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(Winnipeg Centre)
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COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:	)	**APPEARANCES:**
	)	
HER MAJESTY THE QUEEN,	)	Breta Passler and
	)	Chantal Boutin
applicant	)	for the Crown
- and -	)	
	)	Scott Newman
CAMERON JOSEPH OKEMOW,	)	for the respondent
	)	
respondent.	)	Judgment delivered:
	)	June 26, 2017

EDMOND J.

Background

[1] Cameron Joseph Okemow ("Okemow") was convicted of the following predicate offences:

- Two counts of aggravated assault on Peter Newland Hill ("Hill") and Pamela Katherine Harper ("Harper") respectively, contrary to s. 268 of the ***Criminal Code***, R.S.C. 1985, c. C-46 (the "***Code***");
- Assault causing bodily harm to Georgina Marion Redhead ("Redhead"), contrary to s. 267(b) of the ***Code***;

- Four counts of failure to comply with probation orders, contrary to s. 733.1(1) of the ***Code***; and
- Robbery of Redhead's cane, contrary to s. 344(1)(b) of the ***Code***.

[2] Following Okemow's conviction, the Crown filed a notice of application seeking a remand for assessment pursuant to s. 752.1 of the ***Code***. Okemow consented to the requested remand for assessment and on October 7, 2015, an order was granted.

[3] Upon completion of the assessment by Dr. David Kolton, a registered clinical psychologist specializing in forensic psychology, the Crown filed a notice of application to have Okemow declared a dangerous offender, pursuant to the relevant provisions of the ***Code***.

[4] The attorney general consented to the Crown's application on April 10, 2017, as required by s. 754(1)(a) of the ***Code***.

[5] The Crown submits that it has met the onus of proof beyond a reasonable doubt that Okemow is a dangerous offender and seeks a sentence of detention in a penitentiary for an indeterminate period. The defence does not dispute that Okemow is a dangerous offender as defined in the relevant provisions of the ***Code***, but says that the court should exercise its discretion and impose a total sentence of 15 years and order that Okemow be subject to a long term supervision order (LTSO) for a period of eight years.

Criminal Code **Provisions**

[6] The relevant provisions of s. 753 of the ***Code*** are:

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

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

. . . .

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

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

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

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

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

[7] Also relevant are ss. 760 and 761(1) of the ***Code***, which state:

> **760** Where a court finds an offender to be a dangerous offender or a long-term offender, the court shall order that a copy of all reports and testimony given by psychiatrists, psychologists, criminologists and other experts and any observations of the court with respect to the reasons for the finding, together with a transcript of the trial of the offender, be forwarded to the Correctional Service of Canada for information.
>
> **761 (1)** Subject to subsection (2), where a person is in custody under a sentence of detention in a penitentiary for an indeterminate period, the Parole Board of Canada shall, as soon as possible after the expiration of seven years from the day on which that person was taken into custody and not later than every two years after the previous review, review the condition, history and circumstances of that person for the purpose of determining whether he or she should be granted parole under Part II of the *Corrections and Conditional Release Act* and, if so, on what conditions.

The Issue

[8] The Crown and defence agree that Okemow meets the criteria of a dangerous offender beyond a reasonable doubt. There is no doubt that Okemow was convicted of predicate offences including, two counts of aggravated assault and one count of assault cause bodily harm, which are "serious personal injury offences" as defined in s. 752 of the ***Code***.

[9] On the basis of all the evidence filed in this application, I am satisfied that Okemow constitutes a threat to the life, safety and physical or mental well-being of other persons.

[10] Specifically, there is no doubt that the evidence establishes:

a) a pattern of repetitive behaviour by Okemow, including the predicate offences showing a failure to restrain his 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 behaviour; and

b) a pattern of persistent aggressive behaviour by Okemow of which the aggravated assault and assault cause bodily harm convictions form a part, showing a substantial degree of indifference on the part of Okemow respecting the reasonably forseeable consequences to other persons of his behaviour.

[11] The primary issue to be determined in this application, is whether I must impose a sentence of detention in a penitentiary for an indeterminate period or I am satisfied by the evidence adduced during the hearing that there is a reasonable expectation that a lesser measure under paragraph (4)(b) or (c) will adequately protect the public against the commission by Okemow of a murder or serious personal injury offence as set forth in s. 753(4.1) of the ***Code***.

The Evidence

[12] Voluminous records were marked as exhibits by consent at the dangerous offender hearing:

a) Record of Previous Convictions Volume I (December 1987 – October 2001), marked as exhibit S1;

b) Record of Previous Convictions Volume II (April 2003 – May 2012), marked as exhibit S2;

c) Correctional Service of Canada Materials Case Management – Volume III (February 1987 – December 1992), marked as exhibit S3;

d) Correctional Service of Canada Materials Case Management Volume IV (January 1993 – February 1994), marked as exhibit S4;

e) Correctional Service of Canada Materials Case Management Volume V (March 1994 – July 1995), marked as exhibit S5;

f) Correctional Service of Canada Materials Case Management Volume VI (July 1995 – July 1998), marked as exhibit S6;

g) Correctional Service of Canada Materials Case Management Volume VII (April 2003 – October 2004), marked as exhibit S7;

h) Correctional Service of Canada Materials Case Management Volume VIII (November 2004 – February 2006), marked as exhibit S8;

i) Correctional Service of Canada Materials Case Management Volume IX (February 2006 – September 2007), marked as exhibit S9;

j) Correctional Service of Canada Materials Psychology Volume X (January 1990 – September 1992), marked as exhibit S10;

k) Correctional Service of Canada Materials Psychology Volume XI (January 1993 – June 2007), marked as exhibit S11;

l) Manitoba Correction Materials Volume XII (July 2001 – April 2015), marked as exhibit S12;

m) Manitoba Correction Materials Running Records - Volume XIII (April 2015 – September 2008), marked as exhibit S13;

n) Manitoba Correction Materials Running Records - Volume XIV (August 2008 – July 2001), marked as exhibit S14;

o) Probation Materials Volume XV, marked as exhibit S15;

p) Transcript of Proceedings Volume XVI, marked as exhibit S16;

q) Transcript of Proceedings Volume XVII, marked as exhibit S17;

r) Manitoba Corrections Materials Volume XVIII, marked as exhibit S18.

