

Case Name:
R. v. Ryan

Between
Richard Norman Ryan, appellant, and
Her Majesty the Queen, respondent

[2004] N.J. No. 2
2004 NLCA 2
Docket: 01/131

**Newfoundland and Labrador Supreme Court - Court of Appeal
Wells C.J.N., Roberts and Rowe JJ.A.**

Heard: November 19, 2003.
Judgment: January 6, 2004.
(58 paras.)

Criminal law — Dangerous or long-term offenders, detention — Evidence — Appeals.

Appeal by Ryan from a decision finding him to be a dangerous offender and imposing the mandatory indeterminate sentence. Ryan had been convicted on charges of sexual assault, unlawful confinement, and uttering threats. Ryan argued that the judge should have found him to be a long-term offender rather than a dangerous offender. He had previous convictions for fraud, impersonation, unlawful confinement and sexual assault, as well as 22 others. Ryan challenged the weighing of evidence by the trial judge. He also challenged the Crown's failure to disclose that a penitentiary psychologist providing evidence had been dismissed from her position because of sexual relations with an inmate. Finally, he objected to the use of an unproven incident as part of the foundation for a psychologist's report.

HELD: Appeal dismissed. Although the psychologist's dismissal should have been disclosed, the reliability of the conclusion and the fairness of the proceeding were not affected. The trial judge did not err in weighing the evidence. He was entitled to access to the widest possible range of information to determine if there was a serious risk to the public.

Statutes, Regulations and Rules Cited:

Criminal Code, ss. 752.1, 753(1), 753.1(2)(a).

Counsel:

Jerome Kennedy, for the appellant.
Pamela Goulding, for the respondent.

Reasons for judgment by: Roberts J.A. Concurring in by:

Wells C.J.N and Rowe J.A.

¶ 1 **ROBERTS J.A.**— The appellant Richard Norman Ryan (Ryan) appeals a decision under s. 753.1 of the Criminal Code finding him to be a dangerous offender and imposing the mandatory indeterminate sentence. The dangerous offender application took place after Ryan was convicted on charges of sexual assault, unlawful confinement and uttering threats, all involving D.H., a young university student. The appeal of the convictions was dismissed by this Court on July 5, 2000.

¶ 2 There are several specific grounds of appeal, which I will list later, but the overall thrust is that the sentencing judge should have properly found Ryan to be a long term offender rather than a dangerous offender. That alternate finding would have allowed for a more flexible sentencing.

Background

¶ 3 The essential facts surrounding the predicate offences involving D.H. were summarized by Gushue J.A. of this Court in his decision on the appeal, *R. v. Ryan* [2000] N.J. No. 209, at paras. 2-7:

The facts, briefly stated, are that the complainant, a female student at Memorial University, met the appellant in November 1997 at the Breezeway Lounge, a bar at the Thomson Student Centre at the university. Apparently, the complainant regularly frequented the bar and between that time and the Christmas break at the university, the two met and chatted on an almost daily basis. The appellant told the complainant many fanciful stories, including having Masters degrees in various disciplines from the university, that he was connected with the New York mafia and that he was quite wealthy. As they became better acquainted, the complainant informed the appellant that she had "home exams" to write with which she was rather concerned and he offered to help her. He actually composed answers for her, which she utilized to respond to her exams.

Rather than being the intriguing persona he portrayed himself to be, the appellant was actually residing in a half-way house, following convictions for Criminal Code breaches.

On January 10, 1998, the complainant agreed to go to a motel room in St. John's with the appellant. She testified that they were going to have a meal, but she had no intention of engaging in any sexual activity with him.

However, once there, he threatened to tie her up and to sodomize her and she consequently engaged in reciprocal oral sex with him. For his part, the appellant claimed that everything that occurred at the motel was consensual.

The charges laid against the appellant arose out of the incidents which occurred that day at the motel. Her evidence as to events which subsequently occurred was that he wrote her letters of apology (which were placed in evidence) and attempted to reconcile with her on various occasions over the next two or three weeks when he encountered her at the Breezeway, but that she informed him that she wanted nothing further to do with him.

In late January or early February, he threatened her with exposing the fact to the university authorities that he had actually done assignments for her, if she did not respond to his further advances. This apparently upset her considerably, which state of upset was noticed by friends. She also at about that time received information about his criminal past. She subsequently talked to the university authorities and the police became involved. The charges were then laid.

The trial judge correctly stated that the crux of the case was the respective credibility of the parties. Their respective accounts as to what transpired at the motel were totally divergent but the trial judge, after analyzing all of the evidence including confirmatory testimony as to various other actions of the parties, accepted the evidence of the complainant. The judge found that "Richard Ryan was completely lacking in (the) area of credibility" and that he was a "chameleon at lying". He convicted the appellant.

¶ 4 In addition to these predicate offences, the sentencing judge heard evidence concerning Ryan's criminal record and other alleged criminal activities. That evidence, in summary form, referred to the following incidents.

¶ 5 Ryan was convicted in 1992 of defrauding the Airport Inn in St. John's of \$1,695.22.

¶ 6 A.T. gave evidence that in 1992 she wrote bad cheques in the amount of between \$1,500.00 and \$2,000.00 at Ryan's request. Ryan promised to reimburse her but never did and A.T. had to borrow money from her mother to honour those cheques. A.T. said she received a series of harassing and threatening phone calls from Ryan and as a result of court action he was placed on a peace bond.

¶ 7 Ryan was convicted in 1993 of fraud and impersonation for using another person's credit card to rent a vehicle.

