

Determinate or Indeterminate?:

An Examination of Long-Term Offender and Dangerous Offender Legislation

by

Jennie Shaw, B.A. Hons.

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Abstract

Sex offenders often attract the most attention from the public when they are captured, convicted, or released. Public outcries for longer sentences for sex offenders have led to the production of several pieces of legislation over the years. The evolution of the laws on sex and dangerous offenders is examined, beginning with the introduction of the Habitual Criminals Act in 1947 and leading up to the most recent in 1997, the provisions dealing with so-called long-term offenders. This thesis posits that the long-term offender legislation is problematic in its conception and its application, particularly in not targeting the appropriate offenders and by releasing offenders who meet the criteria for a dangerous offender designation. The conflicting demands and needs of law and psychology in this area are discussed in terms of risk assessments, measurements of dangerousness, and the reliability of recidivism studies. Four cases involving dangerous and long-term offenders are examined for similarities and differences between offenders who received an indeterminate sentence and those who were released.

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Chapter 1: Introduction

The Canadian public depends upon the criminal justice system to administer justice on their behalf. There is an assumption that when a person commits a crime, they will be caught, given a fair trial, and if found guilty, sentenced accordingly. There is, however, a particular fear within the public concerning sex offenders, a fear which is reflected by the barrage of media coverage generated when a sex offender has struck, been caught, or has been released.

The Karla Homolka case caused public outrage when she was convicted of the lesser offence of manslaughter despite (belated) evidence that confirmed her full participation in the rape and murder of three teenage girls, one of whom was her sister. Many media reports raised the question: Why was Homolka not designated a dangerous offender under the Criminal Code, and why was her punishment so lenient in light of her crimes? While plea bargaining played a large role in the matter (as well as the belated finding of the taped evidence against Homolka)¹, there was a wave of anger directed at the leniency of her sentence. In light of the Bernardo and Homolka trial and other high profile cases, the Canadian public is calling for harsher punishments for sex offenders. With the demand for more severe sentences being heard more frequently, notably in the recent federal election campaign, this is an appropriate time to examine the effectiveness of earlier legislation dealing with dangerous offenders and recent legislation for long-term offenders.

¹ Galligan, Patrick T. (The Hon.), *Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka* (March 1996).

The public's voice concerning sex offenders includes victims' rights and advocacy groups, specifically women's rights groups. Women's rights organizations and lobbying groups were in part responsible for the introduction of the legislation aimed at dangerous sexual offenders. In particular, the Canadian Association of Sexual Assault Centres (CASAC) has produced several pieces of research that argue for the need for more effective ways of dealing with sex offenders. A primary problem that the CASAC identifies is the manner in which female victims of rape and abuse are treated by the criminal justice system; they often face sexist stereotypes within the administration of justice (Lakeman, 1999). The CASAC argues that there is an added injury when an offender is convicted of an offence and then the government does too little to effectively restrain or censure them (Lakeman, 1999) as illustrated by the case of Bishop O'Connor of British Columbia. O'Connor raped and impregnated Aboriginal women, but was offered a sentencing circle instead of a criminal trial even though he obtained Aboriginal status after he had been convicted (Lakeman, 1999). The CASAC argues that both the past and current legislation relating to sexual predators, including the dangerous offender and long-term offender provisions in the Criminal Code, ultimately fail to take sexual assault seriously.

The long-term offender provisions in the *Criminal Code* have been in existence for less than 10 years, and research surrounding the legislation is not as extensive as that generated by the dangerous offender provisions. Dangerous offender provisions will be examined in conjunction with the long-term offender provisions, the latter being a relatively recent "add-on" to the former. The historical development of dangerous offender provisions is also important to consider because there have been specific events

that shaped decisions to modify the law. Certain landmark cases and research projects have also influenced how habitual offenders are treated by the criminal justice system, and I will discuss these while examining the legislative history.

The concept of dangerousness has played a crucial role in the legislative developments as the very idea of indeterminate sentencing is dependent on an offender's "dangerousness." In the first piece of legislation that addressed repeat offenders, the Habitual Offenders Act in 1947, an offender was classified as dangerous if they were unable to control their impulses (Grant, 1985). The court would classify an offender under this act if he had been convicted three times of an offence that carried a sentence of five years or more (Grant, 1985). In 1948, criminal sexual psychopath legislation was introduced, which specifically targeted sex offenders. The new legislation included the testimony of psychiatrists, which was the first time that consideration was given to an offender's psychological disorders (McRuer, 1958). The entrance of psychology into legal proceedings changed the way that offenders were viewed by the criminal justice system.

Psychology's development of risk assessment led to further changes in the law, as it slowly became possible for an offender's future actions to be predicted on a scientific basis. In the early days of the Habitual Criminal and Criminal Sexual Psychopath Acts, risk assessments were not used to classify offenders, but currently there is often a minimum of two risk assessment tools used to evaluate offenders. The Correctional Service of Canada uses several risk assessment tools to evaluate the potential dangerousness of an offender and his/her likelihood to reoffend when released from incarceration. When psychology is involved in legal matters, there are several

complications that arise. The most general criticism of using psychology in the law is that while legal practitioners often require a “yes” or “no” answer, psychological and psychiatric practitioners measure probabilities. The area of risk assessment has undergone many modifications as the knowledge of psychology has increased, yet there are still instances where risk assessment scores are not consistent. Despite the criticisms that risk assessment and psychological evaluations face, their use within the criminal justice system is widespread and accepted and, therefore, must be discussed in order to understand why the legislation is shaped as it currently stands.

Because long-term offender legislation is intended to provide additional supervision for an offender after their release date, then one might assume that the offender will have received treatment prior to his/her release. Examining the rehabilitative programs within the Correctional Service of Canada will demonstrate how an offender’s behavior is modified (either successfully or unsuccessfully). Rehabilitative programs are judged by how successful they are in reducing recidivism rates. The programs ultimately attempt to show offenders that their behavior is not socially acceptable and introduce them to ways and strategies they can use to control and manage such unacceptable behavior. If rehabilitative programs within the Correctional Service of Canada do not have consistent results in curbing recidivism rates, then the introduction of legislation that allows for an offender to have extended community supervision rather than continue to be incarcerated might be endangering the rest of society.

The dependence that law currently has on the field of psychology to classify the risk of offenders can result in an inconsistent application of sentences to sex and violent offenders. The varying views on meanings of harm, a lack of principles, and the

approaches of individual judges also play a role in creating such inconsistencies. The inherent problems with risk assessment procedures and tools, the difficulty in evaluating the effectiveness of rehabilitative programs, and the inconsistent results under dangerous and long-term offender legislation raise questions as to how the Canadian criminal justice system deals with repeat sex and violent offenders and how the Correctional Service of Canada proposes to treat them. This paper will investigate current dangerous offender and long-term offender legislation with particular attention and analysis of the risk assessment process. Inconsistent findings on the effectiveness of rehabilitative programs raise serious questions about the court's decisions to release habitual and dangerous offenders back into the community. I will discuss the three criticisms of the criminal justice system and the Correctional Service of Canada in the following manner.

Chapter two will examine the progression of indeterminate sentencing from the Habitual Criminals Act to the current dangerous offender and long-term offender provisions in the *Criminal Code*. Discussion will include cases and reports that prompted legislative changes and what problems the modifications were intended to solve. The changes to the dangerous offender provisions throughout the years will be examined in detail, as well as other relevant changes to the *Criminal Code*. I will outline the long-term offender provisions, in particular, the differences between such provisions and the dangerous offender provisions. The final part of the chapter will explore research that has compared the two designations and the experience Crown attorneys have had while applying for a dangerous offender (or long-term offender) designation.

Chapter three will focus on the three theories of dangerousness, risk assessment tools and procedures, rehabilitative programs within the Correctional Service of Canada, and

recidivism rates for different categories of sex offenders. All three theories of dangerousness operate within the criminal justice system, and each of the theories offers a different perspective on how dangerousness can be approached and defined; it will be shown that all three theories have influenced both legislation and risk assessment procedures. Risk assessment tools and procedures have advanced considerably since the mid-1990s; their progress will be discussed briefly, as well as a description of the actuarial tools used within dangerous offender applications. The problems with risk assessment relevant to this thesis will also be examined, along with the treatment programs currently available for sex and violent offenders within the Correctional Service of Canada. This chapter will conclude with a look at research projects that have reviewed the effectiveness of treatment programs by evaluating recidivism rates.

Chapter four will use information from the second and third chapters to examine four dangerous offender applications. The similarities and differences between offenders designated as dangerous offenders and long-term offenders will be evaluated by comparing their criminal histories, risk assessment evaluations, and testimony from other relevant sources such as parole officers and nurses. Two primary categories of offenders are affected by dangerous and long-term offender legislation: sex and violent offenders. In the fourth chapter, I will examine four recent cases, two involving sex offenders and two involving violent offenders². The two offenders in each category will be compared, as one offender was designated as a dangerous offender while the other was designated as a long-term offender. Further discussion will evaluate if the application of dangerous offender and long-term offender provisions are producing the results that the legislation intended. It should be noted here that there are many factors that contribute to the

² I will discuss how I selected the cases in chapter four.

inconsistency found in the decisions, but I focus on the particular problems related to risk assessment and its use in court.

I will use the history of dangerous and long-term offender legislation and descriptions of risk assessment tools and rehabilitative programs to evaluate the practical application of current long-term offender legislation. I plan on discussing dangerous and long-term offender legislation by analyzing four cases of offenders who have been affected by the legislation. Understanding the roots of the legislation and the procedures involved in the application and classification processes is important in discussing the outcomes of the four cases, and I hope to present a thorough examination on the appropriateness of the legislation for use with sexual and violent offenders.

Chapter 2: Evolution of Dangerous Offender Legislation

For the past 50 years, the Canadian government has, at various times, addressed the concept of indeterminate sentencing for high-risk offenders. The legislation has been modified and amended often throughout this time and has consistently encountered criticism. To date, there are two pieces of legislation that are used when sentencing high-risk offenders: dangerous offender legislation and long-term offender legislation. The primary difference between the two statutes is that dangerous offender legislation permits an indeterminate sentence while long-term offender legislation uses a determinate sentence combined with a long-term supervisory order. There has been considerable debate regarding the application of both provisions to violent and sexual offenders, with little real agreement. Before examining the problematic components of the two offender designations, it is necessary to trace their progression.

I will present the legislation's origins and evolution by identifying the fundamental components of each piece of law. Understanding how the criminal justice system perceived sex offenders and how this perception has changed over time is crucial in appreciating the current legislative situation. The reasons given for each legislative change vary through time, and each reason appears to stem from good intentions in protecting the public from offenders who truly present a danger to society. Even the best intentions are sometimes hard to put into action, though, which is demonstrated by the legislative changes that ultimately led to the introduction of long-term offender legislation in 1997.

After tracing the law's development, I will examine in more detail, the introduction of long-term offender legislation, as this change is responsible for the present way the law

deals with violent and sex offenders. The legislation's effectiveness in controlling a population of offenders who are primarily sex offenders has often been called into question by victims' advocate groups as well as academics and working professionals. I will discuss current research projects that evaluate the most recent legislative changes and end by identifying the differences between the two classifications.

Habitual Criminals Act

The Habitual Criminals Act was the first official piece of legislation that implemented indeterminate sentencing in Canadian law. The legal definition of an habitual criminal was:

A person who was 18 or older, and who, on at least three separate occasions, had been convicted of an indictable offence for which the minimum sentence was five years or more, and who was seen as living a "persistently criminal life (Grant, 1985).

Generally speaking, the act targeted repeat offenders, but the majority of offenders sentenced under the act were nonviolent and were usually convicted of property offences (Irving, 2001). For example, the Jackson Study found that one habitual offender had served 12 years after being convicted of 14 property crimes involving amounts of less than \$50 (Webster, Dickens & Addario, 1985).

The original purpose behind the act was to remove the truly "dangerous" offenders from the general population, but the reality of its application fell short. The act did not reach a significant proportion of offenders who met the criteria for being declared habitual criminals which, for the most part, was attributed to its inconsistent application, and justified by the reluctance of judges to hand down indeterminate sentences (Price, 1972). Not only did the act target offenders who were largely considered "nuisance

offenders” (because their crimes were consistent but nonviolent), but the act was unable to deal with those engaged in organized and professional crime (Price, 1972).

A large problem with the legislation was separating dangerous from non-dangerous offenders. In order to segregate “dangerous” offenders from others, there had to be a way for the law to evaluate an offender’s potential dangerousness. The introduction of the term “dangerousness” prompted the inclusion of psychology in legal practices. In 1947 however, there was a lack of psychiatric assessment and testimony that would have provided the court with information regarding the offender’s total person and not just his/her crimes (Price, 1972). The theory behind preventative detention was widely supported by the law and society, but there was a growing concern that the act was not catching the truly dangerous offenders.

Criminal Sexual Psychopath Act

One year after the Habitual Offenders Act was introduced, criminal sexual psychopath legislation emerged. A criminal sexual psychopath was defined as:

A person, who by his conduct in any sexual matter, had shown a failure to control his sexual impulses, and who was likely to cause injury, pain or other evil to any person through failure in the future to control his sexual impulses or was likely to commit a further offence (Greenland, 1984, p. 2).

There were several major premises that were used to justify the criminal sexual psychopath statute, which included concerns about the mental state of sex offenders and what was best for society. For example, it was found that sex offenders usually suffered from a personality disorder or mental abnormality (sexual psychopathy) for which penal sanctions did not offer a deterrent (Petrunik, 1994). In addition, it was suggested that

psychopathy could not be controlled through punishment but required indeterminate confinement and treatment until the disorder was “cured” or the offender was no longer considered dangerous (Petrunik, 1994). The final argument was that the rise in sex offences by predatory strangers represented a serious threat to society and demanded immediate action by the community and its elected representatives (Petrunik, 1994).

There were certain key criticisms of the statute, which can be divided into two general categories: legislative terms and application problems. The legislative terms used in the definition of a criminal sexual psychopath were criticised by psychiatrists and legal professionals. The legislation included the phrases “a lack of power to control his sexual impulses” and “is likely to attack or otherwise inflict injury, pain or other evil on any person” in the criminal sexual psychopath definition (McRuer, 1958). Legal professionals did not appreciate the general nature of each phrase and believed the prosecution of offenders under the definition was too difficult a task, while psychiatrists were highly critical of the term criminal sexual psychopath because it had no clear psychiatric meaning (Grant, 1985).

The standard of proof required to designate an offender as a criminal sexual psychopath was originally “beyond a reasonable doubt,” which made cases difficult to prove. The inconsistent definition of “psychopath” combined with the differing opinions of psychiatrists called to testify in court made the law virtually impossible to apply. In an attempt to balance these problems, a single judge was given the power to decide if a prisoner was a criminal sexual psychopath after hearing testimony from two psychiatrists (McRuer, 1958). The idea that sex offenders can be punished for their acts while simultaneously being treated for their condition was another problem with the legislation

(Greenland, 1984). The criticisms of the criminal sexual psychopath legislation may, in part, explain the small number of offenders classified in the first seven years after the act's implementation – only twenty-three persons (McRuer, 1958). The multiple criticisms led to the law's re-evaluation in the early 1950s.

Dangerous Sexual Offender Legislation

In 1954, a Royal Commission was appointed under the chairmanship of the then Chief Justice McRuer to inquire whether the criminal sexual psychopath legislation should be amended (Price, 1972). The report proposed several changes, with the first being the replacement of the term “criminal sexual psychopath” with “dangerous sexual offender,”³ (Price, 1972). The legal definition of a dangerous sexual offender read:

A person who, by his conduct in any sexual matter, has shown a failure to control his sexual impulses, and who is likely to cause injury, pain or other evil to any person, through failure in the future to control his sexual impulses or is likely to commit a further sexual offence (Marcus, 1971).

