

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Terriak*, 2019 NSPC 40

Date: 20190930

Docket: 8048165; 8048167

Registry: Halifax

Between:

HER MAJESTY THE QUEEN

v

CHRISTOPHER SAMUEL TERRIAK

**DECISION ON SENTENCE AND
DANGEROUS OFFENDER APPLICATION**

Restriction on Publication:

s. 486.4: Bans under this section directs that any information that will likely identify the complainant shall not be published in any document or broadcast or transmitted in any way.

Judge: The Honourable Judge W B Digby

Trial Heard: March 9, 2017
May 5 & 9, 2017 (evidence)
May 12, 2017 (decision)

Application Heard: February 25, 26, 27 & 28, 2019
March 1, 2019 (evidence)
June 13, 2019 (submissions only)

Oral Decision: September 30, 2019

Written Decision December 31, 2019

Charges: Sections 271 and 733.1(1)(a) of the *Criminal Code*

Counsel: Sarah M. Kirby & Rick Woodburn, for the Crown
Patrick K. MacEwen, for the Accused

BY THE COURT:

[1] This is a decision with respect to an application by the Crown to have Mr. Terriak declared a Dangerous Offender (“DO”) and receive an indeterminate sentence for sexual assault and sentence for a breach of probation. At the conclusion of his trial, a guilty verdict was entered against Mr. Terriak with respect to the following two charges:

On or about November 29, 2016, at or near Halifax, Nova Scotia, did unlawfully commit a sexual assault on [redacted], contrary to Section 271 of the Criminal Code

And further, while bound by a Probation Order issued on September 1, 2016, did willfully fail without reasonable excuse to comply with such order, to wit., “keep the peace and be of good behaviour”, contrary to Section 733.1(1)(a) of the Criminal Code.

OVERVIEW

[2] Mr. Terriak was born September 23, 1963 in Hopedale, Labrador, of Inuit parents. In his formative years he was exposed to alcoholism, violence and sexual molestation. Most, if not all, of his offences have involved his consumption of alcohol. He has a lengthy criminal history including sexual assaults, manslaughter and attempted murder. He has participated in many treatment programs while in custody. He has had periods of sobriety but they have not lasted. When he consumes alcohol he frequently comes in conflict with the law.

[3] The Crown position is that a DO designation and indeterminate sentence are the only viable options to protect society. Mr. Terriak’s criminal activities show a pattern of violence that places the public at substantial risk as it is likely to continue as evidenced by the failure of all treatment programs to date to have any enduring change in his alcohol consumption. There is little treatment or programming available in the correctional system that Mr. Terriak has not experienced. The Crown submits there is no basis to expect a change in Mr. Terriak’s behaviour.

[4] Mr. Terriak, through his counsel, seeks to receive a sentence of time served. He submits that the Crown has not advanced sufficient evidence to meet the burden of proof required by the relevant sections of the *Criminal Code* in order to declare him a DO. He further submits that, based on his history, cooperation in treatment and programming, and the testimony of Dr.

Lohrasbe, he should be considered an individual amenable to treatment whose risk can be managed in the community.

LEGISLATIVE EVOLUTION

[5] The following paragraphs from the dissent of Karakatsanis J. in *R. v. Boutilier*, [2017] 2 SCR 936 are included here because the history provides insight and informed perspective with respect to application of current legislation:

The dangerous offender provisions are found in ss. 752 to 761 of the *Criminal Code*. On the application of a prosecutor, after an expert psychological assessment, a hearing is held to determine whether the offender should be designated as dangerous and, if so, whether he or she should be sentenced to indeterminate detention (s. 753).

When this Court first assessed the constitutionality of the dangerous offender scheme in *Lyons*, the legislation provided the sentencing judge with discretion at both the designation and the penalty stages. The legislation stated that a sentencing judge “may” designate an offender as dangerous if the legislative criteria for dangerousness were met. In addition, the sentencing judge had discretion as to whether to impose indeterminate detention on a designated dangerous offender (*Criminal Code*, R.S.C. 1970, c. C-34, s. 688 [rep. & sub. 1976-77, c. 53, s. 14]).

Changes were made to the dangerous offender scheme in 1997 by the *Act to amend the Criminal Code (high risk offenders), the Corrections and Conditional Release Act, the Criminal Records Act, the Prisons and Reformatories Act and the Department of the Solicitor General Act*, S.C. 1997, c. 17. The legislative amendments removed the discretion at the penalty stage. While sentencing judges retained discretion on whether to designate an offender as dangerous when the statutory criteria for dangerousness were met (s. 753(1)), the legislation stated that a judge “shall” sentence designated dangerous offenders to indeterminate detention (s. 753(4)). In *R. v. Johnson*, 2003 SCC 46 (CanLII), [2003] 2 S.C.R. 357, this Court confirmed that, under this legislative scheme, judges could not impose an indeterminate sentence if they were “satisfied that the sentencing options available under the long-term offender provisions [were] sufficient to reduce the threat to the life, safety or physical or mental well-being of other persons to an acceptable level” (para. 40). This ensured that offenders who met the statutory criteria were only designated as dangerous and sentenced to indeterminate detention if their risk could not be adequately managed through the long-term offender scheme. Although there was no discretion at the penalty stage, discretion at the designation stage ensured that the sentencing principles in ss. 718 to 718.2 of the *Criminal Code* continued to guide decisions under the dangerous offender scheme (*Johnson*, at para. 28). Once again, judicial discretion helped guarantee that only “a small group of highly dangerous criminals posing threats to

the physical or mental well-being of their victims” would be sentenced to indefinite imprisonment (Lyons, at p. 347; Johnson, at para. 19).

Legislation

Purpose and Principles of Sentencing

[6]

718. The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community;
and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community

718.02 When a court imposes a sentence for an offence under subsection 270(1), section 270.01 or 270.02 or paragraph 423.1(1)(b), the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

Fundamental principle

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Other sentencing principles

718.2 A court that imposes a sentence shall also take into consideration the following principles:

...

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

...

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders

Serious Personal Injury Offence

[7] Section 752 defines a serious personal injury offence as:

(a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person, and for which the offender may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in s. 271 (sexual assault) ...

Dangerous Offender Provisions

753(1) On application made under this Part after an assessment report is filed under subsection 752.1(2), the court shall find the offender to be a dangerous offender if it is satisfied

(a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender

(i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,

(ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or

(iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint; or

(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.

Sentence for dangerous offender

753(4) If the court finds an offender to be a dangerous offender, it shall

(a) impose a sentence of detention in a penitentiary for an indeterminate period;

(b) impose a sentence for the offence for which the offender has been convicted — which must be a minimum punishment of imprisonment for a term of two years — and order that the offender be subject to long-term supervision for a period that does not exceed 10 years; or

(c) impose a sentence for the offence for which the offender has been convicted.

Sentence of indeterminate detention

753(4.1) The court shall impose a sentence of detention in a penitentiary for an indeterminate period unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under paragraph (4)(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.

[8] The Supreme Court of Canada has confirmed that the dangerous offender provisions form part of the sentencing process. As such, their interpretation must be guided by the fundamental purpose and principles of sentencing contained in ss. 718 to 718.2 (*Boutilier, supra*, para. 53 and 54).

Conditions Precedent

[9] Mr. Terriak acknowledges that the essential conditions precedent for the dangerous offender application have been satisfied beyond a reasonable doubt: he has been convicted of a “serious personal injury offence” as defined by sections 752(a)(i) and 752(a)(ii) of the *Criminal Code*; an assessment was ordered and prepared in accordance with sections 752.1(1) and 752.1(2), (that being the assessment of Dr. Lohrasbe dated May 16, 2018 (exhibit #14); and the notice of the dangerous offender application and consent of the Attorney General as required by section 754(1) of the *Code* have been served on Mr. Terriak and filed with the Court.

Evidence

Exhibits

[10] The following items were received as exhibits, all tendered by the Crown; none by the defence:

- Exhibit 1: Correctional Services Canada file (volume 1)
- Exhibit 2: Correctional Services Canada file (volume 2)
- Exhibit 3: Correctional Services Canada file (volume 3)
- Exhibit 4: Correctional Services Canada file (volume)
- Exhibit 5: Curriculum vitae of Josee Gilbert
- Exhibit 6: Program Performance Report Final (2012)
- Exhibit 7: Photos of Roy Mullin (two on one page)
- Exhibit 8: Statement of Roy Mullin on CD
- Exhibit 9: Previous convictions (volume 1)
- Exhibit 10: Previous convictions (volume 2)
- Exhibit 11: Previous convictions (volume 3)
- Exhibit 12: Halifax Regional Police files (November 2016)
- Exhibit 13: Curriculum vitae of Dr. Shabehram Lohrasbe
- Exhibit 14: Report by Dr. Shabehram Lohrasbe
- Exhibit 15: Report Addendum by Dr. Shabehram Lohrasbe
- Exhibit 16: Gladue Report

- Exhibit 17: Affidavit of Catherine Barbe
- Exhibit 18: Justice Enterprise Information Network (JEIN) Report
- Exhibit 19: Transcript of prior sentencing Halifax and Kentville
- Exhibit 20: Probation files
- Exhibit 21: Predicate offence file

Witnesses

[11] The Crown called seven police officers, two civilians, Correctional Services Canada (“CSC”) staff, and Dr. Lohrasbe. No witnesses were called on behalf of Mr. Terriak at the sentencing and trial. Mr. Terriak read a statement into the record which is attached as appendix “A”.

[12] Police officers Cst. Jeremy Bastarache and Cst. Jason Roy, both with the RCMP in Moncton, spoke of their contact with Mr. Terriak in Moncton in August 2016. Officers Karl McIver, Matthew MacIsaac, Michael Randell, Shawn Currie and Lee Cooke, all with the Halifax Regional Police Service, outlined their dealings with Mr. Terriak. Their experiences are described in the section titled Criminal History. I am satisfied that the police officers accurately described their interactions with Mr. Terriak. Two officers, Cst. Currie and Cst. Cooke, gave evidence suggesting that Mr. Terriak is known to be belligerent. No attempt was made to introduce this as character evidence which is admissible at the designation stage. The officers’ evidence in this regard is superfluous given the obvious conclusion to be drawn from Mr. Terriak’s record of criminal behaviour.

Mabel Leaman

[13] Mabel Leaman, a resident of Moncton, testified she went from her apartment to check on Roy Mullin who lived on another floor. Mr. Terriak answered the door. Ms. Leaman and Mr. Mullin sat together on the couch and began a conversation. Mr. Terriak spoke about his work and people he knew. Ms. Leaman indicated she was not interested. Mr. Terriak was drinking beer. Ms. Leaman told Mr. Terriak that he should not smoke his joint in the apartment. Mr. Terriak lit up the joint and had a couple of puffs. Mr. Terriak then went in front of Mr. Mullin, pulled down his zipper, exposing his penis, saying, “You know what to do.” When Ms. Leaman protested, Mr. Terriak grabbed the hair on the back of her head, pushing her head down in the

couch behind Mr. Mullin. Ms. Leaman was prevented by Mr. Terriak from using the kitchen phone, so she went to her own apartment.

[14] I accept the above evidence of Ms. Leaman as truthful and accurate.

Roy Mullin (video statement)

[15] Mr. Roy Mullin indicated that he and Mr. Terriak had become friends but after a year he told Mr. Terriak that he did not want Mr. Terriak coming to his apartment because Mr. Terriak was causing problems in the building related to drugs and alcohol. He indicated that Mr. Terriak was belligerent to Ms. Leaman, calling her names on that night. When asked, Mr. Mullin was unable to remember if he had ever been forced to perform fellatio on Mr. Terriak.

[16] There is a suggestion to be drawn from the evidence of Mabel Leaman, Roy Mullin, and the officers investigating their incident and others that Mr. Terriak may have committed sexual crimes against Mr. Mullin. These suggestions are not proven beyond a reasonable doubt and cannot be part of the two-stage analysis.

Correctional Service Canada Witnesses and Reports

[17] I wish to acknowledge the considerable effort of Ms. Kirby in preparing the Crown brief. Her summary of the testimony of the Correctional Service Canada witnesses was fair and balanced. I am impressed with the professionalism and dedication of the witnesses from Correctional Services Canada. I have no concerns with their testimony. What follows is largely taken from her brief as well as the portion dealing with criminal history.

Josee Gilbert

[18] Ms. Gilbert is a CSC psychologist who completed a detailed psychological assessment of Mr. Terriak, dated March 22, 2005, located at Exhibit 4, pages 003557-003570 (the “2005 CSC Psychological Report”). Her testimony did not meaningfully add to her report.

[19] The 2005 Correctional Services Canada Psychological Report is thorough and perceptive and, ultimately, the predictions made in 2005 by Ms. Gilbert have proved to be accurate with the passage of time.

[20] Her report states the following:

RELEVANT BACKGROUND INFORMATION (at pp. 003562 -003563)

Concerning his current convictions [attempted murder and manslaughter], the subject appears to be very remorseful and takes responsibility for his crimes. He believes that he is in the right place, meaning incarcerated. The subject stated he is very grateful to have an 11-year sentence (for attempted murder and manslaughter convictions). The subject admits having a very unstable, chaotic and violent lifestyle but recognizes that so far, he has not been able to do so despite all the help he has received.

The sexual offences and the two current offences [manslaughter and attempted murder] were committed under the influence of alcohol. The subject indicates that he has quit drinking for a period of 8-9 months in the past. Alcohol used is part of his lifestyle, part of his daily routine. ... The subject recognizes the severity of his problems and although he admits that he is trying hard to straighten up his life, he always goes back to his drinking habits. He also recognizes that in the community, it is very difficult for him not to associate with alcohol and alcohol abusers. The subject also participated in more than one detoxification program and NA and AA groups but without any significant success.

... He explained how his alcohol use was the centre of his life and basically almost everything is around it. He also described the type of relationships he had on the streets. He explained that all his acquaintances are substance abusers and live on the streets ...

...The subject reports that he is drunk most of the time and does not even notice that it is cold outside. He explained that when he is sober, he finds life boring and misses his "old lifestyle". ... He reports that he is not convinced that he will be able to quit drinking when back in the community. He said that he has tried several programs but obviously continued to drink. Mr. Terriak takes full responsibility for his actions, indicating that he likes that lifestyle.

The subject reports that he presently does not drink due to his incarceration. He reports that he does not have any desire to drink and he is convinced he will be able to stay sober during his term of incarceration. He reports that he perceives a very small chance for him to stay sober in the community. He recognizes that his risk of future violence is very high when under the influence of alcohol ...

CONCLUSIONS AND RECOMMENDATIONS (at pp. 003568-003569)

Concerning the risk of violence in general, the risk is high as long as the subject continues to use alcohol in the community. As previously stated, the undersigned does not believe that a successful participation in institutional programming is an indication that the risk will be reduced when he returns in the community. The undersigned also does not believe that a very good attitude and behaviour during

incarceration will necessarily predict the same pro-social behaviour and attitude in the community. Obviously, it is a good start but only a significant period of alcohol abstinence in the community would increase the chance of success. Any return to his "street lifestyle" and "alcohol abuse" increases significantly the risk of violence. These two factors are judged to be major ones in that case.

Mr. Terriak has several issues and problem areas. He has been raised in violence and substance abuse. This has been his lifestyle for so many years that significant efforts and motivation will have to be provided to change drastically.

