

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Bowen, 2013 NSPC 117

Date: December 20, 2013

Docket: 1984896, 1984897, 1984898

Registry: Halifax

Her Majesty the Queen

v.

Douglas Gordon Bowen

DECISION

Judge: The Honourable Judge Jamie S. Campbell

Heard: October 21 and 22, 2013

Decision: December 20, 2013

Charge: CC 348(1)(b), 271(1)(a), 264.1(1)(a)

Counsel: Catherine Cogswell/Christine Driscoll - Crown Attorneys
Pat Atherton - Defence Counsel

By the Court:

1. Douglas Bowen is 51 years old. Ninety percent of his adult life has been spent in jail. Sadly, the most reassuring thing that can be said about this man is that by the time he is approaching 70 years old, he will be less physically capable of harming others.

2. He has been in the grip of mental illness and drugs for most of his life. While it may be interesting on some levels to speculate on the extent to which he is responsible for his own personality, or is the victim of brain chemistry and circumstances, the focus of this application is not on moral culpability but on public safety.

3. This is an application to have Douglas Bowen declared a dangerous offender and sentenced to an indeterminate period of incarceration in a federal penitentiary. Mr. Bowen, through his counsel Mr. Atherton does not seriously dispute the dangerous offender designation but contends that the risk that he would present in the community upon his eventual release would be manageable if he were sentenced to a sentence of between 5 and 7 years of incarceration followed by supervision for ten years through a Long Term Supervision order. At the conclusion of such a sentence he would be close to 70 years old. It was argued that

he would either have succumbed to criminal burnout or physical infirmity to an extent that he would no longer be risk to endanger others.

4. The application arises from Mr. Bowen's conviction on 17 May, 2010 on a number of charges including sexual assault. On 7 December 2008, Mr. Bowen knocked on the apartment door of the victim. He said that he had a delivery of some take-out food. After she refused him entry he forced his way into the apartment.

5. Mr. Bowen came into the apartment where the young woman was alone with her baby daughter. He threw the young woman to the floor. He closed and locked the door behind him. He pulled her bathrobe open but did not succeed in removing it. He rubbed his hand, on her vagina over her underwear. Mr. Bowen told the victim that if her one year old daughter did not stop crying he would kill the child. After 3 or 4 minutes with the victim screaming and struggling against Mr. Bowen the attack was over and he left the apartment. The victim called her husband who called the police.

6. The victim identified Mr. Bowen in a police line-up. He was apprehended about a block away from where the incident took place.

Dangerous Offender Legislation in Canada

7. The first habitual offenders act in Canada was passed in 1947. That was based to some extent on English legislation from 1908. An “habitual offender” was defined as one who had committed three criminal offences. Those offenders, and later those described as a “criminal sexual psychopath” could be imprisoned for an indefinite period. Those rules were criticized in the 1960’s for among other reasons that they applied to people convicted only of property crimes.

8. *The Criminal Law Amendment Act, 1977* came into force in October 1977 and overhauled the entire system. That put in place the current system for dealing with dangerous offenders. In 1997 the long-term offender category was introduced to monitor offenders in the community on a long-term basis.

9. The Criminal Code provisions were amended again in the spring of 2008. The *Tackling Violent Crime Act* came into force on 1 May and 2 July of that year. The offence that gave rise to the application, took place in December 2008 so the amended legislation applies in Mr. Bowen’s case.

10. Mr. Peter Wickwire is the Area Director, Community Corrections for Nova Scotia, with the Correctional Service of Canada. He was not familiar with Mr. Bowen’s case but gave evidence in the application about the various facilities and

services available in this region. In general, a person is not locked away and forgotten, even if he is sentenced to incarceration for an indeterminate time. There is no sense in which the systems locks a person up and “throws away the key”.

11. If a person is designated as a dangerous offender and sentenced to a determinate time of incarceration, he would normally be eligible for parole at the expiry of one half of the sentence. He would receive statutory release at the expiry of two thirds of the sentence, unless he is referred for detention. At the warrant expiry date he must be released, regardless of the risks he might present to the community at that time. In Mr. Wickwire’s view, those are the most challenging of cases. On one day a person is too dangerous to release into the public and on the next day, he is released.

12. The dangerous offender could be subject to the terms of a Long Term Supervision Order. A breach of the terms of that order would result in charges being laid and after a period of internal review, the offender would be brought before a court. As Mr. Wickwire noted, a Long Term Supervision order is “non-incarceral”, in that while the Parole Board may recommend incarceration, the matter must be brought before a court for that determination.

13. A dangerous offender serving an indeterminate sentence is entitled to consideration for day parole at 4 years from the date of arrest. Full parole is considered after 7 years and at two year intervals thereafter. Considerations include the person's progress within the institution, static factors pertaining to ongoing risk and the general consideration of public safety. As Mr. Wickwire put it, the person must "earn his release". Until the risk is assumable in the community he will not be granted release. An offender earns his release by engaging in the correctional plan. Updated psychiatric and psychological reports are considered. He would normally cascade down from maximum security facilities to minimum security. An inmate must participate and demonstrate change or he will not be released.

14. The person remains under the jurisdiction of Correctional Services Canada for the rest of his life. He would be on conditions which may include the requirement to take medications and comply with a treatment regime. Those conditions can be amended as further progress is made.

15. The difference between indeterminate incarceration and a determinate sentence with a Long Term Supervision Order is of significance in this case. A determinate sentence would result in Mr. Bowne being released on his warrant expiry date regardless of whether he has or has not made any progress. Public

safety would depend on the efficacy of the Long Term Supervision Order in restraining his behaviour. He would not be 70 years old at that time but less than 60 if he were to receive a sentence of 7 years.

16. An indeterminate sentence would result in his being released only when he has shown sufficient progress that public safety can be adequately protected with a form of supervision order.

17. The Crown has given notice of the application to have Mr. Bowen declared and sentenced as a dangerous offender under section 753 of the Criminal Code.