The primary difference between the criminal sexual psychopath and dangerous sexual offender legislation definition was the change from the *lack of power to control* his/her sexual impulses to his/her *failure to do so* (Trevethan, Crutcher & Moore, 2002). The specific offences that rendered a person liable to be classified as a dangerous sexual offender were: rape; sexual intercourse with a female under 14 or between 14 and 16 years; indecent assault on a female; buggery or bestiality; indecent assault on a male and acts of gross indecency (Greenland, 1984).

Although there were many amendments made to the Criminal Code after the McRuer report, there were still many criticisms of the legislation regarding its phrasing and

³ The suggestion also included replacing the word “criminal” with the word “dangerous” throughout Section 659 of the *Criminal Code*.

administration. One criticism was that although the potential dangerous sexual offender was subject to an evaluation by two psychiatrists, there were frequently only one or two interviews conducted before testimony (Price, 1972). Other specific criticisms of the dangerous sexual offender legislature included: it rendered the accused vulnerable to prosecutorial plea bargaining (Petrunik, 1994); the law placed too much power in the hands of a magistrate or provincial judge; and it did not reach the types of offenders for whom such drastic sanctions should properly be considered (Price, 1982).

The concern that the legislation was not targeting the intended offenders was mirrored by its results within the judicial system. The Greenland and McLeod report (1981) examined pre-1977 dangerous sexual offenders and found that many of the dangerous sexual offenders were not exclusively sex offenders, which had significant implications both for the legislation itself and for the design of treatment programs (Webster, Dickens & Addario, 1985). In fact, only 11% of dangerous sexual offenders were being treated in specialized treatment facilities at the end of 1980 (Greenland, 1984). The government was ineffective in providing treatment programs because there were no known treatments for conditions such as psychopathy, mental retardation, and sexual deviation (Greenland, 1984). It also failed because the courts were incapable of distinguishing between offensive but relatively harmless pedophiles and extremely dangerous habitual rapists (Greenland, 1984).

The majority of recommendations from the McRuer report were implemented in 1961 and remained virtually intact until 1977 with a few exceptions⁴ (Greenland, 1972). Between 1961 and 1970, sixty-four offenders were sentenced to preventative detention as

⁴ A noted change took place in 1967 where the words "is likely to commit a further sexual offence" were removed after the Supreme Court decision in the case of Klippert v. The Queen (Greenland, 1984).

dangerous sexual offenders (Greenland, 1972). As of February 24, 1970, 21 had been granted parole – 11 of whom violated their parole and were returned to prison (Greenland, 1972).

Dangerous Offender Legislation

In 1969, the Canadian Committee on Corrections proposed that Canada's admittedly ineffective habitual offender and dangerous sexual offender legislation be replaced with dangerous offender legislation (Klein, 1976). On October 6, 1977, dangerous offender legislation was introduced to target both sexual and non-sexual violent offenders which, in effect, combined the habitual criminal and dangerous sexual offender statutes (Petrunik, 1994; Trevethan, Crutcher & Moore, 2002). A dangerous offender was defined as:

An offender who has been convicted of an offence specified in this Part (of the Criminal Code, see below) who by reason of character disorder, emotional disorder, mental disorder or defect constitutes a continuing danger and who is likely to kill, inflict serious bodily injury, endanger life, inflict severe psychological damage or otherwise seriously endanger the personal safety of others (Greenland, 1972).

The proposed legislation provided an indeterminate sentence of preventative detention for certain classes of offenders who, on the basis of clinical evidence, were judicially determined to constitute a "continuing danger" and were likely to "seriously endanger the personal safety of others" (Klein, 1976). In 1977, legislative changes were made that restricted the use of indeterminate sentences and eliminated the habitual criminal provisions (Jamimiec, Porporino, Addario & Webster, 1987).

In order to be designated a dangerous offender; the Crown had to prove that the offender committed a serious personal injury offence. The concept of the serious personal injury offence was introduced with the intent of bringing the perceived “dangerousness” of the offender into focus (MacAulay, 2001). Section 752 of the Criminal Code defines a serious personal injury as:

(a) an indictable offence, other than high 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 upon another person,

and for which the person may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault) (Criminal Code, S.752).

After an offender was found guilty of committing a serious personal injury offence, an application could be made by the Crown to have the offender sent for a behavioural assessment (MacAulay, 2001). The court would thereby order an assessment based on the reasonable grounds that an offender might be found to be a dangerous offender under section 753.⁵ Once the court had been presented with the behavioral assessment, the court could designate the offender as a dangerous offender if **any** of the following criteria (from Section 753 of the *Criminal Code*) were met:

753. (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find the offender to be a dangerous offender if it is satisfied

⁵ I will discuss the behavioural assessment processes and procedures in Chapter 3.

(a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) (see above) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

(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.

(4) If the court finds an offender to be a dangerous offender, it shall impose a sentence of detention in a penitentiary for an indeterminate period.

A primary difference that separated dangerous offender legislation from its predecessors was that the defence and prosecution would nominate one psychiatrist each and there were two mandatory requirements that the psychiatrists were to address: first, whether or not the offender was likely to recidivate violently (dangerousness) and, second, whether the offender was treatable (Bonta, Harris, Zinger & Carriere, 1996). The *Criminal Code* also stated that dangerous offenders were eligible for parole after serving

three years and then eligible to apply for parole every two years thereafter (MacAulay, 2001). When the possibility of parole was considered, then the dangerous offender status was reviewed (John Howard Society of Alberta, 1993). As of September, 2000, there were 276 active dangerous offenders, with 11 serving determinate sentences and 265 serving indeterminate sentences (MacAulay, 2001).

When the legislation was put into effect, Judge Stuart Leggatt was asked to review the cases of previously labelled habitual offenders. Of the 86 cases reviewed, 73 did meet the criteria for the new dangerous offender legislation and were recommended for a remission of their sentence and sealing of their criminal record (Irving, 2001). One could suggest that Judge Leggatt's findings supported earlier claims that previous legislation was not targeting the intended offenders. Virtually all of the recommended remissions were implemented by May of 1984 and provisions were made in assisting the offenders in seeking employment, accommodations, and social services (Irving, 2001). The decision of the Leggatt Inquiry demonstrates the ineffectiveness of previous drafts of dangerous offender legislation.

In 1993 the Solicitor General of Canada released draft legislation which recommended the expansion of existing dangerous offender laws. The proposed revisions came about in response to the Stephenson Inquest⁶ and consisted of three measures as discussed below (Petrunik, 1994).

The first revision of the *Criminal Code* and the Corrections and Conditional Release Act expanded the time limit for dangerous offender applications. More specifically, it allowed for the Crown to make an application for an offender who was already serving a

⁶ 11-year old Christopher Stephenson was abducted and raped in 1988 by Joseph Fredricks, a convicted sex offender when he was released on statutory release (Ministry of Community Safety and Correctional Services, Ontario Sex Offender Registry, Christopher's Law).

determinate sentence for a serious personal injury offence. The four criteria for the referral were: a current sentence for a serious personal injury offence; an order of detention until sentence expiry which was based on the likelihood of an offence causing death or serious harm; a National Parole Board judgement of the likelihood of an offence causing death or serious harm after sentence expiry; and evidence of dangerousness not presented to the court that sentenced the offender for one or more serious personal injury offences. The deadline for application was the last year of an offender's sentence. If an application was successful, four dispositions would be possible: (a) indeterminate detention; (b) a determinate period of detention; (c) supervised release in the community for a period of ten years; (d) detention plus community supervision.

The second change was the elimination of the "serious harm" criteria for a sexual offence involving a person under the age of 18 that allowed the referral of sex offenders to the National Parole Board that ultimately determined whether they should be held in detention until sentence expiry.⁷ There had to be a reasonable belief that the offender would commit another sex offence against a child before sentence expiry after serving a current sentence of two years.

The third change included a tightening up of the method of sentence calculation which ensured that offenders on conditional release who were convicted of a new federal offence would be automatically returned to custody to serve additional time before parole eligibility, with a cap of 15 years (instead of 7).

The suggested changes would have strengthened existing dangerous offender legislation, instead of creating additional legislation. The second change would have

⁷ In Canada, federal inmates are released prior to the end of their sentence either through full parole (eligibility usually after one-third of sentence) or through statutory release (at two-thirds of sentence completion) (Bonta & Motiuk, 1996).

decreased the possibility of releasing pedophiles because it would have given a parole board more leeway in deciding whether or not to release a high-risk pedophile. The third suggested change would have affected offenders who continually broke parole conditions by not facilitating more than one chance at an early release. However, as a result of the 1993 change in government, the above draft legislation was never introduced.

Before leaving power, however, the Conservative government introduced two community protection measures which were not enacted. The first allowed the court, when imposing sentence, to issue a probation order that prohibited a sex offender from contacting children under 14 and frequenting places where such children were likely to be present (Petrunik, 2003). The second authorized the court to issue an order of recognizance or a peace bond that had similar restrictions but could be applied to a person who was not previously convicted of a sex offence (Petrunik, 2003).

Expansion of Dangerous Offender Legislation

In the fall of 1993 the Liberals took office and in 1994, the new Solicitor General, Herb Gray, introduced Bill C-45, an Act to amend the Corrections and Conditional Release Act, which would limit the availability of parole or statutory release for violent offenders (Pilon, 1996). While Bill C-45 was being discussed before the Commons Justice Committee, Mr. Gray disclosed that the post-sentence detention of high-risk offenders was under active consideration by the Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders⁸.

⁸ The Liberals' Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders replaced the Conservative's Working Group and fulfilled the same purpose – to research and discuss options in improving the criminal justice system.

Although Bill C-45 was implemented in late 1995, the Task Force rejected the idea of post-sentence detention and instead recommended amendments to the existing dangerous offender legislation and the introduction of long-term supervision orders for high-risk offenders, as well as enhancements to the existing national Canadian Police Information Centre offender database, and a national screening system that would provide access to criminal records of those applying to work with children (Petrunik, 2003). In 1996, Bill C-55, the High-Risk Offenders Initiative, was introduced and included a modification of the dangerous offender legislation which increased the amount of time a Crown attorney had to apply for designation; the elimination of determinate sentences for dangerous offenders; and a new long-term offender measure that provided a maximum of 10 years of community supervision for high risk offenders who were considered to have a reasonable chance of being controlled outside prison (Petrunik, 2003).

The *Criminal Code* amendments had 10 clauses, which included modifications to existing dangerous offender legislation and the introduction of the long-term offender designation. The most relevant changes included:

1. Section 753(2) and (3), which would allow a dangerous offender application to be made up to six months after sentencing (as long as the offender was notified, prior to sentencing, of the prosecution's "possible intention" to make an application) (Pilon, 1996). At the time of application, though, the prosecution would have to present new relevant evidence that would not have been available at the original sentencing.

2. Section 753(4) would replace the existing sentencing procedure by making indeterminate sentencing mandatory for offenders classified under the dangerous offender legislation (Pilon, 1996).

3. Subsection 753(8) extended the existing three-year period of parole ineligibility for dangerous offenders by delaying a parole review until the offender served a minimum of seven years in custody (Pilon, 1996). Offenders who were designated as dangerous offenders prior to legislative changes would not be affected by subsection 8. If a dangerous offender finding was not made after trial, then section 753(5) would allow the court to consider making a long-term offender designation under section 753.1 (Pilon, 1996).

Long-Term Offender Legislation

Included with the expansion of dangerous offender legislation was the introduction of long-term offender provisions. The purpose of long-term offender legislation was to provide an alternative to indeterminate incarceration for some sex offenders who, while exhibiting a substantial risk, could be effectively controlled in the community after at least two years of incarceration (MacAulay, 2001). The designation was intended to target offenders who had a high likelihood of committing further sexual offences, but who did not meet the criteria for a dangerous offender designation (MacAulay, 2001). The long-term offender provision came into effect in July of 1997.

There are two ways that an offender can be declared a long-term offender: either by not meeting the requirements for a dangerous offender designation, or by a stand-alone long-term offender application⁹ (MacAulay, 2001). The process for a stand-alone long-term offender application is identical to the dangerous offender process, as the

⁹ An offender can be designated a long-term offender if they have not met the criteria for a dangerous offender designation, but this process does not work in the reverse direction (MacAulay, 2001).

assessment process is the same and the final report's contents are substantially the same (MacAulay, 2001).

In order for an offender to qualify for a long-term offender designation, the court would first have to be satisfied that the offender presented a substantial risk of reoffending, as defined in Section 753.1 (1) of the Criminal Code. Section 753.1 (1) reads as follows:

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

A substantial risk is defined under section 753.1(2), which reads as follows:

- (a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (the invitation to sexual touching) or 153 (sexual exploitation), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and
- (b) the offender
 - (i) has shown a pattern of repetitive behaviour, of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or
 - (ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain, or other evil to other persons in the future through similar offences.

If the court finds the offender to be a long-term offender the court shall, according to Section 753.1 (3) of the Criminal Code:

- (a) impose a sentence for the offence for which the offender has been convicted, which sentence must be a minimum punishment of imprisonment for a term of two years; and
- (b) order the offender to be supervised in the community, for a period not exceeding ten years, in accordance with section 753.2 and the Corrections and Conditional Release Act.¹⁰

Long-term offenders can have their supervision order suspended for 90 days if they breach their terms of release. During the suspension, the Correctional Service of Canada can remand the offender to a community correctional facility, to a penitentiary, or to a mental health facility (MacAulay, 2001). Within the first 30 days of this suspension, the Correctional Service of Canada has the option of cancelling the suspension or referring it to the National Parole Board (MacAulay, 2001). The Board then initiates its own review of the case that will either cancel the suspension or recommend that charges be laid with the Attorney General charging the offender with an offence under Section 753.3 (1) of the Criminal Code, which reads:

- (a) An offender who is required to be supervised by an order made under paragraph 753.1 (3) (b) and who, without reasonable excuse, fails or refuses to comply with that order is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

The Impact of Dangerous and Long-Term Offender Legislation

¹⁰ If an offender is not found to be a long-term offender, then the court will impose a normal determinate sentence for the offence for which the offender has been convicted (MacAulay, 2001).

Along with the introduction of long-term offender legislation, the Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders recommended research on the application of the dangerous offender provisions (Bonta, Harris, Zinger & Carriere, 1996). In response to the recommendations, *The Crown Files Research Project: A Study of Dangerous Offenders* was conducted in 1995 by the Solicitor General of Canada, in conjunction with researchers from Carleton University. The study was used to provide data that would assist Crown attorneys in the application of the dangerous offender legislation but also included interviews with 21 Crown attorneys on their experiences with the application process. The major findings presented some new results regarding the legislation, but the majority of findings repeated past concerns.

Despite the widening of the dangerous offender provisions, over 90% of dangerous offenders from Ontario and British Columbia were convicted of a sexual offence (Bonta, Harris, Zinger & Carriere, 1996). The Crown prosecutor's reliance on psychiatric diagnoses was confirmed, but since there were so many methods of assessing antisocial personalities¹¹, the study confirmed a need for more reliable and consistent assessment procedures and criteria. Approximately 67% of Crown attorneys were satisfied with the definition of "serious personal injury offence" but an agreed area of improvement centered on the definition of "severe psychological damage" (Bonta, Harris, Zinger & Carriere, 1996). Generally speaking, the Crown attorneys affirmed their belief in the efficacy of the dangerous offender legislation (95% endorsed the legislation and found it effective in dealing with high-risk violent offenders) but they expressed a number of operational concerns with the application process.