¶ 8 Ryan pleaded guilty before Hickman C.J. on September 28, 1995 to unlawfully confining and sexually assaulting B.M., a prostitute working out of a St. John's escort agency, and was sentenced to two and a half years imprisonment. The following is an extract from the agreed statement of facts filed at that time:

... On the 3rd of January, 1995, a call came into the agency which was assigned to [B.M.] who had just arrived from Halifax. The client was at the Centre City Motel, Room 226. Ms. [M.] arrived at Centre City Motel, Room 226 before midnight. The client was the accused person, Richard Ryan. Mr. Ryan paid Ms. [M.] a hundred and twenty dollars and suggested that they go downtown, he then ordered whisky and gave her a drink. By this time, the first hour was nearly up and Mr. Ryan paid Ms.[M.] for a second hour. She phoned the agency and advised the proprietor accordingly. Mr. Ryan and Ms. [M.] undressed and started to have sex. Mr. Ryan asked Ms. [M.] if he could tie her up and she said no. He then took her pantyhose and placed them around her neck saying, "you're in the room with a very evil person right now, and also you're not going to leave this room." He put her face down, put her arms behind her back tying them, he also bent her knees up and tied her legs with the pantyhose. She was crying and asking to be let go. During the course of the night, she was tied up and untied on numerous occasions. On one occasion she was gagged. The pantyhose were at all times around her neck - just to explain her arms and legs were occasionally untied and retied, but the pantyhose always stayed around her neck. On a number of occasions, Mr. Ryan threatened to kill her. Mr. Ryan struck her on a number of occasions across the face and had her ask him to strike her harder. On one occasion, he tied her to a chair, blindfolded her and struck her repeatedly on the buttocks with his hand and with his belt. During the night, he did not let her out of his sight even to the extent of accompanying one another to the bathroom. At times, Mr. Ryan told Ms. [M.] that he had nothing against her personally, but that he was being sent to test the agency. He made a number of phone calls saying, "Yeah, she's hurt, she's scared." He told Ms. [M.] "no, they said I have to torture for a little while longer, I have to call them back in fifteen minutes, then you can go." This would be after the phone calls. These sorts of conversations would alternate with threats to kill her and with getting her a cigarette or drink of whisky. Mr. Ryan also requested that Ms. [M.] bite and strike him, and when she would note (sic) bite him, he'd pull the pantyhose tightly around her neck. On one occasion while trying to untie the pantyhose from her wrist, he used a cigarette to burn the pantyhose and left a small burn on her wrist. He also held a cigarette close to her nipple, and touched the cigarette to both nipples. During the course of the night, Mr. Ryan forced Ms. [M.] to perform oral sex on him both with and without a condom. He also forced her to have sexual intercourse with him both with and without a condom. During the course of the night Mr. Ryan would not let Ms. [M.] leave the room. During the night the agency had attempted to contact Ms. [M.] in the room by telephone and were prevented from doing so by Mr. Ryan, who would not let Ms. [M.] answer the phone. The agency also sent a taxi driver up to the room to no avail. I believe he was turned away by Mr. Ryan. I had mentioned Mr. Ryan would not let Ms. [M.] leave the room. She finally was able to leave once he fell asleep. She was able to slip out of the room at approximately 8:30 am. At

the front desk of the hotel, she asked the desk clerk for a cab and one was called. After Ms. [M.] left, the agency proprietor arrived and the police were called. Ms. [M.] was examined by a physician and her injuries were as follows: tenderness, slight swelling at the angle of the jaw, bruises on her arms, welts on her buttocks, linear marks on her left wrist and on the back of her neck, irritated tips on both nipples. A welt on her right wrist was consistent with the cigarette burn and abrasions on her knees."

¶ 9 Ryan defrauded G.P., a Moncton, NB, widow, of \$17,000.00. G.P. testified how Ryan convinced her in 1998 to transfer money to him so that he could place it in a "good ... foreign investment".

¶ 10 Ryan escaped from custody at Her Majesty's Penitentiary in St. John's on August 3, 2000 while on an escorted visit to his sick mother and was at large for some time afterwards. This escape was subsequent to his conviction on the predicate offences involving D.H. and while remanded in custody pending the commencement of the dangerous offender application.

¶ 11 Ryan's record, in addition to the above, shows twenty-two other convictions between 1989 and 1995, three for impaired driving, ten for fraud under \$1,000.00, two for failure to attend court, three for failure to comply with a probation order and one each for assault and for failure to comply with a summons.

¶ 12 The sentencing judge also heard evidence of several unproven allegations of sexual assault.

¶ 13 D.M. told the Court that on August 29, 1993 she went out for a drink with Ryan and that afterwards he drove her to an area outside St. John's, threatened her with a gun and ordered her to take off her clothes. D.M. escaped from his car and flagged down a passing vehicle. The sentencing judge was satisfied that D.M.'s allegations were proven beyond a reasonable doubt.

¶ 14 The sentencing judge heard evidence concerning two other alleged incidents, one of which he found not to be proven and the other not to have constituted a criminal offence. The not proven incident involved J.B. whose evidence was that in September 1993 Ryan forced her to perform oral sex on him at knife point after meeting him at the Memorial University bar. The other incident involved C.C. in Grand Prairie, Alberta and took place in January 1997 after Ryan absconded from the Paartown halfway house in Saint John, New Brunswick. Ryan had been released to Paartown on parole after serving a portion of the two and a half year sentence imposed in connection with the convictions involving B.M. After making his way to Grand Prairie, Ryan called an escort agency from his hotel room and C.C. was the woman who showed up. According to C.C., she sat drinking and talking to Ryan for an hour and a half; at that point Ryan "went really weird" and she ran from the room when Ryan went to the bathroom. The police were called from the front desk and Ryan was arrested shortly afterwards.

¶ 15 The sentencing judge heard psychological evidence from Bernard Galarneau, a forensic and clinical psychologist who supervised a sex offender treatment program at Dorchester Penitentiary in which Ryan participated after his sentencing in the B.M. affair in 1995. The sentencing judge also heard psychiatric evidence from Dr. Wayne Brace and Dr. Nizar Ladha. Dr. Brace had been appointed by the court to do an assessment of Ryan pursuant to s. 752.1 of the Criminal Code. Dr. Ladha was called on behalf of Mr. Ryan.

Relevant provisions of the Criminal Code

Dangerous Offenders and Long-Term Offenders

752.1(1) Application for remand for assessment - Where an offender is convicted of a serious personal injury offence or an offence referred to in paragraph 753.1(2)(a) and, before sentence is imposed on the offender, on application by the prosecution, the court is of the opinion that there are reasonable grounds to believe that the offender might be found to be a dangerous offender under section 753 or a long-term offender under section 753.1, the court may, by order in writing, remand the offender, for a period not exceeding sixty days, to the custody of the person that the court directs and who can perform an assessment, or can have an assessment performed by experts. The assessment is to be used as evidence in an application under section 753 or 753.1.