Mr. Terriak's alcohol problem is very severe and most of his life is centered on the use of alcohol. As the current offences demonstrated, the subject is capable of extreme and gratuitous violence when intoxicated. The subject has rooted anger that surfaces when intoxicated. He is probably able to control his anger and behaviour when sober but loses [sic] easily his control when intoxicated.

The undersigned believes that we have very little information concerning the subject's attitude and ways to cope with anger and stresses when not intoxicated due to the limited amount of time that Mr. Terriak has been sober in the community.

It should also be noted that throughout the report, Ms. Gilbert repeatedly describes Mr. Terriak as cooperative, articulate, interested, positive, introspective, intelligent, and having good insight and good cognitive comprehension of his problems.

Melissa Leger

[21] Ms. Leger is a CSC Parole Officer who supervised Mr. Terriak when he was on statutory release from May 2012 to April 2013.

[22] Highlights of her testimony include:

- To her knowledge Mr. Terriak did not have any cravings for alcohol during her period of supervision.
- Remembers Mr. Terriak as motivated, resourceful, cordial, punctual, compliant with programming and psychological counselling.
- Mr. Terriak had a lot of community resources apart from CSC – friends Claude Tarrant, Ralph Kirkpatrick and his wife, AA, Toastmasters, employment.

- Ms. Leger observed that Mr. Terriak saw the importance of his supports in the community and how his sobriety played a positive part in establishing positive friendships and relationships.
- Said how happy he was to be living a clean, normal, sober life.

Nadine LaPlante

[23] Ms. LaPlante is a CSC Parole Officer who supervised Mr. Terriak when he was on statutory release from April 2013 to May 2014.

[24] Highlights of her testimony include:

- Mr. Terriak talked with her about his partner, Alcid Benoit, who was gravely ill in Dorchester. Mr. Terriak told her that in addition to relying on his Case Management Team (“CMT”) for support, he relied on his supports in the community – friend Eldon Hayes, Claude Tarrant.
- The community supports independent of CSC were AA, his AA sponsor, the Gays & Lesbians of Moncton.
- Lessening of conditions took place during her supervision: he rented a house with friends, he stopped going to AA in December 2013.
- Authored a Correctional Plain Update dated September 2013 which documented progress on his dynamic risk factors since he was released on statutory release. (Exhibit 2, page 002097)
- Emphasized that the CMT relies in part on offender’s self-reports and so honesty and transparency are very important in risk management.
- Said that the frequency of his psychological counselling session with Jacinthe Lavoie was decreased from twice per month to once per month and that this was decided as Mr. Terriak appeared to be engaged, was applying self-management skills, appeared to be dealing with his stressors such as Alcid Benoit’s terminal illness, had stable employment, and was sober.
- Ms. LaPlante explained that during the time that an offender is on release in the community, the goal of the CMT is (in part) to give the offender skills through programming and support, and counselling is to decrease as the offender approaches W.E.D. so they can self-manage on their own at that time.
- In January 2014, Mr. Terriak told his CMT that he was no longer getting anything out of AA – the CMT was surprised because he had been active with it, going as often as once per day.

- In January 2014, the CMT recommended to the NPB that Mr. Terriak be granted leave privileges – the basis of this recommendation was Mr. Terriak had been in the community for almost two years with no known breaches, working full-time – “we believed he was ready”.
- In March 2014, NPB granted leave privileges to Mr. Terriak and he took two leave passes in March 2014, staying at the house he had rented with friends.
- On April 10, 2014, CSC permitted Mr. Terriak to visit his terminally ill partner at Dorchester.
- Mr. Terriak took a three-day pass over Easter weekend on April 19-21, 2014. On April 21, 2014, he left voicemails on Ms. LaPlante’s work phone, saying he was drunk, and he needed help – he was located at Roy Mullin’s house and his statutory release was suspended that day.
- During his post-suspension interview, Mr. Terriak said he lost track and drank alcohol and smoked marijuana at Mr. Mullin’s apartment. He admitted he had drunk alcohol the previous weekend at Mr. Mullin’s house as well.
- He told Ms. LaPlante that he stayed at Mr. Mullin’s apartment instead of the rented house because of tension at the rented house. He denied being in a relationship with Mr. Mullin.
- Mr. Terriak told Ms. LaPlante that he wanted another chance, that he would avoid Mr. Mullin and that he knew that his friendship with Mr. Mullin was an unhealthy one, with Mr. Mullin using him for money, alcohol and cigarettes.
- Although it was a statutory condition of his release to report to his CMT if he was questioned by the police, Mr. Terriak did not tell Ms. LaPlante that he had been questioned by police in relation to an incident at Mr. Mullin’s apartment on April 19, 2014.
- The suspension was cancelled, and Mr. Terriak was re-released into the community on May 1, 2014, with enhanced conditions – curfew of 9:00 p.m., 2-hour sign-outs, urinalysis, no leave passes, no contact with Roy Mullin, weekly sessions with counselling and parole officer.
- A few days later, CSC Psychologist Jacinthe LaVoie told Ms. LaPlante that Mr. Terriak had admitted to developing feelings for Mr. Mullin and to smoking marijuana the entire week before suspension – neither of which he had admitted during the post-suspension interview with Ms. LaPlante.
- Had Ms. LaPlante known the true nature of the relationship between Mr. Terriak and Mr. Mullin, a community assessment would have been done. Had the CMT known that Mr. Mullin “drank constantly,” he would have been a prohibited contact for Mr. Terriak.
- Ms. LaPlante testified that before the first suspension, there were no indications that Mr. Terriak had reverted to drug and alcohol use.
- On May 3, 2014, Alcid Benoit died.

- On May 9, 2014, Mr. Terriak did not show up for his two-hour sign-in. The halfway house called his cell phone and there was no answer. He called back and said he was at Mr. Mullin's house, intoxicated. He was suspended again and ultimately his statutory release was revoked by the NPB.
- Ms. LaPlante called Mr. Mullin after the May 9 suspension. He told her that he and Mr. Terriak were drinking and that Mr. Terriak "went haywire" and pushed a 65-year old woman who was on the sofa and then started slapping Mr. Mullin for no reason. He also told her that a few months prior to that, he had woken up to Mr. Terriak attempting to perform oral sex on him and that when he protested, Mr. Terriak punched him and gave him two black eyes. When asked about this by Ms. LaPlante, Mr. Terriak said he could not recall pushing the older woman and he denied the sexual assault, saying that he lay down beside Mr. Mullin when he was passed out just to "cuddle".
- Significant documents associated with Ms. LaPlante's supervision are:
 - Correctional Plan Update, dated 2014/05/09 (Exhibit 3, page 002268)
 - Page 4, para 4 – referring to Roy Mullins, "Mr. Terriak denied being in a relationship with this friend";
 - Page 5, para 4 – New information since suspension cancelled - "... he admitted to his parole supervisor that during his friendship with this friend, he developed romantic feelings for him...";
 - Page 7, para 2 – "Prior to his current breach, there had been no indication or suspicion that Mr. Terriak had reverted to substance use during his community release...";
 - NPB Decision dated August 8, 2014 (Exhibit 3, page 002507).

Jacinthe Lavoie – 2012 - 2014

[25] Ms. Lavoie is a CSC psychologist who counselled Mr. Terriak while on statutory release from May 2012 - May 2014 and again from June 2015 to his W.E.D. in January 2016.

[26] Ms. Lavoie did not testify as she was not available for the hearing dates, but she was part of Mr. Terriak's CMT and her Clinical Progress Notes provide insight into Mr. Terriak's functioning while on statutory release.

[27] Highlights from Ms. Lavoie's reports from 2015-2016 are summarized later in this brief, so as to maintain the chronological review of the evidence.

[28] Highlights from her reports relating to 2012-2014 include:

- “He mentioned that he was relieved when he got caught for the index offence” (Psychological Report dated 2012-06-22, Exhibit 3, page 003854);
- Consistently reports that:
 - Mr. Terriak is appropriately reaching out for support to deal with stress associated with ill partner
 - “No imminent concerns regarding risk of recidivism”
- Records on 2013-09-17 that the frequency of sessions has been reduced to monthly (from twice monthly) as the client was maintaining stability and showing independence applying appropriate self-management strategies;
- Of particular note is the Clinical Progress Note dated 2014-05-05, (Exhibit 4, page 003735), which reports on the first therapy session post-cancellation of suspension and re-release:
 - Records that Mr. Terriak “was not clear and forthcoming on his degree of emotional involvement/attachment to [blacked out] old man he was visiting and spending time with. During the course of this session, Mr. Terriak admitted that he had developed feelings of affection for [blacked out] and that this relationship had become very stressful and intense for a period of 3-4 weeks, following which they had decided to remain friends. Mr. Terriak had not informed his CMT of the nature and his involvement with [blacked out] and the stress he was experiencing as a result. Based on my understanding, his alcohol consumption and use of THC products occurred at [blacked out] residence. Client reported that he was “using” R.M. reportedly in an effort not to think of [blacked out]”
 - The Report further reads, “This all the while he was reporting psychological distress in relation to [blacked out] whom he referred to as his partner [blacked out] and claimed to be in a committed relationship in spite of the fact that [blacked out]. When queried regarding the presence of stress given the complexity of his situation that is, his involvement with another individual, his failure to be forthcoming with his CMT, etc. Mr. Terriak was rather evasive and alluded that he was glad it was all over”
- Clinical Progress Notes dated 2014-05-06 (Exhibit 4, page 003734)
 - Regarding case conference with Parole Officer
 - Records, “We are concerned that his recent relapse into substance use and interpersonal relationship problems are very similar dynamics to the ones that were present during his offending. On the positive side, there is no evidence that he has resorted to violence...”
- Clinical Progress Notes dated 2014-05-08 (Exhibit 4, page 003732)

- Records at para 2 that Mr. Terriak’s relationship with RM was for a period of 5-6 months
- “It would appear that as structures are lessened Mr. Terriak presents with more challenges managing his life responsibly...”
- Psychological Assessment Report dated 2014/06/11 (Exhibit 2, page 001992)
 - Summary of intervention with Mr. Terriak from June 2012-May 2014
 - This entire report is informative
 - Page 4, para 2 – “... Mr. Terriak admitted consuming alcohol and THC products during two consecutive weekends prior to his suspension. He also reported “smoking a joint a day” for a week. The latter was not shared with his assigned parole officer during his Post-Suspension Interview. In addition, he was not clear and forthcoming on his degree of emotional involvement/attachment to [blacked out] who he was visiting and spending time with. Mr. Terriak disclosed that he had been having what he termed as a dysfunctional relationship with [blacked out] during a period of 5 to 6 months. Mr. Terriak further admitted that he had developed feelings of affection n for [blacked out] and that this relationship had become very stressful and intense for a period of about 3 to 4 weeks, following which they apparently decided to remain friends only. ...”
 - Page 5, para 1 – “... although Mr. Terriak appeared to have developed a number of skills and resources, there seems to be a propensity to regress to more inadequate skills seemingly when faced with significant stress and/or conflicts particularly in the context of interpersonal relationships. Given that Mr. Terriak had not been forthcoming with his CMT with certain difficulties he was experiencing, it is difficult to fully comprehend the dynamics that were at play leading to his breaches and subsequent suspensions.”
 - Page 5, para 2 – “After additional measures and structures were put in place (following his first breach) to manage risk and assist Mr. Terriak to regain stability, he chose to resume substance usage shortly after his suspension was cancelled consequently suggesting a lack of firm commitment and openness regarding risk management and respecting his special condition. The information alleging he resorted to violent behaviours is very disconcerting and parallels past patterns of inappropriate behaviours (crime). ... “

Dan Boon

[29] Dan Boon was Mr. Terriak’s institutional Parole Officer and started working with him in February 2015, to prepare him for statutory release in 2015.

[30] Highlights of his testimony include:

- When asked if Mr. Terriak understood his risk when he drank, Dan Boon answered, “He did understand it and I reinforced this to him - I looked at him intently and I said to him, ‘You’re articulate, you come across as intelligent’ – we do not mix alcohol with Christopher Terriak, it’s instant evil as far as anything else goes. You have to stay away from alcohol, period.” He understood that at the time.

Serge Hall

[31] Serge Hall was Mr. Terriak’s Correctional Program Officer while Mr. Terriak was on statutory release from 2012-2014, and again in 2015.

[32] Highlights of his testimony include:

- Mr. Terriak completed a number of programs while incarcerated:
 - NSAP–High (2008) – National Substance Abuse Program – 80-90 sessions
 - NSAP–High (2008) – National Sex Offender Program – 50-70 sessions
 - VPP-Moderate (2009) – Violence Prevention Program - full core program – 50-70 sessions
 - NSAP Maintenance (2010) – National Substance Abuse Program, Maintenance – 12 sessions, once per week
 - They all have a component of substance abuse in them
- Mr. Hall was a member of Mr. Terriak’s CMT in the role of Program Officer for Mr. Terriak’s Community Maintenance Programming for both the 2012 and 2015 releases
- Mr. Hall said, “I believe he had the skill-set to combat his substance abuse – had the skills, had the knowledge, could demonstrate them, could role play scenarios with me, he could problem solve his way out of it – he had the skills, he knew them well”
- Mr. Terriak had the skillsets that the Integrated Correctional Program Model (“ICPM”) offers
- 2012 – Mr. Terriak was not interested in taking programming again – but he was polite, and he did participate well – he told me this in 2015 too
- Mr. Terriak had done multiple rounds of many programs – he remembered what he learned in those programs; he could quote the old program skills and compare them to the new program skills and how they had changed; he could

- explain them very well in his own words; he felt he could do well without doing maintenance; was a very bright, articulate individual.
- Program Performance Report –Final Report re: CMP–SO – 2012/11/05 – Exhibit 6
 - Page 3 – “... Chris shared a great deal, was quite introspective and displayed very good insight regarding his index offence, past offences (one of which was his sexual offence) and what brought these about.”
 - The Report discusses “dynamic risk factors” and strategies to manage these risk factors
 - Page 5 – “Risk Factor #4 - ... Mr. Terriak identified his relationships with others as a risk factor and chose these examples to illustrate why: spent time drinking/using with friends, did crime w/ friends, had fights with them, all of them drink, gave into pressure from friends. Mr. Terriak stated that this factor played a “huge role” in his offending.”
 - In terms of positive support, Mr. Terriak identified the following sources: Robert, his sister, Ralph & Audrey, Claude, Eldon & Anne, Sister Agnes, Mike Dawson (Community Chaplaincy), members of AA, Toast Masters, AIDS/SIDA Moncton & his CMT
 - Page 6 – “In terms of bad support, Chris identified people that use (drugs/alcohol) because “they drag me down ... misery loves company they take me away from the direction I want to be on.” In fact, Chris was easily able to voice his way of dealing with bad support in role play ... He easily resisted my repeated attempts as the bad support to make him question his decision. Overall, Chris easily demonstrated assertiveness, communication skills & listening skills.”
 - Community Maintenance Program (“CMP”) – Sex Offender – successful completion – 2015/07/09 – 2015/12/18
 - Mr. Terriak was more forthcoming in 2015 than in 2012, admitted to things he did not admit to last cycle
 - In 2015, Mr. Terriak explained to me what had happened for him to be revoked – after he finished his last CMP with me, he had been doing well but that he reconnected with unhealthy relationships, and with substance abuse
 - Mr. Hall testified that Mr. Terriak met an older gentleman, that person was an alcoholic, Mr. Terriak started providing that person with alcohol, Mr. Terriak was smoking pot, then he got bored with that and he started drinking, and things went sideways quickly – this was self-reported by Mr. Terriak to Mr. Hall
 - Mr. Hall identified that Mr. Terriak to have two main interconnected issues: substance abuse and emotions management is very major in the sense that Mr. Terriak is very good at identifying which emotions are risky for him, fear, anger, loathing, mistrust and those are amplified when he is drinking - those

two coincide with each other quite readily – when he is drinking, that emotionality is amplified – much stronger – he realized that when he does drink, things become more volatile and he is around situations that are volatile, around people that are volatile, engaging in criminal behavior, he will adopt that behavior.