¹¹ Some Crown attorney's stated that they were confused by the array of assessment tools used within dangerous offender applications and expressed interest in making the tools used in evaluations more consistent.

Crown attorneys stated that although dangerous offender applications required much more work than a normal criminal sentencing procedure, they received little workload adjustment to compensate (Bonta, Harris, Zinger & Carriere, 1996). There was a suggestion that dangerous offender applications could be reduced to a lower level, where politics would not have such an effect, although there was no real explanation on why the interviewed Crown attorneys felt this way. The final concern regarding the operation of dangerous offender applications was that the majority of Crown attorneys (52%) were unaware of what information was needed to fulfill the requirements (Bonta, Harris, Zinger & Carriere, 1996). The majority of prosecutors interviewed expressed a need for clearer policies and procedures.

In comparing the previous dangerous sexual offender laws with the current dangerous offender legislation, the impact on non-sexual violent offenders appears to be insignificant. There is a large concern within the prosecutorial community about missing offender information in preparing for a dangerous offender application. The general consensus among the interviewed Crown prosecutors was that the existing dangerous offender provisions were satisfactory and there was little need for substantially new legislation (Bonta, Harris, Zinger & Carriere, 1996).

In the fall of 2000, a partnership between the Correctional Service of Canada and the Department of Justice began which evaluated the impact of long-term offender legislation. The Research Branch of the Correctional Service of Canada prepared a profile of dangerous offenders and those serving long-term supervision orders (long-term offenders). The research project also included a comparison of the profiles of dangerous

offenders classified prior to the introduction of long-term offender legislation and those classified under the new provisions.

From January of 1994 to the start of the research project in 2000, a total of 274 offenders were admitted to federal custody under the dangerous offender or long-term offender designation. Of the 274, 179 were designated as dangerous offenders and 95 as long-term offenders, and this research project focused on 270 offenders classified as either dangerous or long-term offenders (Trevethan, Crutcher, & Moore, 2002).

The dangerous and long-term offenders were compared on multiple levels that included: offences, current convictions, previous convictions, risk/needs, and releases. The general findings demonstrated no clear differences between the two designations. The largest proportion of both dangerous and long-term offenders had between two and four current convictions (43% and 45%, respectively) (Trevethan, Crutcher, & Moore, 2002). Virtually all dangerous and long-term offenders had at least one previous adult conviction (93% and 98%, respectively) but 45% of dangerous offenders had 15 or more convictions compared to 26% of long-term offenders (Trevethan, Crutcher, & Moore, 2002). The majority of dangerous and long-term offenders committed sexual offences and also had a history of committing sexual offences. In terms of risk assessment, 98% of dangerous offenders and 90% of long-term offenders were classified as high risk to reoffend (Trevethan, Crutcher, & Moore, 2002). Although dangerous offenders are sometimes released from custody, none had been released in the years this research project examined. Of the 18 long-term offenders who were released, three offenders had recommendations to suspend their release and one was returned to custody (Trevethan, Crutcher, & Moore, 2002). There was no detailed information on what the offenders did

to receive a recommended suspension or on why the offenders were permitted to remain in the community.

The differences between the two groups are not as many as the similarities, but they are important to note. On the whole, long-term offenders committed offences against children more often than dangerous offenders (Trevethan, Crutcher, & Moore, 2002). Dangerous offenders were more likely to offend against a stranger, specifically adult females, and were also more likely to cause greater physical and psychological harm (Trevethan, Crutcher, & Moore, 2002).

The researchers also suggest at the conclusion of their project that a future difference between dangerous and long-term offenders is the amount of resources each group would require from the Correctional Service of Canada. As it stood in 2000, long-term offenders served an average of four and a half years in prison and an average of eight years being supervised in the community. According to the researchers, it is likely that more resources will have to be directed towards the maintenance of long-term offenders (Trevethan, Crutcher, & Moore, 2002). In fact, this suggestion was echoed in a study conducted by the office of the Solicitor General, which estimates that by March of 2007, there could be as many as 1,096 long-term offenders (Canadian Press, 2004).

The most recent update on the number of dangerous and long-term offenders I could find was from a CTV report in May of 2004. According to the article, as of March of 2004 there were 331 dangerous offenders across Canada and since 1997, 260 offenders were designated as long-term offenders (CTV, 2004).

Conclusion

Despite the number of changes made to the dangerous offender legislation and the introduction of long-term offender legislation, the criticisms of the legislation made in previous years still continue to be raised. One of the most consistent criticisms from offenders' rights groups and the field of psychology pertains to the idea of risk assessment and the prediction of violence. Bill C-55 was based on the premise that recidivism can be predicted with accuracy, a premise which is challenged within many academic and legal circles (John Howard Society of Alberta, 1997).

Having examined the history behind indeterminate sentencing and the evolution of dangerous offender legislation, I will now move into a discussion of the information used to compile current dangerous and long-term offender applications. The primary pieces of information that are considered by judges to decide whether or not to designate an offender include the offender's risk assessment scores and testimony from psychologist(s), therefore a discussion of risk assessment tools and procedures is important.

Chapter 3 – Risk Assessment, Rehabilitation, and Recidivism

In order for a Crown attorney to apply for a dangerous or long-term offender designation, the offender must undergo a risk assessment evaluation. When an application is compiled, all relevant information regarding an offender's potential for reoffending and being successfully rehabilitated is presented to the trial judge. Additional information can include, but is not limited to, a detailed account of an offender's criminal past, as well as reports from psychiatrists, psychologists, nurses, parole officers, and victims. In general, judges require as much information as possible that will create a clear picture on how dangerous the offender is and their potential for change.

I will briefly examine the concept of dangerousness in the beginning of the chapter because it is important to consider what dangerousness is. Since there are no specific tools that measure dangerousness, it is more difficult to evaluate than an offender's probability of reoffending, but is important in considering an offender's sentence. I will follow the discussion of dangerousness with an examination of the six risk assessment tools used by the Canadian criminal justice system. Although there is some debate among professionals on which tools are the most accurate, each of the six can be found in the cases that I will discuss in chapter four. The scores an offender generates during his/her initial evaluation will determine which treatment program(s) an offender will be encouraged to participate in. In the final section of the chapter, I will summarize some of the available treatment programs within the Correctional Service of Canada and conclude with an examination of research that evaluates the effectiveness of the rehabilitative programs.

Dangerousness

The concept of dangerousness has been used in civil and criminal legislation to refer to the capacity of persons to harm themselves or others in a physical, psychological, or moral way (Petrunik, 2003). The primary difference between dangerousness and risk assessment is that dangerousness entails not only the probability of reoffending, but also the perception of how serious the harm of the reoffence would be. For example, a person considered to have an 80% risk of shoplifting would be considered less dangerous than a person considered having a 20% chance of committing a sexual assault (Petrunik, 2003).

When discussing dangerousness in terms of sex offenders, there are several key elements that are involved. First, dangerousness refers to a person's abnormal state of being, including paraphilia, personality disorders, or mental abnormalities that predisposes them to do harm, not the person's specific actions or their circumstances (Petrunik, 2003). Risk assessment tools focus on past behaviors and the likelihood that they will be repeated, but a measure of dangerousness includes both the likelihood of reoffending and how the reoffence will affect others (ie. victims) (Petrunik, 2003). There is also a difference in how the crimes a person commits can affect their level of dangerousness.

An offender who commits one single, non-sexual, murder would probably receive a long sentence to punish him/her for the seriousness of his/her crime, even if the person did not present a large risk for reoffending. An offender who commits multiple non-violent sexual assaults, however, would probably be viewed as much more dangerous, so there would be an effort not only to incarcerate the offender, but present rehabilitative options to them (Petrunik, 2003). Taking a step back from the two examples helps to

explain the differences between an offender who presents a risk for reoffence and an offender who is considered to be dangerous. Despite the varying degrees of physical harm between murder and sexual assault, at first glance one would assume that the murderer would be considered more dangerous, yet the capacity of the sex offender to harm other people is greater, as demonstrated by their multiple convictions. The basis for a designation of dangerousness is often a serial pattern of offending and is primarily applied to males who offend sexually and/or violently against women and children outside a domestic context (Petrunik, 2003).

There are also three different models of dangerousness that are used in the criminal justice system: forensic-clinical, justice, and community protection. Each approach to dangerousness adds key elements to the overall definition and current application of the concept within the Canadian criminal justice system. The forensic-clinical model of dangerousness first emerged as a challenge to classical liberal criminology in the late nineteenth and early twentieth century (Petrunik, 2003). The focus of this model is on creating and administering effective treatment programs, and often advocates an indeterminate sentence for those offenders who cannot be deterred from committing their crimes due to mental or personality disorders (Petrunik, 2003). In fact, supporters of the forensic-clinical approach endorse indeterminate sentences for all offenders until they can be rehabilitated, as it is often unknown how much treatment an offender needs in order to change their behavior (Petrunik, 2003). Forensic clinicians are generally responsible for evaluating offenders and assessing their risk potential when they enter into the custody of the Correctional Service of Canada. When the evaluation is completed, various treatment programs are usually recommended to the offender.

The justice model is more concerned with the principles of due process, proportionality, and equity (Petrunik, 2003). Advocates of the justice model support determinate sentences that are proportionate to the seriousness of an offender's crime. They also support extended due process for mentally ill and disordered offenders, and often challenge the ability of forensic clinicians to accurately assess risk and carry out effective treatment (Petrunik, 2003).

The community protection model is the most recent of the three, and emerged in response to the concern that the forensic-clinical and justice models did not give enough consideration to public safety and victims' rights (Petrunik, 2003). The general idea behind the community protection model is that the rights of victims and communities would outweigh those of the offender. Advocates are primarily concerned with keeping offenders off the streets and are preoccupied with creating risk assessment tools that do not produce false negatives (Petrunik, 2003). The defining principle of the community protection model is the extreme caution that supporters suggest when deciding whether or not to release an offender.

Each of the three models of dangerousness can be found in the criminal justice system. The Correctional Service of Canada is primarily concerned with the forensic-clinical model, while the justice and community protection models can be found in other organizations related to the criminal justice system, such as the Ontario Women's Directorate and John Howard Society. Balancing the three approaches is a difficult process for judges, for there are many perspectives that must be considered. The tension between the three models of dangerousness can be seen in Chapter 4, where I examine four dangerous offender applications.

Risk Assessment

After a person is designated as a dangerous or long-term offender they fall under the jurisdiction of the Correctional Service of Canada. The Correctional Service of Canada (CSC) is responsible for classifying offenders in terms of their risk for reoffending and determining which rehabilitative programs would be appropriate in changing and/or controlling the offender's behavior. The CSC uses risk assessment tools in order to first divide offenders into three general categories: low, moderate, and high risk, and then to suggest which treatment program would have the greatest effect on the offender in question. The field of risk assessment and prediction has been subject to criticism for the majority of its 70-year history, but despite its past, risk assessment is an integral part of the CSC's process. The incorrect prediction and classification of offenders can have lasting effects on those who are subject to its use, so there have been many studies and evaluations of each tool. Although there have been improvements, there is still debate within the psychological field on how accurate risk assessment tools are in predicting future behavior of criminal offenders.

The ideal risk assessment would involve extensive recidivism research with identical offenders, but since this ideal is unrealistic, Karl Hanson has identified three plausible approaches: guided clinical, pure actuarial, and adjusted actuarial (Hanson, 1998). The guided clinical approach has expert evaluators consider a range of risk factors and then give an opinion concerning the offender's recidivism risk (Hanson, 1998). Pure actuarial approaches evaluate an offender within a limited set of predictors and then combine variables by using a predetermined and numerical weighting system (Hanson, 1998). Adjusted actuarial approaches are similar to pure actuarial approaches, but allow for

expert evaluators to adjust the actuarial prediction by including additional information (Hanson, 1998). All three approaches can be found within current CSC risk assessment tools, despite conflicting research results. Before describing the actual risk assessment tools used, understanding where risk assessment originated will paint a clearer picture of the tools' fundamental foundations.

James Bonta identifies three generations of risk assessment in his article, "Risk-Needs Assessment and Treatment" (Bonta, 1996). The first consisted of subjective clinical judgments, which were usually characterized by informal and intuitive beliefs (Bonta, 1996). It is clear that first generation risk assessments were not scientifically sound and were inferior to actuarial methods, which first emerged in the second-generation assessments. Actuarial-based risk assessments were validated by research, but included only static measurements. For example, the Salient Factor Score (SFS) consisted of two divisions of measurement: sociodemographic (age at first commitment, employment, and drug history) and criminal (number of convictions, type of offenses, number of incarcerations, and parole history) (Simourd, 2004). Static measurements are not useful in the ongoing evaluation of offenders because an offender's past can never change, which therefore means the SFS cannot change, but it is still relevant for classification purposes (Bonta, 1996).

The third generation assessments include dynamic risk factors that are commonly referred to as risk/needs assessments. Risk/need assessments are used to answer two questions: (a) if an offender poses a sufficiently high risk that justifies commitment and (b) once committed, if an offender's risk level decreases sufficiently to justify release (Hanson, 1998). Considered elements include criminal attitudes and companions, which

are useful in measuring change and significantly impact the correctional rehabilitative system (Bonta, 1996). Risk/need assessments have attracted a lot of attention and criticism, so although it is the latest development, there has been slow implementation of it within the Correctional Service of Canada.

Despite true risk/assessment tools (third generation) not being in practice, there are a variety of assessment devices that do include some dynamic factors. The two questions associated with risk/needs assessments consider both static and dynamic factors, but the current problem is that dynamic factors are not as well evaluated as static and, therefore, offenders are much more readily committed than released. There is also some provincial variance in the tools used to classify offenders, but the most consistently used assessment tools are: the Statistical Index on Recidivism – Revised 1 (SIR-R1), the Violence Risk Appraisal Guide (VRAG), Sexual Offender Risk Appraisal Guide (SORAG), the Static-99, the Level of Supervision Inventory (LSI), the Sex Offender Need Assessment Rating (SONAR), and the Rapid Risk Assessment for Sexual Offence Recidivism (RRASOR).

The SIR-R1 Scale combines 15 items in a scoring system that calculates probability estimates of re-offending within three years of release (Nafekh, 2005). The SIR Scale is used in Canadian penitentiaries with male offenders and estimates both general and violent recidivism (Bonta, 1997). Although the SIR Scale is used within the Canadian correctional system, the Scale includes only static factors, which research has validated, but is not inherently useful for ongoing offender evaluations.

The VRAG was initially developed to assess mentally disturbed offenders' potential of re-offending and consists of 12 items that include personality disorder, early school maladjustment, age, marital status, criminal history, schizophrenia, and victim injury

(Hanson, 1998). Currently, the VRAG is used to predict violent recidivism, including all offences against persons, but not sexual offenses that do not involve contact (for example, possession of child pornography or indecent exposure) (Barbaree, Seto, Langton & Peacock, 2001; Hanson, 1998). The SORAG is an adaptation of the VRAG for sex offenders and contains 15 items that address early childhood behavior problems, alcohol problems, sexual and nonsexual criminal history, age, marital status, and personality disorders (Hanson and Thornton, 2000).