(2) Report - The person to whom the offender is remanded shall file a report of the assessment with the court not later than fifteen days after the end of the assessment period and make copies of it available to the prosecutor and counsel for the offender.

753. (1) Application for finding that an offender is a dangerous offender - 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

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

.....

- (5) If offender not found to be dangerous offender - If the court does not find an offender to be a dangerous offender,
- (a) the court may treat the application as an application to find the offender to be a long-term offender, section 753.1 applies to the application and the court may either find that the offender is a long-term offender or hold another hearing for that purpose; or
 - (b) the court may impose sentence for the offence for which the offender has been convicted.

753.1 (1) Application for finding an offender is a long-term offender - The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that

- (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;
- (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.

Grounds of Appeal

¶ 16 The grounds of appeal are:

- (1) That the Crown should have disclosed that Michele Nadeau, who worked under Bernard Galarneau in the sex offender treatment program at Dorchester Penitentiary and whose reports he had approved as supervising psychologist, had been dismissed from her position in 2000 because of a sexual relationship with an inmate and, if the Crown failed in its duty to disclose, what should be the appropriate remedy therefor. This issue was raised as a preliminary question by counsel for Ryan;
- (2) That the sentencing judge erred in finding Ryan to be a dangerous offender, in particular, by giving weight to the evidence of Dr. Brace and by finding that there was not a "reasonable possibility of eventual control in the community", as that phrase is used in s. 753.1(1)(c); and
- (3) That Dr. Brace's use of the C.C. incident should have resulted in rejection of his evidence.

Analysis

- (1) Should the Crown have disclosed that Michele Nadeau had been dismissed from her position because of a sexual relationship with an inmate and, if so, what should be the appropriate remedy therefor?

¶ 17 When Bernard Galarneau arrived in St. John's to give evidence on the sexual offender application on July 4, 2001, he advised Crown counsel that Michele Nadeau, who had worked with and under him in dealing with Ryan in the context of the sexual offender treatment program at Dorchester Penitentiary, had been dismissed by Correctional Services Canada in 2000 because of a sexual relationship with an inmate. Ms. Nadeau was subsequently permanently barred by the College of Psychologists of New Brunswick from ever practising again in that province.

¶ 18 Ms. Nadeau, at the time she worked with Ryan in 1996, was a psychologist in training under the supervision of Mr. Galarneau; as a psychologist in training with an M.A. in psychology she was required to complete four years of supervised work. During Phase I of the sex offender treatment program in which Ryan participated, Mr. Galarneau and Ms. Nadeau jointly gave group sessions of fifteen hours per week and Ms. Nadeau worked on an individual basis with Ryan for one hour per week. Phase II of the program was carried out by Ms. Nadeau with Ryan on an individual basis, under Mr. Galarneau's supervision.

¶ 19 Crown counsel considered the information concerning Ms. Nadeau's dismissal and decided not to disclose it because, in his opinion, it was not relevant.

- the Crown's duty to disclose

¶ 20 The current law on Crown disclosure was succinctly stated by Cory J. in *R. v. Dickson* (1998), 122 C.C.C. (3d) 1 (S.C.C.), at paras. 20-23:

[20] In *R. v. Stinchcombe*, [1991] 3 S.C.R. 326, 68 C.C.C. (3d) 1, it was held that the Crown has an obligation to disclose all relevant material in its possession, so long as the material is not privileged. Material is relevant if it could reasonably be used by the defence in meeting the case for the Crown. Relevance was described in *R. v. Egger*, [1993] 2 S.C.R. 451, at p. 467, 82 C.C.C. (3d) 193, in this way:

One measure of the relevance of information in the Crown's hands is its usefulness to the defence: if it is of some use, it is relevant and should be disclosed -- *Stinchcombe*, supra, at p. 345. This requires a determination by the reviewing judge that production of the information can reasonably be used by the accused either in meeting the case for the Crown, advancing a defence or otherwise in making a decision which may affect the conduct of the defence such as, for example, whether to call evidence.

[21] Clearly the threshold requirement for disclosure is set quite low. As a result, a broad range of material, whether exculpatory or inculpatory, is subject to disclosure. See *Stinchcombe*, supra, at p. 343. In particular, "all statements obtained from persons who have provided relevant information to the authorities should be produced notwithstanding that they are not proposed as Crown witnesses" (p. 345). The Crown's duty to disclose is therefore triggered whenever there is a reasonable possibility of the information being useful to the accused in making full answer and defence. See *R. v. Chaplin*, [1995] 1 S.C.R. 727, at p. 742, 96 C.C.C. (3d) 225.

[Emphasis added.]

[22] The obligation resting upon the Crown to disclose material gives rise to a corresponding constitutional right of the accused to the disclosure of all material which meets the *Stinchcombe* threshold. As Sopinka J. recently wrote for the majority of this Court in *R. v. Carosella*, [1997] 1 S.C.R. 80, at p. 106, 112 C.C.C. (3d) 289,

[t]he right to disclosure of material which meets the *Stinchcombe* threshold is one of the components of the right to make full answer and defence which in turn is a principle of fundamental justice embraced by s. 7 of the Charter. Breach of that obligation is a breach of the accused's constitutional rights without the requirement of an additional showing of prejudice.

Thus, where an accused demonstrates a reasonable possibility that the undisclosed information could have been used in meeting the case for the

Crown, advancing a defence or otherwise making a decision which could have affected the conduct of the defence, he has also established the impairment of his Charter right to disclosure

[Emphasis in original.]

[23] However, a finding that an accused's right to disclosure has been violated does not end the analysis. As Sopinka J. wisely observed in Carosella, supra, at p. 100, an appellate court must be careful not to "confus[e] the obligation to establish a breach of the right [to full answer and defence] with the burden resting on the appellant in seeking a stay". Similarly, the initial test which must be met in order to establish a breach of the right to disclosure is analytically distinct from the burden to be discharged to merit the remedy of a new trial. The right to disclosure of all relevant material has a broad scope and includes material which may have only marginal value to the ultimate issues at trial. It follows that the Crown may fail to disclose information which meets the Stinchcombe threshold, but which could not possibly affect the reliability of the result reached or the overall fairness of the trial process. In those circumstances there would be no basis for granting the remedy of a new trial under s. 24(1) of the Charter, since no harm has been suffered by the accused.