- Mr. Hall also testified that Mr. Terriak knows if he has one drink, it won't stop. One drink leads to another and another and another and it does not stop – he demonstrated that he knows that there is a probability that there will be negative consequences and he seemed to have a grasp on his risk to the community when he drinks
- Under strict supervision, Mr. Terriak can excel, skills, attitude, wit to do quite well in community when supervised – but a wrinkle – when he becomes complacent, he gets bored and he might start getting into old patterns – he'd been doing well for almost 2 years when he got revoked – he admitted to sabotaging himself and he admitted that what he did was within his control and yet he still went into it – whilst under supervision
- Program Performance Report –Final Report re: CMP–SO – 2015/12/23 – (Exhibit 3, pages 002318-002331)
 - Page 2, para 7: “Despite having many elements that indicated a balanced lifestyle (had job, RRSP, bills paid, money/budget) during his previous release in the community, Chris said his life was “not balanced, but trying to look balanced... missing a wheel... emotionally and mentally... emotionally tearing apart inside, wanted to talk, but afraid, didn't want pity (condescension)... relationship with RM not healthy... started using and drinking”
 - Page 3, para 3: “... He shared in fact that his balance was tilting subtly when he was falling into old patterns that brought about his revocation. He added that he knew he was doing so but ignored his conscience. Hence, Trouble was lurking, and he did nothing to prevent it, in fact, he gave up”
 - Page 4, para 1: “Chris did note and share subtle changes that led to more indicative changes of risk: his last revocation was a gradual yet quick decline in all aspects of his life: poor choice of supports (intimate), poor decisions (started by getting alcohol for someone else, lying to his CMT and himself), risky negative thinking (I can get out of it, I've been here before) and intense emotions (paranoia, self-doubt, no sense of worth and purpose).”
 - Page 4, para 4: “During the period that led to his last release being revoked, Chris described that he was “not coping emotionally”. He was “trying to do it on my own” and in doing so, he “shut out good supports”, started isolating himself and started associating with RM (victim) as a friend at first. Chris described this intimate relationship as a “rebound” following the death of his partner [blanked out]. Chris said he “put on a facade, I wasn't ok... not communicating... didn't want to have to

explain... didn't know how to explain... battled emotions... smoked pot to feel better, it didn't work, took to drinking, didn't work.”

- Page 6, para 4: “He explained that his conditions are what made the consequences of his choosing to drink come quickly into play: revocation. Chris stated: “going back to Dorchester was necessary to get me out of where I was.” Chris admitted that much like at the time of his index offences, he was not with positive people when he began his road to revocation.”
- Page 7, para 4: “With regards to conflict, Chris seemed quite aware of the consequences of poorly managed conflict. He worked on a situation that has been present in the past which has caused many problems throughout his life: being in an unhealthy intimate relationship. Chris recognized that during his prior release, he knew what he needed to do to live a good life and manage his risk factors. And yet, looking back on it all, he stated he was busy keeping his relationship secret and keeping up a front that everything was fine. He admitted that the reality was far from that as he said he was busy with all his triggers bouncing around in his mind and that he eventually absorbed them. He realized that it was a “gradual but quick” return to his old pattern of drugs/booze and poor support.”
- Page 9, para 4: “In the period that led to his revocation, Chris explained that he was smoking THC three weeks prior to actually taking his first drink. He stated that he got bored with pot and drinking was what he wanted to do. Chris identified what he thought: “One toke won't hurt (but I know I minimized) ... no big picture, narrow... I was off ... I'm the one taking the risk ... I hid it really well, until I was too drunk.” He admits he knew that there was no in-between period: he drinks to get drunk and stays drunk.”
- Page 9, paras 4-5: “Chris pointedly stated that the first red flag was when RM and he decided to cross the line between friendship and sex. Chris explained that their relationship was not healthy (“sick”); he claimed that RM was abusive. Chris explained that he had gone back to how he felt in the past when he thought he deserved whatever he was getting from his partners. Chris said he felt like shit, “angry that I was in a fucked-up relationship” that he didn't know how to get out of. Drinking was his choice to solve the problem. ... Chris explained that he “didn't care about where I was and where I was going... I was angry ... in a fucked-up relationship and didn't know how to deal with it, just got drunk.”
- Page 10, para 2: “Chris provided excellent effort in his class work when counter thinking his risky thought of drinking (One drink won't hurt me). His comeback is as follows: “I may get away with a drink, maybe a few times; however, in my life experiences with alcohol, I eventually will come to depend on a drink to survive the day. When that happened, consequences will inevitably happen.”

- Para 10, para 6: “Although Chris denied assaulting RM, he also has no recollection of having assaulted an older tenant (lady). However, he did share that drinking increases probability of risky behaviour. Essentially, when drunk, Chris’ risk increases for violence because instances from which he could ordinarily walk away become instances in which his sense of self-defence becomes too heightened and pre-emptive; outwardly aggressive.”

Patrice Ducharme

[33] Mr. Ducharme is a CSC Parole Officer who supervised Mr. Terriak when he was on statutory release from June 2015 - January 2016.

[34] Highlights of his testimony include:

- As W.E.D. was approaching – the CMT tries to ensure the offender is in the best possible place they can be to function in the community – employment was always a big thing, MR. Terriak was quick at obtaining employment and he did really well, mid-December he got an apartment and began the process of setting it up, he described to us that he was in the best place he had ever been in his life, things were looking good
- Mind-set re W.E.D., looking forward to it, to become a free man again and move on with his life without us chaperoning – he mentioned several times to me that he was in the best place he’d ever been in his life, he was really happy, his relationship had come to an understanding about how it was going to go
 - We always have concerns about how they’ll do without structure – my concerns with him were at ease and he seemed to be in a good space – so I wasn’t overly concerned about the W.E.D.
- He was doing really well – open, honest, transparent, Viola said he was doing well, he didn’t try to hide the difficulties with his relationship
- My last contact with him was on W.E.D. – I asked him to call me – we had a quick chat over the phone – I wished him success.
- After that, I had another very disappointing contact with him – he called me under the influence – speech slurred, asking me to help him – in my role as a PO, I no longer had authority to work with him,, but I felt compelled morally to help him anyways, I used my contacts to get him a bed at a detox in Moncton – 2-3 weeks after W.E.D.
- My understanding is that he went to the detox and he left the same day – I asked the nurse to let me know if he made his way there

Jacinthe Lavoie – 2015 - 2016

[35] Ms. Lavoie is a CSC psychologist who counselled Mr. Terriak while on statutory release from May 2012 – May 2014 and again from June 2015 to his W.E.D. in January 2016.

[36] She did not testify as she was not available for the hearing dates, but she was part of Mr. Terriak’s Case Management team (“CMT”) and her reports provide insight into his functioning while on statutory release.

[37] Highlights from her Closure of Psychological Intervention Referral – 2016/01/19 (Exhibit 4, page 003643) include:

- Page 1, para 2: “He presented as stable from a mental health perspective and has been stable overall since his return to the community.”
- Page 2, para 1: “At completion of therapy, there were no apparent and/or imminent/urgent needs for a psychological referral to an outside agency. ... he was informed that he may contact the undersigned should he need assistance in finding another mental health professional in the future...”
- Page 2, para 4: “No information was gathered to suggest any imminent concerns regarding the risk of recidivism during his last session. The case was reviewed with Mr. Patrice Ducharme assigned PO and we both agreed that he appears stable at this time.”

Engagement with Indigenous Resources at CSC

[38] Various CSC staff-members testified regarding Mr. Terriak’s involvement with indigenous-focused programs during his period of federal custody between 2005 and 2016.

[39] Institutional Parole Officer Dan Boon explained that an Aboriginal Social History is completed regarding each indigenous inmate. It is captured by one of the indigenous/Inuit elders in the institution. Mr. Terriak’s Aboriginal Healing Plan dated 2010/05/17, authored by Aboriginal Liaison Officer Gustave Joseph, is located at Exhibit 2, page 001574.

[40] Parole Officer Patrice Ducharme testified that while in custody, Mr. Terriak was in the “Pathways Unit” at West Moreland, and on the Inuit Range at Dorchester, both of which are indigenous-specific. There are sacred grounds associated with the Pathways Unit and specific ceremonies connected to aboriginal traditions.

[41] Program Officer Serge Hall testified that Mr. Terriak participated in Cultural Escorted Temporary Absences when he was at Westmoreland and explained this could have been for smudges, sweat lodges, etc. He testified that Mr. Terriak was housed on the Inuit range at Dorchester. There was reference to Mr. Terriak having trouble with one of the Elders.

[42] Mr. Ducharme testified that the Institutional CMT included an aboriginal liaison officer, whose role is to work with offenders who have an interest in working with the traditional healing and aboriginal initiatives. He testified that Mr. Terriak's community CMT in 2015 did not include Sarah Anala, an Elder who was otherwise available as part of the CMT, as Mr. Terriak was not interested in working with her.

[43] Mr. Hall testified that Mr. Terriak completed most of his core programming before the advent of the Aboriginal stream of programming. Mr. Hall explained that the same skills are taught in the ICPM-Aboriginal as in the ICPM mainstream, with the difference being the delivery of the skills, which are taught through cultural-specific teachings.

[44] The Assessment for Decision dated 2010/11/29, located at Exhibit 2, page 001962-001967, and the Healing Plan dated 2010/05/17, authored by Aboriginal Liaison Officer G. Joshua (Exhibit 2, page 001574) record that:

- Mr. Terriak's Institutional CMT included Elders G. Sanipass and Sarah Anala and Aboriginal Liaison Officers M. Saulnier and G. Joshua;
- Mr. Terriak was actively involved in the Pathways Community and participated in many aboriginal traditions and ceremonies including sweats; and
- Mr. Terriak was the Groundskeeper for the Sacred Grounds at Dorchester Penitentiary.

Criminal History

The Predicate Offence

Sexual Assault – November 29, 2016

[45] In the evening of November 28, 2016, the victim was at a drinking establishment on Spring Garden Road in Halifax, Nova Scotia. Mr. Terriak joined the table for a drink or drinks.

The victim recognized Mr. Terriak from panhandling on Spring Garden Road, but they were not known to each other beyond this familiarity and were not friends. Shortly after midnight, both men were asked to leave by the bar-staff, and the intoxicated victim started towards his home, walking east along Spring Garden Road. Mr. Terriak followed.

[46] A few blocks later, Mr. Terriak convinced the victim to go into the stairwell of a parking garage. Once there, the victim attempted to leave but was prevented from doing so by Mr. Terriak, who pushed and hit him, with Mr. Terriak ultimately performing oral sex on the victim without his consent. The victim told Mr. Terriak to stop, that he did not want to do that, and that he wanted to go home, to no avail.

[47] After several minutes, the two men left the stairwell and walked down the street together. At one point, the victim ran away from Mr. Terriak and was pushed by Mr. Terriak from behind, which resulted in the victim suffering a black eye from falling face-first into the pavement. The victim did not suffer any other injuries. The stairwell incident was partially captured on security camera, which is how the incident came to the attention of police.

[48] Mr. Terriak told the author of the Pre-Sentence Report dated June 26, 2017 that he was under the influence of mouthwash at the time of the sexual assault. At the time of this offence, Mr. Terriak was on probation, which began on November 10, 2016, the day after he was released from custody in a provincial correctional facility in New Brunswick.

Significant Offences

Break and Enter – St. John’s, NL, 1983
Offence date December 23, 1983

[49] The following is from the Provincial Case Summary dated 11/06/84, completed by Mr. Terriak’s Correctional Service of Canada (“CSC”) Parole Officer at the time, G. Vaughn Paul (Exhibit 1, pages 000286-000288), and is described as “Inmate’s Version of Offence”. Mr. Terriak was having an affair with the victim and was having mental anguish related to being a homosexual. After a sexual encounter with the victim, Mr. Terriak became extremely intoxicated. The drunker he became, the more tormented he became because of his sexual encounter. Mr. Terriak returned to the victim’s mobile home to confront the victim. The victim

was not at home and Mr. Terriak broke into the home and "... went on a rampage and ransacked the whole trailer."

Sexual assault - St. John's, NL, 1986

Sentencing date: October 23, 1986

[50] After a night of drinking alcohol, in the early morning on July 20, 1986, Mr. Terriak sexually assaulted his roommate, attacking him while asleep at their apartment in St. John's, Newfoundland. Mr. Terriak straddled the naked victim while holding a knife to his throat and masturbated the victim. Mr. Terriak also attempted to force oral sex on the victim while holding the knife to the victim's throat – the victim refused. The victim reported that Mr. Terriak was "raging" and was under the influence of alcohol. Mr. Terriak then rubbed his penis against the victim's body until he ejaculated on the victim.

Assault with a weapon - St. John's, NL, 1986

Sentencing date: October 23, 1986

[51] On that same early morning on July 20, 1986, Mr. Terriak assaulted his other roommate at their apartment in St. John's, Newfoundland, after a night of drinking alcohol. Prior to assaulting the victim, Mr. Terriak got into an argument with another associate, who was asked to leave the apartment. Mr. Terriak then turned on the victim, brandishing a bread knife described as 7-8 inches long, and grabbing the victim by the throat and squeezing, as well as holding the knife to the victim's throat and ordering him to lie face down on the bed.

Mischief – Belleisle, NS 1995

Sentencing date September 11, 1995

[52] In his sentencing decision related to the mischief charge, Judge Sherar comments, "He [Mr. Terriak] was involved in '92 and '93 with further alcohol related matters and says before the Court today, that due to a relationship breakdown and presumably the abuse of substance, he has involved himself in these three serious matters" (Exhibit 1, page 000839).

[53] In the CSC Criminal Profile Report dated 1995/12/01, the following is found at page 000843 (Exhibit 1):

On 1995.07.20, the local police received a call from Chris's housemate, Mr. [blacked out]. He reported that Chris was damaging the inside of his residence.

The two had been in a common law relationship and on the date in question, Chris had been drinking. When Mr. (blacked out) came down in the morning, Chris for some unexplained reason, started throwing all the furniture around, smashing it on the floor and throwing other items down the stairs. ...

... Mr. [blacked out], who is over 70 years of age, is reported to be quite feeble and from the last conversation police had with him, on 1997.10.05, he was still quite shaken from the ordeal he had in July. It is reported he now refuses to stay in his home, at night, by himself.

Assault - Halifax, NS, 2001

Sentencing date: June 11, 2001

[54] On June 10, 2001, Mr. Terriak was caught stealing mouthwash from a Shoppers Drug Mart store located on Spring Garden Road, Halifax, Nova Scotia, and guzzled it in the security officer's office while awaiting the arrival of police. When told to stop kicking the desk, he twice spat on the security officer. While being escorted out of the store by police, Mr. Terriak spat on another store employee. At the time of these offences, Mr. Terriak was bound by an Undertaking and was on probation.