18. The Crown must establish that a number of conditions have been met in order for such an application to be properly before the court. Two of the offences of which Mr. Bowen has been convicted are “serious personal injury” offences according to section 752 of the Criminal Code. He has been convicted of a “designated offence” and a “primary designated offence”. The Crown has provided notice of the application as required under section 753(2) of the Criminal Code. A forensic risk assessment has been prepared dated 26 August 2010 and filed with the court as required by sections 752.1(1) and 752.1(2) of the Criminal Code. The consent of the Attorney General has been obtained and filed with the court as required by section 754(1)(a) of the Criminal Code. The Notice of Application has

been properly served on the accused and filed with the court as required by section 745(1)(b) and (c).

19. Mr. Bowen through his counsel has not disputed that those procedural requirements and conditions precedent have been met.

20. Mr. Bowen has also agreed through his counsel that he meets the criteria for designation as a dangerous offender set out in s. 753(1).

21. A person must be declared a dangerous offender if any of four criteria is met. The first three involve situations in which the offender has committed a serious personal injury offence and constitutes a threat to the life, safety, or physical well-being of other persons. That is established when there is a pattern of behaviour that shows a failure on the offender's part to restrain his behaviour and a likelihood of causing death or injury to others through the failure in the future to restrain his behaviour. It may also involve a pattern of persistent aggressive behaviour, showing a substantial degree of indifference about the reasonably foreseeable consequences to other people of his behaviour. It may also involve behaviour 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. The fourth criterion is whether the offence shows a failure on

the part of the offender to control his sexual impulses and a likelihood of causing injury, pain or “other evil”, to other people through his failure to control his sexual impulses in the future.

22. Based on the circumstances of the underlying offences and a review of Mr. Bowen’s extensive criminal record, it is clear that he fits at least one if not all of those four criteria. He did not seriously dispute that. Once that finding has been made, section 753(4.1) requires that the court 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...will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.” That provision was added as part of the 2008 amendments. The lesser measures referenced in that section are a sentence of imprisonment for no less than two years followed by long term supervision for no more than ten years, or the sentence for the offence for which the person has been convicted.

23. The very precise issue here is whether, on the basis of the evidence adduced at the hearing there is a reasonable expectation that the public will be adequately protected by a determinate sentence of 5 to 7 years followed by a long term

supervision order of 10 years. Rather than this application being drawn out over a period of many weeks, to ineluctably reach that question, it has here been completed with a day and a half of court time. Counsel have worked diligently to reach agreement on many evidentiary matters and have succeeded in focusing the issue for decision precisely. Nineteen binders of materials containing close to 12,000 numbered pages have been carefully organized, filed and entered by consent.

24. In *R. v. Johnson*¹ the Supreme Court of Canada found that the designation of a person as a dangerous offender is a discretionary matter. Under the legislation as it was then worded, the issue was whether a person should be sentenced as a dangerous offender or as a long term offender. The considerations are similar to those involved now under section 753(4.1).

25. The court held that a judge has to consider “the possibility” that the sanctions available pursuant to the long term offender provisions would be sufficient to achieve the objectives that the dangerous offender provisions seek to advance. The court also ruled that in exercising judicial discretion in that matter the main objective is the protection of the public. The “essential question” is

¹ 2003]2 S.C.R. 357

whether the provisions of the long term offender designation are sufficient to reduce the threat to an acceptable level. The issue is not whether the threat can be eliminated but whether it can be reduced to an acceptable level. As section 753(4.1) states, there must be a “reasonable expectation” that a lesser measure would adequately protect the public. What constitutes an acceptable level of risk, or what qualifies as adequate protection is not an easy question.

26. In commenting on the Johnson case, the Ontario Court of Appeal in *R. v. MacCallum*,² plainly stated that in order to achieve the goal of public protection, there must be “evidence of treatability that is more than an expression of hope and indicates that the specific offender can be treated within a definite period of time”³. There is no requirement to show that the offender can be “cured” through treatment or that his rehabilitation will be assured. There has to be proof that the “nature and severity of the offender’s identified risk can be sufficiently contained in the community in a non-custodial setting”⁴.

² [2005] O.J. No. 1178

³ *R. v. MacCallum* at para. 47

⁴ *R. v. G.L.* [2007] O.J. No. 2939

27. The issue then is whether there is evidence beyond merely hopeful speculation that Mr. Bowen can be treated in such a way that his risk eventually can be managed to an acceptable level in the community, after a period of incarceration. That will of course involve a consideration of the extent to which he poses a risk to reoffend upon his release and the manner in which that risk can be managed either by treatment or conditions of release. There is no checklist of factors to be considered and no predetermined weight to be assigned to any factor. The circumstances of the offence that gave rise to the application are relevant as are Mr. Bowen's own circumstances including his criminal record and psychiatric diagnoses.

Assessment Report

28. An extensive 52 page report dated 26 August 2010 was prepared by Dr. Grainne Neilson and Dr. Chris Bryniak at the East Coast Forensic Hospital in Dartmouth. That report was based on interviews with Mr. Bowen, an assessment by staff psychologist Dr. Brad Kelln, review of health care notes and the massive quantity of materials pertaining to Mr. Bowen's past offences, behaviour in other institutions and parole board documents.

29. Dr. Neilson gave evidence at the hearing of the application. She was qualified to give expert evidence in the area of psychiatric diagnosis, treatment of psychiatric illness, violence risk assessment and management and prognosis with regard to treatability.

30. At page 48 the report states,

Mr. Bowen is an offender with substantial risk of violent re-offence whose treatment and rehabilitative needs, as well as supervisory requirements will be very high. Extremely gradual and very highly structured release planning is recommended if (and only if) Mr. Bowen takes the initiative to address his violence risk factors effectively (prior to any attempted release), and consistently demonstrates cooperative pro-social behaviour within the institution and cooperates fully with his Case Management Team to devise an appropriate release plan to assist him to manage his violence risk factors. He will be highly system –dependent for resources.

31. Mr. Bowen is described as being psychopathic. Dr. Neilson noted in her report that the presence of psychopathy “predicts a poor response to supervision and a worse prognosis in terms of violence risk”. Supervision is a “formidable challenge”. People with psychopathy tend to be self-righteous and manipulative of the system. Attempts to compel compliance inflame the sense of being victimized. Attempts to provide a “corrective experience are limited by dishonesty in communication and trivialization of the correction”.