[13] In addition to the 18 volumes of agreed exhibits, I received and reviewed two expert reports. Dr. Kolton prepared a 32-page assessment of Okemow dated December 31, 2015 (exhibit S20). The defence filed and relied upon a report prepared by Dr. Philip E. Klassen, a forensic psychiatrist, dated April 1, 2017 (exhibit S27). Both experts assessed Okemow as a high risk to re-offend sexually and violently. Details of their opinions are reviewed below.

[14] The court heard testimony from Ms. Jeannette Acheson who has been employed with CSC for over 30 years. She described in some detail the correctional process and the programming available to dangerous offenders and long-term offenders. She also described the supervision available in the community, the supports and breach procedures. She described the reports that are prepared to deal with planning for offenders. She confirmed that the programs available to regular offenders are also available to dangerous offenders. She described the Osborne Centre, which is a community corrections center or a CCC, often described as a half-way house. She described the difference in eligibility parole with a regular offender versus a dangerous offender. She confirmed that dangerous offenders may apply for day parole within four years of the date of arrest under the eligibility requirements established by CSC and the

Parole Board of Canada would then determine when a dangerous offender can be released and what conditions would apply upon release.

[15] The court also heard the testimony of Kimberley Duncan, an area director with Probation Services, working with the criminal organization high-risk offender unit (COHROU). COHROU provides a higher level of support and supervision for high-risk offenders than for lower risk offenders. She described the organization and the services provided. COHROU has community correction workers that help ensure compliance with probation orders and assist probation officers. Ms. Duncan testified regarding the minimum reporting requirements and supports in the community. Supports include assisting the offender in custody to develop a plan to deal with housing, identification documents, doctor's appointments, among other things. COHROU also works with Forensic Psychology Services (FPS) to set up appointments and ensure that offenders keep those appointments.

The Predicate Offences (R. v. Okemow, 2015 MBQB 70)

[16] On November 17, 2012, less than 48 hours after he had been released from custody, Okemow committed the predicate offences. Okemow attended with Harper at the Bell Hotel to visit Harper's uncle, Hill, who resided at suite 308 of the Bell Hotel. During the course of the evening, Okemow, Harper and Hill were joined by Redhead. It is undisputed that all four were socializing and drinking during the course of the evening. A fight broke out between Okemow and Hill and Okemow assaulted Hill, Harper and Redhead. Okemow picked up a knife from a counter inside suite 308 and stabbed both Hill and Harper during the course of the incident. Okemow also grabbed

Redhead's cane and used it during the course of the assault. Okemow left suite 308 with Redhead's cane.

[17] During the course of the trial, medical records were filed establishing the injuries that were sustained by Hill, Harper and Redhead. Details of their injuries were outlined in paragraphs 13 – 15 of my reasons for decision and will not be repeated. Suffice to say that Hill's injuries included a laceration of his cheek that extended to the angle of the jaw and upper neck and there was another stab wound of the upper neck. The cheek laceration was bleeding profusely. Hill also sustained a fractured nose.

[18] Harper was stabbed in the left scalp and right neck. Her scalp laceration was repaired with six staples and her neck wound was sutured.

[19] Redhead was examined and treated for a swollen area to her right temple region and cheek. The diagnosis was facial trauma.

Victim Impact Statements

[20] Redhead prepared a victim impact statement which was marked as exhibit S24. In her statement dated October 15, 2015, she describes both the physical and emotional impact she sustained. She states that she thinks about what happened and it prevents her from sleeping. She also describes being scared that Okemow will come after her when he gets out of custody.

[21] Harper was interviewed for her victim impact statement and a DVD recording of the interview was received and marked as exhibit S25. During her interview conducted May 2, 2017, she described suffering from severe anxiety and still being affected by the incident that occurred in 2012. She described being afraid to talk about the incident

and was visibly upset when she recounted the incident and how it affected her. She was stabbed in the head and neck and has had recurring headaches and tingling in the area of her wounds. She continues to suffer from anxiety and expressed that she is afraid that Okemow will be released. She also stated that she continues to be affected in relationships and is scared of angry men. Specifically, she stated that she was still afraid that Okemow would be released and look for her.

[22] There is no question that the incidents of November 17, 2012 had a devastating impact and an ongoing emotional impact on both Harper and Redhead.

Criminal Record

[23] Okemow's criminal record spans from 1987 to 2015. The following is a summary of his convictions and dispositions during that time frame:

DATE	CONVICTIONS	DISPOSITIONS
December 1, 1987 Winnipeg, MB (Youth court)	Break Enter and Theft	Probation 18 months
January 8, 1988 Winnipeg, MB	Mischief Under	20 hours community service work
August 11, 1988 God's Lake Narrows, MB (Youth court)	Break Enter with Intent	Probation 1 year
March 10, 1989 Winnipeg, MB	Utter Threats; Breach disposition; Theft under x2; Assault	9 months secure custody
August 16, 1989 Winnipeg, MB	Mischief Under	1 year suspended sentence, unsupervised
November 6, 1989 Portage la Prairie	Assault	30 days
January 9, 1990 Thompson, MB	Assault	30 days
June 27, 1990 Winnipeg, MB	Sexual Assault	4 years