Uttering Threats and Possession of a weapon - Halifax, NS, 2001

Sentencing date: August 19, 2002

[55] On June 4, 2001, Mr. Terriak went to the bottle exchange on Mitchell Street with a hatchet and threatened the victim, saying that he was going to split his head open with the hatchet. The victim retreated into the building and Mr. Terriak was apprehended by the police on scene, with hatchet in hand. Police noted that a stale odour of alcohol emanated from Mr. Terriak and that, when asked, he stated that he had just started drinking. At the time of these offences, Mr. Terriak was bound by an Undertaking and a Probation Order.

Manslaughter – Halifax, NS, 2000

Sentencing date: January 20, 2005

[56] In mid-November 2000, Mr. Terriak and Everett Turner were drinking at Mr. Turner's room in a rooming house at 1056 Barrington Street, Halifax, Nova Scotia. The two men were drinking buddies and lovers. They heard Joseph Murphy outside in the alley and invited him up to drink with them. All three men were intoxicated and drinking Listerine. A fight broke out between Mr. Terriak and Mr. Murphy and Mr. Turner hit Mr. Murphy over the head with a table

leg. Mr. Murphy got on top of Mr. Turner and Mr. Terriak wrapped a cord around Mr. Murphy's neck. Together, Mr. Terriak and Mr. Turner pulled on the cord around Mr. Murphy's neck until he was no longer breathing. Mr. Terriak and Mr. Turner left Mr. Murphy's body in the room for two days, then concealed it with bedcovers and garbage bags and dumped it near the train tracks at the south-end of Barrington Street. The body was discovered approximately a week later. On December 4, 2003, Reverend Gus Pendleton went to police with the tape recording of a conversation he had with Mr. Terriak in late 2002. In that conversation, Mr. Terriak admitted to Reverend Pendleton his role in the Murphy homicide.

Attempted Murder – Halifax, NS, 2003
Sentencing date: January 20, 2005

[57] Overnight on December 3, 2003 and into December 4, 2003, Mr. Terriak was drinking alcohol with Thomas Baker at a rooming house located at 2146 Gottingen Street, Halifax, Nova Scotia. Mr. Terriak had been drinking heavily throughout the day. An argument developed between Mr. Terriak and Mr. Baker wherein Mr. Terriak punched Mr. Baker in the face, knocking him down. As Mr. Baker lay on the floor, Mr. Terriak kicked and stomped on Mr. Baker in the head, stomach and groin area. Periodically Mr. Baker would moan and Mr. Terriak would kick him in the head area.

[58] At some point in the early morning hours of December 4, 2003, witnesses observed Mr. Terriak calling Mr. Baker a "rat" and suggesting this is what happens to somebody who gives a statement to police against him. A witness observed an argument between Mr. Terriak and one of his other drinking buddies about whether Mr. Baker should be killed or not, with the friend saying no and Mr. Terriak saying yes. Mr. Terriak went into the kitchen and returned with a knife, saying he was going to finish Mr. Baker off but was convinced not to by the other man.

[59] Following this incident, Mr. Baker was in hospital for 11 days with a tear to his bowel and his spleen and sinus fractures to the face. On December 4, 2003, upon learning that Mr. Baker had been seriously beaten by Mr. Terriak, Reverend Gus Pendleton went to police with the tape recording of a conversation he had with Mr. Terriak in late 2002. In that conversation, Mr. Terriak admitted to Reverend Pendleton that he had heard that Mr. Baker had "ratted" him out by giving a statement to the police about about Mr. Terriak and the Murphy homicide. Mr. Terriak

has admitted that his motive for assaulting Mr. Baker was that Mr. Baker had gone to the police in October 2002 and given a statement about the role that Mr. Terriak played in the death of Joseph Murphy. At the time of this offence, Mr. Terriak was on probation and bound by a Recognizance.

Threats - Moncton, NB, 2016

Sentencing date: September 1, 2016

[60] On August 6, 2016, Mr. Terriak was apprehended stealing from Sobeys in Moncton, New Brunswick. He threatened the store security guard and police officers and repeatedly made threats regarding the security guard and the guard's family. Police noted that Mr. Terriak was heavily intoxicated, with a heavy smell of mouthwash coming from his breath.

Sexual Assault – Halifax, NS, 2016

Conviction: May 12, 2017

[61] The facts underlying this offence are outlined in the previous section titled, "Predicate Offence".

Administration of Justice Offences

[62] Most of Mr. Terriak's convictions for offences related to the administration of justice relate to breaching or failing to comply with the condition to "not be intoxicated in a public place".

Breach of Probation – section 733.1(1) – x 17

Breach of Undertaking/Recognizance/At large – section 145(3) – x 9

Recent Offence History

[63] The following offences were committed in Moncton, New Brunswick shortly after Mr. Terriak's warrant expiry date ("W.E.D.") on January 19, 2016:

- April 30, 2016 - section 463(d)(i) - attempt to steal a bicycle;
 - sentenced on June 24, 2016 to 30 days custody
- May 30, 2016 – section 334(b) – theft of bottle of Listerine from Superstore;

- sentenced on June 24, 2016 to 15 days custody
- June 7, 2016 – section 129(a)(e) – police were called because Mr. Terriak was intoxicated and wanting to fight his neighbours; gave false name to police; held overnight until sober;
 - sentenced on June 24, 2016 to 15 days custody (concurrent to the previous sentence of 15 days)
- June 16, 2016 – section 334(b) – theft of various items, including a bottle of Listerine; police noted that he did not appear to be intoxicated, but had a heavy smell of mouthwash coming from his breath;
 - sentenced on June 24, 2016 to 15 days custody

[64] Mr. Terriak was sentenced to provincial jail time on June 24, 2016, and released on August 2, 2016. Within days of his release, he was abusing alcohol and offending:

August 6, 2016 – section 334(b); section 264.1(1)(a) – theft from Sobeys; repeated threats to store security guard and police officers; police noted that he was heavily intoxicated, with a heavy smell of mouthwash coming from his breath; had to be removed from holding cell almost immediately upon arrival at police station as was found holding another inmate down on his bed by sitting on that inmate's head;

- sentenced on September 1, 2016 to 2 months and 22 days custody plus 12 months of probation for each charge, to be served concurrently;

[65] The sentencing transcript records the following commentary from Mr. Terriak, at page 12:

ACCUSED: And although I don't remember it the probability of that happening is high because of my track record and I regret that because I, I know the severity of that kind of thing particularly – manslaughter charge I've been convicted of – you know I never thought I'd put myself in that kind of scenario or situation where I would threaten somebody's life or hurt somebody again and ah, my life seems to have spiralled downhill very quickly you know and I seemed to have lost control of my life all of a sudden. So, I have to deal with the regret and the remorse of that and I've been doing that since I've been in.

[66] August 9, 2016 – section 177; section 145(3) – arrested shortly after midnight on August 9, had entered through a gate into a private backyard, opened a closed shed, breached Undertaking to keep the peace and be of good behaviour;

- had been released on the Undertaking earlier that day on August 8;
- sentenced on September 1, 2016 to 22 days custody plus 12 months' probation for each charge, to be served concurrently.

BEHAVIOUR WHILE IN CUSTODY AND ON SUPERVISION**1985**

[67] On February 12, 1985, Mr. Terriak was released on day parole in St. John's, Newfoundland, with a residency requirement of living at a halfway house. One of his special conditions was to abstain from all intoxicants. On April 17, 1985, Mr. Terriak called his Parole Officer to inform her that he had been drinking the night before. Upon investigation, the Parole Officer learned from the halfway house that Mr. Terriak had been drinking every day for the past week. Mr. Terriak's day parole was suspended, the suspension was cancelled a few days later, and on April 23, 1985 he was re-released to the halfway house (Exhibit 1, pages 000201-000202).

[68] On May 4, 1985, Mr. Terriak was given a weekend pass. He returned to the halfway house at 4:30 in the morning, intoxicated. He was suspended for a breach of his special condition to abstain from intoxicants (Exhibit 1, pages 000540-000541) but the suspension was cancelled, and he was re-released to a different halfway house.

1989

[69] The CSC Special Report dated 89/03/15 (Exhibit 1, pages 000752-000754) records that Mr. Terriak was serving 4 years for sexual assault and assault with a weapon. He was released on day parole to Carleton Center CCC on January 18, 1989, with special conditions including to abstain from all intoxicants. The writer records that Mr. Terriak was suspended for failing to return to the Carleton Center for his curfew on March 3, 1989, and ultimately did not return until the following afternoon. He admitted drinking alcohol the night before to the point of blackout. CSC recommended to the National Parole Board ("NPB") that his day parole be terminated and the NPB did ultimately revoke his release.

[70] The CSC Special Report dated 89/08/18 (Exhibit 1, pages 000665-000666) records that Mr. Terriak was released on mandatory supervision ("M.S.") on June 29, 1989. On August 11, 1989, he threatened to commit suicide by jumping off the Halifax-Dartmouth bridge. He was intoxicated at the time. His parole was not suspended, and his supervision was then transferred to CSC Kentville as Mr. Terriak wanted to live in Wolfville with his partner.

1990

[71] The CSC Special Report dated 1990/07/04 (Exhibit 1, pages 000584- 000586) records that on March 26, 1990, CSC was advised by the Wolfville police that Mr. Terriak had been drinking on March 23, 1990. His release was not suspended.

[72] The CSC Special Report dated 1990/06/15 (Exhibit 1, pages 000599-000600) records that on June 9, 1990, Mr. Terriak was picked up by police for being intoxicated in a public place. Mr. Terriak reported that he spontaneously went to Halifax and started drinking. He happened to run into a former lover and got into a physical fight with that man. Again, he was not suspended.

[73] On June 26, 1990, Mr. Terriak's release was suspended because of a perceived increase in risk after a heated argument with his partner. This suspension was lifted on July 4, 1990.

1997

[74] The CSC Special Report dated 1997/05/29 (Exhibit 1, pages 001027-001032) records that Mr. Terriak was serving a 2-year sentence and had been released on full parole on June 23, 1996. On May 16, 1997, Mr. Terriak's release was suspended for breach of the special condition to abstain from the use of alcohol. The Report records that in the post-suspension interview, Mr. Terriak explained that he had received his first paycheque on May 15. This led to him going into a lounge to play a VLT, followed by drinking at a succession of bars, buying a 24 of beer at the NSLC and drinking, smoking marijuana and crack with acquaintances. An argument ensued and the police were called, leading to Mr. Terriak's arrest for public intoxication. His suspension was ultimately cancelled, and Mr. Terriak was re-released but this time to a halfway house instead of to his own apartment.

2009

[75] In 2009, Mr. Terriak was subject to an "involuntary transfer" from the minimum-security institution at Westmoreland to medium security at Dorchester Penitentiary. This was because he had become involved in the introduction of illicit drugs to Westmoreland. In the Referral Decision Sheet dated 2009/11/02 (Exhibit 2, page 001593), the Manager Assessment Intervention Comment reads:

Preventative security information implicates Terriak in the introduction and consumption of drugs while in a minimum-security environment. It is therefore

felt he requires a more structured environment than what can be offered at Westmoreland Institution. It is recommended that this involuntary transfer be approved.

[76] It is telling that this incident happened not long after Mr. Terriak had successfully completed the CSC National Substance Abuse Maintenance Program, as evidenced by the Program Performance Report (Final) dated 2009/04/06 (Exhibit 2, pages 001962-001694). In that Report, at page 001963, the author writes:

Mr. Terriak feels he is in the “maintenance” Stage of Change. He indicated: “Once I’ve been sentenced, I made the decision that I wasn’t going to drink again. However, I was still smoking marijuana on occasion. During the course of the NSAP Program, I’ve come to the understanding that I was substituting my drug of choice. As a result, I’ve given up using any and all intoxicants. Since that decision I find it easier and easier to get used to the idea that I am a drug free person”.

2014

[77] The circumstances of Mr. Terriak’s suspension, cancellation, subsequent suspension and then revocation are amply covered within this brief and the accompanying transcript of the hearing.

DIFFICULTIES WITH INTERPERSONAL RELATIONSHIPS

[78] There are numerous references to Mr. Terriak’s difficulties with emotional regulation throughout the CSC documents. The following is a sampling.

1987

[79] In the Psychological Report dated 87.12.03 by psychotherapist Jean DeGrave (Exhibit 1, pages 00435-00437), the author writes under Recommendations and Conclusions:

Diagnostically speaking, KARPIK is a borderline personality disorder with the following outstanding behavioral problems:

1. Intense and unstable interpersonal relationships
2. Inappropriate intense anger
3. Impulsiveness
4. Physically self-damaging actions
5. Chronic feelings of emptiness or boredom and difficulty tolerating being alone
6. Alcohol addiction

1988

[80] In the Psychological Report dated 88.04.28 by psychotherapist Jean DeGrace (Exhibit 1, page 000415), the author writes:

... he suffers from a personality disorder aside from his homosexuality. This disorder manifests itself essentially in maladaptive interpersonal coping skills which eventually restrict him in learning new coping skills. ...

1989

[81] In the Special Report dated March 15, 1989 by Paul G. Veino, Case Management Officer, the author writes (Exhibit 1, page 000754):

Mr. Karpik seems to be having difficulties with a variety of emotional problems. There seem to be many factors revolving around his childhood and adult life which he has yet to come to terms with. The writer is of the impression that Mr. Karpik is in definite need of some intensive counselling for these difficulties. Another area of instability seems to be the issue of relationships. The subject has some serious deficits in his ability to manage a relationship on any other level besides sexual which has created turmoil for him time and time again.

1995

[82] In the Intake Assessment dated 1995/12/01, Stan Hunter, Case Management Officer, writes (Exhibit 1, page 00851):

With the present offences there has been a reduction in the seriousness of offences being committed by the subject. The present offences are similar in that they were committed while Chris was under the influence of alcohol. There was a period of emotional instability prior to his return to drinking.

[83] In the same Intake Assessment, the author writes (Exhibit 1, page 00856):

Although he has been in the community for a number of years and has dealt with most of his identified problem areas Chris still has some issues to clear up in the areas of emotional stability and substance abuse. When things get him down in the community it would appear that Chris, if he has no-one to talk to, will start to drink. This leads to further complications and eventually circumstances like those in which he is presently found. ...

1996

[84] In a Casework Record dated June 26, 1996 (Exhibit 1, page 001117), Mike Kilburn writes:

... current offences are similar in nature with regard to their underlying triggers, that being emotional instability and substance abuse on his part. ...

[85] In the Activity Note dated 1996/09/12 (Exhibit 1, page 001095), author Susan Leadbetter writes:

The NPB has labeled risk factors as: substance abuse, employment, personal orientation and emotional stability.

1997

[86] In a Correctional Plan dated 1997/07/30, Sherry Jackson-Smith, Case Management Officer, writes (Exhibit 1, page 000942):

PERSONAL/EMOTIONAL ORIENTATION

It is felt that Chris needs help to deal with the issues surrounding relationships. He needs to learn that his needs are as important as the needs of others. If he does not do this it is felt he will end up in the same situation he was in during his last relationship. Chris ends up in relationships involving much older men, and as a result it becomes necessary for him to spend a lot of his time looking after them. This helped contribute to his feelings of being trapped, a return to drinking, and the eventual commission of the present offences.

2005

[87] In her Psychological Assessment Report dated 2005/03/22, Psychologist Josee Gilbert writes (Exhibit 2, page 001518):

Individuals with this type of profile usually have difficulty in their interpersonal relationships. They may be very impulsive and easily frustrated.

[88] She further writes at page 001523:

... his ability to deal with emotions and his capacity to internalize them appropriately is something he needs to work on.