Criminal Record

32. To say that Mr. Bowen has an extensive criminal record would be an understatement. He has a total of 101 criminal convictions. Of those 14 relate to the time that he has been in the Halifax area.

33. Mr. Bowen's criminal history goes back to when he was just 16. At that time he and a friend took some jewelry from the home of a jewelry store owner in Montreal. It was imitation jewelry which they sold as real and turned a "profit" of \$2,000. The two left Montreal and travelled by train to Edmonton to avoid the police. He eventually ended up getting arrested and was incarcerated at Fort Saskatchewan.

34. Mr. Bowen said that while he was in jail there he met some older people who had robbed banks. He said they gave him "tips" on how to rob banks and "get away with it". He was drawn to the idea of robbing banks because he realized that he didn't need to use a real gun and, his view, no one actually had to get hurt.

35. He and his friend returned to Montreal and robbed their first bank. He estimated that over a one or two year period they robbed 40 different banks. He may have been 16 or 17 at the time. After robbing a bank the two would "party", spending the money in clubs and on drugs and "girls". When the money ran out

they would do another robbery. He was doing cocaine at the time and using up to \$300 worth a day.

36. He was convicted in February 1981 for 16 counts of conspiracy and 25 counts of armed robbery. He was sentenced to 7 years in jail. He was released in January 1986 on mandatory supervision. He initially did well on release but returned to his pattern of using cocaine and robbing banks. Over a period of a few months he says that he robbed 10 to 15 banks, and got about \$150,000. During one of these robberies, in April 1986, he took a gun from a security guard and fired it in the air to deter anyone from following him.

37. Two days after that robbery he was involved with an incident in which a woman was shot. After shooting that person he fled to the United States. He crossed the border on foot, stole a van and drove to New York. When he learned that the victim of the shooting had died he planned to head to the southern United States. He was arrested in North Carolina.

38. In 1989 he was convicted of manslaughter with respect to that shooting incident. A bizarre feature of that offence was that the victim was female but Mr. Bowen has insisted throughout that she was in fact a transvestite man. He was sentenced to 12 years in prison.

39. While he was incarcerated in various federal institutions he was convicted of 27 charges of uttering threats, mischief and 6 counts of assaulting a peace officer. The threats would usually take the form of threats to kill or injure someone once he was released from prison. Those would sometimes involve his stating that he had been convicted of murder and citing the number of days until his release. The range of sentences for these matters was from 30 days to 2 years.

40. In February 2005 he was convicted of causing a disturbance, possession of a weapon, assaulting a police officer, mischief and escaping lawful custody. The assault took place on December 23, 2004. Mr. Bowen was in custody and was in the van waiting to be transported into the Spring Garden Road courthouse. A sheriff's officer escorted a prisoner into the cells area and returned to get Mr. Bowen. Mr. Bowen lunged at him and struck him in the throat with both hands. The officer fell to the ground. Mr. Bowen ran but was captured 40 feet away. Mr. Bowen's version of the event was that he had indeed tried to escape. "I had a handcuff key which I carry all the time". He said that he used that key to unlock the cuffs and shackles. His plan was to run home.

41. Also at about that same time, he was convicted of a weapons possession charge involving a pellet gun. In September of the previous year a woman on

Creighton Street in Halifax heard Mr. Bowen mumble something. She turned to look at him and he said “That’s what I’m talking about.” As he spoke those words he pulled the gun out of a bag and tossed it in the air. The police executed a high risk take down. They found Mr. Bowen with the air pistol, black gloves and a black balaclava.

42. He was sentenced to 5 consecutive periods of 2 months each, and 2 periods of two months served concurrently. That resulted in a total jail sentence of 10 months with 12 months of probation to follow.

43. In February 2006, he was convicted of assault with a weapon. On 31 October 2005 Mr. Bowen approached a woman who was knocking at a door. He pulled a knife and pushed her away from the door. Mr. Bowen said he didn’t remember what happened that night. “I was fooling around. I was going to the same place. We were going to smoke crack or something. Making her think I was gonna get her.”

44. He was sentenced to 2 years in jail with credit for 10 months on remand.

45. In May 2009, he was convicted of theft and failure to comply with conditions. He was sentenced to one month in custody.

46. The report from the East Coast Forensic Hospital dated August 26, 2010 notes that 14 of the 101 convictions have taken place since he moved to Halifax 6 years before. There are no previous sexual assault matters on his record. His most serious conviction was manslaughter. His violent convictions “show a degree of clustering”, in that 20 threats convictions and 5 assault convictions took place during 2001-2002.

47. “In recent years, his offence pattern has shown some evidence of a decrease in overall frequency/density of his convictions, while at the same time showing evidence of an escalation in terms of diversification of offence type (i.e. assault with a weapon, sexual assault).”⁵

Background

48. Mr. Bowen described that he was born and brought up in a “rundown, poor district” of Montreal. He is the youngest of 6 children. His mother worked in a beauty salon and his father worked at the public gardens. He described his childhood as being “fantastic”. His family home was a social gathering place for young people and adults. He had a large circle of friends and participated in sports.

⁵ Assessment Report page 17

49. He never experienced physical violence in the home. His parents separated a number of times and reconciled but finally separated when he was about 18 years old. His father moved to Halifax, where he remained until his death in 2009. His mother moved to Halifax in the early 1980's.

50. He was an average student in elementary school but described himself as a "scrapper". He was getting into physical fights by the time he was 8 years old. He became more involved with drugs and alcohol by 13 and started to miss both classes and sports practices. His interest in sports and school declined as his interest in drugs, alcohol and anti-social peers increased. He left public school in grade 10. He got his G.E.D. in 1981 while incarcerated.

51. After leaving school he never completed any formal vocational training. His longest period of employment was about 2 or 3 months when he was contracted to paint a house. While in Halifax he has done various odd jobs like painting and lawn mowing. He used to supplement his income by selling drugs until 2009. He admitted that he sometimes exchanged drugs for sex.