The original aim of the RRASOR was to predict sex offense recidivism using a small number of easily scored variables (Hanson and Thornton, 2000). Four items are included in the RRASOR evaluation: type of victim (male, stranger) and prior sex and non-sex offences. The Static-99 is a combination of the RRASOR and the Structured Anchored Clinical Judgment (SACJ), and includes only static factors created in 1999 (Hanson and Thornton, 2000). The measurement has 10 items, four from the RRASOR with additional items including prior sentencing dates, convictions for non-contact sexual offenses, index offence of a nonsexual violent nature, prior nonsexual violent offences, stranger victims and cohabitation status (Barbaree, Seto, Langton & Peacock, 2001). The Static-99 is applied to male offenders who have committed at least one sexual offence and are assigned to one of seven risk categories, ranging from 0 (lowest) to 6+ (highest) (Barbaree, Seto, Langton & Peacock, 2001).

The LSI is currently used in Ontario and includes 54 items, both static and dynamic. The items include criminal history variables, the offender's present employment, and financial situation (Bonta, 1996). The LSI-R1 is particularly useful in distinguishing between violent and nonviolent offenders, psychopaths and non-psychopaths, and rapists

and child molesters (Simourd, 2004). Several studies have evaluated the predictive validity of the LSI-R1 and have consistently demonstrated its applicability to long-term incarcerated offenders (Simourd, 2004).

There are many other risk assessment tools that are used in the United States and in the United Kingdom, but there appears to be consistency in the use of the Static-99, VRAG, and SORAG. The Psychopathy Checklist Revised (PCL-R) is often used in Canada and other parts of the world, but it is not directly part of the risk assessment process as its purpose is to identify psychopathic tendencies in people. There is reference to the PCL-R in most dangerous offender applications, but it is not considered an actuarial risk assessment tool. The PCL-R is used to measure the psychopathic characteristics an offender possesses, which are then used to gage their probability of recommitting a crime. The additional tools used in other parts of the world have the potential to change our current evaluation system, but because I am evaluating current CSC practices applicable to dangerous and long-term offenders, I will not be discussing any supplemental tools and/or procedures. There have been several research projects that have evaluated several of the currently used risk assessment tools, and the most recent Canadian example was published in 2004.

The 2004 study titled, "Predictors of Sexual Recidivism: An Updated Meta-Analysis," examined 95 different studies that included more than 31,000 sex offenders and close to 2000 recidivism predictions (Hanson & Morton-Bourgon, 2004). The research project identified the most important predictors of sexual recidivism and new predictor variables that may have future prediction potential. General conclusions stated that actuarial risk

instruments were more accurate than simple clinical opinion in predicting sexual, violent non-sexual and general recidivism (Hanson & Morton-Bourgon, 2004).

The study confirmed that deviant sexual interests and antisocial orientation are as important in predicting recidivism for sex offenders as well as new dynamic risk factors (Hanson & Morton-Bourgon, 2004). Past studies established that the lack of an intimate relationship was associated with an increased risk for sexual recidivism, and the 2004 study confirmed the importance of having an intimate relationship, but also identified that problems in an intimate relationship can increase sexual recidivism (Hanson & Morton-Bourgon, 2004). There are several theories on why intimate relationships, or lack thereof, can affect recidivism rates. One hypothesis is that child molesters, for instance, choose child sexual partners because they lack the social skills to have an adult relationship (Hanson & Morton-Bourgon, 2004). If an offender learns social skills, which are often lacking, then they may be at a lower risk to reoffend. This theory does not heavily affect risk assessment according to the authors, but it is a new direction that could be explored.

Risk assessments that included the evaluator's opinion as well as the offender's scores appeared to produce the most accurate results. There were three common approaches to combining individual risk factors into an overall assessment:

- a) unguided professional judgment (based on expertise and unique features of the case),
- b) empirically-guided professional judgments (structured around empirically established risk factors), and
- c) pure actuarial prediction (the risk factors and the method of combining the factors being determined in advance) (Hanson & Morton-Bourgon, 2004).

The most accurate prediction included both pure actuarial and clinical assessments as well as factoring external risk factors, although this comprehensive model of risk assessment is not used frequently (Hanson & Morton-Bourgon, 2004).

Actuarial risk scales, when used alone, were in the moderate to high range when predicting sexual recidivism (Hanson & Morton-Bourgon, 2004). There were no significant differences between the specific measures used to assess sex offenders, and the study suggests that the measures designed to predict general recidivism (e.g., SIR) were as effective at predicting sexual recidivism as the specific sexual recidivism measures (Hanson & Morton-Bourgon, 2004). This did not work in the opposite way, however, as this study found that measures designed to predict sexual recidivism were not effective in predicting general recidivism. Interestingly enough, the general recidivism prediction tools were also as effective in predicting violent recidivism as the tools specially designed for evaluating the risk for violent recidivism (Hanson & Morton-Bourgon, 2004).

Problems With Risk Assessment

The Correctional Service of Canada's purpose is to evaluate, treat, and then reintegrate offenders back into the community, but the law itself cannot fulfill these responsibilities, so it must rely on other disciplines. The field of psychology offers suggestions on how to measure an offender's risk potential and also develops treatment programs to assist in the rehabilitation process. The heavy reliance on risk assessment tools and procedures does not mean that the psychological components of evaluations are 100% reliable. There have been many research projects that have evaluated the reliable nature of each risk assessment tool, and the general field of risk assessment. Considering the faults of risk assessment tools and procedures are important, as they are the most relevant criticisms relating to dangerous and long-term offenders.

The most obvious criticism of risk assessment *is* its predictive accuracy, and since it is impossible to predict the future, there will always be doubt regarding psychological methods of predicting the future behavior of offenders (or people in general for that matter). The sheer number of risk assessment tools is a testament to the differing opinions of professionals whose job is to aid the legal system in protecting the public from offenders who are likely to re-offend once released from incarceration.

In response to the 1983 report entitled ‘Deciding Dangerousness: Policy Alternatives for Dangerous Offenders’ (Webster, Dickens, Addario, 1985; Mossman, 1994), Webster et al. wrote a monograph that reviewed the scientific and legal literature used to make predictions for dangerous offenders. The authors listed numerous difficulties in predicting the future behavior of violent and sexual offenders, many of which still ring true today (Webster, Dickens, Addario, 1985; Mossman, 1994). The most relevant difficulty is the correspondence between the law and clinical decision-making processes. In the majority of cases, the law requires a “yes/no” answer to the prediction of risk, yet clinical decision making can really only be dealt with in terms of probability (Webster, Dickens, Addario, 1985; Mossman, 1994). According to the authors, the most dangerous consequence of combining law and psychology is the chance that an offender could receive an indeterminate sentence based on a potentially inaccurate risk assessment. There has also been evidence that clinicians can give conflicting opinions regarding the dangerousness of the same offender, which compounds an already critical problem (Webster, Dickens, Addario, 1985).

Risk assessment procedures are often conducted with limited samples of behavior submitted for evaluation, which can also be misleading. Thorough face-to-face interviews

are an essential aspect of the assessment process, but there is also the possibility that the offender may act much differently in the assessment than in his/her usual world (Webster, Dickens, Addario, 1985). In addition, even the most comprehensive risk assessment can be complicated by factors beyond the assessor's control, such as future physical and social circumstances (Webster, Harris, Rice, Cormier & Quinsey, 1994).

Although there is not much discussion within the psychological and legal community that risk assessment is not 100% accurate, the idea can be found "between the lines" of most research studies. One researcher even stated that clinicians could not avoid making mistakes, but have to choose which mistakes to make (Mossman, 1994). No risk assessment tool can ever be 100% accurate, but the margin of error that happens with risk assessment is large enough to cause concern, and this is voiced by the abundant number of research projects conducted on the reliability and validity of risk assessment tools. Regardless of the problems within the risk assessment process, when an offender is classified into one of three risk categories (low, moderate, or high), he/she is then assigned to a certain treatment program.

A separate, yet connected, problem with risk assessments is the inability for a tool to measure potential harm. There are no risk assessment tools that can predict the future harm an offender may inflict on another person. Using an offender's risk assessment results can give the courts an indication of how likely an offender is to commit further crimes, but there are no methods that produce a numerical score measuring the harm a future crime would have. When examining the four cases in chapter four, I discuss the courts' decisions with respect to the offenders' risk assessment scores as well as the potential harm that the offenders may cause if released.

Treatment Programs

Long-term offender legislation suggests that offenders can serve a shorter prison sentence and have the potential to be controlled in the community when released. There is an assumption on the part of the public that offenders who qualify for this classification will not be a threat when released, yet the only way a person's risk could decrease is through rehabilitative treatment. After an offender has received their pre-treatment risk assessment scores, different treatment programs are offered for them to take, but all participation in treatment programs is voluntary. In order to understand how the rehabilitative process occurs when an offender is incarcerated, I will briefly discuss the different programs currently available within the Correctional Service of Canada.

The CSC evaluates offenders to determine their needs and to find a suitable institutional placement that can create an individualized treatment plan based on the principles of risk, need, and responsivity (Mailloux, 2003). The three treatment categories that sex offenders are categorized in are: low, moderate, or high intensity. High intensity programs in Ontario are located at the Regional Treatment Center in Kingston (RTC), moderate intensity programs occur at the Bath Institution and the Warkworth Sexual Behavior Clinic (WSBC) and low intensity programs can be found within most penal institutions (Mailloux, 2003)¹². It should also be noted that sex offenders continue to be assessed throughout their stay within the CSC, including pre and post treatment, follow-ups, and pre and post release (CSC Standards, 1996). Finding a specific composition of treatment programs for sex offenders is virtually impossible but there are general descriptions of what treatment entails. According to CSC documentation, sex offender treatment focuses on addressing cognitive distortions, deviant arousal and fantasy, social

¹² All treatment centers are located in Ontario, Canada.

competence, anger and emotion management, empathy, and victim awareness (Correctional Service of Canada, 2002). They tend to have a cognitive-behavioral approach that emphasizes the need for offenders to take responsibility for their actions and to help offenders develop strategies to prevent recidivism (Correctional Service of Canada, 2002).

Offenders placed into high-intensity programs receive treatment for six to eight months with a minimum of 15 contact hours of therapy per week (CSC Standards, 1996). Full-treatment program clients attend two group sessions per week run by a psychologist, two group sessions per week run by a nurse, one individual therapy session with a psychologist, and one individual therapy session per week with a nurse (with each session lasting for approximately one hour) (DiFazio, 2001). Individual treatment programs include hourly sessions as well, but only three per week with a psychologist and once per week with a nurse (DiFazio, 2001). The breakdown of the actual components of programs is unavailable, but the majority of programs available are cognitive-behavioral.

Cognitive-behavioral treatment programs make up the bulk of current CSC rehabilitative programs for it has been found that programs that combine anti-androgens with psychological treatment can significantly reduce recidivism of sex offenders (Marx, 1999). In 1968, Lang produced a research study that suggested a relationship between cognitions, bodily states, and overt behavior, which creates a triple response theory, which included three separate response channels (verbal, overt motor, and physiologic) (Marx, 1999). Lang suggested that including both the covert and overt factors in treatment programs would create a more comprehensive view on sexual offending because it identifies not only the primary factor in offending, but multiple ones. By

treating the conditions where the arousal and cognition influences take place, treatment can target the arousal patterns that are crucial in understanding the external conditions that are tied to overt sexually aggressive behavior (Marx, 1999).

Recidivism

Despite advances in risk assessment and treatment programs, there is still only a slight difference between the recidivism rates of offenders who participate in rehabilitative programs and those who do not (Hanson, Broom, & Stephenson, 2004; Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002). All treatment programs aside, violent offenders have the highest recidivism rate of all offender groups. Sex offenders have a relatively low rate of sex offence recidivism but still have a moderate rate of committing new nonsexual offences. Since the vast majority of dangerous and long-term offenders are sex offenders, and sex offenders attract the most attention both in the public and correctional sphere, it is no surprise that the majority of studies primarily concern sex offenders.

“The First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment for Sex Offenders” conducted a meta-analytic review on the effectiveness of psychological treatment for sex offenders by examining 43 studies. Across all the studies, the average sex offence recidivism rate was 12.3% for treated groups and 16.8% for untreated groups (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002). For general recidivism, the treated group had a rate of 27.9% while the untreated groups had a rate of 39.2% (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002). An interesting side note concerns the studies that showed no difference between the recidivism rates of treated and untreated offenders.

From these studies, it was found that treatment dropouts (regardless of treatment program) had a higher recidivism percentage than offenders who either completed treatment or who did not participate at all (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002). The authors suggested that interrupted treatment could actually make an offender's behavior worse.

The most effective programs, according to the First Report, in curbing recidivism rates are the cognitive-behavioral treatment programs. There was also the suggestion, however, that different sex offenders would be expected to have different treatment needs, so there would have to be more research conducted on which type of sex offender benefited the most from which type of treatment program (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002). Researching not only the treatment differences, but also the differences between offenders was recommended.

Andrew Harris and R. Karl Hanson conducted another report on the recidivism of sex offenders in 2004, appropriately titled, "Sex Offender Recidivism: A Simple Question." The report uses data from 10 follow-up studies of adult male sex offenders who were either charged with and/or convicted of a new sexual offence once released from incarceration (combined sample of 4,724 offenders) (Harris & Hanson, 2004). General findings echoed studies of the past that suggested the majority of sex offenders have low rates of recidivism, and sex offenders over the age of 50 have an even lower chance of reoffending.

For every division of sex offenders in the study, rapists, extended incest child molesters, "girl victim" child molesters, and "boy victim" child molesters, the largest percentage of recidivism occurred by the 15-year mark (Harris & Hanson, 2004).

Individually speaking, 24% of rapists, 24% of extended incest child molesters, 13% of “girl victim” child molesters, and 35% of “boy victim” child molesters had been either charged and/or reconvicted of a sex offence by 15-years post-release (Harris & Hanson, 2004). First time sex offenders had just over half of the amount of reoffending as offenders who committed more than one sexual offence, 19% and 37% respectively (Harris & Hanson, 2004). Another general finding was that the longer an offender remained offence-free in the community, the less likely they were to reoffend. The first few years after release often demonstrate the highest reoffence rates.

The other concluding thoughts of the report are similar to other research projects that have assessed the recidivism rates of sex offenders. There was one phrase that stood out as a new idea, however; it read, “Furthermore, increased public awareness and concern should reduce the opportunities for sexual offenders to locate potential victims” (Harris & Hanson, 2004, p. 11). I am not sure if the authors are suggesting that increased social awareness on the problem of sex offender recidivism makes people more aware of their surroundings and who is socializing with their children, or if the authors have some other intention behind the statement, but it is difficult to understand how such a phrase could be used to rationalize a drop in recidivism rates. As much as people support victim awareness and self-defense programs, it is not the responsibility of individual members of communities to keep out of a sex offender’s reach. The responsibility to treat and/or isolate offenders from doing undue harm in the community sits squarely on the shoulders of the criminal justice system, and the suggestion that the community is also responsible is not appropriate.

Despite the pros and cons of risk assessment, the reality is that the current Canadian criminal justice system uses risk assessment tools to evaluate and classify offenders into risk groups, and then recommends rehabilitative treatment. The varied results of recidivism studies in relation to the effectiveness of treatment programs for sex and violent offenders appear to be a concern to the Correctional Service of Canada and several other Canadian government agencies as there are several recent reports that address the matter.

Conclusion

The dangerous offender applications are themselves lengthy processes, where there is usually extensive background research on the offender, psychiatric assessments, and other relevant information. The court transcripts often make reference to risk assessment tools, the scores of said tools, and criminal and mental health history. Bill C-55 offered an alternative to indeterminate sentences for offenders deemed “dangerous” by the courts. Whether or not this piece of legislation is an appropriate alternative has yet to be truly evaluated.