2008

[89] In the Interim Program Performance Report, National Moderate Intensity Sex Offender Program dated 2008/11/03, Psychologist Regis Losier writes that “emotional management will be an issue in the future for Mr. Terriak” (Exhibit 2, page 001709).

2010

[90] In the Correctional Plan dated 2010/05/17, Gustave Joseph, Aboriginal Liaison Officer, writes (Exhibit 2, pages 001572-001573):

Personal/Emotional Orientation

Mr. Terriak has been assessed as requiring a referral to the Anger and Emotions Management Program. He has a problem dealing with his emotions especially when he is under the influence of alcohol and is feeling angry. He will learn skills that will help him to deal with these emotions in a more pro-social manner.

2012

[91] In the Assessment for Decision Report dated 2012/04/10, Parole Officer Dave Garrett writes (Exhibit 2, page 001842):

As noted throughout this report Mr. Terriak needs to demonstrate a sustained ability to abstain from alcohol and drugs while in the community, and to avoid persons that live an unstable lifestyle. Supervision will also need to monitor his male associates and relationships to ensure he is managing his emotions positively.

[92] In the National Parole Board Decision Sheet dated 2012/05/16, the NPB writes that “Emotional issues, unhealthy relationships and substance abuse are factors/stressors that could lead you to reoffend in the community.”

2014

[93] In the Psychological Assessment Report dated 2014/06/11, psychologist Jacinthe Lavoie writes (Exhibit 4, page 003721):

... although Mr. Terriak appeared to have developed a number of skills and resources, there seems to be a propensity to regress to more inadequate skills seemingly when faced with significant stress and/or conflicts particularly in the context of interpersonal relationships...

... The area of interpersonal relationships will require further attention and efforts on Mr. Terriak 's part to be more transparent about his relationship/friendship involvements and any struggles he may be experiencing in this matter. ...

[94] In the Psychological Services Clinical Progress Note dated 2014-05-06, psychologist Josee Gilbert writes (Exhibit 4, page 003734):

... We are concerned that his recent relapse into substance use and interpersonal relationship problems are very similar dynamics to the ones that were present during his offending. ...

2015

[95] In the Correctional Plan dated 2015/03/10 (Exhibit 3, page 002249), Dan Boon, Parole Officer, writes:

It is also felt that TERRIAK needs to continue working on his ability to deal with his emotions appropriately. This is particularly true when he is in an interpersonal relationship with conflicts. As per file information, the area of interpersonal relationships has been repeatedly mentioned as problematic for TERRIAK. The previous dysfunctional friendship with his friend R.M. has dissolved according to the Subject. He has stated that he wants to focus on himself during this release and not involve himself with negative influences.

[96] In the Assessment for Decision dated 2015/03/10, Jim Russon, Parole Officer Supervisor, writes (Exhibit 3, page 002480):

Personal/emotional orientation is identified as a contributing factor requiring a moderate level of intervention. File information indicates the subject suffers from a number of deficits in this area including anger and emotions management, aggression, impulsivity, low frustration tolerance and poor consequential thinking. ...

[97] In the same Assessment for Decision dated 2015/03/10, the author writes (Exhibit 3, page 002481):

Mr. Terriak has participated in several educational programs during his current sentence and reports indicate favourable results. These include NSAP high intensity, the sex offender program moderate intensity, the Violence Prevention Program, and their respective institutional and community maintenance programs. The SOP report by psychologist Regis Losier (08-12-10) notes subject is especially sensitive and prone to interpersonal difficulties. He has difficulty managing emotions adequately when in a conflicting interpersonal relationship which was evident during his last release. Mr. Terriak has shown some stability, however his return to substance abuse and alleged violent behavior demonstrates that he continues to present with an elevated risk, post program. (emphasis added)

Similarly, Mr. Hall testified that Mr. Terriak's emotionality is amplified when he drinks and that when he drinks, things become more volatile.

Gladue Factors

- Chris is an Inuit man who lived in relocated community, heavily shaped by a colonial past in which non-Inuit administrators set the moral, civic, and legal
- He has experience in trans-generational trauma of community relocation and dislocation from Inuit Culture
- He has suffered extreme physical, emotional and sexual abuse, neglect
- Racism
- Alienation
- Loss of identity, culture, and ancestral knowledge
- Isolation
- Family breakdown
- Systematic, Cultural and Environmental Racism

Gladue Report Excerpt

It is difficult to reconcile the engaging, friendly and intelligent man I met with the criminal record he has accumulated. Chris doesn't consider himself an angry person when he is sober and he appears warm hearted and animated, gifted conversationalist and man with a keen intellect. Chris has continued, despite his limited circumstances, to foster a growth mindset. He completed a GED and began some course work at Acadia University in the early 1990's, with the assistance of a local clergyman. He singlehandedly took on the role of organizing a library during a prison sentence in New Brunswick. When he stated the library, he had bags and bags of books in a room with no classification or organization. Within a short period of time, Chris had begun to read parts of these books so he could accurately classify them and began the task of building a library, to the praise of prison staff and inmates.

Chris says he is happiest in serving others and during periods of sobriety, he has continued to find ways to help other people while pushing himself out of his comfort zone to do things that were never imaginable to him as a child who ran away and slept in people's sheds to be a peace:

"I know the happiest I have been as an adult has been any time I'm helping other people. One time, I got sober for eight months and started working the AA lines. My Mom got sober as a result of that, that was the happiest I've ever been. In Moncton, I joined the Toastmasters so I could learn how to speak in public. I volunteered for Habitat for Humanity."

Presentence Report

[98] The presentence report dated June 18, 2017 contains the following two paragraphs:

In preparation of the Pre-sentence Report, contact was established with Jolene Dominix, Case Management Officer with Central Nova Scotia Correctional Facility. Ms. Dominix advised she has only met with the offender on one occasion and stated he was both polite and respectful. The source advised the subject works on the unit in the laundry department. Ms. Dominix informed he is not involved in any programming to date; however he expressed an interest to attend. The contact reported no incident levels during his current remand at the Correctional Facility.

In preparation of the Pre-sentence Report, this writer spoke with Dawn Callaghan, Case Management Officer with Central Nova Scotia Correctional Facility. The contact advised the offender was more than willing to participate in programming while in custody, however through no fault of his own, he was unable to attend due to lack of availability. The source did also mention Mr. Terriak expressed a desire to attend for psychological counselling to address issues pertaining to his childhood. Ms. Callaghan confirmed the subject was an on unit cleaner in the day room and described him as “pretty quiet.”

Dr. Lohrasbe’s Report

[99] Dr. Lohrasbe came before the court with an impressive resume. His knowledge and experience are evident in both his oral testimony and his report. He clearly sets out the factual basis for his opinion. I have no concern with the factual foundation on which his testimony and report are based. His opinion follows:

I. PSYCHIATRIC DIAGNOSES

a. Substance Use Disorder (most significantly, Alcohol Use Disorder)

It is readily apparent that substance abuse has had a persistently harmful impact on Mr. Terriak’s life and has been closely associated with his criminal and violent behaviours. Noteworthy features of his substance abuse include early onset, severity (mouthwash abuse typically marks ‘the bottom’ of descent into alcoholism), consistent ability to maintain sobriety while incarcerated, and rapid return to substance abuse when no longer under supervision.

Alcohol (or street drugs) do not by themselves create violence in some disembodied manner. Consumption of alcohol and drugs widespread in our

society, in contrast to most forms of serious violence. Nevertheless, substance abuse has an omnipresent association with interpersonal violence seen in clinical practice and in our society in general. There are three broad ways in which alcohol (and drugs) influence violence. The first is *physiological* via direct impact on mental functioning during intoxication or withdrawal; substance abuse impairs impulse control, can lead to paranoid or fearful interpretations, and heightens emotional reactivity, all of which may lead to violence. This is especially so in individuals prone to mental instability, including those with the volatility of mood associated with several personality disorders. The second is thorough *economic* needs, where panicky cravings for more alcohol or drugs leads to property crimes, with its associated potential for instrumental violence. The third is through the *drug subculture*, with its gangs and ‘turf wars’ directly linked with many acts of serious violence. The first two links between substance abuse and violence appear to be relevant to Mr. Terriak.

b. Personality disorders

The diagnoses of both Borderline Personality Disorder and Antisocial Personality Disorder have been applied in the past to Mr. Terriak, in my view appropriately so. The more flamboyant features of both these disorders appear to have lessened with age.

Antisocial Personality Disorder (APD) is primarily a behavioural diagnosis applied to individuals who show a pervasive pattern of disregard for and violation of the rights of others, with a behavioral pattern of repeated lawbreaking, irritability, aggressiveness, recklessness, impulsivity, deceitfulness, irresponsibility, and a lack of remorse. APD is common in prison populations, and often co-exists with substance abuse disorders. Adverse influences (biogenetic, socioeconomic and sociocultural) are etiologically relevant to the onset and persistence of APD. Mr. Terriak criminal history is extremely varied, including a mix of property offenses, violent offenses, sexual offenses, and failure to comply offenses, stretching between 1982 and 2016. Such a history is in keeping with the fact that people with APD are rarely ‘specialists’ in their criminal behaviours.

The ubiquity of APD in offender populations makes the diagnosis of limited value. More relevant to risk assessment is the concept (although not a formal diagnosis) of Psychopathic Personality Disorder, also known as Psychopathy. As noted in the file review Dr. Gilbert had applied the standard tool for ‘measuring’ psychopathy known as the Psychopathy Checklist, Revised Edition (PCL-R), a widely used measure for the personality construct of psychopathy, and concluded that Mr. Terriak did not meet the criteria for a diagnosis of psychopathy. I agree. Psychopathy is a complicated concept, and its distinction from APD can be difficult. While Mr. Terriak has a history of an Antisocial Personality Disorder, he does not have the lack of empathy and remorse that is at the core of the concept psychopathic personality disorder, and demarcates those with psychopathy from the much larger group who have APD. In sum, while it is likely that Mr. Terriak

had a few psychopathic traits as a younger man, at present he is not especially psychopathic.

Borderline Personality Disorder (BPD) is a frequently overlooked diagnosis in the offender population. As Borderline Personality Disorder may perhaps not be familiar to the Court, some elaboration may be helpful. In the current edition of the Diagnostic and Statistical Manual of mental disorders DSM 5, BPD is diagnosed when there has been:

A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

- 1. Frantic efforts to avoid the real or imagined abandonment.*
- 2. A pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation.*
- 3. Identity disturbance: markedly and persistently unstable image or sense of self.*
- 4. Impulsivity in at least two areas that are potentially self-damaging (example, spending, sex, substance abuse, reckless driving, binge eating).*
- 5. Recurrent suicidal behavior, gestures, or threats, or self-mutilating behavior.*
- 6. Affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days).*
- 7. Chronic feelings of emptiness.*
- 8. Inappropriate, intense anger or difficulty controlling anger (e.g. frequent displays of temper, constant anger, recurrent physical fights).*
- 9. Transient, stress related paranoid ideation or severe dissociative symptoms.*

Mr. Terriak's history indicates that many of the features of BPD have manifested over the years and have gradually declined. Nevertheless, in my view the ongoing manifestations of BPD, even in muted intensity, remain relevant to his risk and its management (discussed further below).

c. Sexual deviancy vs. sexual aggression

Sexual deviancies (also termed Paraphilias) can be broadly divided into two categories: abnormal targets and abnormal activities. In the former grouping, the foci of sexual thoughts, fantasies and urges are targets other than sexually mature humans (e.g. Pedophilia); in the latter, the foci of sexual thoughts, fantasies, and urges are activities that are highly atypical (e.g., Sexual Sadism).

Although some clinicians and researchers regard men who are repeatedly sexually aggressive as sexually deviant ('coercive paraphilia', 'biastophilia'), at present the psychiatric consensus is that such behaviour does not constitute a clearly defined sexual deviancy.

Hence, despite Mr. Terriak's convictions for sexual offenses in 1986 and 2016, he cannot be diagnosed with any sexual deviance.

II. RISK ASSESSMENT

i. Limitations

At the outset of this section it is important that I draw attention to two important caveats to this risk assessment.

Firstly, Mr. Terriak's history of violent offenses is an unusual one. His non-sexual offenses have included a homicide and an attempt murder. There have been accusations but no convictions for intimate partner violence. His sexual offenses have occurred some three decades apart, a rare occurrence among sex offenders, even considering his decade of continuous incarceration.

The victims of his sexual assaults have been adult males, a fact that (besides being unique in my 33 years of clinical experience) puts him firmly outside the broad research database of sex offenders. Overwhelmingly, victims of sexual assault are adult females and children. As far as I know, there is no research and no risk assessment instrument that specifically addresses sexual offenders who target adult males.

Simply put, Mr. Terriak is an outlier, a fact that places limits to the confidence one can have about the validity of risk assessment. To reiterate, the database of our knowledge on risk-related issues is derived from vast numbers of offenders who have committed more typical kinds of violent and sexual offenses and have more typical patterns of offending. What may be true for that group (the subjects of systematic research) may not be valid with Mr. Terriak. Confident psychiatric opinions can be offered when insights about a man and his actions have a close 'fit' with scientific knowledge derived from group data and clinical experience. This principle was expressed in a famous aphorism: *Every person is in certain respects like all other people, like some other people, and like no other person.* Science is most helpful when, on the particular issue being considered, the assessee is 'like all other people', far less so when he is 'like no other person'.

Another caution results from Mr. Terriak's rejection of the findings of the Court that his actions amounted to sexual assault. Ideally, a risk assessment 'deconstructs' the acute and chronic contributors toward violence, sometimes described as a 'crime cycle'. Isolating the elements that preceded and precipitated violence, including sexual violence, allows for close examination of what may

perpetuate violence in the future. When an offender's version of a violent incident is at odds with the facts as found by a Court, there is an unavoidable gap in understanding, and hence in the confidence of risk assessment.

Notwithstanding these limitations, Mr. Terriak's history provides ample information regarding the presence of risk factors relevant to his sexual and general violence.

ii. Risk Factors

All approaches to risk assessment are based on identifying risk factors and if possible elaborating on their relevance to the case at hand. A risk factor is a thing (condition, habit, characteristic, event, etc.) that is associated with the occurrence of violence, and may play an etiological role. Causation can rarely be directly demonstrated; more often, risk factors are correlated or associated with violence and are hence seen as at least indirectly contributive to violence.

Such factors fall into four broad categories:

Historical factors, such as adverse childhood developmental events, prior criminal and violent behaviours, and prior responses to treatment and supervision. These are static factors that are unchangeable, and are the baseline for the assessment.

With Mr. Terriak: Historical risk factors are emphatically present. His childhood was marked by the absence of his biological parents, parental substance abuse, and violence both witnessed and endured. He felt rejected and unloved by his adopted parents, and was often truant. The intertwining of his own substance abuse and petty criminal behaviours was established early and has endured to the present. His offenses have since spanned the range of severity. Static factors are central to risk assessment and are given outsized 'weight' in all risk assessments instruments, since decades of research has demonstrated their enduring prognostic power.

Dispositional factors, primarily linked to personality characteristics especially antisocial and psychopathic traits; the person's temperament is such that violence is made more likely. These are dynamic but stable personal factors that tend to evolve slowly with maturity, but more rapidly if the offender is motivated to change and has support and direction to sustain that motivation over extended periods.

With Mr. Terriak: Dispositional factors are clearly present. He has long standing Antisocial and Borderline personality dysfunction.

Contextual factors, such as intimate relationships, peer groups, employment, and subcultural social networks. These are dynamic situational influences that are

amenable to change from personal efforts and choices, as well as through guidance, direction, and supervision.