[Emphasis added.]

¶ 21 To assist in the analysis of this first ground of appeal, I admit as fresh evidence an August 22, 2003 affidavit of Robert Simmonds, Q.C., counsel for Ryan on the dangerous offender application, and a September 26, 2003 affidavit of Scott Beazley, Crown counsel on the application. I am satisfied from reading Mr. Simmonds' affidavit that he was diligent throughout in pursuing disclosure. I note in particular the following exchange between counsel when Mr. Simmonds had expressed concern about disclosure in discussions concerning another witness:

MR. BEAZLEY: Far be it for [sic] me for not complying with any Stinchcombe requirements-

MR. SIMMONDS: I'm sure you would, Mr. Beazley, I have no doubt about it.

¶ 22 Mr. Beazley says in his affidavit that he decided not to disclose information concerning Ms. Nadeau's dismissal essentially because her dealings with Ryan took place four years before the incident for which she was dismissed; furthermore, the reports compiled by her and Mr. Galarneau were favourable to Ryan and instrumental in his being transferred from Dorchester to the Paratown halfway house in Saint John, NB. He states, in para. 20:

THAT I then applied the test in R. v. Stinchcombe (S.C.C.) and came to the conclusion that, although no privilege could be ascribed to this information, there was nothing in Mr. Galarneau's disclosure to me that was relevant to the defence providing full answer and defence.

¶ 23 As indicated in Dickson, the threshold requirement for disclosure is quite low. While I do not question the good faith of Mr. Beazley's decision not to disclose, I am satisfied that there was a reasonable possibility that the information concerning Ms. Nadeau's dismissal may have been useful to Ryan in making full answer and defence. In any event, it was information that Ryan's counsel should have been provided with to consider and decide for himself, in consultation with his client, how he might have used it.

¶ 24 Having decided that the information concerning Ms. Nadeau should have been disclosed is not, however, as underscored in Dickson, the end of the matter. It remains for Ryan to show that the failure to disclose somehow affected the reliability of the sentencing judge's decision on the dangerous offender application or the overall fairness of the proceeding. Mr. Simmonds outlined in para. 15 of his affidavit what he would have done had he had the information:

THAT I have no doubt in my mind whatsoever that if [I] had been aware of Ms. Nadeau's dismissal from her employment and dismissal from her professional association I would have presented an application to Judge Kennedy demanding that the Crown call Ms. Nadeau as a witness indicating what I believe to be the Crown's clear obligation to present such relevant evidence to the Court. Finally, with the assistance of expert advice from Dr. Ladha and/or a certified psychologist I would have vigorously cross-examined Ms. Nadeau with respect to her behavior and inappropriate/unethical actions and misjudgments resulting in her dismissal from employment and her professional association, in an attempt to show that her lack of judgment could have affected the reports prepared in relation to Mr. Ryan.

¶ 25 Several things are to be noted about Ms. Nadeau's involvement with Mr. Ryan. Firstly, the two reports prepared by her and signed by Mr. Galarneau as supervising psychologist were done in July and October 1996, the latter four and one-half years before Galarneau gave evidence on the dangerous offender application in July 2001. In other words, those reports were dated, a fact noted by Ryan's counsel on his cross-examination of Mr. Galarneau and recognized by the two psychiatrists, Dr. Brace and Dr. Ladha. Furthermore, as was emphasized by Mr. Beazley, both these reports were positive, or at least, hopeful, in tone and it was on the basis of the November 1996 report that Ryan was released on day parole to the Parrrtown halfway house. I refer, firstly, to several of the concluding paragraphs in the fifteen page report dated July 15, 1996:

Mr. RYAN does have a fairly lengthy criminal background and does possess personality traits that are characteristic of a psychopath and of the Narcissistic Personality Disorder. Also he has a history of alcohol abuse problem, but does not appear to be suffering from any mental illness. As mentioned above, these problem areas have been addressed at length and it [is] strongly recommended that similar efforts be maintained by Richard in the future. For the rest of his life, Richard will need to monitor his deviant

sexual urges, his desire to exploit others and/or organizations, as well as the personality dynamics presented in this report.

The Team feels that his risk to re-offend in a sexual manner has been reduced as a result of his involvement in treatment and is now considered moderate to low. However, the risk to re-offend in a sexual or non sexual manner remains if Mr. RYAN does not pay close attention to his risk factors and apply appropriate coping strategies.

It is believed that Richard has gained a better appreciation of people and the lives he has affected because of his criminal actions, and that this may serve as a deterrent for engaging [in] future criminal and/or unethical activities. Furthermore, given his personality dynamics, his current predicament (loss of freedom and self-respect) is extremely costly for this man.

.....

The Treatment Team recommends that Richard has [sic] a structural and gradual release plan so he can continue his treatment (individual counseling and/or group therapy), integrate himself to society, and apply the skills that he has learned during his treatment. It is believed that the best time for such a plan to be implemented would be in the late Fall of 1996 or early Winter of 1997.

¶ 26 The outlook for Ryan was even more positive in the report of November 6, 1996. The following paragraphs are from the "Clinical Impressions and Recommendations" section of the report:

In summary, Mr. RYAN is a category One, a first time federal offender who fully admits his guilt and responsibility for the current offense without minimizing, blaming, or justifying his actions. He fully exonerates his victims and recognizes his deviant motivation. He possesses a very good understanding of his offense dynamics, and has identified several risk factors as well as appropriate and realistic coping strategies. Mr. RYAN was found to be respectful, polite, punctual, a hard worker, and he was always very thorough in his homework assignments.

.....

The R.A.G. guide yields a predictive score of 35% chance of violent recidivism within the next seven years and the ASSESS-LIST supports this predictive score. Consequently, the risk of violent recidivism is considered moderate.

It is still believed that Mr. RYAN's risk to re-offend in a sexual manner has been reduced as a result of his involvement in treatment and is now considered moderate to low. However, the risk to re-offend in a sexual or non sexual manner would certainly escalate and could be considered high

if Mr. RYAN does not pay close attention to his personality dynamics and his risk factors, nor applies appropriate coping strategies.