Risk assessment is itself a risky process because it relies on probabilities, not certainties. Understanding risk assessment procedures is important when discussing dangerous and long-term offender designations because of the court’s reliance on their results. The interaction of law and psychology has the potential to misclassify some non-dangerous offenders and release dangerous offenders. There is no foolproof way of accurately predicting a person’s future actions and while risk assessments can offer an idea on an offender’s potential, there is the possibility that some offenders will fall

through the cracks. Understanding the problems in risk assessment procedures allows for a deeper examination of dangerous and long-term offender legislation, because risk assessment is the basis for the court's decision on who receives indeterminate sentencing and who does not. If the information that courts rely on to designate offenders is flawed, then the assumption is that the implementation of legislation will also be flawed.

In the next chapter I will analyze two cases of dangerous offenders and two cases of long-term offenders. I will explain how risk assessment scores are used to demonstrate an offender's dangerousness and risk of recidivism. Considering the problems with risk assessments, identified in this third chapter, I will evaluate long-term offender legislation and the effect it has had in the sentencing component of the criminal justice system by looking at four recent cases. The cases will highlight some of the problems in the law and its application.

Chapter 4 – Case Analysis

The evolution of habitual offender legislation has witnessed the introduction of different measures in how dangerous offenders are dealt with in the criminal justice system. As the law has evolved, so have the psychological methods offenders are assessed with. The current interaction between the law and psychology is complicated. On the surface, the legal and psychological developments within the last 50 years appear to create a method of combating crime while assessing, punishing, rehabilitating, and then reintegrating offenders back into the community. Below the surface however, there are many conflicts between the law and psychology that many professionals in the criminal justice system appear to ignore. The problems with risk assessment tools and rehabilitative treatment programs do not appear to be considered, and this creates a significant problem.

When long-term offender legislation was introduced, it was suggested that dangerous offenders could be effectively treated in the community instead of prison. The consequences of such legislation have yet to truly be measured, but the implications are clear. If the Correctional Service of Canada cannot successfully rehabilitate offenders within a controlled environment, then one can assume the same would be true in an uncontrolled environment. There is the suggestion that treatment programs can be successful in the community, but the obvious consequence to unsuccessful treatment within the community is that it puts the general population at risk.

Offenders who are classified as long-term offenders are viewed by the court to be dangerous but controllable. When I began reading dangerous offender applications it was difficult to understand why some offenders were released into the community while

others were not. Many of the dangerous offender applications had very similar offences, yet some were designated as dangerous offenders while others were designated as long-term offenders. Long-term supervision orders are clearly not as effective in controlling offenders as long-term prison sentences (at least in the short term), because supervision orders do not result in the constant supervision of offenders. Long-term offender legislation appears to prematurely release dangerous offenders without considering the potential harm to the community.

In order to evaluate the potential consequences of long-term offender legislation, I examine four dangerous offender applications. I chose the cases after reading approximately 12 dangerous offender applications and found these four cases to have strikingly similar offenders, but different designation outcomes. Long-term offender legislation was primarily designed for pedophiles, but some violent offenders have also been designated as such, so I chose two cases of sex offenders and two cases of violent offenders. In each of the two, one offender was designated as a dangerous offender while the other received a long-term offender classification. I chose the cases because there appeared to be no clear differences in the offenders' criminal histories and risk assessment scores, yet the legal outcomes of the cases were very different.

In this chapter I discuss and evaluate each offender's criminal history, risk assessment scores, and additional relevant testimony from professionals who were involved in each case. As mentioned in Chapter 2, I also consider harm and dangerousness which, combined with the above mentioned information, can help illustrate the idea of "seriousness." In one case I discuss, the court suggested that certain crimes were not

serious, and I hope to address such statements by including a discussion of harm and dangerousness.

By comparing the two offenders in each category (sex and violent offenders), it can be demonstrated that long-term offender legislation endangers the public by releasing dangerous offenders who have consistently failed previous rehabilitative programs and have subsequently re-offended during prior releases. I will also discuss the reasoning given by the court on why the two long-term offenders were not classified as dangerous offenders. The results of the applications call into question the efficacy of the legislation.

Sex Offenders

Since the mid-nineteenth century, legislation has been in place for repeat sex offenders. Various treatment methods and programs have gradually surfaced that were designed to lower the recidivism rate of sex offenders. Although there have been great improvements in how offenders are classified and treated, recidivism rates are still high. The following two cases are the dangerous offender applications for two repeat sexual offenders. Despite the similarities between the two offenders, one offender was designated as a dangerous offender and the other a long-term offender.

The Case of R. v. S.S.

The case of R. v. S.S. was held over a period of one year, with a long-term offender designation made on April 1, 2005.¹³ The designation included a 10-year supervision period and the administration of pharmacological sex-drive reduction medication. Mr.

¹³ All information that refers to Mr. S.S. was obtained from case R. V. S.S. between Her Majesty the Queen, applicant, and respondent. [2005] O.J. No. 1391. Court File No. CR-16-00.

S.S.'s criminal history spans over 30 years and includes crimes of theft, assault, and sexual assault. The 54-year old defendant has been in and out of psychiatric treatment and hospitals for most of his life. Throughout his psychiatric treatment, medical professionals diagnosed him as having a sociopathic personality, various mental and personality disorders, and hypomania. Although the diagnoses were not wholly consistent from one professional to another, the majority of evaluations considered Mr. S.S. to be a sociopath and most believed he would be very difficult to rehabilitate.

There was solid evidence that the seriousness of Mr. S.S.'s crimes had gradually increased in regards to the harm inflicted on his victims. Mr. S.S. was most recently convicted of committing multiple sexual assaults. The most current conviction was for the sexual assault of 50 male teenagers, where the defendant either fondled his victims' genitals or performed fellatio. There was a consistent *modus operandi* to the assaults in that Mr. S.S. would find a street-wise male to engage in conversation and then offer to show him some wrestling moves. The Crown proved all the evidentiary bases of section 753 beyond a reasonable doubt, but expert evidence was brought forward that suggested sex-drive reduction medication could reduce his risk of re-offending, and consequently control Mr. S.S. within the community.

During the application process, evidence was presented over a period of six months, but at the end of the Crown's case, Mr. S.S. sought to have further psychiatric assessment. Due to Mr. S.S.'s considerable criminal history, there were numerous psychiatric reports included in the dangerous offender application. The most relevant evaluations referred to assessments conducted after his convictions for sexual offences. I

will briefly summarize the psychological evaluations from 1994 to the most recent evaluations conducted for the dangerous offender application.

In 1993, Mr. S.S. was convicted on three counts of sexual assault and was sentenced to one year on each count served consecutively. While incarcerated, Mr. S.S. was evaluated by Dr. Peter Malcom and Dr. Howard Barbaree. Dr. Peter Malcom, whose specialities are child molesters and denial, was the first doctor to assess Mr. S.S. after his conviction. Three risk assessment tools were used to evaluate Mr. S.S.'s risk: the PCL, LSI, and GSIR. Mr. S.S.'s PCL score was 31, which translates into a high risk for violent recidivism and the probability of psychopathic tendencies.¹⁴ The LSI score was -37, which means that he has a medium to high risk for general recidivism. Mr. S.S.'s GSIR scores were also high enough to suggest that Mr. S.S. has a high risk of general recidivism. Dr. Malcom also reported that although Mr. S.S. had expressed remorse for his actions, it was interpreted as a superficial confession and not a genuine expression of regret. Another concern raised by Dr. Malcom was Mr. S.S.'s inability to control his aggressive sexual behaviour when pursuing sexual relations.

Later in 1994, Mr. S.S. was evaluated by Dr. Howard Barbaree, an expert in sex offender treatment. Dr. Barbaree found that Mr. S.S. had a clinically unstable personality and that he led a chronically deviant lifestyle. His personality was also described as selfish, manipulative, and deceitful. Dr. Barbaree reported that Mr. S.S. lacked guilt, remorse, and did not understand the effect his behaviour had on others. Mr. S.S. was seen as a good candidate for the full pre-release treatment program, which he participated in. The post-treatment report showed that Mr. S.S. had a low motivation for treatment and

¹⁴ The maximum score on the PCL is 40.

there was little behavioural change, so it was recommended that Mr. S.S. continue treatment in a medium security facility.

After a mid-treatment report, in September of 1994, Dr. Barbaree and other treatment facilitators discussed Mr. S.S.'s progress and concluded that he was still not motivated and was sceptical of the treatment process¹⁵. His performance was regarded as inadequate and the committee recommended further treatment, to which Mr. S.S. expressed indifference. After participating in two treatment programs, the treatment facilitators suggested to the Parole Board that Mr. S.S. be considered an untreated sex offender because his progress was minimal and his risk level was still high. According to court documents, Mr. S.S. was released despite the concerns raised by Dr. Barbaree. Between 1994 and 1999, Mr. S.S. was convicted three times. The first conviction was in 1997 for failing to attend court (sentenced to twenty days and time served). In April of 1997, Mr. S.S. was convicted for failure to comply with recognizance (sentenced to twenty-three months probation) and then again in 1999 for breach of probation.

Dr. Dickey prepared Mr. S.S.'s most current assessment in September of 2002 for the dangerous offender application. In Dr. Dickey's opinion, the criminal behaviour of Mr. S.S. was part of an overall pattern of persistent aggressive behaviour, and there was a considerable amount of indifference on the part of Mr. S.S. for the consequences of his actions and their effect on his victims. Dr. Dickey also stated that Mr. S.S. was a pedohebephile, which he defined as, "a sexual preference in which the preferred method of achieving sexual arousal or gratification is the fantasy image or interaction with the pubescent or early adolescence individuals" (R. v. S.S., pg. 3). According to Dr. Dickey, there is no known treatment that could change this sexual preference. Other options, such

¹⁵ The treatment programs were strictly cognitive, with no chemical elements.

as sex-drive reduction medication, combined with psychological treatment, could give Mr. S.S. some control over his impulses, but Dr. Dickey believed he may not be inclined to participate. Dr. Dickey's conclusion was that Mr. S.S. would continue to represent a high likelihood of re-offending and the treatment and control of Mr. S.S.'s sexual offending could be problematic if conducted in the community.

Regarding Dr. Dickey's opinion on sex-drive reducing medication, he stated that the medication would make it reasonably possible for Mr. S.S. to be controlled within the community. However, if Mr. S.S. stopped taking the medication, then controlling him would be a concern and his risk would return to its pre-medication level. Dr. Dickey's estimation of the possibility of Mr. S.S. taking the medication was 50%, and he also expressed concern that Mr. S.S. would be dishonest with respect to the treatment.

After Mr. S.S.'s request for an additional evaluation, Dr. Bradford, a specialist in the treatment of sexual disorders, performed an evaluation at the Forensic Corporate Division of the Royal Ottawa Healthcare Groups, in September of 2004. Dr. Bradford's diagnosis was that Mr. S.S.'s behaviour could be controlled with sex-drive reduction medication combined with therapy and community assistance. Dr. Bradford suggested inter-muscular injections for Mr. S.S. because they are the most efficient of all sex-drive reducing medication. There was a small trial where the drug was administered every two weeks, which resulted in a 70% decrease in Mr. S.S.'s testosterone levels. In Dr. Bradford's opinion, Mr. S.S. would be a good candidate for long-term pharmacological treatment combined with therapy. According to Mr. S.S.'s Static-99 score, he represents a 39% risk in five years, a 45% risk within ten years, and a 52% risk of recidivism in fifteen years

without treatment¹⁶. The effect of sex-drive reducing medication is similar to surgical castration because it blocks brain function, but when the medication is not administered for a long period of time, the effects are reversible.

At the time of the report, Mr. S.S. had been receiving the injections for 8 months. One additional month of treatment would have significantly affected his brain receptors, which could have resulted in a long term change in his behaviour. If Mr. S.S. stopped taking the medication, though, its effects could be reversed, but it would take some time. In May of 2004, Dr. Bradford suggested that it was no longer necessary for Mr. S.S. to continue taking the medication, but there was no reason given for his suggestion. Despite the recommendation for Mr. S.S. to stop taking the medication, Mr. S.S. disagreed and opted to keep getting injections.

The conclusion of the court was that although Mr. S.S. met the dangerous offender criteria without question, the effect of the sex-drive reduction medication was positive enough to reduce his risk of re-offending. The only potential problem that could affect Mr. S.S.'s willingness to comply with injections was the medication's side effects. If Mr. S.S. decided the side effects were too great, then other options would be discussed to keep him in the community.

Pharmacological treatment methods have made it possible for some sex offenders to be released from incarceration despite their failure in cognitive-behavioural programs. Although there is a reduction in recidivism rates when sex-drive reducing medication is used, the reduction is not absolute. There has been considerable research that suggests a sex offender's risk decreases naturally with age, but this offender was 54 and still in need of medication to control his urges. Reports in the dangerous offender application state

¹⁶ The Static-99 measures sexual recidivism.

that the natural decrease is most noticeable after the age of 70, so even if Mr. S.S. is treated as a long-term offender for 10 years, he would still be six years away from this natural decrease. This concern was noted at the end of testimony, but it was found that because his *modus operandi* included wrestling with adolescent boys, as Mr. S.S. aged, it would become more difficult to assault boys in this manner. Even if Mr. S.S. could no longer wrestle with adolescent boys, it could be argued that he is likely to find another way to satisfy his sexual needs (as most people tend to do).

The court's decision that Mr. S.S. presents a manageable risk for re-offending is problematic for several reasons. First and foremost, Mr. S.S. states that his sexual preference is for adolescent boys and although his *modus operandi* would become more difficult as he aged, the fact remains that he is attracted to adolescent males. When the 10-year supervisory period is over and the medication is no longer administered, there is no guarantee that he will not re-offend in another manner. Sex-drive reduction medication stalls sexually deviant behaviour, so it is natural to conclude that once the medication is no longer administered, the original feelings and urges will resume. There is also the suggestion that Mr. S.S.'s criminal activities would naturally decrease with age, but there is no research that shows a person's sexual attractions change with age. Dr. Bradford and Dr. Dickens both recommended therapy in conjunction with the medication, but since previous attempts to treat Mr. S.S. with cognitive methods have been dismal in their effect, it is difficult to imagine there would be any difference in the next few years.

The psychological damage that Mr. S.S. inflicted on his victims throughout the previous twenty years does not seem to have been admitted into testimony or evidence

during the dangerous offender application process. Several comments by Dr. Bradford suggested that Mr. S.S.'s crimes were not of a serious nature, which seems to ignore the impact Mr. S.S.'s crimes had on his victims. Any type of forced sexual act is a serious offence, so for Dr. Bradford to state that Mr. S.S.'s crimes are not of a serious nature significantly undermines the harm Mr. S.S. inflicted upon his victims.

In the 1994 assessment, Dr. Barbaree offered an explanation as to why Mr. S.S. did not receive pharmacological treatment at the time of his assessment. The court case states "Dr. Barbaree indicated that they would not be involved because there are side effects of these drugs which would be difficult in an institutional setting where the risk is minimal versus that within the community" (R. v. S.S., p. 46). The testimony goes on to state that pharmacological treatment occurs only in a community treatment program, and not while the offender is incarcerated. There is no explanation given as to why this was the case at the time, or any clarifying information on the risk potential of medication administration within a prison. If an institutional setting has minimal risk, then it would be natural to assume that prison would be an ideal place to test Mr. S.S.'s receptivity to treatment without endangering the public. I would argue it is not appropriate for the community to serve as a testing ground to see if an offender will commit further crimes. Some research suggests that the most effective treatment programs take place in the community, but the reality is that putting dangerous offenders in arm's reach of potential victims is potentially harmful. In order to test if pharmacological treatments are effective in controlling sexual urges, there must be some temptation, but balancing public safety with the potential for rehabilitation is a delicate process. A compelling argument can be made

that the first session of treatments could be administered within a controlled environment so that when the offender is released, the drug and its impact can be known.