With Mr. Terriak: Contextual factors are also of high relevance. He has an established history of living on the margins of society, and associating with others who are themselves alienated from the mainstream. In such circles, criminality and violent behavior can be ‘normalized’. While he has shown potential for being a reliable worker, his employment history is limited, with only one job lasting more than a year. While he has had many intimate relationships, many have been marked by instability.

Clinical factors, acute and immediate, that may be related to violence, such as symptoms and dysfunctions related to abnormal mental functioning, substance abuse, and conflicted interpersonal functioning in the community. These are dynamic, acute factors that are especially amenable to intervention by clinicians if the individual is carefully supervised.

With Mr. Terriak: Clinical factors are also relevant to his acts of violence. Most obvious is acute substance abuse. At the immediate or acute level, extreme intoxication can disinhibit preexisting or reactive anger. Conflicted interpersonal functioning also appears to be an important risk factor. Among those who live marginal or antisocial lifestyles, substance abuse tends to go along with risk-enhancing relationships and situations.

Hence, Mr. Terriak has a history replete with the presence of a diverse range of risk factors from each of the broad groupings. The implication is that Mr. Terriak has to be mindful of the ongoing influence of his history, his character, his setting, and his current mental state at all times (self-awareness; the monitoring of internal and external reality). He can have no leeway for the lapses common to all people. This is an onerous task for most people, more so for Mr. Terriak. As is common with those who have a background of childhood trauma Mr. Terriak did not enter adulthood with ‘normal’ or average skills in self-awareness and self-control.

iii. Self- regulation (self-awareness and self-control)

Over the past two or three decades there has been an enormous growth of interest in self-regulation and its relationship to violence. Self-awareness has been identified as the critical variable that determines whether behavior is influenced primarily by the situation or by the internal strivings of the person. When people are self-aware and consciously thinking about themselves (thoughts, feelings, speech, behaviours) they are more strongly influenced by their personal standards and goals. When they are not self-aware, they can react automatically, mindlessly, and habitually and are prone to act in unreflective reaction to situational pressures.

Research has outlined at least four necessary ingredients for successful self-control, particularly when a person is under stress. To assert self-control in such a situation, the person must: be self-aware and adequately monitor himself; have clear goals; mentally transcend the immediate situation to imagine the long-term consequences of words and actions; and have sufficient self-control strength (the latter also termed 'willpower', firmness of will, or self-discipline) at that particular time to override transient impulses that may be harmful to their long-term wellbeing.

If any of these elements are weak or missing, people will be unlikely to control themselves as effectively as they may sincerely desire when they are 'at their best'. These four requirements are mental skills, the basics of which are learned early in life among those raised in 'normal' circumstances. Fully developed, such skills are intuitive and automatic and require little effort in most circumstances. A tragic irony is that traumatized children – the very group overrepresented in our jails and prisons – are those that are least skilled yet most require self-regulation.

With Mr. Terriak, intoxication has long been the most obvious acute factor undermining self-awareness and hence self-control. This is true for all people, but for most people lapses in self-awareness and self-control do not lead to violence, much less severe violence. Hence, going forward, Mr. Terriak's self-regulation will need to be total and continuous, which will in turn require absolute abstinence from intoxicants.

While intoxication may be the proximate factor undermining self-awareness and hence self-control, the analysis of his lapses in self-regulation does not end there but is 'pushed-back' one step: What contributed toward the urge to intoxicate himself in a man who had been sober for a decade? There is no one answer but the significant influences prompting his lapses have long been the outlined by numerous assessors: restlessness, intolerance of boredom, loneliness and search for companions and partners, and poor coping with the stressors of life are among those relevant to Mr. Terriak.

There are two additional concerns with Mr. Terriak. One is his acknowledged attraction to the 'street life'. At first glance this can seem inexplicable, but his history is revealing. Having endured an unstable and traumatic childhood when he was deprived of healthy levels of affection, attention, and guidance, Mr. Terriak did not 'grow into' an adult for whom the taking and exercising of responsibility was an aspiration or gratifying, meaningful even when not pleasurable. Unlike a person from a non-traumatic background, he did not enter adulthood comfortable with responsibility, which demands self-regulation, itself neither intuitive nor effortless for Mr. Terriak. Hence in the future he to be 'on guard' against his intuitive self in every and all circumstances. This is very demanding even for those with excellent self-regulatory skills and hence it is no surprise therefore that for Mr. Terriak the 'relief' of street life, with none of the demands of everyday society, can be compelling. Unfortunately, street life is inextricably linked to enhanced risk.

The second and overlapping concern is institutionalization, a word that encapsulates a range of interrelated and undesirable psychosocial outcomes of lengthy stays in correctional facilities. Successful adaptation to life in a prison steadily accumulates habits of mind that undermine thinking for oneself, decision-making, and responsibility, all key aspects of self-regulation. Over time many offenders adjust their ‘comfort level’ to the structure and routine imposed on them. The lack of decision-making and lack of responsibility in managing everyday affairs in everyday life for an offender within institutions steadily erodes the skill-set needed to make even everyday decisions in the community.

Additionally, the personal attributes and skills developed to cope with life in prison are often a poor fit with life in the community. Vulnerability and warmth do not go a long way in jails and prisons, and dehumanization is rampant, in both directions: the offender feels dehumanized by ‘the system’ and in turn dehumanizes other offenders as well as correctional officers and by extension other authority figures. There can often be a distortion of values and interpersonal relationships such that the offender feels a misfit when back in the community. Many of these changes in psychosocial functioning are unconscious and subtle. Offenders vary in the severity of the degree of institutionalization depending on a host of factors (prior antisocial mindset, supports in the community, motivation to succeed in pro-social areas of life, etc.).

With Mr. Terriak, there appear to have been some features that have promoted and some that have discouraged institutionalization. He is aware that he is ‘clean and safe’ on the inside, with his health (physical and mental) greatly improved. He recognizes that in many ways he is at his best in custody, where he is able to think clearly, read, write, eat relatively healthy food, and keep physically fit. These are not insubstantial benefits; in essence benefits of incarceration. On the other hand, there are aversive aspects. He is a proudly independent man who cherishes a kind of radical freedom from the constraints of demands and directions, which are much more prevalent and ‘in your face’ within an institution. He spoke with nostalgic regret about having achieved and then “*throwing away*” an approximation of a “*middle class life*”.

Overall his institutionalization does not appear to be as severe as is sometimes encountered. However, it is the combination of some degree of institutionalization with the attractions of life on the street that is very worrisome. When things become stressful for him, as is inevitable, Mr. Terriak is unlikely to experience either a return to street life or a return to prison as especially aversive. As with most people most of the time and especially at times of acute stress, the mental process that drive choices and behaviours can be unconscious and intuitive, and Mr. Terriak’s habits of mind are long established.

iv. Risk assessment summary

All risk assessments are anchored on the ‘bare facts’ of prior violence, since recurring violent actions are ‘markers’, collectively reflecting attitudes, habits, relationships, behaviors, and lifestyle choices that promote violence. Hence, if an offender has a history of:

1. *repetitive* acts of violence, that have been
2. *non-trivial*, and have occurred over an
3. *extended* period of time, in
4. *varied situations*, with
5. *multiple* victims,

then, barring very strong reasons to believe otherwise, the reasonable inference is that the offender unquestionably has some admixture of characteristics (attitudes, needs, emotions, judgment, poor self awareness and self control) that are likely to perpetuate ongoing violence. Moreover, it can reasonably be assumed that such forces or internal risk factors are transferable from situation to situation, and are relatively independent of specific situational variables. (The converse is also true. When there has been a single or very few act of violence with a single victim or very few victims in a limited setting and over a brief period of time, then the reasonable interpretation is that there were unique, situation-specific and time-bound influences which were crucial to the acts of violence.

The pattern described above (repetitive, non-trivial, diverse acts of violence, over an extended period of time, in varied situations, with multiple victims) is clearly applicable to Mr. Terriak. Hence one can confidently conclude that the factors that drive his risk for violence reside firmly within him (as against changing situations or circumstances). Given his history, then, elaborate risk assessment instruments are superfluous. Moreover, as discussed in the caution above, formal standardized risk assessment instruments have limited usefulness in this case.

Nevertheless, to be comprehensive I have in the file review provided extracts from earlier assessors who have addressed Mr. Terriak’s risk for sexual and general violence, including that of Josee Gilbert in 2005 which incorporated several risk assessment instruments. Past assessors have consistently rated as Mr. Terriak as being somewhere in the moderate to high range of risk, and have noted its strong relationship to lifestyle and substance abuse

Using any methodology (actuarial or clinical) violent offenses that have occurred subsequent to risk assessment inevitably elevate subsequent estimates of risk. Since Mr. Terriak’s conviction on the predicate violent offense raises his previously-assessed levels of risk it follows that, as things stand, he is an offender who poses a high risk for general and sexual violence.

v. Mitigation of risk

There are potential risk-reducing features to be considered.

a) Sobriety

A striking feature of Mr. Terriak's history, reviewed above, is the close correlation between intoxication and violence, with intoxication in turn being associated with his return to street life. Put simply, if absolute abstinence can be achieved, which in turn means ensuring that he does not return to street life his risk for violence falls precipitously, and vice versa. This aspect of his history is especially important for risk management, discussed below.

b) Ageing

Aging is always a risk-relevant consideration since it brings many biological, psychological, and social alterations that collectively serve to decrease risk for violence. Behaviorally, it is common for the more overt features of antisociality (aggression, impulsivity, recklessness) to gradually decline in ageing offenders, sometimes termed 'burnout'. Statistically, the likelihood and frequency of violence declines with age among all types of violent offenders. Although this is a well-established group statistic, there are exceptions.

c) Current sentencing proceedings

It is likely that going through this process will impress upon Mr. Terriak the seriousness with which the justice system takes his offending. In the literature on self-regulation and in clinical experience 'external' motivations have a reputation of being fleeting. Although there is still no research on the sustained power of DO/LTO proceedings (independent of outcome) to motivate offenders in the long term, informal discussions among clinicians who treat and manage offenders who have gone through such proceedings indicate that their impact may be substantial and sustained.

During the interview Mr. Terriak spontaneously stated that he knows that he has been given many opportunities for redemption and has run out of chances to demonstrate that he can 'make it' in the community. While he did not disagree with concerns related to institutionalization and the allure of street life, as discussed above, he was also emphatic that he has continued to reexamine and reevaluate his values and his choices. When he is thinking clearly – as he does when he is sober and incarcerated – he does not find the idea of living on the street to be attractive, nor does he relish spending middle age and beyond in prison. He is sharply aware that, whatever the outcome of current sentencing proceedings, he will attract severe penalties if he reoffends. Time will tell whether he maintains such awareness when under stress, but at present it is reasonable to assume that current sentencing proceedings will enhance Mr. Terriak's incentives to abstain from offending and help to strengthen self-awareness and self-control.

d) Prospects for rehabilitation

It is likely that Mr. Terriak will be a good candidate for ongoing treatment and risk management, explored in the section below.

Each of the above is a potential. Sobriety does not eliminate risk, older men can and do reoffend, DO/LTO proceedings do not inevitably lead to cessation of violence, and even offenders who are good candidates for treatment and risk management sometimes go on to reoffend. Taken alone, each of the above potential risk-reducing considerations may not generate much confidence. Taken together they support the view that there is a reasonable prospect for significant reduction of risk in the foreseeable future.

III. TREATABILITY AND RISK MANAGEMENT

In making the comments that follow I will not make any assumptions about the outcome of sentencing proceedings.

As part of his correctional plan Mr. Terriak has been offered and successfully completed a range of relevant programs. Progress reports from program facilitators and numerous therapists in institutions and in the community consistently speak of his intellectual insight, his ability to learn and incorporate new material, and his capacity for forming therapeutic relationships. Nevertheless, his relapses into substance abuse and crime have been rapid when no longer under supervision. His predicate offense occurred within three weeks after his release from a correctional facility.

Despite these setbacks, it would be a mistake to regard this as a case of 'treatment failure'. Progress with many offenders is uneven especially when substance abuse (itself notorious for relapses) is a key feature. Prior to relapsing, Mr. Terriak remained abstinent for a lengthy period which is encouraging, as is his capacity for maintaining employment when sober. Moreover, while in no way diminishing the psychological damage inflicted on the victim of the predicate offense, there was a decline in the severity of Mr. Terriak's violence when he did reoffend. Hence, while prior efforts and treatment were not enough to ensure total desistance, they did have value and can be built upon in the coming years.

All treatment approaches rely on motivation, emotional stability, ability to engage with therapists, and intact cognitive capacities. Mr. Terriak currently is very motivated to avoid further offending. His cognitive capacities are excellent. He has no difficulty establishing therapeutic relationships with a range of therapists. With age, he has 'settled down' in his emotional reactivity and at present is stable. Hence, he is a good candidate for ongoing treatment.

If he is sentenced to a period in custody, and even if he continues to insist that his sexual contact with the victim was entirely consensual, it is possible that

Mr. Terriak could still benefit from further guidance about meeting his emotional and sexual needs. He has yet to fully accept the perils of sexual contact with relative strangers, particularly when either party is intoxicated. Currently CSC delivers programs in a 'multi-target' approach, which would be appropriate for Mr. Terriak if he does have to spend time in custody.

That being said (and I am speaking here only to issues related to his treatment and rehabilitation, as other principles of sentencing are outside the ambit of a psychiatrist) it does not appear that further in-custody programs are absolutely necessary, nor are they likely to be especially valuable. Much of in-custody treatment is didactic and backward-looking. Deficits in life-skills are identified and the offender is encouraged to improve and compensate, and prior failures to desist from violence are explored to assist self-awareness and self-control. Mr. Terriak's progress in these areas are well described in some of the extracts in the file review. In sum, there does not appear to be a 'knowledge-deficit' and there is little new information that Mr. Terriak has to learn that requires a custodial setting. It may well be that he has maximized whatever benefits are available through in-custody programs.

In contrast, there are good reasons to believe that therapeutic contact along with prolonged and close supervision in the community is likely to be of great benefit in managing his risk. There is a different quality to community programs as compared to institutional programs. Out of custody, the issues that come up in individual and group therapy tend to be more immediate and relevant to living in the community, precisely what is going to be most valuable for Mr. Terriak; his failures have not been of knowledge but of implementation. In the community, support from group members and therapists is focused on immediately-relevant practical matters to do with relationships, substance abuse, employment, finances, and related issues of re-entry into the community (as compared to issues such as acceptance, integration, and coping with prison life in custodial settings). Most broadly, although all programs raise and address a mix of past, present, and future issues, there is a greater focus on the pragmatic aspects of present and future during community programs. This approach can complement the benefits of institutional programs.

Mr. Terriak did relatively well for lengthy periods when given a full slate of structure and support in the community, and it is likely that Mr. Terriak would benefit from the kinds of services offered while he was on parole in 2012-2015. Even though he relapsed, the response from the 'system' was rapid and appropriate. Going forward, risk management is going to be feasible if Mr. Terriak receives similar supports in the community while being held accountable for any future relapses. He is likely to be responsive to both individual and group therapy. While substance abuse will obviously be a central issue, a marker of his ongoing commitment and his success, all related issues (loneliness, boredom, alienation, etc.) are typically addressed in most therapeutic approaches.