52. His drug and alcohol problems are long standing. He began using both alcohol and marijuana when he was 13. Marijuana became pretty much a daily habit for him. By 18 he was smoking 3 to 4 grams a day. He reported stealing

things from stores to sell in order to buy drugs. He started selling marijuana in Grade 7 when he was 13. Through selling marijuana he began to appreciate the life style it provided him. “We became pretty popular....We were the boys and we had the women and the girls.”

53. By 18 he was using cocaine regularly. He used other drugs to modulate the effect of the cocaine. He said that he was also a frequent user of drugs while he was incarcerated.

54. When living in the community from 2004 to 2008 he continued using drugs. The longest period of abstinence for him was about one month. He used crack 2 or 3 times a week, dilaudid 2 to 3 times a week, 1 or 2 grams of marijuana almost daily and alcohol almost daily.

Psychiatric and Mental Health History

55. Prior to 2004 Mr. Bowen had never been told that he had a psychiatric diagnosis and was not on any medication. In December 2004, while serving a provincial sentence he was transferred to the East Coast Forensic Hospital for a psychiatric assessment. He remained there until January 2005. He was then diagnosed with bipolar disorder and antisocial personality disorder. He was treated with mood stabilization medication.

56. During his admission he was reported as maintaining a “very aggressive, intimidating, verbal and behavioral approach to staff and without exception.” He was noted as being acutely mentally ill with both manic mood symptoms and psychosis involving delusions of persecution.

57. His second psychiatric admission was also to the East Coast Forensic Hospital in April/May of 2005. At that time there was no aggressive behaviour and he was described many times as being polite with the staff. It was noted that his psychiatric and behavioral symptoms responded well to olanzapine.

58. Mr. Bowen was admitted a third time to the East Coast Forensic Hospital in January/February 2009. He was discharged with a diagnosis of Schizoaffective Disorder, Substance Abuse and Antisocial Personality Disorder. He was reported to be loud and threatening and tested positive for both marijuana and cocaine use. After a number of threats he was reported to have said, “I’m covered for all my crimes because I know how to work the system because I’m crazy.” When he went back to the Correctional Centre in Burnside he was once again verbally aggressive.

59. On a fourth occasion he was admitted to the East Coast Forensic Hospital in April/May 2009. He was admitted on an Assessment Order pursuant to s. 672.13 of the Criminal Code. He was found fit to stand trial and did not meet the criteria for

exemption from criminal responsibility. At that time he showed evidence of hypomania. There was described as being a “grandiose quality” and a “certain flavour of paranoia” about him. Mr. Bowen indicated at that time that he was then a Muslim, was no longer using substances and was “trying to go straight”.

60. The assessment report dated 26 August 2010 noted that since his most recent incarceration in April 2009, Mr. Bowen stated that he is a “whole new person”. He has not reported any disciplinary issues and says that he has not used any illegal drugs or alcohol during this period of incarceration. He said that he spends his time exercising and reading the Qur’an.

61. Across several assessments he has been diagnosed with a personality disorder which is a long term and consistent with a predictable pattern in interpersonal relationships, impulse control, emotional tone and a way of perceiving and interacting with his environment. His personality disorders have tended to fall in the antisocial and narcissistic. The antisocial disorders involve a pattern of disregard for the basic rights of others. People who are narcissistic are highly self-centered and grandiose. The report notes that he possesses the personality traits of psychopathy.

62. In summary, Mr. Bowen was diagnosed with a major mental illness in 2004. He has antisocial personality disorder and polysubstance abuse. The report notes that his compliance with treatment is related to an improvement of his overall behaviour.

Social norms and Attitudes

63. Mr. Bowen says that since 2004 he has undergone a personal reform. He says that he realizes that the criminal lifestyle is in fact not glamorous. As a result of it he has been estranged from his family. He says that his religious faith has helped him to change.

64. In the past he has shown an inability or unwillingness to accept responsibility for his criminal behaviour. The Assessment Report states that he consistently has an excuse for his behaviour and either blames others, rationalizes the behaviour or denies or grossly minimizes the consequences to others. He says that his last conviction for manslaughter was his last “fair conviction”.

65. When discussing his criminal behaviours he has shown a general lack of concern for others. He claims that society, the victims and extenuating circumstances were to blame for his actions.

66. When not in jail the report describes Mr. Bowen as living a lifestyle that has been “dependent/parasitic”. He has avoided steady employment, relied on his elderly mother for shelter, relied on social assistance despite being able bodied and sought the support of his family doctor for an application for long term disability as a result of the effect of his incarceration. He has supported himself through theft and drug trafficking at various stages in his life.

67. Mr. Bowen has been prepared to use deceit and deception to defraud and manipulate others. He has described his belief that it would be foolish not to exploit the weaknesses of others. He has what was described as a long standing interest in get rich quick schemes and has a consistent inability to formulate and carry out any kind of realistic long term plans and goals. They are quite unrealistic. For example, his stated employment goal is to be a war correspondent with CNN.

68. He has expressed his desire to lead a crime free life. He was asked how he planned on doing that. He said that he needs to get a job and “be around good people and take it from there”.

69. Mr. Bowen has lived on the spur of the moment. He has little forethought and little afterthought. He does what he feels like doing and has shown a tendency to be drawn into the “fast lane”, with novel and exciting stimulation, illegal drugs,

multiple relationship partners and pursuing his desire to be “where the action is”. When it is described that way it sounds almost like a real life version of game Grand Theft Auto. But there has been little about it that has been particularly thrilling. Mr. Bowen’s life to date has been the sad story of a mentally ill man whose lack of impulse control has resulted in his spending the most part of his life in jail. Having pretty much no personal experience on which to base any speculation of what the actual fast lane may look like, I nevertheless feel some confidence in expressing the view that it does not look much like Mr. Bowen’s life.

70. Mr. Bowen has shown that he responds to frustration, discipline and criticism with violent behaviour, threats and abuse. He takes offense easily and perceives himself as being picked on by others. His interpersonal, emotional, behavioral characteristics and ongoing attitudes and values are those associated with a criminal lifestyle. Mr. Bowen, once again, says that he has changed over the last number of years.