As above-mentioned, he continues to be receptive and to address his problem areas through individual therapy sessions. In fact, following the completion of Phase II, Mr. RYAN requested to continue the therapy sessions for the remainder of his incarceration. It is highly recommended that Mr. RYAN continues [sic] addressing his problem areas in the future. Due to his understanding of his personality dynamics, it is believed that Mr. RYAN is now more amenable to treatment via individual and/or group therapy.

.....

¶ 27 Mr. Ryan was released to the Parrrtown halfway house shortly after the second report, i.e. on December 30, 1996, and he absconded to Alberta on January 11, 1997.

¶ 28 Ms. Nadeau's only contact with Ryan after his release to Parrrtown was by telephone after his arrest in Alberta. In a two page memorandum prepared by her and signed by Mr. Galarneau on March 25, 1997, she wrote, in part:

.....

It is this writer's opinion that, while recently released, Mr. RYAN visited several of his risk factors (i.e. avoiding support people, consuming alcohol, and calling an escort) and consequently re-entered his crime cycle. It is believed that Mr. RYAN also knew that he was re-entering his crime cycle but chose to do so anyway.

Mr. RYAN has contacted this writer on several occasions by telephone while he was incarcerated at the Edmonton Remand Center. It is this writer's opinion that Mr. RYAN has remained open and honest with her and for this reason, she remained very supportive of such contacts with the subject. In his conversations, Mr. RYAN explained his reasons for deciding to abscond from the Parrrtown C.C.C. in Saint John. While it may be true that he did not feel understood and supported by his Parole Officer in Saint John in his endeavors to secure employment, it remains the writer's opinion that he could have considered other alternatives rather than impulsively deciding to leave the halfway house. Mr. RYAN maintains that he does not regret his decision and believes he was left with no other choice.

Mr. RYAN stated to the writer on several occasions that he never had any intention of committing another sexual offense, but does understand how his choice of actions represent a return to his crime cycle.

Furthermore, this writer has already shared her opinion with Mr. RYAN that she does not believe that he is currently a good candidate for a release on his Statutory Release date and especially not for a release with a residency on his Statutory Release Date. This opinion is held because of

the personality dynamics that he presents (i.e. difficulty with people in positions of authority, ability to manipulate others, tendency to view himself as superior to others, tendency to react impulsively when feeling stressed or desperate, etc.) As well as his performance while recently released, Mr. RYAN informed the writer that he would take the necessary legal steps if she were to interfere with his future release plans.

.....

For all of the above-mentioned reasons, it is strongly recommended that Mr. RYAN be referred for another Psychological Assessment so his current risk level can properly be assessed by taking into consideration his behaviors and choices while he was released as well as his current mental status.

.....

¶ 29 In light of the more current assessments of Ryan done by Dr. Brace in 2000 and Dr. Ladha in 2001, and for purposes of the present analysis I will refer particularly to the assessment of Dr. Ladha, the psychiatrist called on behalf of Ryan, it is difficult to fathom how being able to cross-examine Ms. Nadeau would have been helpful to Ryan. Ms. Nadeau could not have been more positive about Ryan without totally disregarding his conduct.

¶ 30 Dr. Ladha classified Ryan as dangerous and was prepared only to support his release after extended treatment. The following exchange took place with Dr. Ladha on direct examination:

Q. And if we know that treatment, medicine and counselling, not always, but sometimes can be successful, and the more the therapy and counselling, the greater the success?

A. It's possible.

Q. If that is the case at play here with Mr. Ryan, and a further period of incarceration in the range of five to six years is mandated by the court, with the knowledge of the objective tests that have taken place, what would your comment be, what would your comment be with respect to the degree of knowledge professionals would have in light of Dr. Brace's report, this hearing, the other things that have [taken] place, what would be the degree of knowledge the professionals would have with respect to the conditions and dilemmas facing Mr. Ryan?

A. Well I think it's a valid question to ask that is he improved somewhat with treatment at Dorchester which occurred over a period of ten months and that is there a possibility that there may be further improvement with treatment over a period of - and I think you mentioned five or six years.

Q. I think I did.

A. Yes, well I think it's a valid question.

Q. Is it a reasonable proposition, doctor?

A. I think it's a reasonable proposition in light of what the Psychologist[s] at Dorchester and Drumheller have said. I think perhaps there should be a benefit of the doubt as a result of those opinions.

Q. Doctor, I can't speak and I don't know, my learned friend can't speak, but would you agree there is a fair body of knowledge now around Mr. Ryan and his condition, his problems and his relapses?

A. Yes, there is.

Q. Will that enhance or will that assist perhaps is a better word the ability to deal with him in future?

A. Well it's the data that people can use in management with Mr. Ryan.

Q. If counselling over a period - would counselling in an institution for a period, and we discussed five to six years, would you describe that - how would you describe that. Is that a significant period of counselling, is that a significant course of therapy. If it was group therapy, one on one counselling, various types?

A. If some improvement has occurred over a ten month period, then the possibility of further improvement has to be considered. It can't be ruled out with further treatment.

Q. Is that a lengthy period, is that a lengthy regime of treatment, in an institutional setting five or six years?

A. Oh that's very long.

Q. Doctor, if in fact the court placed him on a period of close supervision for a further period of ten years after his release, how would that - would that or how would that be of any assistance, comfort or assurance?

A. As long as it's very close supervision I think it may be of assistance.

(Transcript, pp. 1179-1181)

¶ 31 As can be seen from the above exchange, in contrast to release within months as was envisaged by Ms. Nadeau in the summer of 1996, Dr. Ladha could only tentatively

agree that incarceration for five or six years and close supervision for a further ten years might work.

¶ 32 In summary, while I accept that Crown counsel should have disclosed the information concerning Ms. Nadeau's dismissal, I am fully satisfied that the failure to disclose it, given the circumstances described, could not possibly have affected the reliability of the conclusion reached by the sentencing judge or the overall fairness of the dangerous offender proceeding.

- (2) Did the sentencing judge err in finding Ryan to be a dangerous offender, in particular, by giving weight to the evidence of Dr. Brace and by finding that there was not a "reasonable possibility of eventual control in the community", as that phrase is used in s. 753.1(1)(c)?

¶ 33 Dr. Nizar Ladha, a St. John's psychiatrist of long experience, gave evidence on behalf of Ryan. Dr. Ladha was of the opinion that Ryan was treatable, not based on his own assessment, but on the assessments done in 1996 by the psychologists at Dorchester Penitentiary and Drumheller Institution and what he saw as less violent incidents involving C.C. and D.H.