DATE	**CONVICTIONS**	**DISPOSITIONS**
January 11, 1993 Saskatoon, SK	Assault Causing Bodily Harm (while at the Regional Psychiatric Centre)	3 months consecutive to sentence serving
January 10, 1995 Winnipeg, MB	Sexual Assault	2 years
July 8, 1997 God's Lake Narrows, MB	Assault	$500 and probation 1 year
November 20, 1997 God's Lake Narrows, MB	Assault Causing Bodily Harm; Fail to Comply with Recognizance; Assault	8 months and 2 years probation; 3 months consecutive; 1 month consecutive and 2 years probation
September 22, 1998 God's Lake Narrows, MB	Assault with a Weapon; Assault x 2	12 months and 15 months probation; 3 months concurrent on each charge
July 13, 1999 Thompson, MB	Fail to Comply Probation Order	2 months
April 20, 2000 Winnipeg, MB	Fail to Appear; Mischief under $5,000 x 2; Fail to comply with Recognizance	Time in custody (30 days) on each charge concurrent
January 30, 2001 Thompson, MB	Possession of Property Obtained by Crime; Forcible Entry; Fail to Appear	4 months on each charge concurrent and probation 1 year; 30 days concurrent
October 18, 2001 Thompson, MB	Aggravated Assault	2 years less 1 day and probation 3 years and mandatory firearms prohibition order
April 1, 2003 Thompson, MB	Sexual Assault	4 years and 1 month pre-sentence custody
March 5, 2007 Saskatoon, SK	Assault	5 months custody consecutive
November 23, 2007 Winnipeg, MB	Breach of Recognizance – 811 x 2	Time in custody (2 months) plus 1 day
February 7, 2008 Winnipeg, MB	Breach of Recognizance – 811	Time in custody (46 days) plus 18 months supervised probation
April 9, 2008 Winnipeg, MB	Assault; Breach of Recognizance; Fail to Comply with Probation Order	16 months and 53 days pre-sentence custody and probation 24 months; time served (53 days) on each charge concurrent

DATE	**CONVICTIONS**	**DISPOSITIONS**
June 9, 2009 Winnipeg, MB	Fail to Comply with Probation Order x 2	4 months and 1 month pre-sentence custody
October 8, 2009 Winnipeg, MB	Fail to Comply with Probation Order x 2	8 months and 10 days and 10 days pre-sentence custody
June 2, 2010 Winnipeg, MB	Fail to Comply with Probation Order	5 months and 1 month pre-sentence custody and probation 18 months
December 22, 2010 Winnipeg, MB	Sexual Assault; Fail to Comply with Probation Order x 2	10 months and 2 months pre-sentence custody and probation 18 months and mandatory prohibition order s. 109 CC; 10 months and 2 months pre-sentence custody and probation 18 months concurrent
August 23, 2011 Winnipeg, MB	Fail to Comply with Probation Order x 2; Fail to Comply with Probation Order	12 months custody on each charge and 17 days pre-sentence custody
May 17, 2012 Winnipeg, MB	Fail to Comply with Probation Order	Time in custody (26 days) and 9 months custody and 2 years supervised probation

[24] Including the predicate offences, Okemow has been convicted of over 50 criminal offences. His criminal record includes convictions for utter threats, nine counts of assault, three counts of assault cause bodily harm, four counts of sexual assault, assault with a weapon and three counts of aggravated assault. The predicate offences occurred less than 48 hours after Okemow was last released from custody. Okemow was arrested on November 21, 2012 and has remained in custody since that time. In addition to the record of previous convictions, both experts commented and expressed opinions on the CSC and Manitoba Corrections records, which disclose many occasions of physical assault (against staff and inmates), sexual assault (against inmates),

intimidation of others while in custody and masturbation in the presence of female staff (see p. 8 of Dr. Kolton's report; pp. 20-33 of Dr. Klassen's report).

[25] Okemow's history of violence and criminal behaviour dates back to before he was 10 years of age. The convictions on March 10, 1989 related to an incident in which he assaulted his own mother by punching her in the face and kicking her. His sexual assault convictions in 1990 and 1995 involved major sexual assaults on strangers.

[26] On April 1, 2003, Okemow was convicted of sexually assaulting the partner of a friend while he was staying at their home. In that case, the victim had passed out from intoxication and he sexually assaulted her. The victim's three young daughters were sleeping in the same room as the victim at the time of the assault. Okemow punched the victim when she tried to stop him from leaving the residence with some of her property.

[27] Okemow's last sexual assault in 2010 was not a major sexual assault. He was convicted of sexual assaulting a victim after touching her buttocks and failing to comply with a probation order.

[28] Okemow was convicted of assault five times between 1989 and 1997. On November 20, 1997, he was convicted of assault causing bodily harm. On September 22, 1998, he was convicted of assault with a weapon. October 18, 2001, he was convicted of aggravated assault. Further assault convictions occurred in 2007 and 2008. He was released from custody on November 16, 2012 and less than 48 hours later, he committed the predicate offences which include two counts of aggravated assault and one count of assault cause bodily harm.

[29] Dr. Kolton points out that Okemow's Manitoba Corrections offender profile shows that since 1989, he has been incarcerated for more days of his life than he has been in the community (see p. 11 Dr. Kolton's report).

