance of public protection.

Legal Issues:

11. Part XXIV of the *Criminal Code* provides for these kinds of applications.

12. If a person is found to be a “dangerous offender” the court must impose a sentence of detention in a penitentiary for “ an indeterminate period”. The consequences are immensely serious.

13. If a person is found to be a long term offender the person must be sentenced to a term of imprisonment of at least 2 years and be ordered to be supervised in the community for not more than 10 years.

14. Dangerous offender designations are made to protect the public from dangerous people. They are people who have committed serious personal injury offences and are a threat to life, safety or well-being of others. In this case, Ms. Overton’s actions in setting fire to a women’s shelter while people were inside, meets the requirement as a serious personal injury

offence. That has been agreed. It is an indictable offence that endangered or was likely to endanger the safety of others. That may not be the case with every arson, but in these circumstances that is not, and should not be, in dispute.

15. The level of threat or dangerousness can be shown by evidence establishing that the person engaged in a pattern of repetitive behaviour, showing a failure to restrain his or her behaviour. That behaviour must be found to be likely to cause death or injury to others. In the alternative, the Crown may show that the person has demonstrated a pattern of persistent behaviour showing a substantial degree of indifference respecting the foreseeable consequences of his or her behaviour. A third alternative involves “brutal behaviour”. That is not in issue here.

16. Ms. Campbell asserts that the Crown has not shown that Ms. Overton now presents such a threat. She agrees however that Ms. Overton does meet the criteria for a finding that she is a long term offender. For that designation a court has to be satisfied that the person shown receive a sentence of more than two years, that there is a substantial risk that the person will re-offend and that there is a reasonable possibility of eventual control of the risk in the community.

17. It is vitally important to note that even if a person meets the criteria as a dangerous offender, a person can be sentenced as a long term offender. That can happen if the judge is satisfied that the long term offender sentencing options are sufficient to reduce the threat to an “acceptable level”. That does not involve the elimination or eradication of all risk but the containment or management of risk to an acceptable level. It does not suggest that there must be evidence that the person can be “cured” or that her successful treatment can be assured. However, there must be evidence that the specific person can be treated within a specific time frame and the evidence must be more than just speculation or an expression of hope.

18. The Crown does not have to prove beyond a reasonable doubt that there is no possibility of eventual control in the community. The sentencing judge must be satisfied that there is a reasonable possibility of control of the risk. If the judge is not satisfied, and the person has met the dangerous offender criteria he, or she, must be sentenced as a dangerous offender.

19. So, a person who has committed a serious personal injury offence and is currently “dangerous”, may be sentenced as a long term offender if the judge is satisfied that there is a reasonable possibility that she can be eventually controlled in the community. That is the real issue here. Kirsten Overton does meet the criteria for designation as a dangerous offender.

There has been proven to be a persistent pattern of behaviour. The issue is whether the “blunt instrument” of a dangerous offender designation should be used. If there a real possibility that she can eventually be controlled in the community, she should instead be sentenced as a long term offender.

20. That precise issue, to a large extent comes down to the consideration of the reports prepared by two psychiatrists. One asserts that Ms. Overton’s psychiatric condition and history of behaviour taken together show that she constitutes the kind of risk that can only be managed through the use of the dangerous offender sentencing provision. In other words, there is no reasonable possibility that the risk presented by Ms. Overton can eventually be controlled in the community.

21. The other psychiatrist maintains that a major breakthrough has been made and that with the appropriate medication and course of treatment Ms. Overton could eventually be released into the community and pose no more of a threat than anyone else.

22. These are not just any two psychiatrists. Both are very highly qualified, very highly regarded and very experienced in forensic psychiatry. Both work at the East Coast Forensic Hospital. They are colleagues who work together regularly. Their diagnoses are essentially the same. Both

were entirely respectful of the opinion of the other. This is not a matter of choosing between them, or of expressing a preference for the opinion of one over the other. Their opinions for the most part aren't that different. It is a matter of perspective. It's all in how you look at it, what exactly you look at or perhaps when you look at it.