¶ 34 Notwithstanding that opinion, given on direct examination, Dr. Ladha remained concerned about Ryan, and the following exchange with him on cross-examination is particularly pertinent:

Q. Is it fair to say that it is very, very difficult to modify or change traits of the type that Mr. Ryan has?

A. Very, very difficult to change.

Q. And why would that be?

A. Well personalities [are] very difficult to change. I think sexual deviations are very difficult to treat.

Q. Am I correct in stating to you that one of the last things you would have said in direct examination is that you can't tell from your personal assessment as to whether or not Mr. Ryan is treatable, is that correct?

A. That's true, yes. I would make the conclusions by looking at the reports from Dorchester and Drumheller.

Q. There's no way of knowing how long it will take an individual to, for want of a better term, improve or get better, is that correct?

A. Not for certain, no, there isn't.

Q. But are you certain now as we sit in this room today that Mr. Ryan is a dangerous man?

A. I think so.

Q. That as it stands right now that there is a likelihood that Mr. Ryan could fall back into his offence cycle?

A. That is a likelihood, yes.

(Transcript, p. 1201)

¶ 35 Dr. Ladha had already described why he felt Ryan was dangerous on direct examination:

A. Well my major concern, Your Honour, with Mr. Ryan is that in my opinion Mr. Ryan has a sexual deviation. And I believe I have clinical evidence to back it up. And that sexual deviation is a deviation of sadomasochism. In other words Mr. Ryan gets sexually aroused by bondage, inflicting violence on his victims, and suffering violence himself and that arouses him sexually.

Q. And that's dangerous?

A. Yes, very dangerous.

Q. Why?

A. Because it can cause serious psychological and physical harm to victims. It's a condition that's always present and has a high risk of repeating itself. And it may cause very serious damage.

Q. And indeed review of Mr. Ryan's history would indicate that it has caused injury in the past?

A. Yes.

(Transcript, p. 1122)

¶ 36 Dr. Ladha agreed with Dr. Brace, and with Bernard Galarneau, that the best predictor of future behaviour is past behaviour. I refer again to his direct examination:

Q. Doctor, would you agree that the best indicator of future activity is often past history?

A. Yes, it is.

Q. Dr. Brace makes that point and you would concur?

A. Absolutely.

Q. No one has a crystal ball nor a computer program?

A. No, that's correct.

(Transcript, p. 1156)

¶ 37 Doctor Brace differed with Dr. Ladha on the question of treatment and also on the significance of the incidents involving C.C., in Grand Prairie, and L.H., the young university student in St. John's, the subject of the predicate offences. Dr. Ladha was

prepared to agree with Ryan's counsel that the lack of violence against C.C. and L.H. demonstrated that the treatment received at Dorchester had started to have effect and that more treatment over a longer period would lead to a "reasonable possibility of eventual control".

¶ 38 As noted above, Dr. Ladha seemed less certain about treatment on cross-examination. In the extract from his evidence at para. 34, he said he arrived at his conclusion about treatment after reviewing the reports from Dorchester and Drumheller. These reports were written in 1996 and early 1997. Dr. Ladha testified in November 2001. A lot had happened in Ryan's life in the meantime.

¶ 39 There are two other facts which must also be underlined. Firstly, Nadeau and Galarneau, who were generally positive about Ryan's prospects after stages I and II of the treatment program at Dorchester, were much less positive after the escape to Alberta and the incident with C.C. I referred earlier to Nadeau's memorandum of March 25, 1997, and the final paragraph bears repeating:

For all of the above reasons it is strongly recommended that Mr. Ryan be referred for another psychological assessment so his current risk level can properly be assessed by taking into consideration his behaviours and choices while he was released as well as current mental status.

In other words, the Dorchester team were disavowing their earlier assessment in light of Ryan's actions after being released. They were saying, in effect, that he had either betrayed their trust or they had misread him.

¶ 40 Secondly, the Drumheller report is no more than a repetition of the earlier Dorchester reports and a recounting of what Ryan told the interviewing psychologist, much of which, in light of other evidence given during the dangerous offender hearing, was either greatly exaggerated or untrue. I will quote two short extracts by way of example:

It is Mr. RYAN's present understanding that he'd spread himself too thin before the offense [involving B.M.]. He saw the sky as the limit. By January of 1995 he also had problems with his relationship. He wanted to keep the relationship but he had trouble with his partner in this common-law union. He was under significant stress. He was running both Ray Investments and JB Holdings and 2 nightclubs. Revenue Canada then audited his records and told him that he owed them, in their estimation, over \$700,000.00 ...

¶ 41 The report continues, on the next page:

Mr. RYAN presently does not have any institutional charges. He states that he is not scrambling for his freedom. He has now solved his tax problems, giving them a percentage on the dollar, and has been able to, by liquidating his assets, pay them, so that stress is removed ...

¶ 42 Ryan is challenging on appeal the sentencing judge's use of Dr. Brace's evidence for the same reasons that were argued before the sentencing judge. Dr. Brace's credentials as a psychiatrist are not in issue.

¶ 43 Ryan submits that Dr. Brace has been used consistently by the Crown in dangerous offender applications and thereby displays bias. The sentencing judge dealt with that argument at p. 127 of his reasons:

... This ignores the fact that since the 1997 amendments neither side nominates a psychiatric expert but the court directs that the assessment be carried out. In this case, having decided that the Crown had discharged the onus of satisfying the court that a remand for assessment was appropriate, the court, at the Crown suggestion did direct that Dr. Brace do the assessment. This was done only after affording the Defence counsel at that time the opportunity to meet with Dr. Brace.

¶ 44 Concerning the submission that Dr. Brace failed to review relevant reports prepared by Correctional Services Canada psychologists subsequent to Ryan's leaving Parrtown halfway house in Saint John, N.B., the sentencing judge agreed that that was so and considered it "a significant oversight". As noted above, however, the only reports after the escape from Parrtown were the memorandum dated March 25, 1997 prepared by Ms. Nadeau and signed by Mr. Galarneau, in which she discounted the prior assessments in light of Ryan's actions and called for a "new assessment", and the Drumheller report, which was no more than a review of the Dorchester reports of July and November 1996 and a recounting of information from Ryan.

