

**The Long-Term Offender  
Provisions of the *Criminal Code*:  
An Evaluation**

**by  
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## Abstract

The Canadian dangerous offender legislation seeks to identify the most dangerous offenders and to distinguish them from those who pose a lesser degree of risk. In 1997, a new designation was added: the long-term offender designation. The key difference between the dangerous offender and long-term offender is that the latter is deemed to be eventually controllable in the community.

This dissertation was designed to describe and evaluate the application of the long-term offender provisions of the Canadian *Criminal Code* in the province of British Columbia during the first 10 years since its inception in 1997. The data sources include secondary file data and primary interview data. The files relating to 67 long-term offenders were accessed at the B.C. Forensic Psychiatric Services Commission; they contained both judicial reasons for judgment and expert assessments. The interviews were semi-structured and were conducted with a total of 33 interviewees in the following stakeholder categories: Legal, Mental Health, Supervision/Enforcement and Community Service.

The file review findings reveal that long-term offenders are predominantly male and disproportionately Aboriginal. The index offences are primarily sexual in nature, and the 10-year long-term supervision order length is the most commonly imposed. The most prevalent diagnoses are: substance-related disorder, antisocial personality disorder, and pedophilia. Ethnic differences in the diagnosis of psychopathy and in the evaluation of treatability are revealed.

The interview findings reveal that a key advantage of the designation is that it provides a viable option that is less extreme than the dangerous offender designation, yet more restrictive than a conventional sentence. The lack of resources for effective supervision and treatment was noted by interviewees in each stakeholder category; the wording of the long-term supervision order conditions was also described as problematic. Interviewees in each category indicate that there have been recent increases in the demands placed by this subset of the offender population. Suggestions for reform

include improving the wording of the conditions of long-term supervision orders, increasing funding for treatment and supervision of long-term offenders, and also increasing agency collaboration and service continuity.

**Keywords:** dangerous offender; long-term offender; sex offender; sentencing; risk assessment; and community supervision

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## Table of Contents

Approval .....	ii
Abstract .....	iii
Acknowledgements .....	v
Table of Contents .....	vi
List of Tables .....	x
List of Figures .....	xi
<b>Chapter 1. Introduction.....</b>	<b>1</b>
Dissertation Overview .....	3
<b>Chapter 2. The Development of Dangerous Offender Legislation in Canada: An Historical Overview .....</b>	<b>6</b>
Initial Canadian Dangerousness Legislation .....	7
The Habitual Offender Legislation .....	7
The Dangerous Sexual Offender Legislation .....	8
Government Committee Reports .....	9
The Ouimet Committee Report .....	9
The Goldenberg Report.....	12
The 1977 DO Legislation .....	13
The New DO Provisions in the Post- <i>Charter</i> era .....	14
<i>R v. Lyons</i> (1987).....	15
The 1997 Amendments to the DO Provisions.....	17
The Application of the LTO Provisions: <i>R v. Johnson</i> (2003).....	20
The Application of the LTO provisions: Post-Johnson .....	23
<i>Tackling Violent Crime Act</i> (2008):	
The Future of Judicial Decision-Making in DO/LTO Cases.....	26
<b>Chapter 3. Theoretical Considerations in Designating Dangerousness and Assessing Risk .....</b>	<b>29</b>
Shifting Models of Dangerousness:	
The Predecessors to the Current Community Protection Approach .....	30
The Forensic-Clinical Model.....	30
The Justice Model .....	30
The Community Protection Model: A (New) Penology.....	31
Mental Health Experts, the Designation of Dangerousness and the Assessment of Risk.....	35



<b>Chapter 4. The Emergence of the Community Protection Model in North America and a Descriptive National Overview: The Contextual Background.....</b>	<b>40</b>
The North American Experience .....	40
Canada.....	40
The United States .....	44
The Canadian and U.S. Experiences: An Analysis .....	48
Unintended Consequences .....	49
The LTO Provisions: An Even Longer Arm for the Canadian Correctional System .....	52
The Long-Term Offender: Factors to Consider .....	52
The Long-Term Offender: Who is (S)he? .....	53
Descriptive National Overview .....	56
<b>Chapter 5. Methods.....</b>	<b>63</b>
Data Sources: The Options.....	63
The File Review .....	64
Demographics .....	66
General LTO Hearing Information .....	67
Index Offence and Victim Information .....	67
Sentence Information .....	67
Long-term Supervision Orders .....	68
Long-term Supervision Order Breaches.....	68
The Assessors .....	69
Diagnoses .....	70
Assessment Tests/Tools .....	70
Assessment Test/Tool Scores.....	70
Overall Assessment of Risk Summary .....	71
Treatability.....	71
The Interviews.....	72
Ethical Considerations .....	76
Strengths and Weaknesses .....	78
Methodological and Policy Considerations .....	82
<b>Chapter 6. Findings: The File Review, Reasons for Judgment and Assessments .....</b>	<b>83</b>
Demographics.....	83
The Female LTO .....	85
General LTO Hearing Information.....	86
Index Offence and Victim Information .....	86
Sentence Information .....	87
Long-Term Supervision Orders.....	88
Long-Term Supervision Order Breaches .....	89
The Assessors .....	90
Diagnoses .....	90
Assessment Tests and Tools .....	92
Assessment Test/Tool Scores: The PCL-R, the Static-99 and the VRAG .....	94