23. In this case, it seems to be a matter of determining which of their perspectives as to Ms. Overton's potential treatment has most relevance to the very specific legal question. I have to consider which of their reports bears most directly on the legal issue of whether there is a **reasonable possibility** the risk that Kirsten Overton presents can be managed with a period of incarceration followed by a period of supervision for no more than 10 years.

Personal History:

24. Each one of the people we pass on Spring Garden Road, but with whom we decide it best not to make eye contact, has a complicated story. Many, I suspect, like Kirsten Overton's, would be surprising if only we were to hear them. She is not someone whom anyone would have expected would end up here. She was adopted at an early age by couple in Manitoba. The family soon moved to the Kansas where they remained for about 21 years. Her father is an art professor at a college. He now lives in

Indiana. Her mother, who was a nursing professor, died in 1998. The anniversary of her death is still a very difficult time for Ms. Overton.

25. She was never subjected to any form of abuse or neglect and always had positive relationships with her siblings.

26. Her father reported that Kirsten Overton taught herself to read by the time she was three years old. She became a voracious reader. The family had to limit the number of library books she could bring home because she was capable of reading several a day.

27. She was described as well as being musically gifted with a solo quality mezzo-soprano voice. She could play clarinet and bassoon at a very high level.

28. Ms. Overton saw a psychiatrist for the first time when she was in Grade 6. Her psychiatric problems have been ongoing since that time. Her adolescent years were rough. She ran away from home a few times and was generally a handful for her parents. She was treated at a local clinic in Kansas after she reported that she was hearing voices and had begun to cut herself. Because she didn't respond to treatment she was moved to a state mental hospital where, after treatment, she appeared to be getting better.

Some medications were stopped after they seemed to make her suicidal.

29. Eventually, in about Grade 11, she was placed in a group home. Ms. Overton appeared to benefit from the more structured environment. She became an outstanding student and began making friends. Her verbal scores while in high school were in the top 95-97 percentile. She received a letter of invitation from Radcliffe College at Harvard University.

30. She went on to university, though not at Radcliffe. There she focused on English literature and creative writing. She was appointed leader of the college peace club, won several awards for her poetry, was a member of the elite choir, and served as a residence assistant in her dorm. She worked part time for an agency dealing with people with mental challenges and was reported as showing particular skill in dealing with a child with autism.

31. Kirsten Overton was clearly a very smart, very talented and very accomplished person.

32. Her university years were disrupted by periods of inpatient mental health treatment. During her second year she quit and moved into an apartment. Her father noted that she has long struggled with issues of identity. After a number efforts at obtaining housing and employment,

while dealing with mental health issues, she became homeless in 2002.

33. She ended up in Wichita Kansas, attending a counseling program there. When she failed to get immediate attention she set fire to the motel room where she was living. On that day she had contacted a crisis intervention centre and told them that she was feeling like lighting fires.

34. She was sentenced to 3 ½ years at the Topeka Correctional Center for Women. Her father reported that rather than getting any better over that time, Ms. Overton seemed to get worse. She refused medications and was eventually placed in solitary confinement for over 2 ½ years.

35. She made very serious threats to her family and to one of the psychologists responsible for her treatment there. She said she knew where to find the person and her family and would kill them when she got out. That of course, resulted in further charges.

36. The record of her time in the correctional facility shows a sustained pattern of violence and potential violence. There were 42 disciplinary reports between January 2003 and February 2005. Those cover a very wide range of activities, from telling officers to shut up to making weapons and telling someone she was going to kill him by choking him with a power

cord.

37. She spent 5 years in total in jail. She had been released but was returned after a parole violation.

38. When she was released she received a \$40,000 inheritance from a relative. She came home for Christmas in 2005 but by very early 2006 she was back at a state mental hospital. She once again threatened to kill her father. After taking medications she was released to a shelter in Salina Kansas.