[30] Since 2007, Okemow was released from custody on a number of occasions and re-offended on each occasion. Exhibit E for identification summarizes Okemow's releases from custody and re-arrest dates as follows:

Okemow Release from Custody	**Arrest Dates**	**Time between release from custody to re-arrest**
August 31, 2007	September 26, 2007	26 days
November 23, 2007*	December 31, 2007	28 days
February 7, 2008*	February 18, 2008	11 days
March 19, 2009	May 7, 2009	1 month and 12 days
September 3, 2009	September 29, 2009	25 days
March 25, 2010	May 1, 2010	1 month and 7 days
September 11, 2010	October 19, 2010	1 month and 8 days
July 17, 2011	August 6, 2011	20 days
April 10, 2012	April 21, 2012	11 days
November 16, 2012	November 21, 2012	5 days
* Time Served Sentence		

Expert Evidence

[31] In addition to the volumes of evidence regarding Okemow's past aggressive and violent behaviour, I had the benefit of two expert reports and testimony by Dr. Kolton and Dr. Klassen. Dr. Kolton is a registered clinical psychologist with a specialization in clinical forensic psychology. He is a recognized expert in his field and has testified in the courts of Manitoba on a number of occasions as detailed on page 3 of his curriculum vitae (exhibit S19). Dr. Kolton specializes in the provision of clinical services to high-risk/high-need populations including delivery of clinical services to a special population, such as cognitively impaired and mentally disordered offenders.

[32] In addition to receiving the volumes of records marked as exhibits in these proceedings, Dr. Kolton also obtained the consent from Okemow to review his former treatment file at FPS in Winnipeg from 2007 to 2012. Dr. Kolton describes treatment opportunities provided to Okemow at page 14 of his report as follows:

> In terms of community treatment opportunities, while on supervision conditions (810.2 Order and Probation), Mr. Okemow was a client of Forensic Psychological Services in Winnipeg from 2007 to 2012. He was placed in one of their Healthy Homes – a treatment oriented independent living opportunity – and also received weekly individual counseling, weekly group therapy, and several hours per week of one-to-one support from community support workers (Community Integration Managers). As well, FPS offered to provide culturally relevant programming to Mr. Okemow, including a weekly Elder run Sharing Circle, Sweatlodge Ceremonies, and other Traditional Aboriginal programming. In addition to working individually with Mr. Okemow, FPS treatment staff integrated services with Probations Services, where Mr. Okemow was supervised by the intensive COHROU Program.
>
> Mr. Okemow's participation in treatment at FPS was frequently interrupted due to breaching the conditions of release or incurring new criminal charges. Individual treatment sessions eventually commenced on November 26, 2007, but soon after he was re-arrested for failing to abide by his curfew. Subsequent to his February 2008 release, only one session was conducted as Mr. Okemow was arrested and charged with numerous breaches, Utter Threats, and Assault. The longest period he participated in treatment was from March 2009 until May 2009, when he was arrested for not abiding by his curfew condition. Otherwise, his pattern of participation typically involved breaching his Order within weeks (or days) of release from jail.

[33] Okemow was seen by Dr. Kolton for a total of six hours of clinical interview. Okemow also participated in psychological testing and was scored on a variety of tests to determine his level of risk for violent re-offence.

[34] Dr. Kolton described Okemow as well-oriented, alert, logical and linear in thought process. Dr. Kolton noted that he was tested in 1994 as having a low average range IQ. Dr. Kolton noted that there was no indications of delayed responses or pressured speech. Okemow was not assessed for the possibility that he may suffer from alcohol-

related neurodevelopmental disorder (ARND; formerly known as fetal alcohol spectrum disorder, FASD). Okemow's mother was described as abusing alcohol on a regular basis, although Dr. Kolton was unable to confirm that she did so during her pregnancy with him. Okemow abused solvents from an early age which Dr. Kolton notes is known to have significant impact on cognitive functioning. Okemow reported to have sustained a head injury at age 16 years and suffering from frequent headaches as a result of that injury. Okemow's previous psychological reports include being diagnosed with psychotic disorder, schizophrenia, antisocial personality, sexual deviancy and polysubstance abuse. Okemow confirmed to Dr. Kolton the previously documented reports that he had attempted suicide in the past (see p. 18 Dr. Kolton's report).

[35] Insofar as Dr. Kolton's opinion regarding his clinical and diagnostic formulation, he states (at p. 22, Dr. Kolton report):

> Mr. Okemow meets the DSM-5 diagnostic criteria for *Antisocial Personality Disorder* and has a high PCL-R score, indicating psychopathic personality. His history of instability of relationships, self-image, and affects, and marked impulsivity, anger and anxiety, are consistent with the presentation of individuals with *Borderline Personality Disorder*. His history of inappropriate and intense anger and insecure attachment is also consistent with typical Borderline traits. Also well established is Mr. Okemow's history of substance abuse. He meets DSM-5 diagnostic criteria for *Alcohol Use Disorder*, in remission in a controlled environment, as well as problematic use of various other substances. His history suggests that this disorder becomes problematic whenever he finds himself in an environment where he is free to abuse substances.

[36] Under the heading "Risk Evaluation", Dr. Kolton states on page 23 of his report, he assessed Okemow's level of risk for violent re-offence through the completion of the Violence Risk Appraisal Guide – Revised (VRAG-R) and HCR-20 (Version 3). Dr. Kolton describes the VRAG-R as follows:

> The Violence Risk Appraisal Guide – Revised (VRAG-R) is an actuarial measure that was developed to assess risk for general and sexual violence among offenders evaluated at a maximum-security forensic psychiatric hospital in Ontario. Its validity as a risk assessment tool among a wide variety of violent and sexual offenders in numerous jurisdictions has been repeatedly replicated. The VRAG-R consists of the 12 items that are most highly correlated with future acts of violence and it produces estimates of future risk based upon the combination of risk factors present in any one individual. The recidivism estimates provided by the VRAG-R are group estimates based upon reconvictions and were derived from groups of individuals with these characteristics. As such, these estimates do not directly correspond to the recidivism risk of an individual offender. An individual offender's risk cannot be absolutely known and may be higher or lower than the probabilities estimated in the VRAG-R depending on other risk factors not measured by this instrument.