Institutional Behaviour

71. While in jail in the early 1980’s, Mr. Bowen asked for a transfer to Springhill to be closer to his family in Nova Scotia. He was sent to Dorchester instead. He said that was one of the reasons for his behavioral problems. He was

not prepared for the culture of a maximum security penitentiary. He was eventually transferred to Springhill and began to do drugs there. He pulled a knife on another inmate and was sent back to Dorchester. He said that the person had been trying to “muscle” him.

72. While in Dorchester he assaulted another inmate with a rock. He explained that by saying the person was a known child molester. He was then sent back to Quebec.

73. He was released in 1986 and was back to robbing banks within a month. He justified that saying, “Since I received no help I went back to robbing banks to pay for drugs.”

74. Between 1987 and 2000 he was in various federal institutions including Special Handling Units (SHU’s) around the country. In his interview he speculated that he was moved because he was disruptive, tended to “start riots” and assaulted guards. He also continued to use drugs while in prison. The records support that. In 1987 he was in an SHU for the first time after assaulting two officers in Archambault. He remained in that SHU for three years until he was transferred to Kingston. After 8 months he was return to the SHU for uttering threats, being involved in institutional trafficking and having materials in his

possession to make what is referred to as a “zip gun”. In May 1991 he was transferred from SHU in Quebec to SHU Prairies because of his “many incompatibilities”. He was at super maximum Prairies for 4 years.

75. In November 1996 he was sent back to Quebec to the SHU there. That was following “very dysfunctional behaviour” and information that he had sexually assaulted another inmate during a one year stay in Kingston.

76. For about 15 months, from June 1999 to November 2000 Mr. Bowen’s file showed substantially improved behaviour within the federal system. Mr. Bowen said that this was because he was being left alone. At that time he completed two programs for relational skills and relapse prevention. He began psychological counseling, met his probation officer and dealt with staff appropriately and politely.

77. That period of stability ended when his release date got closer and Mr. Bowen says the staff started causing him problems. He said that the staff feared his eventual release. The Assessment Report notes that other documents elaborate on this period of sustained behavioral improvement. The National Parole Board decision from 17 August 1998 acknowledged some changes but also cited his return to aggressive and disruptive behaviours. Workers noted that Mr. Bowen had

made progress on a “cognitive level” and had learned concepts that enabled him to react better with others. His behaviour pattern to that point was described as follows:

In fact, his entire sentence is not a constant tirade of inappropriate and violent behaviour, but rather a series of cycles involving lulls, build ups and then full blown storms. Some of the lulls have lasted for insignificant periods of time, but none in the last six years have lasted as long as Bowen’s present positive change. Also, the fact that there is a gradual build up to Bowen’s violent behaviour makes the risk that he presents manageable in the community under the type of intense supervision that would be used should the detention order be modified.

78. In April 2000 he transferred to the Atlantic Institution at Renous. He was fine for the first 6 months there. There were no serious disciplinary reports. Then from December 2000 his behaviour deteriorated significantly. From December 2000 to April 2001 he accumulated 40 serious offence reports for things like assaulting an officer, uttering threats to torture members of their families, threats to rape and kill a correctional officer, lighting fires and writing threatening letters to the warden of the penitentiary.

79. The Warrant Expiry package section labeled “Psychological/Psychiatric Assessment Report” dated 7 July 2000 states:

[Mr. Bowen] spent most of the last twenty years behind bars and his institutional past is very tumultuous. Over the years he accumulated

hundreds of institutional charges and became a jigsaw puzzle for the management. His behaviour was one of protestation and annoyance. He would demonstrate his dissatisfactions by several means (screaming, setting fires, inappropriate sexual behaviours etc.).

80. While in jail in the west in 2001 things do not seem to have improved. He was noted as having continued to threaten, harass and intimidate staff. His behaviours there included lighting fires, flooding the range, threats to throw urine and feces on the staff, threats to sexually assault and murder the staff either within the institution or on release. On a number of occasions he was noted as having intentionally exposed his genitals to the staff. While at that institution he said that he was capable of acting appropriately. He had consciously made the decision to “cause havoc”.

81. Mr. Bowen’s applications for parole were repeatedly denied. He was kept in jail until his warrant expired on 25 January 2002. At that time he was immediately arrested and served a second federal term of 2 years for 5 counts of assault and 25 counts of uttering threats. Of those offences, 18 occurred within the Quebec Detention Centre and 12 at the Donnacona Institution. Examples of the kinds of threats were, “I’ve committed three murders and you’re going to be the fourth”, and “I’m going to put a bullet in the back of your head when I get out of here in 32 days.”

82. Mr. Bowen also told one correctional officer that he would rape her when he got out.

83. The National Parole Board Assessment for Decision dated 13 September 2003 stated that Mr. Bowen had exhibited serious behavioural problems. He was described as being disruptive and aggressive. He remained in segregation and his behaviour was stabilized by medication. That being said, he stated that he did not need to take medication and probably would not upon being released. He also indicated that he was not interested in any programs that correctional services or the institution had to offer.

84. He ended up at the Central Nova Scotia Correctional facility in 2004. Mr. Bowen is described as having major institutional adjustment problems. He has been quite challenging to manage. Since 2004 in the Central Nova Scotia Correctional he has tried to set fire to his cell, taken aggressive stances with staff, and made multiple successful escapes from handcuffs. The vast majority of those incidents took place between 2004 and 2006.

Psychological Assessment

85. Dr. Kelln a Psychologist with the Dept. of Psychiatry assessed Mr. Bowen as falling within the “moderate to high range and need for supervision and monitoring” for individuals with criminal histories.

86. Mr. Bowen’s profile suggests someone who is impatient, irritable and easily provoked. He is impulsive and prone to risk taking. He is likely self-centered and skeptical of the intentions of others. His profile also suggests someone who is self-assured, confident and forceful with others. He is also prone to stimulus seeking and reckless, dangerous behaviour. His scores would also suggest that he is someone prone to physical displays of anger and a “significant spike on a scale measuring feelings of persecution suggest that Mr. Bowen is firmly of the belief that others are attempting to undermine his efforts.”