39. At that point she decided to start a new life by finding her birth parents who she believed to be in Winnipeg. She renounced her American citizenship and changed her surname to Overton. She spent her inheritance partially on meals and hotels. She also spent thousands of dollars on music cd's which she simply destroyed. She reported that she felt that this was a form of protest against capitalism.

40. While in Winnipeg she adopted the Muslim faith. She disrupted a religious service there because of what she interpreted as lax liturgical practices. She was charged with a number of offences arising from that incident.

41. After receiving treatment in a Winnipeg hospital, she discharged herself to the streets. While living on the street she got into trouble again, when she smashed a plate glass window of a Metis Centre and wrote “Accept me or Die” on the walls.

42. She then hitched a ride to Montreal with an acquaintance. Once again, she was treated in a Montreal hospital. In Montreal she was able to receive social services and some follow up mental health services. The mental health professionals in Montreal diagnosed her and were in the process of adjusting her medication to doses more in keeping with her needs. She decided that it was time to move on.

43. On a whim, once again, she drove to Halifax with a person she hardly knew. She arrived in this city with no job, no place to stay, no real friends and no support of any kind. She found a place to stay at Barry House, a shelter operated by the St. Leonard’s Society.

44. Her father reported that Ms. Overton had contacted him while at Barry House. She was lonely, sad, distraught and expressing regret for having traveled so far from home.

Barry House Fire:

45. Ms. Overton lived at Barry House for about 2 weeks. She set a fire in her room on May 16, 2008. She simply put some papers on her bed and lit them.

46. She walked out and went to pay phone to call 911. She was arrested at the pay phone.

47. The house burned down. No one was injured but that is just a matter of good luck. Ms. Overton very quickly admitted to setting the fire with the intention of burning the place down. In her statement to the police she said that she made the 911 call to turn herself in because she “wanted credit for it”. She said at that time that fire made her feel “happy I guess”. She said that she really didn’t care if anyone had been hurt.

48. Then on 26 May 2008 she wrote a letter addressed to the Crown Prosecutor. In that letter she said that she thought it was “funny” how people react to fire. She identified that she had lit a fire before in Kansas and that she had done 5 years in jail for it. She gave her former name, so that she could be readily identified as the same person.

Officer Wagg asked a lot of tedious questions on May 16. I was not very interested in interacting with people right then. He was wrong about one thing: I thought of this as I planned lighting

the fire, women being injured or dying from smoke inhalation. Probably smoke inhalation. I had hoped this would happen but it did not. ...It made me grin and laugh. They were over dramatic. I didn't have a liking for any of them. Why do you think I closed the door to the room?... I had thought about an accelerant, but I chose not to use one. Barry House is an old house, and dry. The smell was distinctive. ...

49. At the time there were 12 people living in the house. There was also a staff member on duty. Six fire engines responded. People up to three houses away were evacuated.

50. Each of the women at Barry House were made homeless by the fire. Emergency beds were obtained and the shelter was closed for 10 weeks until it could be opened at another location. The damage to the home took more than \$400,000 to repair. Repairs were eventually done and the house reopened in June 2009.

Nova Scotia Incarceration:

51. Ms. Overton has been in jail since her arrest in this matter.

52. In April 2009 she assaulted a correctional officer at the Central Nova Scotia Correctional Facility and was sentenced to 1 day in addition to the 2 months that she had spent on remand.

53. The next month she was charged with the same offence and received the same sentence.

54. Since May 2009 there have been no charges and apparently no significant problems with regard to her behaviour.

Psychiatric Evidence:

55. Mr. Overton was assessed by Dr. Aileen Brunet and subsequently treated by Dr. Risk Kronfli.

56. The two psychiatrists very largely agree on the diagnosis. The difference in their reports in that respect is not substantial. Dr. Brunet however is not confident that the risk can ever be effectively managed in the community. Her colleague, Dr. Kronfli believes that a significant breakthrough has been made since Dr. Brunet has seen Ms. Overton. A therapeutic relationship has been developed and in his view, with proper monitoring and treatment, Ms. Overton would pose no more of a risk to society than anyone else.