[37] Dr. Kolton concludes (at pp. 23-24):

> A VRAG-R score was calculated based on Mr. Okemow's most recent offences. He obtained a score that places him in the highest of the nine categories. Among offenders in the development sample for the VRAG-R, less than 2% obtained higher scores. In terms of violent recidivism, approximately 76% in Mr. Okemow's category reoffended violently within an average of 5 years and 87% reoffended violently within an average of 10 years after release.

[38] Dr. Kolton describes the HCR-20 (Version 3) as follows (at p. 24):

> The HCR-20 (Version 3) is a set of structured professional guidelines for assessing risk for general violence. Evaluators use the guidelines to identify the presence and relevance of 20 basic risk factors for general violence reflecting characteristics of the perpetrator: 10 reflect historical or past adjustment, 5 reflect clinical or current adjustment, and 5 reflect risk management or future adjustment. Ratings are based on interview and case history materials. As the HCR-20 is an aide memoire or checklist designed to assist clinical evaluations, it cannot be used to make quantitative estimates (i.e., probabilistic predictions) of risk for general violence.

[39] After reviewing the factors of the HCR-20, Dr. Kolton concludes as follows (at pp. 24-25):

> In summary, with respect to Mr. Okemow's risk for future violence, in assessing across the different measures of risk and considering variables specific to Mr. Okemow's offending behaviour, his level of understanding of his risk factors and risk management strategies, his need areas, and his overall level of functioning and repertoire of coping skills, it is my opinion that his overall level of risk for

> violence should be considered High. According to the latest research and the principles of risk/need/responsivity, it is recommended that resources devoted to treatment, supervision, and secure custody be generally apportioned in direct relation to that risk, giving the most secure custody, most intensive supervision, and most energetic treatment efforts to individuals of highest risk.

[40] Dr. Kolton expresses the following prognosis regarding eventual control of risk in the community as follows (at p. 27):

> The prognosis for eventual management of Mr. Okemow's risk in the community is very poor. Mr. Okemow presents as being a high risk for future violent and sexual reoffence and has been repeatedly released to the community with an awareness by authorities of this risk level. Each time Mr. Okemow has either breached the conditions of his release or reoffended in a violent or sexual manner. If a Long-Term Offender designation is to be considered for him, then it needs to be acknowledged that he will be a high-risk release, even to a structured setting.
>
> One of the central issues to be considered is whether an effective risk management strategy could be developed for Mr. Okemow. In this regard, I am particularly troubled by his past performance while being intensively supervised. The risk management plan that was developed over the course of many years and multiple release opportunities, while he was supervised by Probation Services on a Section 810 Order and multiple Probation Orders, involved many components of effective risk management for high-risk offenders; yet, he was not cooperative or unable to comply with these efforts.

[41] Dr. Kolton concludes (at p. 32):

> Risk management in Mr. Okemow's case will be a significant challenge as his level of risk is high, his integration of past correctional program and treatment information has been limited, his compliance with community supervision poor, and he has a history of antisocial conduct and an ongoing pattern of criminal and violent recidivism. As has been identified, risk management in this case will require intensive institutional and community based treatment and supervision interventions. Mr. Okemow has demonstrated that without intensive resources in place to provide structure, accountability, monitoring, surveillance, supervision, treatment, and support there would be little possibility of effective risk management. The potential success of this recommended model is connected to two major issues. Firstly, the identified resources would need to be provided to Mr. Okemow over the course of his sentence. This means CSC must be prepared to commit to providing the resources to facilitating risk management in this case. Secondly, and most importantly, it requires 'buy in' from Mr. Okemow. His willingness to cooperate, take full advantage of the resources provided, and make a genuine commitment to work on personal change and

> behaviour management will be central to this plan having the potential to be effective.

[42] Dr. Klassen is a very experienced forensic psychiatrist. He is the vice-president of medical affairs of the Ontario Shores Centre for Mental Health Sciences and a assistant professor at the Departments of Psychiatry and Medicine at the University of Toronto. Dr. Klassen conducted an independent assessment of Okemow and met with him on two occasions for a total interview time of approximately six hours. He reviewed the same volumes of evidence that were reviewed by Dr. Kolton. Prior to testifying, he reviewed the final volume of Manitoba Corrections materials, volume XVIII, exhibit S18. Dr. Klassen was qualified to give evidence as an expert in the area of forensic psychiatry and risk assessment. There is no doubt that he is qualified to provide opinion evidence. He has extensive experience and has testified as an expert or prepared reports which have been filed by consent in court approximately 180 times. His opinion was largely consistent with the opinion provided by Dr. Kolton. At page 37 of his report, Dr. Klassen summarized his opinion as follows:

> From a diagnostic perspective, it is my opinion that this gentleman does not suffer from a major mental illness, such as schizophrenia; it is clear at this point that this gentleman's early descriptions of psychotic symptomatology were malingered, in the service of obtaining medication. Rather, this gentleman suffers from antisocial and borderline personality disorders, an alcoholic use disorder, and perhaps from one or more paraphilic disorders.

[43] In terms of risk assessment, Dr. Klassen used a similar approach to that of Dr. Kolton and applied a barrage of risk assessment tools including the violence risk appraisal guide (VRAG), the Static-99R or SORAG and the HCR-20 and the psycopathy checklist-revised (PCL-R). Dr. Klassen scored Okemow on the PCL-R at 31 out of a

possible 40 points, which is a high score. Dr. Klassen scored Okemow on the Static-99R at 6, which places him on the 94th percentile with respect to the reference or standardization samples. To put that into perspective, he stated that Okemow is at 3.77 times the risk of sex offending in comparison with the "average" sex offender. He stated that "Similar-scoring individuals, in the developmental samples, recidivated sexually or violently at the rate of 52% over 10 years opportunity in the community." (see p. 44 of Dr. Klassen report)

[44] Dr. Klassen scored Okemow on the SORAG at 32, which falls somewhere between the 98th and 99th percentile, with respect to the reference or standardization sample. Again he stated "Similar-scoring individual's recidivated violently or sexually at a rate of 100% over 10 years' opportunity in the community." He expressed the view that this probability of recidivism is likely an overestimate (see p. 44 of Dr. Klassen's report). Dr. Klassen's conclusion based on the available tools for assessment of sex offenders recidivism is that Okemow is at a high risk of future sexual offending.