87. Mr. Bowen’s scores also show warmth and trusting. It was noted that it was unclear how this might fit with the other result. “In all likelihood it is an artifact of Mr. Bowen’s tendency towards being quite engaging and sociable with others in his interactions.”

Violence Risk Assessment

88. The Assessment Report describes two broad approaches to predicting future risk. The first is referred to as an actuarial analysis. Using that method the person is compared against grouped statistical data. The method is described as being heavily weighted on historical/static factors that are known to be associated with violence. The factors are then analyzed to generate a statistical probability of re-offending. The scales do not predict individual behaviour. They place the individual within a group which has a greater or lesser risk of offending. The advantage is that these methods have been validated. They have been criticized for their focus on unchanging factors.

89. The second approach is by using a “structured clinical guide”. That approach considers variables that are more specific to the person’s individual case taking into account both the unchanging static factors and the dynamic or potentially modifiable ones. The purpose is to “guide clinical judgment” and tailor clinical interventions by what has been empirically supported by the literature.

90. The report used five violence risk assessment tools. Three of them were actuarial assessment instruments and two were non- actuarial guides that incorporate dynamic factors. The assessment also used an instrument called the

Psychopathy Check List- Revised (PCL-R). The results of the PCL-R are needed to complete the other assessment instruments.

91. Psychopathy is described in the assessment report as a “clinical construct defined by a constellation of interpersonal, emotional, and lifestyle characteristics”. On a personal level psychopaths are grandiose, arrogant, callous, dominant, superficial and manipulative. They are short tempered, unable to form strong emotional bonds, and lack guilt or anxiety. Those things are all associated with a socially deviant lifestyle.

92. The PCL-R is a commonly used and widely accepted instrument. It was designed to measure the extent to which an inmate possesses psychopathic traits. It was not designed to assess the risk of recidivism or violence. However, individuals shown to have psychopathic traits have been shown to re-offend violently at “persistently higher rates than other offenders”.

93. The report indicates that Mr. Bowen has evidenced a variety of traits associated with psychopathy over the course of his life. He has shown glibness and superficial charm, a grandiose sense of self-worth, need for stimulation and proneness to boredom, cunning manipulative behaviour, lack of remorse or guilt, lack of empathy, promiscuous sexual behaviour, lack of realistic long term goals,

impulsivity, failure to accept responsibility for his own actions, all to a large degree. Mr. Bowen's score was noted as 32.2, above the generally accepted cut-off threshold of 30 for psychopathy. His score was just above the 91st percentile meaning that slightly less than 9% of North American male offenders would show more psychopathic traits.

94. The Violence Risk Assessment Guide, VRAG was also used. It is a 12 item instrument designed to assess the risk of violent recidivism, using data from a study of over 600 male offenders. The VRAG gives a numerical value representing the risk to re-offend over 7 to 10 year period. The indicators associated with increased violence risk that apply to Mr. Bowen as his PCL-R score of between 25 and 34, his maladjustment in elementary school, leaving the home of his biological parents before 16, the absence of victim injury during the index offence, the presence of a personality disorder, the absence of a diagnosis of schizophrenia, never having been married and a history of non-violent offences. He also showed several items that would be consistent with a lower risk score such as his age at the time of the index offence, and the fact that the victim of the offence was a female. His total score was 16, which falls into the Risk category 7 of 9. This is described as corresponding to a moderately-high future risk level.

95. The Sexual Offence Risk Assessment Guide (SORAG) was also used. It is designed to assess the risk of an offender matching certain characteristics will reoffend violently. It does not specifically predict sexual recidivism but general violent recidivism. Once again, on this instrument Mr. Bowen's score fell into Category 7 of 9, corresponding to a moderately high risk.

96. The Assessment Reports also reference the use of the Static 99R instrument. That risk assessment instrument consists of 10 items and produces an estimated risk factor for the individual. The factors associated with higher risk as they apply to Mr. Bowen are the presence of convictions for both index and prior non-sexual violence, the number of sentencing dates and the characteristics of victims as people who are unrelated to him and strangers. The factors associated with a lower risk are his age, the absence of other convictions for sexual offences, the absence of convictions for "non-contact sex offences" and the lack of male victims. Mr. Bowen fit within the moderate high risk category using this instrument.

97. The Historical Clinical Risk Management (HCR-20) and the Sexual Violence Risk -20 (SVR-20) methods were also used. They are guided or non-actuarial methods so they do not yield normative scores for risk. They are clinical guides to insure the proper consideration of pertinent variables known to be

associated with general and sexual violence. Mr. Bowen was judged to be at least of moderate risk using both methods.

98. In considering Mr. Bowen's history of violence the assessment takes into account the date of onset of violence as well as the frequency and persistency of the violence. The earlier the behaviours are present and the more extensive an individual's history the greater their potential for future violence. The report notes that older the sexual offenders are at lower risk to reoffend.

99. Mr. Bowen was first convicted of a violent offence at 19. He had later convictions during his 20's, 30's and 40's. The index offences took place when he was 48. The report notes that these reflect only charges and convictions and do not include his other violent and intimidating behaviour. He was noted to have sexually threatened female prison guards but was not charged for that behaviour.

100. Mr. Bowen's "advancing age" as of the date of the assessment has been taken into account.

101. Offenders with diverse offense histories are at increased risk to reoffend because of the wide choice of "victim variables and circumstances available to them". Mr. Bowen's violence has taken the form of general violence toward people and property as well as sexual violence. The victim in this case was a female

stranger. There was evidence to suggest to the assessors a level of premeditation. The manner in which this assault took place clearly involved Mr. Bowen taking the time to pose as a delivery person and making sure that the victim's husband was not at home.

102. The circumstances of the general violence have been varied. Some were calculated or instrumental while some instances were more reactive or impulsive. The motivations are also diverse.

103. Escalation refers to a pattern in which the person's actions become more frequent, serious or diverse over time. The "trajectory of violence" over time is thought to be an important consideration when considering the nature and severity of future violence as opposed to the level of risk of violence in and of itself. Once offenders have shown ability and willingness to commit a certain level of violence the assumption is that they will be more willing to commit that level of violence once again.