57. Dr. Brunet last saw Ms. Overton in February 2009. She has had no involvement with her since that time.

58. Dr. Brunet diagnosed Ms. Overton as having Schizoaffective Disorder. She acknowledged that some psychiatrists would consider this to be schizophrenia with some mood symptoms.

59. Dr. Brunet noted that Ms. Overton presented “something of a conundrum from the perspective of risk assessment”. Typically people who undergo assessments with respect to the risk of violent recidivism, have committed offences that are acts of direct violence against others. While the conviction for arson meets the definition of a serious personal injury offence, arson is not generally considered to be a violent offence “from the psychiatric risk assessment perspective”. In fact, from the perspective of the Violence Risk Appraisal Guide, an actuarial instrument used to predict violent recidivism, arson is considered a nonviolent offence. Fires set for the purpose of harming others ought, in Dr. Brunet’s opinion, to be considered violent but it was not clear in her view that Ms. Overton’s motivation was to harm others. While she might have been callous and reckless, she appears not to have set the fire with the intention or for the purpose of hurting anyone.

60. While arson is dangerous, there are no risk assessment instruments that address the rather amorphous concept of “dangerousness”. It was not clear, in Dr. Brunet’s view that the standard risk assessment instruments

would be appropriate. Furthermore, the Violence Risk Appraisal Guide has been shown not to be an accurate instrument when applied to women. Because Ms. Overton has committed arson twice, the relevant issue is whether she will do it again. There are no tools available to predict that kind of risk. While literature does address the features often found in arsonists, it deals with the issue of recidivism only generally.

61. In the absence of such tools, Dr. Brunet examined the circumstances in which Ms. Overton committed arson. There were numerous similarities. Both were planned and deliberate. At the time of each, Ms. Overton was not experiencing the symptoms of her mental illness. In neither case was she under the influence of drugs or alcohol. She was homeless and had no support. She was feeling anxious and distressed about her circumstances. She was at both times angry, resentful and hopeless. She saw herself with nowhere to go and decided to make a gesture. That gesture would signal her rage and remove her from an unwanted situation.

62. Dr. Brunet concluded that based on what Ms. Overton had said she was not “floridly ill with overt delusions and disorganized behaviour”. Her thinking might well have been influenced by her illness.

63. At the time of the assessment Ms. Overton expressed no remorse for

the Barry House fire. On the contrary she said that the outcome had been positive. She has been in a setting where her needs have been met. She also said that she would consider that kind of action again if she were faced with similar circumstances.

64. Dr. Brunet concluded that despite the lack of applicable risk assessment instruments, Ms. Overton presented a substantial risk to re-offend. She had committed arson twice and was unrepentant. She said she would do it again and was reckless in her attitude toward the property and lives of others. There was a strong correlation between her fire setting and her stress related to her adverse circumstances. She has not been able to function independently. To manage her risk, the circumstances in which she found herself on both occasions would have to be avoided. Given the lack of resources available to people in her situation, that would be difficult. She would also require ongoing psychiatric follow-up. Her conditions are notoriously difficult to treat. "At the time of my assessment Ms. Overton did not present as particularly interested in changing herself. She would be amenable to psychiatric intervention when she considered it to be needed however."

65. No one seriously disputes anything that Dr. Brunet has reported. Her diagnosis of Ms. Overton's condition is essentially in accord with Dr.

Kronfli's opinion. The difference appears to be one of perspective. Dr. Kronfli has indeed seen Ms. Overton since February 2009. He has developed what he described as a therapeutic alliance with Ms. Overton. Rather than an assessing psychiatrist he has been a treating psychiatrist. He has noticed significant changes in her condition which in his view bear directly on this matter.