Ideally, Mr. Terriak would also be put into contact with a therapist trained to deliver Dialectical Behavioral Therapy or DBT. A variant of Cognitive Behavioural Therapy or CBT (which itself is the most widely used therapeutic approach in Canada) DBT was originally developed for suicidal patients, then became the standard model for treating Borderline Personality Disorder (BPD) and more recently has been used for a wide range of psychiatric disorders, including substance use disorders.

DBT is a ‘multi-target’ approach, recognizing that especially in those people with traits of Borderline Personality Disorder there is emotional dysregulation (affective instability, problems with anger), behavioural dysregulation (impulsive behaviour, self-injurious behaviour), cognitive dysregulation (dissociation, paranoia), interpersonal dysregulation (chaotic relationships, fears of abandonment), and self-dysregulation (identity disturbances, chronic feelings of emptiness). While the more intense features of Mr. Terriak’s BPD are in abeyance, such dysregulations remain dormant and emerge under stress. In my view he is very likely to benefit from this particular therapeutic approach.

Given that he now knows that any further violence is going to risk extremely lengthy incarcerations, his motivation to remain abstinent appears to be quite high. He is aware that those charged with his supervision in the future are to be seen as ‘on the same side’, not antagonists, if he is to be successful in the community. He is aware of the importance of openness and disclosure for successful risk management.

Towards the end of the interview Mr. Terriak spoke in plaintive tones of his awareness that the first puff of marijuana is going to take him down the road to vodka and then Listerine and then, inevitably, prison. He knows that his best chance for success is to avoid that very first puff of marijuana or drink of alcohol. He sounded sincere.

It is crucial that Mr. Terriak remains under supervision for a lengthy period. It has been said that ‘treatment failure’ is better conceptualized as ‘failure to follow-up’. For offenders such as Mr. Terriak, who have an established pattern of poor self-regulation, external guidance and control is crucial to their rehabilitation, and the longer the period of support and supervision, the better the prospects for risk management in the community

DANGEROUS OFFENDER SCHEME

[100] The dangerous offender scheme is a two-stage process: the first stage is the designation stage; the second is the sentencing or penalty stage. At the designation stage the Crown must prove that the predicate offence is a *serious personal injury offence* as defined in section 752. An indictable sexual assault under section 271 is a *serious personal injury offence*. The judge

must be satisfied beyond a reasonable doubt of the likelihood of future danger that an offender presents to society before he or she can impose the dangerous offender designation where the accused falls within one of the four standards in section 753, the first three based on violent behaviour, section 753(1)(a) or the fourth based on sexual behaviour, section 753(1)(b). The Crown in this application is not relying on section 753(1)(a)(iii).

[101] In *Boutilier, supra*, at paragraph 44 Cote J. stated:

Given that a dangerous offender application is typically conducted in one hearing, it would be artificial to distinguish evidence that should be considered to designate an offender as dangerous from evidence that should be considered to determine the appropriate sentence. All of the evidence adduced during a dangerous offender hearing must be considered at both stages of the sentencing judge's analysis, though for the purpose of making different findings related to different legal criteria. During the application hearing, the Crown or the accused must present any prospective evidence concerning risk, intractability, or treatment programs, including the required assessment report addressing prospective treatment options. Many aspects of clinical evaluations provide evidence going to both the assessment of the offender's future risk and the sentence necessary to manage this risk.

Section 753(1)(a)(i) – Pattern of Repetitive Behaviour

[30] The Crown must prove beyond a reasonable doubt:

- (i) The accused has been convicted of a serious personal injury offence under s. 752(a);
- (ii) The accused is a threat to the life, safety or physical or mental well-being of other persons based on evidence
 - (a) showing a pattern of repetitive behaviour by the accused;
 - (b) the offence for which he is convicted forms part of the pattern;
 - (c) the pattern of repetitive behaviour shows a failure to restrain his behaviour;
 - (d) there is a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his behaviour.

Section 753(1)(a)(ii) – Pattern of Persistent Aggressive Behaviour

[31] The Crown must prove beyond a reasonable doubt:

- (i) The accused has been convicted of a serious personal injury offence under s. 752(a);
- (ii) The accused is a threat to the life, safety or physical or mental well-being of other persons based on evidence;
 - (a) showing a pattern of persistent aggressive behaviour by the accused;
 - (b) the offence for which he is convicted forms a part of the pattern;
 - (c) the pattern of persistent aggressive behaviour shows a substantial degree of indifference by the accused to the reasonably foreseeable consequences to other persons of his behaviour.

The Requirement of a Pattern under ss. 753(1)(a)(i) or (ii)

[102] While the term “pattern” is not defined in the Criminal Code, the definitions under sections 753(1)(a)(i) and (ii) essentially require a pattern of behaviour, (described differently in each) in respect of which the predicate offence must form a part. Both set out in precise detail the criteria which must be met if the Crown is to establish that the offender’s conduct falls within one of the proscribed patterns of past behavior. (*R. v. Neve*, 199 ABCA 206)

[103] In *Neve*, the Alberta Court of Appeal, after setting out the elements required under sections 753(a)(i) and 753(a)(ii) at paras. 107 to 108, considered what must be proven to *establish a pattern*, at para. 109:

What do these sections require in assessing an offender's past conduct? First, the type of past behaviour encompassed by these sections is criminal behaviour since the predicate offence, a criminal one by definition, must form part of the pattern of conduct. The dangerous offender legislation is directed at those who hurt people through criminal, as opposed to simply anti-social, conduct. The latter cannot be the foundation for a dangerous offender application.

[104] In considering the *quality of the past behavior*, the Court commented at para. 110:

This takes us to the second point: the quality of the past behaviour. Does all criminal behaviour form part of the pattern? In our view, it does not. We read s. 753(a) as requiring that the court be satisfied on two points: (a) that the predicate offence is part of a pattern of behaviour which has involved violent, aggressive or brutal conduct; and (b) that it is likely that this pattern of conduct will continue

and will lead to conduct endangering the life, safety or physical well-being of others: see Lyons, *supra*. Since a predicate offence under s. 753(a) must be a "serious personal injury offence" (meaning that it itself must meet either a violence or endangerment requirement under s. 752(a)), it follows logically that the past behaviour must also have involved some degree of violence or attempted violence or endangerment or likely endangerment (whether more or less serious than the predicate offence). Otherwise, the predicate offence would not be part of that pattern.

[105] At para. 111, the Court suggested how repetitive behavior and aggressive behavior can be established:

Third, repetitive behaviour under s. 753(a)(i) and persistent aggressive behaviour under s. 753(a)(ii) can be established on two different bases. [Persistent in this context has been equated with repetitive: Yanoshewski, *supra*.] The first is where there are similarities in terms of the kind of offences; the second where the offences themselves are not similar in kind, but in result, in terms of the degree of violence or aggression inflicted on the victims. Either will do. Thus, the mere fact that an offender commits a variety of crimes does not mean that no pattern exists. There is no requirement that the past criminal actions all be of the same or similar form, order or arrangement; though if this has occurred, it may well suffice.

[106] Lastly, at para. 112, in reference to s. 753(1)(a)(i), the Court quoted approvingly the British Columbia Court of Appeal decision in *R. v. Dow*, 199 BCCA 177, wherein Lambert, J.A., at para. 112, wrote:

In short, the significance and the relevance of common elements of the pattern must be determined by whether they tend to show first, repetitive behaviour, second, that there has been a failure in each case to restrain the behaviour, and third, that there has been injury to other persons arising from that failure. If any of those three elements is missing, then there may be a pattern but it will not be a relevant pattern. But if all three are present then the essential elements of a relevant pattern are revealed.

The one qualification we would add to these comments is that it is not necessary that the past conduct have led to actual injury. Attempted serious violence and likely serious endangerment of life, safety or physical well-being or severe psychological harm may well be adequate.

[107] In *Boutilier supra* at para. A7 Cote J stated:

The language of s. 753(1), which led Justice La Forest to develop the four criteria outlined above, has never been amended since its enactment in 1977. Before designating a dangerous offender, a sentencing judge must still be satisfied on the evidence that the offender poses a high likelihood of harmful recidivism and that

his or her conduct is intractable. I understand “intractable” conduct as meaning behaviour that the offender is unable to surmount. Through these two criteria, Parliament requires sentencing judges to conduct a prospective assessment of dangerousness.

[108] In *R. v. George*, (1990) 1998 CanLII 5691 (BC CA), 126 C.C.C. (3d) 384, at paras. 15-19, the British Columbia Court of Appeal, commented that in determining what constitutes a *pattern of persistent aggressive behavior*, the Court should distinguish between childhood aggression and adult criminality.

[109] In *Dow*, Lambert J.A., also observed at para. 25, that:

[T]he very essence of a pattern that there be a number of significant relevant similarities between each example of the pattern that is being considered, but that, at the same time, there may be differences between each example, some of them quite distinctive, so long as the differences leave the key significant relevant elements of the pattern in place. That is, after all, what is meant by a pattern.

[110] Similarly, in *R. v. P.M.C.*, [1998] B.C.J.No. 3225, at para. 20, Wilson, J., in delivering the judgment of the British Columbia Supreme Court stated:

[F]or the Crown to prove that there is a "pattern of repetitive behaviour", there must be: firstly, repetition (although not necessarily more than two incidents); and secondly, some similarity between the incidents, so that it can be said that they form a pattern. I do not find that the Crown need prove an identity of the elements of the incidents, or that they show a particular psychological profile or trait of the offender such as pedophilia. The incidents can be serious or not, and involve violence or not, but they must go beyond merely a series of criminal offences, so that the court can identify some commonality or arrangement or order between them.

[111] In *Neave*, the Court, at para. 123, described the three areas of evidence will generally be considered in determining whether there is a pattern of conduct falling within the threshold requirements under. Section 753, as:

1. the offender’s past criminal acts and criminal record;
2. extrinsic evidence relevant to those past acts and the circumstances surrounding them; and
3. psychiatric reports opining as to that conduct.

[112] In *R. v. Bunn*, 2012 SKQB 397 (CanLII), a decision of the Saskatchewan Court of Queen's Bench, the Court considered the meaning of *substantial degree of indifference* and concluded at para 19:

In defining substantial degree of indifference, the British Columbia Court of Appeal in *R. v. George* 1998 CanLII 5691 (BC CA), (1998), 126 C.C.C. (3d) 384, [1998] B.C.J. No. 1505 (QL) (B.C.C.A.) at 394-95, established that the court cannot only look at the offender's actions at the time of the offence but other offences as well in determining "substantial degree of indifference". If the offender has a conscious but uncaring awareness of causing harm to others and this has occurred over a period of long duration involving frequent acts and with significant consequences, this is sufficient to establish a substantial degree of indifference.

Section 753(1)(b) - Failure to Control Sexual Impulses

[113] The Crown must prove beyond a reasonable doubt:

- (i) the offender has been convicted of a serious personal injury offence under s. 752(a);
- (ii) the offender's past conduct in any sexual matter, including the predicate offence, has shown a failure to control his or her sexual impulses; and
- (iii) a likelihood of causing, injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

[114] The Supreme Court of Canada in *R. v. Currie* (1997), 1997 CanLII 347 (SCC), 115 C.C.C. (3d) 205, at para.17, held that the prospective dangerousness of the offender in s. 753 (b) is measured by reference to his or her conduct in any sexual manner, including that involved in the predicate offence. There need not be a focus upon the objective seriousness of the predicate offence to determine the application. Any sexual matter may, but need not, refer to the predicate offence. Provided that the offender's past conduct in any sexual matter demonstrates a present likelihood of inflicting future harm upon others, the designation dangerous offender is justified.

[115] In *R v Shrubbsall*, 2001 NSSC 197 (CanLII), at para. 35, Cacchione, J. observed:

The wording of s. 753(1)(b) also does not contain a reference to a "pattern of behaviour". Under this section the Crown must establish that the offender has been convicted of a "serious personal injury offence" and that there is a likelihood of harm to others through future failure to control sexual impulses. The Crown is

not required to prove beyond a reasonable doubt that certain events will happen in the future. It is the quality and strength of the evidence of past and present facts together with the expert opinion thereon, which forms an existing basis for a finding of present likelihood of future conduct; *R. v. Knight* (1975), 1975 CanLII 1424 (ON SC), 27 C.C.C. (2d) 343 at 356.

[116] The relevance of *psychiatric evidence* was considered in *R. v. Sullivan*, 1987 CanLII 6853 (ON CA), [1987] O.J. No. 2162, at paras. 34-35, where Martin J.A., in delivering the majority judgment of the Ontario Court of Appeal, held that psychiatric evidence is relevant to the issue of whether the offender by his or her conduct in sexual matters, including that involved in commission of the predicate offence, “has shown a failure to control his or her sexual impulses”. He wrote:

[i]n my view, the psychiatric evidence is of particular relevance to this issue. The psychiatric evidence indicates that the appellant suffers from an ongoing personality disorder, that he has low impulse controls, and that his conscience is defective in regulating his sexual behaviour. In my opinion, the trial judge was entitled to rely on the psychiatric evidence against the background of the appellant's sexual offences on this issue. It warranted her conclusion that the appellant in the future is likely to similarly fail to control his sexual impulses.

The psychiatric evidence was also highly relevant to the third issue, namely, whether there is a likelihood of the appellant causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses. In other words, the evidence is highly relevant to whether the appellant, because of his personality disorder, represents a continuing danger.

[117] In *R. v. Oliver* (1997), 1997 ABCA 49 (CanLII), 114 C.C.C. (3d) 50, at paras. 9-10, Hunt J.A., in delivering the majority of the Alberta Court of Appeal, held that test is not whether the offender can control his or her sexual impulses, but whether he or she has failed to do so.

[118] Mr. Terriak is a chronic alcoholic who has committed many criminal offences over a span of more than three decades while inebriated and disinhibited. The most significant of these are the first sexual assault using a knife, manslaughter by strangulation, attempted murder by repeatedly striking and kicking a helpless victim and the predicate offence of sexual assault. He has other offences involving violence or threats of violence plus non-violent offences. The non-violent offences are not significant at the designation stage. Common elements are loss of control brought about by excessive alcohol consumption and violent behaviour. These are more than a series of criminal offences. The repeated use of violence has persisted throughout his adult life.

This indicates that the underlying cause or triggering factors are not of temporary duration. The facts in this case amply establish a pattern both on the basis of the violent nature of the offences and the harm either physical or psychological caused to victims. I find that the Crown has met the burden of establishing a pattern beyond a reasonable doubt.

[119] Mr. Terriak has for most of his adult life, when not incarcerated, been unable to control his alcohol consumption. His violent intractable behaviour is a direct result.

[120] Mr. Terriak has frequently expressed remorse for his actions and that is commendable. However, that is not a complete answer to the requirement that an offender be shown to have a substantial degree of indifference respecting the reasonably foreseeable consequences of his or her behaviour. He is aware of his likely behavior and the consequences when he consumes alcohol, yet he continues to drink. That demonstrates a substantial degree of indifference.

[121] Dr. Lohrasbe has assessed Mr. Terriak as a high risk to reoffend:

Since Mr. Terriak's conviction on the predicate violent offense raises his previously-assessed levels of risk it follows that, as things stand, he is an offender who poses a high risk for general and sexual violence.