104. Mr. Bowen's violent and sexual history is spread out over many years. The assessment has to take into account the periods during which he was actually at liberty in the community to reoffend. The report notes that the frequency of his acts of violence is not abating and that he is now diversifying into sexual violence.

105. Coercion refers to physical or psychological acts committed during the course of an offence to further that violent offence. The report notes that there is some evidence to link coercion with sexual recidivism. In Mr. Bowen's case he has used what was described as a "wide array of physical and psychological coercion" to advance his offending.

106. The assessment report also considers Mr. Bowen's psychological adjustment. He has a long standing tendency to "externalize blame for his behaviour" and has failed to accept personal responsibility for his actions. By doing that he has been able to shift responsibility away from himself and to rationalize or justify his own behaviour to himself. "This type of perspective makes it quite difficult for the individual to gain true insight into their own behavioral pattern as this first and foremost requires acknowledging their behavior."

107. Mr. Bowen as of the date of the report continued to express his acceptance of violence as a means to resolve conflict. This risk factor was described as overlapping with the previous one because it involves a kind of cognitive distortion.

108. Problems with self-awareness indicate a lack of appreciation for the factors and processes that place the person at risk of committing violent acts. Mr. Bowen

was described as having expressed some limited insight into those risk factors including his substance abuse and psychiatric illness. He does not acknowledge the risk factors associated with sexual violence, asserts that he is not a sex offender and that he was wrongfully convicted. He has every right to maintain his innocence.

109. Mr. Bowen has problems with stress and coping with stress. He tolerates stress poorly and responds with “impulsive, ill-conceived or criminal decision making to address life’s everyday problems.” This was evident both in jail and in the community.

110. Mr. Bowen did not “endorse questions related to deviant sexual arousal”. The assessors stated that not all offenders who commit sexual assault suffer from sexual deviance. They may commit the act out of “broadly antisocial or psychopathic personality or lifestyle”. In Mr. Bowen’s case it was suggested that the driver of his behaviour may relate to excessive sexual drive, dearth of appropriate sexual outlets and a sense of sexual entitlement.

111. Mr. Bowen’s personality style through the years shows an individual who is “quick to react, impulsive, generally mistrustful of the motives of others, and has a great deal of difficulty with any authority figure.” He is highly self-centred. When

anyone tries to control him he reacts by trying to take control himself by whatever means are available to him. It was noted that intimidation and aggressive behaviour were the tools most available to him. “This would set up an escalating dynamic between the institutional staff who in turn would react by attempting to control and contain Mr. Bowen, which in turn would fuel Mr. Bowen’s aggressive reactions.”

112. The report notes that there is a strong relationship between violence and psychosis or mania. The presence of psychiatric symptoms is a “dynamic risk factor” for sexual recidivism. Mr. Bowen has been diagnosed with a major mental illness documented as bipolar disorder, psychosis NOS or Schizoaffective disorder. He was described on many of his admissions to the East Coast Forensic Hospital as being in clinically manic or acutely psychotic state. There is however a strong correlation between his taking his psychiatric medication and significant improvement in his behaviour and overall mental state.

113. Substance abuse is also associated with increased risk of violence and sexual violence. Substance use leads to impulsive or irrational decisions making. Mr. Bowen has offended while under the influence but also in the absence of intoxicating substances. He has a significant and chronic problem with clinical dependence of multiple substances including alcohol, cocaine and marijuana. He

has frequently used those substances while in jail. He has had very little if any formal programming to deal with those abuse issues. That has been a result of his unwillingness or inability to engage in those programs.

114. Mr. Bowen has made threats of violence in the past but was not at the time of the assessment expressing any such thoughts.

115. The failure to establish or maintain stable romantic or sexual relationships with age appropriate partners is associated with recidivism. That may be because of lack of desire, ability of opportunity. Characteristics that define psychopathy such as manipulation and deficits in empathy can result in relationships that are superficial and lacking in intimacy. Mr. Bowen has never formed consensual intimate relationships. All of his interactions with women were described as “superficial and exploitative, solely for the purpose of sexual gratification.”

116. Similarly problems with non-intimate relationships are associated with recidivism. A lack of social and emotional support has been linked to the severity of sexual offending. Other than his mother and of course those professionals who are paid to be involved, Mr. Bowen appears to have no circle of support or accountability.

117. Problems with employment, such as the failure to get and keep a job, are associated with the higher risk of criminal violence. The lack of daily structure and routine is a “strong socio-demographic” predictor of future violence. In Mr. Bowen’s case, he has had little by way of stable employment.

118. A history of criminality and antisocial lifestyle is a risk factor. In Mr. Bowen’s case his criminal behaviour started at a young age. While not in jail he has shown a “fair degree of comfort” with the criminal lifestyle. He has shown a pattern of antisocial behaviour and has used manipulation, coercion, intimidation, threats, force and violence to get what he wants.

119. Some people have problems in implementing pro-social life plans. They are those who have poor self-management, unrealistic goals and the inability to delay gratification. They are impulsive. People who fail to have stable plans are at increased risk to re-offend. Mr. Bowen has had difficulty in adhering to such a pro-social life plan. The assessment report acknowledges that he has generally been held until his warrant expiry date and because of that has not had the benefit of a case management team to assist him with a suitable plan upon his release from a correctional institution.

120. Problems with treatment are another risk factor. People who reject institutional support or who cannot benefit from it are at increased risk. Through his years in jail Mr. Bowen has shown little interest in taking advantage of programming. When he has done such programming it has been the basic ones, such as anger management and cognitive skills. He has not completed programs that are aimed at addressing his violent behaviour. The assessment report speculates that this may be a result of his rejection of authority and lack of insight into his need for programming. He has seen himself as a victim and has rationalized his behaviours in the past. It has been noted that he was able to stabilize his behaviour and was willing to access programs for a 15 month period in 1999-2000 while in a federal penitentiary. During that time he seems to have gained some insight into his risk factors and made “noticeable strides” to address them. The report also notes that the presence of psychopathy is a poor prognostic factor in terms of treatment adherence and response.