66. What is particularly significant is Dr. Kronfli's clinical observation that Ms. Overton's behaviour has changed dramatically since her medications have been adjusted to the appropriate dosage. While essentially under-medicated, Ms. Overton continued to have auditory hallucinations. When a person is being treated, in Dr. Kronfli's experience, those voices are the first symptoms to go. While the voices are present, that is a sign that the medication may not be sufficient.

67. Based on her medical history, it does appear that when medication doses began to approach what was needed her condition improved somewhat. It didn't seem to get to the level sufficient to allow Ms. Overton herself to have the insight that would mean that she would be inclined to continue with the medications.

68. The issue of the right dose of medication is not simply a matter of

deciding what dose to give the patient. Each of the drugs have side effects. Patients are often unwilling to accept larger doses because of those side effects. While not properly medicated a person may lack the insight required to actually take the medication. It is a spiral. Not taking the medication makes the condition worse which decreases the patient's insight and decreases the likelihood that the medication will be taken.

69. Dr. Kronfli described a significant breakthrough for Ms. Overton. It seems as though that cycle may be at least in the process of being broken. She has shown now that she is willing to take her medications in the appropriate doses. That has increased her insight into her condition and the potential that she will continue to take the medication. She has experienced lapses but in each case did not return to her baseline condition. For about the last year there have been no significant behavioural issues while at the correctional centre. That coincides with the period during which the doses of medication were approaching adequate.

70. In Ms. Overton's case, Dr. Kronfli was also encouraged by her very high "pre-morbid condition". She has no intellectual problems to overcome. Many people suffering from psychiatric conditions also have cognitive deficits. That is not at all the case for Kirsten Overton.

71. Dr. Kronfli made reference to a recently approved drug, with few side effects and which can be delivered in long lasting doses. The benefit is that the person does not have to make the decision to take or not take the medication a few times a day. A single dose may last a month. That also means that if the patient misses a dose by a few days the relapse is much slower and less severe. In cases such as this one, it also has the singular benefit of providing for very effective monitoring to insure that the medication has been taken.

72. Dr. Kronfli noted that in the past Ms. Overton had made a number of “self damaging statements”. She is not really unrepentant. Her statements were made to achieve a goal. He commented on her police interview where initially she expressed that she did not intend to harm anyone. Once it became clear to her that she might be released, she was able to adjust to achieve her goal of incarceration. In some senses she was more comfortable being ill. She was used to the voices in her head and missed them when they were gone. While ill she could be in a protective environment. Once she began to get better she would be released into an environment that caused her considerable anxiety.

73. That is changing. Ms. Overton has increasing insight.

74. Dr. Kronfli was entirely satisfied, based on this breakthrough in Ms. Overton's treatment that a plan could be developed for her release into the community and that if over a number of years her medications were in place, she would represent no more of a risk to the community than anyone else. After 10 years of monitoring the chances that she would continue to take medication and be well would, in his view, be very high. Her condition is not "intractable". For some people, Dr. Kronfli offered, nothing will work. That is not the case here. There is, in his opinion, clear evidence that with medication she can do well. When on medication there is a "total shift" in behaviour. Dr. Kronfli said that this was not based on opinion but was an observable fact.

75. To use Dr. Kronfli's rather memorable turn of phrase, he would "sleep like a baby" if Ms. Overton were eventually released in the community after a course of treatment and with monitoring and supports in place.

76. Dr. Kronfli has had an opportunity to treat Ms. Overton over the last year. He has observed significant improvement. Ms. Overton is developing greater insight into her condition. He is not speculating that there might be an improvement or hoping for a breakthrough. He has seen it.

77. Dr. Brunet's assessment took place before Dr. Kronfli was involved and before any breakthroughs were observed.

78. There is a practical issue. If Ms. Overton were to be released into the community she would have limited options available. She burned down Barry House. That property was owned by the St. Leonard's Society. That organization runs the only half way house in Atlantic Canada that accepts women. It is a private institution which has the right to refuse applicants. Not surprisingly people with arson convictions are notoriously difficult to house. Expecting the society to house the person who burned down their own property might well be stretching the limits of even their very substantial stores of understanding and goodwill.