¶ 45 Doctor Brace was challenged on the subjectivity of his assessment. The sentencing judge's response is at pp. 128-129:

Dr. Brace acknowledged that in a number of areas his report is based upon his subjective views of the interchange between himself and Richard Ryan. He indicated that in arriving at his opinion he applied his clinical skills to the best of his ability.

In preparation of a report of this nature there is bound to be some element of subjectivity involved. Dr. Ladha acknowledged that some subjectivity is involved but that of course one must strive for objectivity.

¶ 46 Dr. Brace was challenged for having administered the Hare Psychopathy Checklist (revised) without being certified to administer it; he had attended courses but had not written the exam. Although the sentencing judge accepted that Dr. Brace should not have administered the Checklist, he continued on to say, at p. 132:

... it appears that Dr. Brace's assessment of the level of psychopathy exhibited by Richard Ryan accords with the range set out by Bernard Galarneau and by Michelle Nadeau. Dr. Ladha also agrees with the findings that Richard Ryan exhibits psychopathic traits. All of the evidence of the psychiatrists and psychologists indicate that Richard Ryan displays moderate psychopathic personality traits. While Dr. Brace was of the opinion that Richard Ryan was at the mid range of the moderate level of psychopathy, Mr. Galarneau and Miss Nadeau placed him at the low moderate range.

¶ 47 The sentencing judge responded to the attacks in general on Dr. Brace's assessment of Ryan, at pp. 133-134.

Dr. Brace in his report also concluded that Richard Ryan displayed narcissistic personality traits. This means that Mr. Ryan has an exaggerated high opinion of himself. He feels superior to others and will hold himself out to be more than he is. He feels capable of manipulating others and takes pride in doing so as this reinforces his sense of superiority. This creates a problem in treatment as compliance with and adherence to treatment is important.

The narcissistic personality traits were also noted by Mr. Galarneau and Miss Nadeau as well as by Dr. Ladha.

Dr. Brace also found that Richard Ryan had an alcohol abuse disorder. While Mr. Ryan is not an alcoholic, he does abuse alcohol to an extent that it is problematic. The abuse of alcohol by Richard Ryan is problematic as it may serve to loosen his sexual inhibitions. Dr. Ladha agreed with Dr. Brace's finding of an alcohol abuse problem in relation to Richard Ryan. Both psychiatrists felt that the abuse of alcohol was a very significant problem for him.

.....

Dr. Brace also indicated that Richard Ryan suffered from a sexual disorder relating to sexual sadism. Dr. Brace indicated that the offence history displayed strong sexual sadism behavioural traits but noted that this was not supported by phallometric testing.

The Corrections Canada Psychologists and Dr. Ladha concurred with Dr. Brace's finding of sexual sadism. Dr. Ladha indicated that he felt Richard Ryan was sadomasochistic. He indicated that this is a dangerous condition and could result in serious harm to others. Such sexual practices occur among people in our society but are considered deviant when one engages a partner who is not consenting to the activity.

All of the above observations by the sentencing judge are supported by the evidence.

¶ 48 A complete review of the evidence shows that the only difference of any significance between the assessments of Dr. Brace and Dr. Ladha concerned the effect of treatment. That dichotomy was highlighted by the sentencing judge, at pp. 174-176.

Dr. Brace was of the view that Richard Ryan was not treatable. He felt that the personality makeup of Richard Ryan, his narcissism and level of psychopathy combined with sexual sadism and alcohol abuse problem were an extremely difficult combination of factors to treat. In addition, he felt that Richard Ryan had gained little insight from the treatment at Dorchester Penitentiary. Dr. Brace could not rule out the possibility that Richard Ryan would respond to long term treatment but did not feel that he would do so. He indicated that in terms of assessing future risk that Psychiatrists do not hold a crystal ball, they make the assessment of what the future may hold based upon past conduct. To Psychiatrists the history of past conduct is the best indicator of what will follow. In the case of Richard Ryan, in Dr. Brace's opinion, there is clearly a significant risk of violent recidivism.

Dr. Ladha indicated that he could not say whether or not Richard Ryan would respond to treatment based upon his own assessment. He could not indicate how long it would take to treat any individual. Dr. Ladha also agreed with the Prosecutor that some people do not respond to treatment and come out of counselling worse than they were when they started.

Dr. Ladha did express the opinion that if Richard Ryan was declared to be a long term offender and sentenced to a term of imprisonment followed by community supervision that there was a reasonable possibility of eventually reducing the risk to the community that Richard Ryan would reoffend. Dr. Ladha recognized that at present that Richard Ryan is a dangerous individual but felt that treatment in prison accompanied by supervision offered a reasonable possibility of eventual control of the risk in the community.

Dr. Ladha felt that the Corrections Canada Psychologists at Dorchester and at Drumheller held out hope that Richard Ryan could be treated. He felt that the treatment which Richard Ryan had received at the Dorchester sex offender treatment program may have diminished the intensity of the conduct exhibited by Richard Ryan in the [C.C.] incident and in relation to the assault on [D.H.]. He also felt that as there was no evidence that Richard Ryan violated a bail condition requiring abstention from alcohol or engaged in further sexual misconduct during the 18 month period while he was on bail, that this demonstrated that Mr. Ryan was able to exercise some measure of control over his conduct.

¶ 49 The sentencing judge, accepting the expert opinion of Dr. Brace on the question of treatability, as he was entitled to do, and being mindful of Ryan's actions after his treatment at Dorchester following sentencing for the assault on B.M. in 1995, concluded at p. 183:

All of the actions by Richard Ryan since the commission of the [B.M.] offenses display an unwillingness on his part to control his conduct or to comply with parole conditions or with court orders. They do not show any willingness to abide by conditions imposed upon him. They do not imbue you with any sense of confidence that he would be willing to comply in any manner with treatment requirements.

My conclusion is that while there may be a possibility that treatment could reduce the risk to the community that Richard Ryan would reoffend and a possibility of eventual control of his risk to the community, the level of possibility, however, falls far short of a reasonable possibility. My conclusion is that the possibility of reducing the risk to the community through further treatment and community supervision is currently quite low. Having concluded that there does not exist a reasonable possibility of eventually controlling the risk to the community which Richard Ryan presents at this time, I declare that all of the elements required to be proven beyond a reasonable doubt to make a finding that Richard Ryan is a dangerous offender have been satisfied.