121. Problems with supervision in the community are a well-established predictor of recidivism. Mr. Bowen's does not have much of a record of supervision in the community. The presence of psychopathy is noted as being a poor prognostic factor of supervision compliance. People with psychopathic traits tend to be less likely to comply with supervision in the community.

122. At the time of the assessment Mr. Bowen was indicating that he was motivated to participate in any programs that would help to secure his release. The report notes that there is no evidence from the literature that positive intention to participate in programming ultimately translates into a reduction in recidivism. A refusal to pursue treatment however has been shown to result in high rates of recidivism.

123. With sufficient motivation in the past, Mr. Bowen has shown that he has the ability to control his behaviour. During the 15 months from June 1999 to December 2000 his behaviour improved dramatically. His aggressive behaviours stopped and he participated in counseling and programming. The record notes that his behaviour deteriorated rapidly when he was denied early release.

124. Mr. Bowen has been able to achieve some success in the past but in general he completed very few programs. While his attitude is better now, he has expressed the same view at times in the past. The Assessment Report states:

Overall, given the limited history of completed programming, it is very difficult to predict how Mr. Bowen will respond to future programming/treatment. Furthermore he does not accept responsibility for the current sexual offence (conviction notwithstanding) and intends to appeal this decision. Such a stance is highly likely to hamper treatment progress in any sex offender programming he may agree to undertake. In addition, the research

literature indicates that individuals high in psychopathic traits such as Mr. Bowen, exhibit a poor response to treatment with a greater likelihood of refusing treatment outright or dropping out of treatment.

125. The Assessment Report notes that eventual control of an offender in the community is predicated on the person's willingness to be "fully involved in, consistently cooperative with and honestly engaged in" the correctional plan both in the institution and later in the community. That would include participating in recommended treatment and rehabilitative programs and engaging in an honest reporting relationship. Given the circumstances Mr. Bowen's expression of willingness is not surprising but at the same time does not really help to predict the risk of recidivism. While he hasn't expressed the intention to refuse to cooperate, his attitude of defiance of authority and resistance to boundary setting is of long standing and would be likely to continue.

The Age Factor and Criminal Burnout

126. Mr. Bowen's longest period of stability has really been his most recent one. While in custody awaiting sentencing he has not been involved with the kinds of behaviours that have characterized his institutional record in the past. Dr. Neilson related that staff members have noted that Mr. Bowen is not like "the old Doug". He has not been aggressive or even rude.

127. Mr. Atherton suggested that this was a sign that Mr. Bowen could be managed and that with the right medications, properly monitored, Mr. Bowen could be an assumable risk in the community. Mr. Bowen himself in his brief statement to the court compared himself to Ashley Smith, a young woman who committed suicide in an institutional setting. Mr. Bowen said that now, with a pill, which he mimicked taking, he has been able to control his behaviour in a way that could never be done before. In his view, had the authorities properly diagnosed him, rather than moving him from institution to institution across the country he would not be where he finds himself now.

128. Mr. Bowen's comparatively good behaviour has to be considered in its context. He has essentially self-segregated during this period. He remains in his cell and has no contact with other inmates. He has little contact even with the staff, who have allowed him to keep his cell in a state of disarray rather than risk a confrontation with him. He has had virtually no access to drugs or alcohol while segregated in that way, though as Mr. Atherton notes, that has been by his choice. He refuses to provide blood samples to monitor the effects of his medications, though he does so politely. The medications are for his physical well-being and his failure to have the testing harms no one but himself.

129. He was described as being in “hibernation”. He wakes at 11am and reads the newspaper. He does not use the hour allotted him to be outside in the courtyard and essentially spends the entire day in his cell, alone. His desire to avoid conflict is a good thing. The highly artificial environment that he has created, when considered in light of his long term criminal behaviour is hardly enough to reasonably infer that there has been a fundamental change in attitude or even the onset of criminal burnout.

130. As Mr. Atherton notes, at the end of a determinate sentence, followed by a ten year supervision order, Mr. Bowen would be close to 70. The impulsiveness and aggression that have characterized his actions for much of his adult life should have slackened their grip on him. While older people do tend to be less physically capable of acting in dangerous way and perhaps less inclined to do so, there are some things about Mr. Bowen that simply cannot be ignored. As Dr. Neilson noted, in response to questions from Mr. Atherton, Mr. Bowen has that characteristic psychopathic charm, along with the lack of empathy and remorse. Even as an older person he would be able to insinuate himself into situations where he could prey upon others who were prepared to trust him. He could perpetrate acts that were dangerous to other people without using brute force or physical strength. While Mr. Atherton’s suggestion that there just aren’t that many dangerous 70 year

old may in fact be accurate, it might equally be said that 70 year old psychopaths can find ways to be dangerous. Mr. Bowen's risk taking behaviour may change in its character over age, but his personality traits and psychopathic tendencies will be channeled towards other means.

131. Mr. Bowen has been involved in a life of violent crime for almost his entire adult life. He has been in jail for 90% of it. The last five years may be an indication that there is hope for him in the long run. It is just that, hope. There is no evidence of a transformation, or of a new willingness to engage in programs that will assist in a more gradual change. A new regime of medication has helped, but there is nothing to suggest that he would now be willing to abide by the requirements of that course of treatment. If he were to be released at the age of 58 or 59 and subject to a long term supervision order, he would come out of jail not having lived anything like a normal life since he was 16 years old. Public safety would depend on his willingness to comply, essentially for the first time, with constraints placed upon him while living in the community.

132. Mr. Bowen may respond as he grows older. The evidence in this application, confirms that he needs to have the incentive to earn his freedom. He cannot simply be allowed to wait until the end of a warrant expiry date without engaging in any

rehabilitative programs with the expectation of being released on a supervision order. For Mr. Bowen to be a manageable risk to be at large in the community at all, he must be placed in circumstances where his release depends on his actions. Hibernating through a long sentence will not be enough.

133. Douglas Bowen is a dangerous offender. No sentence short of indefinite incarceration will adequately protect the public against the risk that upon his eventual release he would commit a serious personal injury offence.