After reading R. v. S.S., the reason for the decision to release Mr. S.S. was still not clear. The prosecution demonstrated that Mr. S.S. presented a high risk of recidivism if not for chemical assistance, whose effects could decline if the administration ceased. Mr. S.S. is a sexual predator who shows little remorse for his actions and it was suggested that Mr. S.S. took the medication to avoid a dangerous offender classification. If Mr. S.S. does not qualify for an indeterminate sentence, then it is unclear who does. An offender who was considered to be dangerous enough for an indeterminate sentence is Mr. J.H., who was designated as a dangerous offender in early 2005. There are many similarities between Mr. S.S. and Mr. J.H.'s crimes and psychological evaluations, which I will now explore.

The Case of R. v. J.H.

The case of R. v. J.H. was first heard on February 23, 2005 and concluded on September 16, 2005. Mr. J.H. was a 48 year-old man at the time of this case, and his criminal history dates back to 1978. The most recent conviction for Mr. J.H. occurred on February 12, 2003, when he was found guilty of enticing a person under the age of 14 years to his apartment, contrary to s. 281 of the Criminal Code of Canada.¹⁷ This crime was Mr. J.H.'s third sexual assault conviction.

In regard to the most recent sexual assault conviction, the 10 year-old victim (R.G.) testified that Mr. J.H. showed her extremely disturbing pornographic images including

¹⁷ Guilty of enticing a person under the age of 14 years to his apartment when he was not the parent, and depriving the guardian of the child control and possession of her child.

adults having sex with children.¹⁸ Mr. J.H. also asked R.G to show her “boobs” to him in exchange for two dollars. The Crown decided to pursue a dangerous offender designation after Mr. J.H.’s 2003 conviction, where testimony included a detailed criminal record report and statements from various psychiatric evaluators and treatment facilitators.

Mr. J.H. began his considerable criminal history in 1978 when he was convicted of theft over \$200. For the next eight years, Mr. J.H. was convicted several more times for theft, break and enter, driving under the influence of alcohol, and attempted fraud. According to Mr. J.H.’s own admission, he sexually assaulted a 9-year-old girl in 1982, three years before his first sexual assault conviction. His first sexual assault conviction was in 1985, which also included a count of gross indecency, for which he was sentenced to 12 months in jail and two years of probation upon release. Three years later, Mr. J.H. was convicted of break and entering, possession of a weapon, sexual assault, and causing bodily harm to a complainant while committing a sexual assault. He received five years (concurrent) on each charge. Mr. J.H. also admitted to threatening a girlfriend with a knife when demanding sex, which took place in 1988. In 1995, Mr. J.H. was again convicted of two sexual assaults and sentenced to another five years to be served concurrently. He also received a lifetime prohibition against carrying firearms, ammunitions, or explosive substances. The final conviction which prompted the dangerous offender application was the 2003 conviction.

For the sexual assault convictions, Mr. J.H.’s victims were primarily female children between the ages of 6 and 9. Physical violence was not used against the child victims, but Mr. J.H. used manipulation to coerce the girls. Although Mr. J.H. had been

¹⁸ All information that refers to Mr. J.H. was obtained from case R. V. J.H. between Her Majesty the Queen, applicant, and respondent.[2005] O.J. No. 4169, Court File No. 03-G9580.

incarcerated several times and participated in several treatment programs, his progress was not substantial in reducing his risk for reoffending.

During Mr. J.H.'s mandatory supervision order in 1992 he was living on his own and receiving psychological counselling for sex offending at the Warkworth Institution. His treatment was suspended, however, when he was charged with sexual assault and sexual assault with a weapon against a 15 year-old victim. Although he was not convicted of this crime, he was convicted of perjury for convincing a witness not to testify against him. In 1993 he was interviewed by a registered nurse at Warkworth Institution, where he confessed that he was starting to re-experience deviant sexual fantasies involving female children 9 to 12 years of age, and was masturbating 4 to 5 times per day to these fantasies. The nurse referred him to the Warkworth Sexual Behaviour Clinic, where he was found to have a high risk on the GSIR, moderate risk on the PCL-R, and a moderate/high risk for sexual re-offending. He was recommended to attend the Sex Offender Treatment Program at the Bath Institution and to continue Sex Offender Treatment upon his release.

Mr. J. H. participated in another treatment program in 1996 at the Warkworth Sexual Behaviour Clinic, where his PCL-R scores classified him at a high risk for violent reoffending¹⁹. He did not complete the program, however, as he missed 12 sessions and was suspended from participating. In 1997, Mr. J.H. participated in another Warkworth Sexual Behaviour Clinic, but was chronically absent again, resistant to feedback, showed low motivation, and refused the process on several other levels. He also stole 2 slides used for phallometric testing, which were eventually returned, but he did not take

¹⁹ In 1993, Mr. J.H.'s PCL-R score showed him at a moderate risk, but later in 1996, PCL-R results showed he was a high risk.

responsibility for taking them. In early 1998, Mr. J.H. successfully completed an Offender Substance Abuse Pre-Release Program, but his participation was not great. He did not complete homework assignments, nor did he agree that he had an alcohol abuse problem. It was recommended that he continue with treatment but only if his motivation and attitude changed. In August of 1998, he withdrew from the Regional Treatment Center Sex Offender Program, but promised to return at a later date.

Mr. J.H. was reassessed in October of 1998 at the Regional Treatment Centre where he was found to have very strong sexual feelings for under-aged females and severe problems with alcohol abuse. It was recommended that Mr. J.H. participate in a high intensity sex offender treatment program. Mr. J.H. successfully completed a 6 month Sex Offender Treatment program in March of 2000, but he was discharged from individual counselling because of his inappropriate behaviour. During the last treatment program, Mr. J.H. underwent additional phallometric testing, which still showed a deviant arousal pattern that indicated a sexual preference for underage females. Although his participation in the program was better than previous programs, he still had difficulty understanding that a child does not have the ability to consent to sexual activity. Consequently, Mr. J.H. was still considered at a high risk for re-offending. It is also important to note that from 1994 to 2000, Mr. J.H. either refused or tested positive for drugs 79% of the time.

Mr. J.H. went to the Royal Ottawa Hospital in June of 2002 to seek help in overcoming his sexually deviant fantasies involving females between the ages of 8 and 12 years. Dr. Federoff assessed Mr. J.H.'s behaviour and found that he met the criteria for pedophilia, with the possibility of a sadistic trend. Mr. J.H. continued treatment until

September of 2002, where Dr. Federoff requested that he cease participating because of his attitude during group therapy sessions. Mr. J.H. also refused sex-drive reduction medication and to abstain from alcohol. Dr. Federoff's conclusion was that Mr. J.H. suffered from paraphilia, a personality disorder, and one or more substance abuse disorders.

Dr. Klassen evaluated Mr. J.H. in 2004 for the dangerous offender application and reaffirmed the previously obtained risk assessment scores found in 1993. The score for Mr. J.H. on the PCL-R was 33 out of 40 points, which places him in the 91st percentile. This score demonstrates a significant risk of future general and/or violent criminal recidivism, as well as difficulties with community supervision and response to treatment. Mr. J.H.'s SORAG score was 27, which placed him in the 94th percentile and predicts an 89% chance of re-offending violently or sexually within 10 years. It is also important to mention that there has not been a 10-year period when Mr. J.H. did not re-offend since he was 13 years old and that the SORAG may underestimate his risk of re-offending. The STATIC-99 result of 7 puts Mr. J.H. into the 88th percentile, which translates into a 59% chance of re-offending over 15 years. Dr. Klassen concluded his remarks by stating that if Mr. J.H. is to be released, he should receive sex-drive reduction medication by intramuscular injection.

The judge concluded that Mr. J.H. could not be classified as a long-term offender because of his high risk of recidivism. At the time of sentencing, Mr. J.H. was 48 years of age, so with the mandatory community supervision order associated with a long-term offender designation (10 years), he would not be old enough to have his sexual deviance

curb naturally. In the interest of public safety, Mr. J.H. was declared a dangerous offender and sentenced for an indeterminate period of time.

Comparison of Mr. S.S. and Mr. J.H.

The differences between Mr. S.S. and Mr. J.H. can be identified on several levels: criminal histories, psychological assessments, and the ultimate outcomes of their dangerous offender applications. Mr. S.S. clearly has the more extensive criminal past, with almost double the amount of convictions. However, Mr. J.H.'s criminal history was considered to be more serious, illustrated by the consistency of sexual assaults against under-aged girls. The question therefore becomes, why is one considered dangerous while the other is not? The only significant difference between the two men appears to be one's willingness to take sex-drive reduction medication and the other's outright refusal.

If the working definition of dangerousness is "the capacity of persons to harm themselves, or others in a physical, psychological, or moral way" (Petrunik, 2003), then both Mr. S.S. and Mr. J.H. fit the definition. Interestingly, the Courts did not disagree that both offenders are dangerous, because they both fulfilled the criteria for being declared a dangerous offender, but the difference was that Mr. S.S. was considered controllable in the community while Mr. J.H. was not. Both offenders failed previous attempts at rehabilitation and showed little remorse for their actions. The difference in ages between Mr. S.S.'s and Mr. J.H.'s victims is slight, as they both relied on intimidation, manipulation, and deception. Mr. J.H. had more of a history with violent crime, but towards his sexual victims, his actions involved less direct sexual contact than Mr. S.S.

With all the similarities between the criminal histories and risk of recidivism, it is still unclear why Mr. S.S. was not declared a dangerous offender and Mr. J.H. was. An indeterminate sentence does not mean that an offender is locked up for the rest of his/her life without any assistance within the prison system. Instead, an offender is detained for an unspecified time until it is found that he/she no longer poses a risk to society. Offenders are encouraged to attend and participate in rehabilitative treatment programs, evaluate their actions, and then modify their behaviour. If an offender refuses to take responsibility for his/her actions, then an indeterminate sentence could last for the rest of the offender's life, but that was not the principle behind the legislation.

Mr. S.S. did not respond to cognitive therapy and chose to be detached from the rehabilitative process. He displayed little remorse for his actions, and submitted to pharmacological treatment to avoid a dangerous offender designation. According to Dr. Federoff, drugging offenders will stop a male offender from having an erection, but will not stop other sexual impulses, such as exhibition and sexual touching. Since Mr. S.S.'s crimes included both fondling and fellatio, the pharmacological sex-drive reduction medication will affect one of two crimes that Mr. S.S. commits. The Court decided that both Mr. S.S. and Mr. J.H.'s crimes fit an indeterminate sentence, as both were found to fit the criteria of a dangerous offender, but Mr. S.S. had the potential to be controlled within the community because he would take sex-drive reduction medication.

These two cases suggest an offender who does not take accountability for his/her crimes, has failed repeatedly at rehabilitation, and refuses to change his/her behaviour, may still have access to community treatment programs. Long-term offender legislation is problematic in this way, as it allows for the possibility of repeat offenders to have

multiple chances at rehabilitation within the community. One argument that supports the release of sex offenders is that sex-drive reduction medication is an effective way for an offender to control his/her behaviour. Research has shown that continual administration of sex-drive reduction medication can result in a long-term change in an offender's behaviour, but it does not change an offender's sexual preference or desire. The medication may assist an offender in controlling their sexual urges and impulses, but it does not stop the offender from feeling the urges and impulses.

In terms of dangerousness, both offenders fulfill Petrunik's definition of dangerousness,²⁰ as they were both found to have personality disorders. Petrunik also suggests that the term "dangerous" is often applied to males who have a serial pattern of committing sexual and/or violent offences against women and children (Petrunik, 2003). It can be argued that Mr. S.S. and Mr. J.H. both committed crimes against children, but Mr. S.S. did not have female victims. The three models of dangerousness are also applicable to both Mr. S.S. and Mr. J.H.

The forensic-clinical model of dangerousness advocates an indeterminate sentence for offenders who cannot be deterred from committing their crimes due to mental or personality disorders (Petrunik, 2003). According to the forensic-clinical model, both Mr. S.S. and Mr. J.H. should be incarcerated for an indeterminate time until they can be successfully rehabilitated.

The justice model supports determinate sentences that are proportionate to the seriousness of an offender's crime. In the opinion of Dr. Bradford, Mr. S.S.'s crimes were not serious because they did not involve violence or any type of penetration. As stated

²⁰ That dangerousness refers to a person's abnormal state of being, including paraphilia, personality disorders, or mental abnormalities that predisposes them to do harm, not the person's specific actions or their circumstances.

previously, Dr. Bradford did not address the serious psychological harm that Mr. S.S. inflicted on his victims, but it has been suggested that victims of any sexual assault experience harm. Mr. J.H.'s crimes were considered serious by the courts responsible for his convictions, as his sentences for sexual assaults were much longer than Mr. S.S.'s. According to the justice model, Mr. J.H.'s designation as a dangerous offender is justified, but it can be argued that Mr. S.S.'s designation as a long-term offender is also justified.

The community protection model is concerned with keeping offenders off the streets and protecting the rights of victims. In terms of the community protection model, both Mr. S.S. and Mr. J.H. are dangerous, as both offenders have failed at previous attempts at rehabilitation.

When looking at the two cases of Mr. S.S. and Mr. J.H., it is unclear why Mr. S.S. was not designated as a dangerous offender. Mr. S.S. fit the legal criteria for a dangerous offender, as well as Petrunik's definition of dangerousness, and at least two models of dangerousness. Although this analysis of sex offenders is limited, one can assume that similar cases exist. For sex offenders, sex-drive reduction medication appears to be a primary factor that judges consider in dangerous offender applications, and seems to be the reason that Mr. S.S. was designated as a long-term offender.

The primary purpose of long-term offender legislation is to provide an alternative to indeterminate incarceration for some sex offenders who can effectively be controlled in the community. Sex-drive reduction medication appears, in these two cases, to be the discriminating factor that ultimately released Mr. S.S. and kept Mr. J.H. incarcerated. The substantial risk requirement for sex offenders is an interesting point of discussion because an offender would need to have a high risk for reoffending before qualifying for the

designation. One could suggest that releasing offenders who have a high risk of reoffending, like Mr. S.S., is not the most effective way to protect the public from an offender's further crimes. As the purpose of the legislation states, however, Mr. S.S. fits the legislation's primary goal.

Violent offenders do not have the option of pharmacological treatment, but they are still eligible for a long-term offender designation. The stated target of long-term offender legislation was sex offenders, so the inclusion of violent offenders arguably alters the act to something that was unintended. I discuss two additional dangerous offender applications involving violent offenders, where one offender was designated as a dangerous offender while the other was classified as a long-term offender. As with the sex offender cases, both violent offenders have similar criminal and psychiatric backgrounds.

Violent Offenders

When long-term legislation was introduced, its primary target was pedophiles. It was decided that some sex offenders could be treated and controlled in the community instead of within a correctional setting. Despite its original target, long-term offender legislation is also being applied to violent offenders, who often score higher on psychopathic risk assessment measures and whose behaviours are more difficult to control. I will examine the cases of two violent offenders and how each offender earned their designation.

The Case of R. v. J.M.C.

Mr. J.M.C. is a perfect example of an offender who fits the criteria for an indeterminate sentence. At the time of the dangerous offender application, Mr. J.M.C. was 27 years old. Prior to his 22nd birthday, Mr. J.M.C. had been found guilty of 18 adult convictions that included nine violence-related crimes.²¹ When incarcerated, Mr. J.M.C. served lengthy periods in segregation for in-prison violence and consistently showed himself to be a dangerous and violent man.