[45] Further, Dr. Klassen expressed views based on the VRAG and the HCR-20. Okemow's score on the VRAG was 18 which placed him on the 90th percentile with respect to the reference or standardization sample.

[46] On the HCR-20, Dr. Klassen concluded as follows (at pp. 44-45):

> My score for this gentleman on the HCR-20 falls somewhere between 31 and 34; there is a future section of the HCR-20 where a range of scores may be offered, given that an individual may find themselves in a range of different circumstances upon release. In any event, scores ranging from 31 to 34 are high scores. Similar scoring individuals, in one sample of federal offenders from British Columbia, recidivated violently at a rate of 93% over 7.6 year follow up. Again, however, this information is dated, base rates of recidivism have declined, and this is likely now an overestimate of risk.

> Taken together, the VRAG and the HCR-20 suggest that this gentleman is at moderately high to high risk of violent recidivism.

[47] Dr. Klassen expressed the following opinion on Okemow's probability of violent recidivism (at p. 46):

> From a purely psychiatric perspective, if this gentleman was released today I believe that there is a probability of serious violent reoffence. Given that this gentleman is now (almost) 47 years of age, that probability is in evolution for age-related reasons. Taking into account in particular the results of the VRAG and the HCR-20, I would submit that this gentleman's probability of violent recidivism, if released today, likely falls somewhere in the 50-75% range.

[48] Finally, Dr. Klassen summarizes his opinion as follows (at p. 48):

> In summary, and from a purely psychiatric perspective, it's my opinion that at this juncture, this gentleman remains a high-risk release. That being said, I would expect, as per Dr. Kolton's report, this gentleman's risk for sexual recidivism, and violent recidivism, will decline very significantly over the next decade. Whether this gentleman is found a Dangerous Offender, or a Long-Term Offender, I would recommend that this gentleman receive a period of at least a further five years of incarceration, to support continued attenuation of risk for age-related reasons; I would note that this gentleman's behaviour in custody, latterly, has reportedly been good, consistent with age-related decline in propensity for violence. At that point, he may be more amendable to abiding by the terms of a residency condition, and other associated conditions as might be applied. He needs constraints to approximately age 60; if a fixed sentence takes him to age 60 no additional measures may be required, and if a fixed sentence takes him to less than age 60 then some form of leverage for supervision is likely required.

[49] Both experts express opinions given Okemow's treatment history that he will require external controls in addition to further development of internal controls. Both experts made recommendations regarding structures and conditions if Okemow is released into the community in the future.

Position of the Parties

The Crown

[50] The Crown submits that Okemow meets the criteria of a dangerous offender and that he should be detained for an indeterminate period. In accordance with s. 753(4.1) of the ***Code***, the court shall impose a sentence of detention in a penitentiary for an indeterminate time unless satisfied by evidence adduced during the hearing that there is "a reasonable expectation that a lesser measure under paragraph 4(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence." The Crown submits that a less restrictive sentence would not satisfy the need for public protection given the record of convictions and the opinions expressed by Drs. Kolton and Klassen. On the basis of all the evidence, a dangerous offender designation was submitted to be appropriate, accompanied by the presumptive indeterminate sentence.

The Defence

[51] The defence submits that Okemow is 46 years of age and a fit and appropriate sentence can be imposed which will ensure that he will, in all probability, remain incarcerated for 10 years. At that time, Okemow will be 56 years of age and the risk of re-offending will be substantially reduced and accordingly, a lesser measure will adequately protect the public against the commission of a serious personal injury offence.

[52] The defence submits that the predicate offences justify a term of incarceration of 15 years. The two counts of aggravated assault carry a maximum punishment of 14 years. In the circumstances, the defence suggests that the court should impose the maximum of 14 years for the offences that took place on November 17, 2012. Both Crown and defence agree that Okemow should receive a concurrent sentence respecting the series of charges that occurred on November 17, 2012 (see ***R. v. Taylor***, 2010 MBCA 103, 262 Man.R. (2d) 43).

[53] Further, defence submits that the court should impose a sentence of one year for the breach of probation charge which occurred on November 21, 2012 (count 10 on the indictment amended March 2, 2015). Since that breach occurred on another day and is not connected or related to the incidents that occurred on November 17, 2012, the defence submits that the court should impose a total sentence of 15 years.

[54] Further, the defence submits that Okemow has been in custody since November 21, 2012 and has served approximately 4½ years. In the circumstances and applying the principal set forth by the Supreme Court of Canada in ***R. v. Summers***, 2014 SCC 26, [2014] 1 S.C.R. 575, defence submits that Okemow should only receive credit for time served on a 1:1 basis. Okemow has been held to warrant expiry on the last two periods of incarceration and there is no significant risk that he will be released early given the dangerous offender designation. Further, the defence submits that a LTSO is appropriate once Okemow is released. The risk of re-offending will be substantially reduced or near "zero" as he approaches the age of 60 and supervision would ensure that the public could be adequately protected.

[55] Defence submits that the two main triggers for Okemow re-offending are alcohol and residential suitability. Defence stressed that if Okemow was placed in a CCC and supervised more frequently, there would be a reasonable expectation that the public would be adequately protected.