[122] There are no victim impact statements before the court. Section 753(1)(a) requires evidence establishing either a likelihood of inflicting severe psychological damage on other persons, through failure of Mr. Terriak in the future to restrain his behaviour or a substantial degree of indifference by the offender respecting the reasonably foreseeable consequences of his or her behaviour. The physical consequences are evident from the record before the court. There is little direct evidence of the psychological consequences of sexual assault other than the example of Mr. Terriak himself. A review of the case law clearly shows that courts have acknowledged that there is a likelihood of inflicting severe psychological damage on a victim of sexual assault in the circumstances of Mr. Terriak's two sexual assault convictions. In *R. v. McCraw*, [1991] 3 S.C.R. 72, Cory J. wrote:

Violence and the threat of serious bodily harm are indeed the hallmarks of rape. While the bruises and physical results of the violent act will often disappear over time, the devastating psychological effects may last a lifetime. It seems to me that grave psychological harm could certainly result from an act of rape.

The psychological trauma suffered by rape victims has been well documented. It involves symptoms of depression, sleeplessness, a sense of defilement, the loss of sexual desire, fear and distrust of others, strong feelings of guilt, shame and loss of self-esteem. It is a crime committed against women which has a dramatic, traumatic impact. See D. J. Giacomassi and K. R. Wilkinson, "Rape and the Devalued Victim" (1985), 9 *Law and Human Behavior* 367; *R. v. Billam* (1986), 8 Cr. App. R.(S.) 48 (C.A.), at pp. 49-50; P. Marshall, "Sexual Assault, The Charter and Sentencing Reform" (1988), 63 C.R. (3d) 216, at p. 221; A. W. Burgess, "Rape Trauma Syndrome" (1983), 1:3 *Behavioral Sciences and the Law* 97; C. H. Herd, "Criminal Law: Kansas Recognizes Rape Trauma Syndrome" (1985), 24 *Washburn L.J.* 653. To ignore the fact that rape frequently results in serious psychological harm to the victim would be a retrograde step, contrary to any concept of sensitivity in the application of the law.

[123] The fact that the victims of Mr. Terriak's sexual assaults were male does not change the likelihood of inflicting severe psychological damage.

[124] Having carefully considered all of the evidence, I am satisfied that Mr. Terriak constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing the required elements under section 753(1)(a)(i) and 753(1)(a)(ii) beyond a reasonable doubt.

[125] Having carefully considered all of the evidence, I am satisfied beyond a reasonable doubt that Mr. Terriak, by his conduct in any sexual matter including that involved in the commission of the offence for which he 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 as per section 753(1)(b).

[126] I find Mr. Terriak to be a dangerous offender.

[127] The Supreme Court of Canada has addressed section 754(4.1) in *R v Boutilier supra*, where Cote J. speaking on behalf of the majority stated in paragraphs 68 to 70:

68] Under s. 753(4.1), the sentencing judge is under the obligation to conduct a "thorough inquiry" into the possibility of control in the community: *Johnson*, at para. 50. The judge considers all the evidence presented during the hearing in order to determine the fittest sentence for the offender:

The judge should . . . take into account all the evidence available before making a determination, which will inevitably require a thorough investigation. Once such an investigation has been conducted, it will be up to the judge to determine the sentence; there is no obligation on any of the parties to prove on any standard the adequate sentence one way or another.

(Neuberger, at p. 4-4.1; see also p. 10-10.)

[69] In other words, s. 753(4.1) provides guidance on how a sentencing judge can properly exercise his or her discretion in accordance with the applicable objectives and principles of sentencing. As explained above, it is permissible for Parliament to guide the courts to emphasize certain sentencing principles in certain circumstances without curtailing their discretion. Once the sentencing judge has exhausted the least coercive sentencing options to address the question of risk based on the evidence, indeterminate detention in a penitentiary is the last option.

[70] The framework a sentencing judge should adopt in exercising his or her discretion under s. 753(4.1) has been aptly explained by Justice Tuck-Jackson of the Ontario Court of Justice: *R. v. Crowe*, No. 10-10013990, March 22, 2017. First, if the court is satisfied that a conventional sentence, which may include a period of probation, if available in law, will adequately protect the public against the commission of murder or a serious personal injury offence, then that sentence must be imposed. If the court is not satisfied that this is the case, then it must proceed to a second assessment and determine whether it is satisfied that a conventional sentence of a minimum of 2 years of imprisonment, followed by a long-term supervision order for a period that does not exceed 10 years, will adequately protect the public against the commission by the offender of murder or a serious personal injury offence. If the answer is “yes”, then that sentence must be imposed. If the answer is “no”, then the court must proceed to the third step and impose a detention in a penitentiary for an indeterminate period of time. Section 753(4.1) reflects the fact that, just as nothing less than a sentence reducing the risk to an acceptable level is required for a dangerous offender, so too is nothing more required.

[128] Counsel for Mr Terriak has requested a sentence of time served of 34 months (Dec 1, 2016 to Sept 30, 2019) which is the equivalent of a 51-month sentence at a 1.5 credit rate. The Dangerous Offender designation, the long time span of criminal activity, the prior conviction for sexual assault and the predicate offence being a sexual assault mandate that the principles of denunciation and deterrence and protection of the public are of primary importance. Other principles such as parity, proportionality and restraint are still to be considered taking this importance into account. My view is that an appropriate determinate sentence, taking into account the circumstances of the offence, the offender, case law and the principles of sentencing

would be five years in a federal penitentiary. A period of probation cannot be imposed for a sentence of this length. Mr Terriak has a chronic alcohol condition which he has been able to manage with supervision and support for some periods. Recent experience ending with the predicate offence clearly demonstrates that he cannot manage without supervision and support in the community. A determinate sentence will not protect the public from the commission by Mr. Terriak of a serious personal injury offence.

[129] In *R. v. Bragg*, 2015 BCCA 498 (CanLII), the relevant considerations for sentencing a dangerous offender are set out:

[55] The judge referred (at para. 154) to the three elements in *R. v. McCallum*, 2005 CanLII 8674 (ON CA), [2005] O.J. No. 1178 at para. 47 (and adopted in *R. v. Taylor*, 2012 ONSC 1025 (CanLII) at para. 356), that must be present to achieve the goal of protecting the public regarding the reduction of risk to an acceptable level:

- (1) there must be evidence of treatability that is more than an expression of hope;
- (2) the evidence must indicate that the offender can be treated within a definite period of time; and
- (3) the evidence of treatability must be specific to that offender.

[130] At paragraphs 34 and 35 in the same decision the court endorsed the following statements quoted from other cases:

... as to the meaning of the phrase “reasonable expectation” that a lesser measure ... will adequately protect the public in s. 753(4.1) is that it amounts to “a confident belief, for good and sufficient reasons” to be derived from the quality and cogency of the evidence heard on the application. ...
and
... a “reasonable expectation” imposes a higher standard than the previous “reasonable possibility”.

[131] The Crown has rightly pointed out that one of the reasons for Mr. Terriak’s most recent relapse was his deliberate and calculated deception of his treatment providers as to his drug and alcohol consumption and his contact with Roy Mullin.

[132] The Crown has also correctly noted the Mr. Terriak was not deterred from committing further offences by his experience of being charged with murder and facing life imprisonment until the matter was resolved by a plea of guilty to manslaughter.

[133] Despite Mr. Terriak's repeated failures to maintain sobriety and the above noted observations, I am persuaded after consideration of all of the evidence, including the *viva voce* testimony and exhibits (documents and reports), and the submissions of counsel that there is a reasonable expectation that a sentence of five years followed by a long-term supervision order of ten years duration will adequately protect the public against the commission by Mr. Terriak of murder or a serious personal injury offence. For greater clarity the accepted evidence or findings of fact considered include, but are not limited to, the following:

1. Mr. Terriak has demonstrated that he has the intellectual capacity to understand the therapeutic material provided by Correctional Services Canada.
2. Mr. Terriak has demonstrated a willingness to cooperate and actively participate in therapy.
3. Mr. Terriak has asked for counselling while awaiting sentence.
4. Mr. Terriak did apply the benefits he gained from therapy to achieve a period of sobriety where he found employment and established an apartment.
5. Mr. Terriak has a positive attitude toward therapists and mental health care providers.
6. Mr. Terriak is not suffering from psychopathy and some factors which were present in his younger years tending to suggest that they are no longer present.
7. Mr. Terriak when sober expresses remorse for the harm that he has caused others.
8. Mr. Terriak suffers from an antisocial personality disorder (ASPD) but the symptoms tend to abate with age and Dr. Lohrasbe indicates this appears to be the situation with Mr. Terriak
9. Mr. Terriak despite suffering from ASPD has managed to function in the stressful environment of prison without any significant concerns.
10. Mr. Terriak suffers from a borderline personality disorder (BPD) which can be addressed by Dialectical Behavior Therapy outside of the prison.
11. Mr. Terriak is not considered by Dr. Lohrasbe to be an angry man at this stage contrary to his state as a young adult.
12. Mr. Terriak's predicate offence has a lower level of objective violence than his first sexual assault, manslaughter and attempted murder convictions.
13. Mr. Terriak has two friends who have attended most, if not all of his court appearances, and are both willing to assist him in the community. Both have pro social back grounds and one has had a career in corrections.
14. Mr. Terriak regrets his lost opportunities and has had thirty four months to consider how to avoid failure in his next attempt.

15. Mr. Terriak derives satisfaction and happiness from assisting others and this can provide him with an avenue to integrate himself into the community so that he has a sense of inclusion and belonging.

[134] I am persuaded that the risk of Mr. Terriak's behaviour in the community can be successfully managed while under a long-term supervision order. Mr. Terriak will be 66 upon the expiration of his long-term supervision order. Dr Lohrasbe has indicated that Dielectrical Behaviour Therapy will benefit Mr. Terriak. This along with the above considerations lead me conclude that there is a reasonable expectation Mr. Terriak will not be a risk to the public of committing murder or a serious personal injury offence upon completion of his long-term supervision order. To be explicit, I conclude that the additional mechanisms for control and accountability that apply to an indeterminate sentence are not necessary in the case of Mr. Terriak.

Remarks to Mr. Terriak

[135] A court decision has many audiences. The following remarks do not form any part of the legal analysis, rather they are directed to Mr. Terriak. Mr. Terriak, I suggest you keep a copy of your letter to the court with you and read it frequently. Every time you are tempted by your addiction to consume drugs or alcohol, your response answers the questions "Who am I?" and "Who will I become?" These questions are prospective; you cannot change your undeniably atrocious formative years; you can change your future.

[136] Your attention is drawn to the following paragraphs 161, 162 and 175 taken from the case of *R v Bourdon*, 2018 ONSC 3431:

As of March 2018, there were 657 dangerous offenders indeterminate in Canada. Of these 615 remained in jail. Of the 42 released on conditional release, 19 were on day parole and 23 were on full parole.

On average, a dangerous offender indeterminate serves 16.5 years from date of arrest before being granted day parole.

On average, indigenous offenders do not make parole as early as nonindigenous offenders.

SUMMARY

[137] With respect to the conviction for sexual assault contrary to section 271 of the *Criminal Code*, Mr. Terriak is declared to be a dangerous offender pursuant to sections 753(1)(a)(i), 753(1)(a)(ii) and 753(1)(b) of the *Criminal Code*. The sentence is five years less credit of 51 months for time served from December 1, 2016 to September 30, 2019 (34 months at a rate of 1.5), to be followed by a ten-year long-term supervision order. There will be a DNA order under section 487.051(1) of the *Criminal Code*, a lifetime firearms prohibition under section 109(1)(a) and an order in Form 52 requiring Mr. Terriak to comply with the *Sex Offender Information Registration Act* for life, the period specified in section 490.013(5).

[138] In accordance with section 760 of the *Criminal Code* the court orders that a copy of all reports and testimony given by psychiatrists, psychologists, criminologists and other experts and any observations of the court with respect to the reasons for the finding, together with a transcript of the trial of the offender, be forwarded to the Correctional Service of Canada for information.

[139] With respect to the charge of breach of probation contrary to section 733.1(1)(a), the sentence is 90 days concurrent.

[140] There will be no victim fine surcharges.

Dated at Halifax, Nova Scotia the 31st day of December, 2019.

Judge William B. Digby
Judge of the Provincial Court

Honourable Digby, Mr. MacEwen, Ms. Kirby, Mr. Woodburn, Members of this Court,

It is not my intention or desire to minimize the nature of my criminal history. I acknowledge and accept that I alone am accountable for my criminal record; however, I would be remiss to claim the responsibility in its entirety by my own volition.

You have all heard and read my story – at least the parts that were relevant to this case. Errant choices, lapses in judgement, and unforeseen events influenced my life in ways I did not welcome or intend; thereby, contributing to the predicament I currently find myself in. Much of this evidenced by Dr. Lohrasbe's psychiatric assessment, Honourable Shelly Martin's Gladue Report, submissions from the crown, and by many of the witnesses subpoenaed at the dangerous offender application hearing a couple of months ago.

One would think, because alcohol had so profoundly affected my life in such a negative manner, even before I picked up my first drink, I would have avoided it like the plague. Initially, I did. I did so with all the fervor I could muster at that time. I feared what it was doing to me, to my family, to my neighbors, to my community, and to my culture. I lived in constant fear every day; until the only friend I had, convinced me to take a drink. For the very first time in my entire life, I felt something other than fear. I could not explain what that feeling was, but suddenly I could face anyone, anywhere, and anything at any time! I was hooked...I was five! Here I am, fifty years later, facing the possibility of a *Dangerous Offender* designation.

Given the severity of the offence to which I was convicted and its potential consequences – the amount of information forwarded to the court regarding my life, along with the fine-tooth process in which it's been scrutinized – and the length of time I've been incarcerated, had compelled me to evaluate my life in a manner deeper than I've ever done before.

It is my belief we all have just one life to live...that's it, that's all – no afterlife, no heaven, no hell, no second chances, nothing! Sadly, I had already used up most of what life I have left in a senseless, wasteful, and shameful manner. It absolutely stuns me to realize I have become that person who is "always in and out of jail" or "always in trouble with the law," that my legacy could be a statistic of another indigenous person wasted away behind prison walls. It most certainly was not something I aspired to be growing up.

Throughout my life, I had often stated that I was not a criminal, that I did not possess a criminal mind, that the contents and length of my criminal record were solely the direct result of my alcoholism. Though somewhat jaded, part of that statement is true to the extent that when I am sober I do not think or act criminally. Having said that, as proven by that criminal record, and pointed out by both defence and crown, the possibility of me committing a crime while under the influence of alcohol is not only highly probable, but also inevitable. The moment I choose to disregard the significance of this fact, is a moment I choose to act irresponsibly, thereby choosing to live my life, indeed as a criminal.

It has become abundantly clear to me, regardless of the outcome of my sentence, from this day forward I cannot risk using any mind or mood altering substances every again! I repeat: I cannot risk using any mind or mood altering substances ever again! Initially, the thought of that had absolutely terrified me because it had never occurred to me my life would ever come to that. Ironically, due to the length of my latest incarceration, I had ample time to digest that reality.

I remained in constant contact with people who believe in me, who support me, and who love me. I made new contacts in the Halifax area with those who have committed themselves to assist me wherever necessary. These same people will make the transition back into the community more manageable. I am confident there will be other like-minded people I have yet to meet. I am truly grateful I need not take this journey alone.

In closing, I want to apologize. I am sorry to have had such a negative impact on people's lives in ways I could not possibly comprehend. Regrettably, I come to realize much too late, the pain, agony, and grief I have inflicted on my victims was so preventable and unnecessary. I know uttering the words of an apology may seem inadequate right now; but I am afraid that is all I have to offer at this moment. Because action do speak louder than words, only in time will people have the opportunity to witness and benefit from the apologies I have made today.

Thank you for allowing me the opportunity to share my thoughts.