Mr. J.M.C.'s dangerous offender application was unlike any other I read while preparing my thesis, in that his criminal history was not outlined. In fact, previous convictions were hardly mentioned throughout the entire document. The most reasonable answer is that because many convictions occurred when he was a minor, all his records were sealed. The only historical information that was presented was his extensive mental health history that dated back almost to his birth. In addition, the defence presented an unusual argument as to why Mr. J.M.C. should not be designated. According to Mr. J.M.C.'s defence counsel, the longer an offender is sentenced to prison, the less likely he/she is to receive treatment. Many treatment programs have a fixed capacity, and when an offender is close to his/her release date, their priority for receiving treatment often trumps those who have a longer time to serve²². Consequently, many offenders who are serving long sentences are unlikely to receive treatment until close to their release date. For offenders sentenced to an indeterminate period, the likelihood of receiving treatment is even less.

²¹ All information that refers to Mr. J.M.C. was obtained from case R. V. J.M.C. between Her Majesty the Queen, applicant, and respondent.[2005] O.J. No. 176, Court File No. CRIMJ (P)5998/02.

²² Many programs accept 2 – 3 offenders serving longer sentences.

The first encounter Mr. J.M.C. had with a psychiatrist was when he was only four years old. Dr. Thibault referred him to the Regional Children's Center, because of his behaviour at school, but there was no follow-up. At the age of six, Mr. J.M.C. was diagnosed as having Hyperkinetic Syndrome, which was possibly connected with child abuse and neglect. After four years of intense treatment and evaluation, 10-year old Mr. J.M.C. exhibited narcissism, anger, depression, and anti-social tendencies. By the age of 12, it was recommended that Mr. J.M.C. be committed to a long-term placement facility to treat his deep core disturbance within a stable environment. The first suggestion for Mr. J.M.C. to take medication came when he was 13, where he pretended to take it and reported that he did not want it to run his life. By the age of 16, Mr. J.M.C. was diagnosed as having characteristics associated with an antisocial personality disorder and by the age of 18 was officially diagnosed as having a personality disorder.

In early 1998, 19-year old J.M.C. was sentenced to 2 years imprisonment after being convicted of assault with a weapon and other offences. During Mr. J.M.C.'s assessment he admitted that there were many offences, mostly robberies, for which he had not been caught, and indicated that he did not have a strong desire to change. Mr. J.M.C. met the criteria for diagnosis as a psychopath with the PCL-R and his VRAG score predicted an 82% probability of violent recidivism within 10 years. Dr. Dickey, who was consulted by the CSC to assess Mr. J.M.C.'s risk and treatment, concluded that psychiatry and/or psychology would likely have no impact on changing his behaviour.

Mr. J.M.C.'s most current conviction was for homicide by manslaughter, where he hit and killed a 65-year-old cyclist with his vehicle and then fled the scene. After the 2003 conviction, Dr. Hucker led the assessment team in evaluating Mr. J.M.C. The majority of

findings reflected many similarities to previous evaluations, but the more extreme difference was the significant increase in his PCL-R score. The highest score possible on the PCL-R is 40, and as of 2004, Dr. Hucker found that Mr. J.M.C. scored a 36, but suggested that his score could be as high as 38. Only 1% of North American offenders score a 36 or higher, so this score affirms Mr. J.M.C.'s psychopathy. In addition to the PCL-R scores, Mr. J.M.C.'s VRAG scores predicted a 100% probability of a violent re-offence within seven years. According to Dr. Hucker, if Mr. J.M.C. were to be released, "he would certainly commit further offences of violence and cause various degrees of psychological harm depending on the type of victim, up to "severe" harm" (*R. v. J.M.C.*, pg. 13). On January 19, 2005, Mr. J.M.C. was declared a dangerous offender and sentenced for an indeterminate time.

Between Mr. J.M.C.'s criminal history and consistent psychiatric diagnoses and evaluations, it is clear that he poses a risk for re-offending and therefore fits the criteria for a dangerous offender designation. During the application process, the defence offered a unique position regarding whether or not Mr. J.M.C. should be classified. Before discussing it further in chapter five, I will present another example of a violent offender who was declared a long-term offender instead of a dangerous offender.

The Case of R. v. G.L.

The dangerous offender application for Mr. G.L. was held on March 3, 2004. At the time of the application, Mr. G.L. was 45 years of age. Mr. G.L.'s most recent conviction was for breaking and entering into his ex-girlfriend's apartment and assaulting her and

her boyfriend with weapons while threatening to kill them.²³ Despite his extensive criminal history, G.L. was not designated as a dangerous offender, but was instead classified as a long-term offender.

Mr. G.L.'s criminal conviction sheet dates back to 1985 and has progressed steadily, with a total of 25 crimes to date. Of the 25, 13 involved violence against a person and one sexual assault. His crimes gradually escalated over time and eventually led to his first assault in 1992, and his theft crimes increased from over \$200 in 1985 to theft under \$5000 in 1998. During Mr. G.L.'s repeated run-ins with the law he broke the conditions of his parole on three separate occasions and also assaulted a peace officer.

Dr. Klassen first began assessing Mr. G.L. in 2003 when he was serving three years and eight months for his most recent conviction, the assault of his ex-girlfriend and her boyfriend. Dr. Klassen's report was used as evidence for the dangerous offender application and, generally speaking, he suggested that Mr. G.L. was an offender who was likely to re-offend. Mr. G.L. had participated in various treatment programs in the past, including substance abuse programs, cognitive skills treatment, and family violence programs, yet upon his release, he was drinking within a few months, and eventually recidivated violently. In Dr. Klassen's opinion, Mr. G.L. was simply participating in treatment to secure a release, instead of actually committing himself to change. In past relationships, Dr. Klassen testified that Mr. G.L. could be described as a classic psychopathic and domestic abuser who was controlling and manipulative. While incarcerated, Mr. G.L. wrote to his ex-girlfriend and attempted to minimize his actions as well as manipulate her into lying about the event.

²³ All information that refers to Mr. G.L. was obtained from case R. V. G.L. between Her Majesty the Queen, applicant, and respondent. [2004] O. J. No. 1242.

Dr. Klassen testified that, in his opinion, Mr. G.L. would not experience any fundamental change in his personality, with or without treatment. Mr. G.L.'s PCL-R score was a 35, an extremely high score, and he also suffers from a serious personality disorder. In order to meet the criteria for an anti-social personality, a person must manifest three of seven criteria - Mr. G.L. met all seven. Combined with his obvious disregard for anyone beside himself, Mr. G.L. has a long history of abusing alcohol, which has been found to escalate his violent behaviour. Mr. G.L.'s VRAG score of 30²⁴ also predicted a 100% chance of recidivism over seven years in the community.

Interviews with past parole officers also demonstrate Mr. G.L.'s ability to manipulate people to his own advantage. In June of 2001, a parole officer, J. Patini, was assigned to his case but, with only four months of experience, the evidence suggests that she was too inexperienced for the task²⁵. The Parole Board had made recommendations that Mr. G.L. follow a treatment plan and attend counselling, according to J. Patini, this was never done.

In terms of Mr. G.L.'s risk assessment scores, they are generally the same as the other three cases presented in this chapter. Dr. Klassen found that Mr. G.L.'s PCL-R score was 35, which places him in the 96th percentile. Mr. G.L.'s VRAG scores place him at a 100% risk of recidivism over a seven year period. Dr. Klassen admits that people who score as high as Mr. G.L. did are very difficult to supervise on parole and probation. Dr. Kalssen also believed that the original provisions for long-term offenders were meant to deal with community pedophiles rather than persons who had unstable lifestyles, so it would be important to see what services the Parole Board could offer should Mr. G.L. be

²⁴ The highest possible score on the VRAG

²⁵ R.v G.L., pg. 25, Parole Supervision Section, number 67.

designated as a long-term offender. One of Dr. Klassen's fears, however, was the high number of newly classified long-term offenders, approximately 100, who will be released over the next number of years because the offenders are quite diverse in their crimes and psychiatric/behaviour problems. Dr. Klassen's opinion is that Mr. G.L.'s history of indulgent supervision is not a good sign that if released, his behaviour would change. In addition, because Mr. G.L. had never been severely reprimanded while on conditional release in the past, he suspects that the Parole Board was not serious in its recommendations and stipulations. In other words, Mr. G.L. does not take the Parole Board seriously because he has continually broken Parole conditions and has faced few consequences.

Dr. Klassen's final thought on the release of Mr. G.L. was that the expectation of zero recidivism is not very realistic. There are several dynamic risk factors that Dr. Klassen identifies, which include Mr. G.L.'s psychopathic character structure, addiction to alcohol, a non-conformist lifestyle, choice of vulnerable partners, and involvement with criminal peers, all which present a recidivism problem. If released, Dr. Klassen argued that Mr. G.L. should be ordered to abstain from consuming alcohol and street drugs and continue to receive substance abuse treatment. Dr. Klassen also recommended that Mr. G.L. should refrain from socializing with his criminal peers and he should be involved in very structured daytime activities. The only place that could facilitate Mr. G.L.'s needs, according to Dr. Klassen, is the Keele Centre in Toronto, where residents are well supervised 24 hours a day. Despite the overwhelming evidence that suggests Mr. G.L. will continue to offend in the community, he was designated as a long-term offender instead of a dangerous offender. The primary reason given was that because of his age,

by the time he was released from incarceration, he would be over the age of 50 and the natural decline in offending would be in effect.

Dr. Klassens' concern on Mr. G.L.'s potential for recidivism contradicts the court's decision to treat Mr. G.L. in the community rather than in a controlled institutional setting. Many of the psychiatrists that testified in the sex offender and violent offender dangerous offender applications spoke of a natural decline in offending. General research suggests the decline begins at the age of 50 and eventually tapers off until the age of 70, when offenders often stop offending. There is no guarantee that all offenders comply with the natural decline at the same rate, and Dr. Federoff²⁶ argued that a male person in his 60's was still likely to commit a sex offence.

Comparison of Mr. J.M.C. and Mr. G.L.

Mr. J.M.C. and Mr. G.L. are two violent offenders who have extensive criminal pasts and are considered to have a very high risk of reoffending. Mr. J.M.C. has been evaluated by numerous psychiatrists since the age of six, and presently has PCL-R scores that demonstrate his psychopathy. Combined with the PCL-R score and the VRAG score that predicted a 100% probability of violent recidivism within seven years, Mr. J.M.C. more than satisfied the court's criteria for a dangerous offender designation. Mr. G.L.'s PCL-R scores also confirm his psychopathy and tests also showed that he met the criteria for an anti-social personality disorder. As with Mr. J.M.C., Mr. G.L. attained the highest possible score on the VRAG, yet was designated as a long-term offender instead of a dangerous offender.

²⁶ From R. v. J.H.

Both offenders' criminal histories are substantial as well, with each offender being convicted of at least 18 crimes that include breaking and entering, assault, sexual assault, and theft. Mr. J.M.C.'s most recent conviction was for homicide by manslaughter while Mr. G.L.'s most recent conviction was for breaking into and entering an apartment and then assaulting two individuals. The testimonies of Dr. Hucker (Mr. J.M.C) and Dr. Klassen (Mr. G.L.) were instrumental in the final outcomes of the dangerous offender applications. Dr. Hucker testified that Mr. J.M.C. would commit further offences of violence and cause psychological harm on his victims if he was released. Dr. Klassen provided a similar opinion to Mr. G.L., but concluded that he could be released to the Keele Centre in Toronto where 24-hour supervision would help Mr. G.L. refrain from socializing with his criminal peers and structure his daytime activities. Another factor in Mr. G.L.'s designation as a long-term offender was his age. By the time Mr. G.L. had completed his prison sentence, he would be over the age of 50, where a natural decline in offending would begin to occur.

Previous rehabilitative attempts by Mr. G.L. and Mr. J.M.C. did not result in any difference in their behaviour. Mr. G.L. had an extensive violent history, which was increased by his consumption of alcohol. Despite the knowledge that alcohol contributed to his loss of control, Mr. G.L. chose to continue drinking. Mr. J.M.C.'s criminal history is not as long as Mr. G.L.'s but one could suggest that if the two offenders were the same age, Mr. J.M.C.'s history would include more offences. During treatment programs, psychologists noted that Mr. J.M.C. did not indicate a strong desire to change and that Mr. G.L. did not feel much remorse for his actions. The primary reason that Mr. J.M.C. was declared a dangerous offender was because his age, 27 years, indicated that there was

no chance of a natural decline in his crimes. In fact, the natural age decline was also a primary reason that Mr. G.L. was declared a long-term offender, for he would not be released before his 50th birthday. In spite of each offender's failed attempts at rehabilitation and vast reconviction rates when they were not incarcerated, Mr. G.L. would eventually be released because of his age, not due to his desire to stop offending.

The three models of dangerousness suggest that both Mr. G.L. and Mr. J.M.C. are "dangerous" offenders. Working with Petrunik's definition, both offenders have the capacity and propensity to harm others in a physical, psychological, and/or moral way. Both offenders had committed crimes against women and children, and although Mr. G.L. had fewer victims than Mr. J.M.C., the level of violence they inflicted upon their victims is quite similar.

The forensic-clinical model of dangerousness suggests that offenders who cannot be deterred from committing crimes due to mental or personality disorders should receive an indeterminate sentence. Psychological testing showed that both Mr. G.L. and Mr. J.M.C. suffer from antisocial personality disorders and both offenders have problems with drugs and/or alcohol. According to the forensic-clinical model, both offenders are dangerous and should be incarcerated for an indeterminate time.

The justice model of dangerous encourages determinate sentences that are proportionate to the seriousness of an offender's crime(s). Mr. G.L. and Mr. J.M.C. are both extremely violent individuals who committed repeat offences, yet Mr. G.L. was not sentenced as severely as Mr. J.M.C. One could suggest that hitting and killing a person with a vehicle is just as severe as breaking into an apartment and attacking two people with a weapon, but the court does not appear to agree. However, it is apparent that in the

court's opinion, breaking into an apartment and violently attacking two people with a weapon is not as serious as a hit-and-run. According to the justice model of dangerousness, Mr. G.L. and Mr. J.M.C. are both dangerous offenders who should receive similar sentences.

The community protection model's primary concern is to keep dangerous offenders segregated from the rest of society. When looking at the current convictions of both Mr. G.L. and Mr. J.M.C., both offenders are extremely violent and have a high risk of reoffending if released from prison. The community's protection is of the utmost importance to this model of dangerousness, and both offenders would be considered dangerous in accordance with the model's concerns.

The consistent criminal tendencies of both offenders are indisputable. Both offenders' crimes have increased in intensity over time, which have resulted in their most current convictions for very violent offences. It appears that the court's primary reason for declaring Mr. G.L. as a long-term offender is his age, which Mr. G.L. has little control over. Mr. G.L.'s inconsistent attendance at rehabilitative programs and reluctance to accept responsibility for his actions did not appear to affect the court's decision to allow for his eventual release.

Similarities Between Sex and Violent Offenders

The most obvious difference between sex and violent offenders is the nature of their crimes, and as such, the rehabilitative processes are distinct for offenders in each group. During the assessment process, an offender's crimes are evaluated in addition to their scores on various risk-measuring tools. There are risk assessment tools that are used to

evaluate both sex and violent offenders, such as the PCL-R, as well as tools that are used to specifically target an offender's future actions, whether they would be violent or sexual. In the two sex and violent offender cases I discussed in this chapter, there are strikingly similar characteristics that transcend the offenders' differences in offences.