[56] Since this is what defence acknowledged is a close call, defence counsel submitted the court should examine the ***Gladue*** factors and doing so, tips the balance in favour of imposing a determinate sentence for the predicate offences and ordering Okemow to be subject to an LTSO for a period of eight years following his release.

Analysis

[57] As stated above, I am satisfied beyond a reasonable doubt that Okemow meets the criteria for a dangerous offender. Accordingly, s. 753(4) of the ***Act*** provides for three sentencing options to be considered. The court may impose an indeterminate sentence as requested by the Crown, impose a sentence for the predicate offences to be followed by a LTSO not exceeding 10 years, or impose a sentence for the predicate offences, as the court would for any other offender.

[58] It is important to emphasize that s. 753(4.1) provides that the court shall impose a sentence of detention in a penitentiary for an indeterminate period unless the evidence satisfies the court that a lesser sentence will adequately protect the public against the offender committing murder or a serious personal injury offence.

[59] The Manitoba Court of Appeal in ***R. v. Osborne***, 2014 MBCA 73, 306 Man.R. (2d) 276 (QL), dealt with the limited discretion provided to the sentencing judge on a dangerous offender sentencing as follows (at paras. 90-91):

> 90 As I have indicated, a discretion, albeit a limited discretion, does exist in the judge who, having declared an accused to be a dangerous offender, turns to consider the penalty to be imposed (ss. 753(4) and (4.1)).
>
> 91 As a discretion exists, the judge must, therefore, consider the sentencing principles enunciated in ss. 718 to 718.2 of the Code and, in particular, must consider s. 718.2(d), namely, that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances, and s. 718.2(e), all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention in this case to the circumstances of the accused, an aboriginal offender.

[60] The aboriginal background of Okemow is a relevant consideration in the determination of an appropriate disposition. Dealing with the ***Gladue*** principles, the Court of Appeal in ***Osborne***, stated (at paras. 94 and 96-98):

> **94** While I agree with the conclusions reached by the judge, with respect, I do not agree with the language which he has used. *Ipeelee* did not reaffirm the need for sentencing judges to remember the *Gladue* principles when aboriginal offenders are sentenced. Rather, it emphasized that sentencing judges are required to consider the *Gladue* principles in every case involving the sentencing of an aboriginal offender, including those involving "serious" offences. The court reaffirmed in *Ipeelee* (at para. 85) the statement made in *Gladue* that (at para. 82):
>
> > …. There is no discretion as to whether to consider the unique situation of the aboriginal offender; the only discretion concerns the determination of a just and appropriate sentence.
>
> . . .
>
> **96** Dangerous offender applications must be considered on the basis that the paramount purpose of the dangerous offender regime is the protection of the public. Although decided in respect of the Previous Regime, the comments of Cronk J.A. in *R. v. Little (G.)*, 2007 ONCA 548, 226 O.A.C. 148, are apposite (at para. 70):
>
> > As I have indicated, the overriding purpose of the dangerous and long-term offender regimes is the protection of the public. Thus, "real world" resourcing limitations cannot be ignored or minimized where to do so would endanger public safety. The court is required on a dangerous offender application to balance the liberty interests of an accused with the risk to public safety that will arise on the release of the accused into the community. That balancing exercise is informed by this fundamental principle: in a contest between an individual offender's interest in invoking the long-term offender provisions of the *Code* and the protection of the public, the latter must prevail. This accords, in my opinion, with the intention of Parliament as expressed in the dangerous

> and long-term offender provisions of the *Code*, and in the *Corrections and Conditional Release Act*.
>
> **97** While that statement is not directly applicable to this case because of the change of legislation and the fact that the accused here had been designated a dangerous offender with the consequent penalty considerations which have to be addressed, the point remains that, where a judge is considering the appropriate penalty to be imposed under s. 753(4.1) and is thus required to consider s. 718.2(*e*) and the aboriginality of an accused, the balancing exercise is informed by the fundamental principle that protection of the public must prevail.
>
> **98** This was clearly stated by Hamilton J.A. of this court in *R. v. O.E.C.*, 2013 MBCA 60, 294 Man.R. (2d) 122, where she wrote (at para. 35):
>
> > The Crown appropriately acknowledges that **Gladue** applies to dangerous offender applications. However, the Crown rightly asserts that the impact of **Gladue** must be considered in the context of the fact that the protection of the public is the paramount consideration in these proceedings. ....

[61] Okemow is a 46-year-old Aboriginal. His mother had difficulties with alcohol overuse and the experts make reference to the fact that Okemow may suffer from FASD. That diagnosis was not confirmed. Okemow was raised on the God's Lake Narrows First Nation. He was raised by his mother and then adopted by his aunt and raised by her. Okemow's father and three of his siblings died in a boating accident at the time he was nine or ten years of age. He started using inhalants at a very young age, was rebellious and was apprehended and placed by Child and Family Services.

[62] Okemow's mother and father were Indian residential school survivors. His parents separated when he was approximately nine years of age. Okemow described both his parents as alcoholics and it is clear that Okemow suffered from a lack of parenting. He acted out and was involved with inhalants and crime from a very early age. His mom died when he was 22 years of age. His aunt, who had cared for him, also died. Okemow has a grade six education and has little or no employment

experience. He has been incarcerated more often than he has been in the community in his life.

[63] There is no question that Okemow had a very difficult and traumatic upbringing. His alcohol and drug use has exacerbated his problems and contributed to his anger, lack of control and re-offending.

[64] While I agree that ***Gladue*** principles apply to dangerous offender applications, I have considered ***Gladue*** in the context of the fact that the protection of the public is the paramount consideration in dangerous offender applications.