79. It would be a travesty however if any woman were to be incarcerated rather than released simply because resources were not available based entirely on her gender. If she were a man, a half way house could be found. It should be no different for her.

80. Dr. Kronfli is satisfied that if she were released into an environment where those basic needs were met, she would, with proper medication, be able to function in the community with minimal risk. There may be significant issues in providing those resources.

Sentence:

81. Dr. Kronfli's report is not based on hopeful optimism. It is not based only on a humane desire to see Kirsten Overton get better. There is nothing pollyannaish about Dr. Risk Kronfli's opinion. He has observed Ms. Overton. He has treated her since she was assessed by Dr. Brunet. He is remarkably confident in his view that with proper medication and the right amount of time, the risk if any presented by Ms. Overton can be minimized. Dr. Kronfli cannot guarantee that the progress made to date will continue. He doesn't have to. What he can do and has done, is show that the possibility that Ms. Overton's behaviour can be controlled is based on clinical observations and reasonable inferences based on those observations. Dr. Brunet may reasonably choose not to make the same inferences.

82. I am satisfied in this case, that there is a reasonable possibility that Ms. Overton can be treated in the community. While the criteria for designation as a dangerous offender have been met, the sentencing options available for long term offenders will be sufficient to provide the level of control required.

83. Given the nature of the offence and Ms. Overton's record of offences

a term of imprisonment of three years is appropriate. While a sentence should deter others, I am not satisfied that a longer sentence would in any way deter any other desperate and mentally ill person from acting in way that was influenced by her condition. Factoring deterrence into this sentence might “make a statement” or “send a message” but likely the wrong one to the wrong people. Ms. Overton herself will be deterred, not by punishment but by being properly treated and released to an environment that considers her needs. Society will be better served by providing her with services to allow her to function in the community than in paying the huge costs involved in jailing her for the rest of her life.

84. A period of three years will be required to get her ready for an eventual release into the community. She needs to have effective medications, in the proper amounts that can be taken in a controlled way to insure that they are indeed being taken.

85. Ms. Overton should be sentenced as a long term offender. She should be released into the community with a period of supervision of ten years. Medications can be monitored to insure that they are being taken. A structured and secure environment will be essential. At the conclusion of that time, as Dr. Kronfli has noted, she will either have breached the conditions of her release or have become stabilized to the point where she

no longer poses a greater risk to the safety of the community than anyone else. The terms of her release will be determined based on her circumstances at that time but it should be noted that her success will depend on the provision of services that address her specific needs. Put perhaps a bit too bluntly, services are not only more humane than jail, but for those who focus on such considerations, they are cheaper than jail.

86. Judges are called upon to make inferences every day. In many situations a person's past behaviour is used to make reasonable inferences about what they will do in the future. A person's past can say a lot about what will happen in their future. It is a good, but of course not a perfect predictor. George Santayana wrote: "Those who cannot remember the past are condemned to repeat it".¹ That is what the American labour leader Lane Kirkland once referred to in a speech as a "deep truth". Kirkland had an interesting take on the concept. While it is true that those who cannot remember the past are condemned to repeat it, it is equally true that sometimes we just have to know that the past is over.²

87. In the case of Kirsten Overton it would appear that the past may just

¹Reason in Common Sense, The Life of Reason Vol. 1. This is a variation of Edmund Burke's "Those who do not know history are destined to repeat it."

²Kirkland's exact words were, "I owe to Sydney Hook a thought that I offer as my final conclusion from all this. From him I learned the difference between a truth and a deep truth. A deep truth is a truth the converse of which is equally true. For example, it is true, as Santayana said, that those who do not know the past are doomed to repeat it. Yet it is equally true that those who do remember the past may not know when it's over. That is a deep truth" University of South Carolina Commencement Address, 1985 reproduced in Lend Me Your Ears: Great Speeches in History, selected and introduced by William Safire, Norton & Company, 1992

be over. She can start working on her future.