¶ 50 It bears repeating that "the actions by Richard Ryan since the commission of the [B.M.] offences", as above referred to by the sentencing judge, included his absconding from the Parrtown halfway house in Saint John, NB, to Grand Prairie, AB, the incident involving C.C., the defrauding of G.P., the sexual assault and unlawful confinement of D.H. and the unlawful escape and being at large while on remand pending the dangerous offender application.

¶ 51 The contest on the dangerous offender application, in the final analysis, was between dangerous offender and long term offender, counsel for Ryan contending that the evidence, particularly that of Dr. Ladha, supported a conclusion that there was "a reasonable possibility of eventual control of the risk in the community", as required by s. 753.1(1) of the Criminal Code for a long term offender designation. The sentencing judge carefully considered the evidence of psychologist Galarneau and psychiatrists Brace and Ladha. Dr. Brace and Dr. Ladha, as mentioned, differed only on the question of treatment. While Dr. Ladha had reservations about Ryan's susceptibility to treatment, he was prepared to give him the benefit of the doubt. The sentencing judge took Dr. Ladha's opinion into account, but, in the end, accepted the opinion of Dr. Brace that the possibility of eventual control of the risk in the community was not a reasonable one [See Note 1 below]. He, consequently, found Ryan to be a dangerous offender.

Note 1: In R. v. Johnson, [2003] S.C.J. No. 45, 2003 SCC 46, the court confirmed that a sentencing judge must take into account the long-term offender provisions prior to declaring an offender dangerous and imposing an indeterminate sentence.

¶ 52 Having reviewed all of the evidence, I am satisfied that the sentencing judge committed no error in making that finding.

- (3) Should Dr. Brace's use of the C.C. incident have resulted in rejection of his evidence?

¶ 53 I have difficulty understanding this ground of appeal because of the references to and use of the C.C. incident by Ryan's counsel at trial. No objection was raised when the incident was first broached with Dr. Brace on direct examination and the only objection came when Dr. Brace began to speculate what would have happened to C.C. if she had not escaped from Ryan's hotel room. That objection was sustained. Otherwise, the C.C. incident was discussed by both Crown counsel and Ryan's counsel with both Dr. Brace and Dr. Ladha. The following exchanges are two of the number of exchanges which took place between Ryan's counsel and Dr. Ladha:

Q. The next incident I guess we had, doctor, was his release or he's sent to Parrtown?

A. I'm sorry, I didn't hear that, Your Honour.

Q. The next incident we have--well you go from the format you had set out?

A. Well I mean the next thing that I have is I went through some of his other victims.

Q. Okay, please do.

A. With [C.C.] he became agitated or he became angry at the discussion of the size of his penis, or a comment of the size of his penis. That's what I read. He told me that this was a partial truth. Both of them were drinking heavily and both of them were undressed, they were there for more than an hour as I understand it, but there was no bondage, there was no violence, there was no sexual intercourse. There was mention of bondage.

(Transcript, p. 1136)

.....

Q. Well what do we objectively know, doctor?

A. Objectively we know that the two Psychologists at Dorchester have said that he has shown some improvement, that he has gained some insight, and then the incident with [C.C.] or a psychological attack if you like. [C.C.]'s is of a lesser intensity than on [B.M.].

(Transcript, p. 1169)

¶ 54 In his earlier cross-examination of Dr. Brace, Ryan's counsel used the C.C. incident in an attempt to bolster his theory that the treatment received at Dorchester was working and that further treatment would likely work even better:

- Q. Correct, thank you. So could it not be objectively that this nine month course in fact was a significant benefit, that's why we didn't have a repeat of the [B.M.] incident, because this nine month course was an assistance to him and [albeit] he did relapse a known principle in medical treatment, but his relapse was not nearly as severe as it would have been had he not had a nine month program. Isn't that objectively possible, doctor.
- A. Is that objectively possible?
- Q. Yes.
- A. You're asking me is it possible.
- Q. No, I'll go farther than that. I understand, and I'm certainly not an expert in the area, but from the discussions, the preparation that it is objectively possible that that may be the reason this wasn't a more severe incident. Is that objectively possible, doctor?
- A. You know the combining of the words objective and possible is a little bit of a difficult thing for me to kind of put together. It's either objective or it's not. Are you asking me -
- Q. Objective it wasn't that severe -
- A. Is it possible, excuse me, sir, let me finish what I'm saying. Is it possible that the sexual offender's program modified that potential high risk situation to lessen its intensity?
- Q. Yes?
- A. Yes.
- Q. Then if that's the case, if that is the case, then I think you've admitted that the program was at least in part effective and it did reflect and adjust Mr. Ryan's behaviour?
- A. I feel that the program had very little real effect on the underlying dynamic of Mr. Ryan. (Transcript, pp. 1032-33)

¶ 55 The sentencing judge did not use the C.C. incident to establish the pattern of behaviour required by s. 751(1) of the Criminal Code. Nevertheless, he did refer to it in his consideration of future risk. He wrote, at pp. 179-180:

... Although this court found that there was no criminal misconduct involved in the [C.C.] incident, the Corrections Canada Psychologists and Dr. Brace and Dr. Ladha see this event as significant. The significance of the event from a treatment perspective is that it represents a relapse. It represents a demonstration of willingness to engage risk factors and it occurred so soon after treatment.

¶ 56 The use of the C.C. incident by the sentencing judge was a correct one. As Gonthier J. stated in *R. v. Jones* (1994), 89 C.C.C. (3d) 353 (S.C.C.), at p. 396:

... As with all sentencing, both the public interest in safety and the general sentencing interest of developing the most appropriate penalty for the particular offender dictate the greatest possible range of information on which to make an accurate evaluation of the danger posed by the offender.

In the case of dangerous offender proceedings, it is all the more important that the court be given access to the widest possible range of information in order to determine whether there is a serious risk to public safety ...

¶ 57 There is no merit to this ground of appeal.

Disposition

¶ 58 For the above reasons, the appeal is dismissed.

ROBERTS J.A.

WELLS C.J.N.: I concur.

ROWE J.A.: I concur.

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