[65] The key issue to be determined in this case is whether there is a less restrictive means than an indeterminate order of imprisonment which would serve to adequately protect the public. If, as suggested by the defence, that a determinative period of detention followed by a LTSO would serve to reduce the threat to the public to an adequate level, then an indeterminate sentence should not be imposed (see ***R. v. Johnson***, 2003 SCC 46, [2003] 2 S.C.R. 357 and ***R. v. Moore***, 2016 MBQB 116, 329 Man.R. (2d) 295). The issue of whether Okemow can be managed in the community is determined based on considering all the evidence including the expert evidence. The evidence must satisfy the court that there is a "reasonable expectation" that a measure less than an indeterminate sentence will adequately protect the public. The "reasonable expectation" standard is a higher standard than the "reasonable possibility" standard that is applied in a long-term offender hearing under s. 753.1 (see ***Osborne*** at paras. 64-75).

[66] The Crown is not required to prove that an offender cannot be controlled in the community. Rather, if the court is uncertain whether or not the offender can be controlled in the community, the court should grant an indeterminate order (see ***R. v. Innocent***, [2009] O.J. No. 3663, 2009 CarswellOnt 4791 (Ont. Sup. Ct.), paras. 47 and 48 and ***Moore*** at para. 36).

[67] The task of the sentencing court is to consider on the basis of the evidence, whether the threat of harm to the public can be reduced to an adequate level. In assessing that issue, I considered not only the evidence of the experts, but the evidence of Ms. Acheson and Ms. Duncan as to the programs available to dangerous offenders as well as the level of support and supervision for high-risk offenders offered by COHROU.

[68] Considering the programs available in the community, and the expert assessments that have been provided, there is no question that Okemow remains a high risk release who has a history of sexual and violent recidivism. I accept the opinions of Dr. Kolton and Dr. Klassen that Okemow's risk of sexual recidivism and violent recidivism will decline significantly by the time he reaches 60 years of age.

[69] Dr. Kolton describes the ability to manage Okemow in the community as "very poor". Dr. Klassen stated that Okemow remains a high risk release.

[70] I accept that there is a basis to hope that Okemow's risk of recidivism will reduce as he ages. The number of violent incidents since his incarceration on November 21, 2012 have reduced. There also appears to be signs that he is interested in further programming, obtaining further education and being employed. That said, there have

still been reported incidents of violent behaviour while he has been in custody since November 21, 2012. These incidents have occurred notwithstanding the fact that Okemow has known since shortly after he was charged with the predicate offences, that a dangerous offender application would be made by the Crown if he was convicted (See p. 12 of Dr Kolton's report). The last reported incident of violent behavior by Okemow occurred on February 2, 2017. Okemow pled guilty to an unlawful act and was disciplined on February 3, 2017.

[71] Clearly, evidence that amounts to a mere hope or possibility that an offender would be amenable to treatment and change, does not lead to the conclusion that there is a reasonable expectation that a measure less than an indeterminate sentence will adequately protect the public.

[72] Okemow's history when he has been released in the community has been horrendous and given his track record of violent behavior and offending, I am not satisfied that there is an air of reality to the possibility of adequately reducing or controlling the risk to the public at the present time.

[73] Based on all of the evidence, I am not satisfied that there is a reasonable expectation that imposing a sentence for the predicate offences followed by a LTSO as suggested by the defence, will adequately protect the public against the commission of a serious personal injury offence in the future.

[74] Imposing an indeterminate sentence is not equivalent to a sentence in perpetuity. According to Ms. Acheson, there are 704 dangerous offenders in Canada, 63 of them are presently supervised in the community. 641 remain institutionalized.

Providing Okemow receives treatment and he is assessed as becoming manageable in the community, he may be eligible for release on parole. Pursuant to s. 761(1) of the ***Code***, dangerous offenders become eligible for parole seven years after the date of arrest with respect to the predicate offence. In addition, every two years after the first review, the Parole Board of Canada shall conduct a review of the condition, history and circumstances of the dangerous offender for the purposes of determining whether he should be granted parole under Part II of the ***Corrections and Conditional Release Act***, S.C. 1992, c. 20, and if so, on what conditions.

[75] As was stated by the court in the ***Innocent*** case at para. 57, "the National Parole Board may be ultimately in a better position to evaluate the offender's progress in penitentiary and his participation and recommended treatment programs and as to whether there are changes in his lifestyle which signify a true change from previous patterns of violent impulsive behaviour." (see ***R. v. R.M.***, 2007 ONCA 872, 228 C.C.C. (3d) 148)

Conclusion

[76] Having considered all of the evidence, I have serious doubt as to whether Okemow's violent behavior and tendencies can be reasonably controlled in the community so as to adequately protect the public against the commission of a serious personal injury offence in the reasonably foreseeable future. As a result, and in accordance with s. 753(4.1) of the ***Code***, the court is required to impose a sentence of detention in a penitentiary for an indeterminate period. Unfortunately, Okemow poses an unacceptable risk to public safety which cannot be reduced or controlled without

extensive long term treatment in a controlled environment. It is hoped that Okemow will receive the treatment he requires and as recommended by Dr. Kolton and Dr. Klassen in their reports.

[77] In addition to the indeterminate sentence of incarceration, Okemow will be required to provide a sample of his DNA to the appropriate authorities as soon as is practicable. Okemow will be subject to a lifetime weapons prohibition as defined in s. 109 of the ***Code***.

[78] I impose a no contact order respecting all victims of the predicate offences including Harper, Hill and Redhead, pursuant to s. 743.21 of the ***Code***.

[79] Pursuant to s. 760 of the ***Code***, all reports, exhibits marked during this application, a transcript of the evidence of this application and a copy of my decision shall be forwarded to CSC.

[80] Okemow will be required to pay a victim surcharge of $200 within one year of his release from custody.

_____ J.