All four offenders had high scores on the PCL-R, which is used to measure a person's psychopathy and according to the PCL-R, all four offenders are psychopaths. In terms of risk, all four offenders scored high on their respective risk assessment tools²⁷, which generally predicted a minimum of "high" risk to a 100% chance of recidivism. All four offenders have extensive criminal histories and have shown an escalation in their crimes. Three of the four offenders are middle-aged, with the exception of Mr. J.M.C., and have demonstrated little remorse for their actions. Long-term offender legislation has released two of these four offenders despite their similarities with the offenders classified as dangerous offenders.

Although sex and violent offenders both have the opportunity to avoid an indeterminate sentence by being designated as long-term offenders, the original intention of the long-term offender provisions was to offer an alternative to indeterminate incarceration for *sex* offenders. As demonstrated by these four cases, there are few differences between offenders who are designated as dangerous offenders and offenders who are designated as long-term offenders. The inconsistent application of dangerous offender legislation has allowed for some offenders to be declared long-term offenders even though they fulfill the requirements for a dangerous offender. The implications of this inconsistency are discussed in chapter five.

²⁷Different risk assessment tools are used to assess sex and violent offenders. For sex offenders, the SORAG, Static-99, and the VRAG for violent offenders.

Chapter 5 – Conclusion

While there are many goals which can be identified for the Canadian criminal justice system, one of the more important ones is the protection of society. People who commit crimes are prosecuted under the law and sentenced accordingly, where they become the responsibility of the Correctional Service of Canada. The two major components that affect an offender's release are the relevant legislation and, subsequently, the Correctional Service of Canada. I have discussed these two areas throughout my thesis have examined how current legislation and correctional practices allow the release of sex and violent offenders back into the community.

The origins of specific legislation for repeat and habitual offenders can be traced back to the beginning of the 1900s and its evolution has ultimately resulted in dangerous and long-term offender legislation. Both pieces of legislation have directly influenced the criminal justice system's view on sex offenders, as the implication for an indeterminate sentence is that the offender has a high risk of reoffending and may be untreatable, and therefore, should not be released. Long-term offender legislation offers a different perspective, in that some offenders (who present a high risk of reoffending) can be treated in the community under supervision instead of in prison. The suggestion that some offenders who fulfill all the requirements to be designated a dangerous offender could be treated within the community instead of a controlled environment appears to contradict one of the original purposes of the dangerous offender legislation, that is, to keep dangerous offenders separated from the community.

Indeterminate sentencing first emerged in 1947, with the intention that an offender would remain incarcerated until they had been rehabilitated. The option for an

indeterminate sentence continued to be available as other factors around the legislation evolved. Long-term offender legislation suggests that an offender does not need to be segregated from the general population in order to be rehabilitated. Keeping an offender in a controlled environment while they undergo rehabilitative treatment is a sure way that the public can be protected from an offender who has not yet completed the term of a treatment program, at least in the short to medium term. As some research has suggested, some offenders require more treatment than others, so even if an offender successfully completes a program, there is the possibility that they could require additional treatment. To place an offender who has not exhibited fundamental changes in their beliefs, values, and actions back into the community endangers both the offender (as he/she would be at a high risk of reoffending and consequently could result in a re-arrest and reconviction) and the public. One could argue that pharmacological treatments such as chemical castration, when administered correctly, can prevent sex offenders from reoffending, but even with chemical injections, an offender's sexual preference will not change. The format of assessing an offender's receptivity to treatment, their degree of risk, and possible pharmacological treatments, stems from psychological evaluations, which have evolved alongside the legislation.

The law's dependence on psychological assessments has increased since the introduction of the criminal sexual psychopath provisions in 1948. Currently, psychology is a cornerstone to the dangerous offender and long-term offender legislation. Risk assessment tools and procedures play a key role in a court's decision to classify offenders either as a dangerous offender or a long-term offender and are instrumental to the operation of the Correctional Service of Canada. The primary problem of using

psychology in law is the different ways in which each profession predicts future behaviour. Psychology uses percentages and probabilities in predicting an offender's risk of reoffending while the law uses a definitive "yes or no" categorization.

Other difficulties in using psychology to justify legal decisions are the problems inherent to the risk assessment tools themselves. Risk assessment is not an exact science, as there is room for error and miscalculation. Tools such as the Psychopathy Checklist and the Static-99 have both been revised at least once, and other risk/need assessment tools are presently being developed, so the field of risk assessment itself is aware of the problems in predicting future behaviour. Relying on a field that has problematic components without acknowledging their existence creates additional difficulties for legal officials in dangerous and long-term offender applications and for judges in designating such offenders. It is therefore important to be explicit in identifying and highlight any shortcomings or caveats associated with the field.

If one were to disregard the problems with risk assessment, and take the evaluative scores of risk assessment tools at face value, the primary problem of integrating law and psychology remains. In terms of the law's "yes or no" penchant regarding an offender's chance of reoffending, one could suggest that offenders who scored the highest possible score on a risk assessment tool would be declared as a dangerous offender. In the cases of Mr. G.L. and Mr. J.M.C. though, both offenders' VRAG scores indicated a 100% chance of recidivism within seven years of release. Despite the evidence that suggests a highly probable "yes" prediction for reoffending, Mr. G.L. was designated as a long-term offender while Mr. J.M.C. was designated as a dangerous offender. The decisions in these two cases illustrate the difficulty in defining the requirements for administering the

legislation. Since each case is evaluated by different judges, who have differing opinions on who appears to be a high risk for reoffence, there is no consistent manner in how offenders are designated. If dangerous and long-term offender applications require psychological evaluations that include risk assessment tools, then the reliance on them can add to the inconsistency which is witnessed. In the cases of Mr. S.S. and Mr. G.L. though, the information generated by the psychological evaluations did not lead to a dangerous offender designation despite the evidence that suggested their substantial probability of reoffending.

The inconsistency of the results given the psychological evaluations is puzzling because of the mandatory psychological components for dangerous offender applications. There is no simple solution to the relationship between law and psychology because the law requires input from psychological evaluations for its decisions. If the law were to act independently without input from psychology, then past criminal behaviour would be the sole determining factor that judges could use to designate offenders under dangerous and long-term offender legislation. An offender's criminal past cannot change and, therefore, cannot be used to evaluate whether an offender has changed his/her behaviour. Without psychology and the introduction of dynamic risk factors, the only basis for a designation decision would come from a static measurement.

Even with the current risk assessment problems, psychology and law must coexist and interact because psychology offers a perspective on the mental state of offenders which gives offenders the opportunity to change and allows the court to understand the motivations behind an offender's actions. If the law is to rely on psychological assessments, then there must be a consistent consideration given to the testimony of

psychiatrists. This, of course, is difficult to achieve given the different values and approaches of different judges, and it highlights the importance of judicial training and guidelines.

As it stands, there are important psychological components to dangerous and long-term offender applications, so despite the problems with risk assessment and the relationship between law and psychology, the law heavily relies on psychiatric professionals' opinions on offenders. Risk assessment tools are used to predict the future criminal behaviour of offenders, and the risk assessment tools' accuracy is often measured by the actual recidivism rates. The majority of research studies that measure recidivism rates use the rearrest and/or reconviction rates of offenders who completed treatment program(s) and compares them to offenders who did not complete or participate in rehabilitative program(s).

In 2002, "The First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment for Sex Offenders" was conducted that reviewed 43 studies conducted on the effectiveness of psychological treatment for sex offenders with an average follow-up period of 46 months after release. On average, the recidivism rate for sex crimes was 12.3% for treated groups and 16.8% for untreated groups (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002). In terms of general recidivism, 27.9% of treated groups reoffended while 39.2% of untreated groups reoffended (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002). There is a clear difference of general recidivism between the treated and untreated groups, but the difference is much smaller for sexual recidivism. The most effective treatment programs, according to the authors, are cognitive-behavioural treatments that emphasize the need

for offenders to take responsibility for their actions by developing strategies that will help offenders control their behaviour (Correctional Service of Canada, 2002).

Since any rehabilitative treatment program is voluntary, participants are free to leave at any time, but several studies have found that offenders who drop out of treatment programs have higher sexual recidivism rates than offenders who refused treatment (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002). In the case of R. v. J.H., the Crown presented information from Mr. J.H.'s rehabilitative treatment history, where he was shown to have missed several treatment appointments on more than one occasion. In keeping with the findings of The First Report, Mr. J.H. is at a higher risk for sexual recidivism than an offender who had refused treatment, so the court's decision to declare Mr. J.H. a dangerous offender (along with additional information) was well-founded. In the case of R. v. S.S. however, Mr. S.S.'s unsuccessful attempts at rehabilitation did not appear to be taken into consideration despite the testimony from several psychiatrists. Although Mr. S.S. technically completed his rehabilitative programs, post-treatment evaluations found him to have made no significant changes and proposed that Mr. S.S. be viewed as an untreated sex offender.

An offender's potential for reoffending is not the same as an offender's level of dangerousness. The three models of dangerousness present a means by which an individual's dangerousness can be measured. The models are important because an offender's risk of reoffending does not necessarily assess an offender's dangerousness. The three models represent the three major players in criminal justice: psychology (clinical-forensic), law (justice), and society (community protection). If an offender is apt to commit dangerous crimes, then their sentence should reflect the potential harm they

may inflict onto others. According to all three of the models, all four offenders are dangerous.

I would make the argument that long-term offender legislation is not the best way to deal with sex offenders. The original purpose of the legislation was to offer an alternative to indeterminate sentencing for high-risk sex offenders. Administering sex offender treatment within a prison is not as effective as conducting treatment within a community setting, but releasing offenders who have a high chance of reoffending before much rehabilitation has occurred puts the public in danger: it is a question of achieving a better balance between the need for protection and the rights of the inmate. It is impossible to watch an offender 24 hours a day when they are outside prison walls, regardless if they live in a halfway house or not. The Criminal Code revisions that emerged after the Stephenson Inquest in 1993 proposed changes to the dangerous offender legislation that may have had the potential to lead the legislation in a different direction from the later-implemented long-term legislation.

The draft legislation in 1993 recommended an expansion of existing dangerous offender provisions, which consisted of three measures. The first measure increased the amount of time the Crown had to make a dangerous offender application and suggested four possible outcomes if an offender was found to be a dangerous offender: indeterminate detention; a determinate period of detention; supervised release in the community for a period of ten years; and detention plus community supervision. This first measure included the disposition found in the current long-term offender legislation, that is, a determinate period of detention followed by supervised release into the community, but the time limit proposed in 1993 is longer than the time limit in both

dangerous and long-term offender legislation. Allowing the Crown to apply for a dangerous offender designation up to the last year of an offender's sentence could better serve the public in several ways. While incarcerated, an offender has the opportunity to attend treatment programs, show initiative that demonstrates their desire to change, and/or take educational courses that could assist the offender when they are released. Offender evaluations occur before release, so if an offender's scores indicate they are still at risk for reoffending, the Crown would be permitted to apply for a dangerous offender designation. Increasing the amount of time the Crown has to apply for a dangerous offender designation could keep violent and dangerous offenders from re-entering society, and could grant offenders the opportunity to attend additional treatment programs in a controlled environment.

The second proposed change to the dangerous offender legislation in 1993 was the elimination of the "serious harm" criteria for a sexual offence involving a person under the age of 18. If an offender committed a sexual offence against a person under the age of 18, and the National Parole Board believed the offender would commit another sex offence against a child before their sentence expired, they would be held in detention until their sentence expired. This change could have strengthened dangerous offender legislation because it would have eliminated the mandatory statutory release for pedophiles. Keeping sex offenders, pedophiles in particular, who have a high chance of reoffending once released, is important in terms of community protection.

The third change concerned parole as well, by suggesting that offenders who were convicted of a new federal offence when on conditional release would automatically be returned to custody and serve additional time before parole eligibility. The change also

included a change from a 7-year cap on parole eligibility to a 15-year cap. This change demonstrated that the government was serious about those offenders who broke their release conditions. The three proposed changes would have strengthened dangerous offender legislation and long-term offender legislation would have been unnecessary. The reason that the three changes were not implemented is because a change of government happened in the fall of 1993.

Despite the suggestions made by the Conservative government in 1993, the Liberals decided to introduce long-term offender legislation in 1995. The legislation was not intended to be an option for violent offenders, but since its introduction there have been violent offenders who have been so classified. In chapter four, I discussed two cases of violent offenders, where one (Mr. J.H.) was designated as a long-term offender. According to the legislation's purpose, there is a strong argument to be made that Mr. J.H. did not qualify for a long-term offender designation. It is unclear when the legislation was first used with violent offenders, because according to the legislation's principles, it was designed exclusively for sex offenders. One reason why violent offenders should not be classified as long-term offenders is the lack of pharmacological treatment for violent offenders. According to the two cases of sex offenders I discussed in chapter four, it appeared to be the case that Mr. S.S. was released because it was found that he could be controlled with the use of pharmacological treatment. If no such treatment is available for violent offenders, it is another reason why violent offenders should not be granted access to the long-term offender legislation.

The issue of pharmacological treatment raises an interesting moral question. If an offender shows no desire to change their behaviour and makes no effort to stop

reoffending but submits to a chemical injection that will reduce his/her sex drive, should he/she be released? The idea of remorse is ingrained in our justice system, for showing regret for harming another person is an important consideration in any granting of leniency. An offender cannot be successfully rehabilitated if they do not acknowledge their actions as being inappropriate, so releasing an offender who has not exhibited the basic human feelings of guilt and shame over their actions is not appropriate. Receiving an injection that lowers his/her sex drive is not the same as being rehabilitated, and as stated previously, Mr. S.S. did not display guilt or remorse for his actions, yet he was still released. One could argue that offenders who opt for sex-drive reduction medication are not entitled to the same rights as those individuals who have worked at changing their behaviour. This is not to say that some individuals do not require pharmacological treatment to sustain their change, but offenders who appear disinterested in taking accountability and responsibility for their crimes should not be rewarded with a release.

Long-term offender legislation gives repeat sex and violent offenders another chance to commit further crimes in the community. With the inconsistent results from rehabilitative programs, treating offenders outside a controlled environment can endanger the public. Dangerous offender legislation allows for an offender to be treated within a controlled environment, and although the treatment is not as effective as treatment within the community, there has to be a compromise where only successfully treated and successfully responding offenders can apply for additional treatment within the community. Instead of making treatment mandatory before release, long-term offender legislation has gives untreated offenders an opportunity to repeat their crimes.

Although the scope of this thesis is limited, the four cases discussed in chapter four suggest that there are few differences between offenders designated as dangerous offenders and those designated as long-term offenders. The mandatory psychological evaluations involved in the designation process of both pieces of legislation suggest that an offender's scores on risk assessment tools would be heavily relied on, which is not demonstrated in the cases discussed in chapter four. The problematic element in having psychological evaluations in legal proceedings is that one professional's opinion on whether an offender can be treated within the community appears to override the information generated by the risk assessment tools. The general recidivism rate of treated sex offenders is 27.9% while untreated sex offenders have a rate of 39.2% (Hanson, Gordon, Harris, Marques, Murphy, Quinsey & Seto, 2002). These numbers suggest that when 10 sex offenders are released, at minimum, approximately 3 will reoffend. Having 3 high-risk sex offenders in the community represents a significant threat to public safety, and long-term offender legislation can make this possibility feasible.

The priority of the criminal justice system, from my perspective, should be to protect the victims and potential victims of (repeat) offenders. Releasing offenders who have shown little respect for the criminal justice system does not sufficiently protect the public and gives the impression that despite an offender's criminal history and lack of progress in treatment, he/she will still be eligible for release regardless if he/she has been rehabilitated or not. Long-term offender legislation is a watered-down version of dangerous offender legislation that does not consider the interests of society, and consequently, leaves the public open to further criminal acts by persons who should have been segregated from the rest of the population.

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