Overall Assessment of Risk Summary .....	102
Treatability.....	105
Summary of File Review .....	107
<b>Chapter 7. Findings: The Stakeholder Interviews .....</b>	<b>109</b>
Topic A: Interviewee Role in the Process of the LTO Provisions .....	110
Legal .....	110
Mental Health .....	112
Supervision/Enforcement .....	112
Community Service .....	113
Topic B: Interviewee Perceptions of LTO Provisions .....	114
Legal .....	115
Mental Health .....	119
Supervision/Enforcement .....	122
Community Service .....	124
Summary .....	126
Topic C: Interviewee Perceptions of LTO Characteristics.....	128
Legal .....	128
Mental Health .....	130
Supervision/Enforcement .....	132
Community Service .....	134
Summary .....	137
Topic D: Interviewee Experiences and Perceptions of LTOs in the System .....	138
Legal .....	138
Mental Health .....	144
Supervision/Enforcement .....	146
Community Service .....	151
Summary .....	153
Topic E: The Future of Dealing with LTOs .....	155
Legal .....	155
Mental Health .....	157
Supervision/Enforcement .....	158
Community Service .....	159
Summary .....	160
<b>Chapter 8 Discussion .....</b>	<b>163</b>
The File Review .....	163
Demographics .....	163
General LTO Hearing Information .....	165
Index Offence and Victim Information .....	166
Sentence Information .....	168
LTSOs and Breaches .....	169
The Assessors .....	170
Diagnoses .....	171
Risk Assessment Tests and Tools .....	172
Test Scores and Overall Assessment of Risk Summary .....	172
Treatability.....	175



## List of Tables

Table 1.	Total National Number of DO and LTO Designations Since the Inception of these Designations, 2006-2009 .....	59
Table 2.	National LTSO Population, 1997-2009 .....	60
Table 3.	Number and Percentage of LTO Assessments by Most Prevalent Diagnoses and by Profession in B.C., 1997-2007.....	91
Table 4.	Probability of Violent Recidivism at Two Different Mean Lengths of Opportunity as a Function of Nine Equal-Sized VRAG Categories.....	100
Table 5.	Number and Percentage of LTO Assessments by Overall Risk-Assessment Category in B.C., 1997-2007 .....	103
Table 6.	File Review Profile of the LTO in B.C., 1997-2007.....	108
Table 7.	Summary of Topic B: Interviewee Perceptions of LTO Provisions by Stakeholder Category.....	127
Table 8.	Summary of Topic C: Interviewee Perceptions of LTO Characteristics .....	137
Table 9.	Summary of Topic D: Interviewee Experiences and Perceptions of LTOs in the System.....	153
Table 10.	Summary of Topic E: Recommendations for Reform by Stakeholder Category .....	160

## List of Figures

Figure 1.	Number of DOs in Canada per Year since 1978.....	57
Figure 2.	Number of LTO Designations by Province, 1997-2009.....	58
Figure 3.	Average LTSO Length in Years by Province .....	59
Figure 4.	National Increases in LTSO Population, 1997-2009 .....	61
Figure 5.	Number of LTOs by Age Range in B.C., 1997-2007 .....	84
Figure 6.	Number of LTO Cases by Length of LTSO in Years in B.C., 1997-2007 .....	88
Figure 7.	Number of LTO Assessments by Tests and Tools Used in B.C., 1997-2007 .....	93
Figure 8.	Percentage of LTO Assessments by Most Prevalent Tools and Tests Used and by Profession in B.C., 1997-2007 .....	94
Figure 9.	Number of LTO Assessments by PCL-R Score Category in B.C., 1997-2007 .....	96
Figure 10.	Percentage of LTO Assessments by PCL-R Score Category and by Profession in B.C., 1997-2007 .....	97
Figure 11.	Number of LTO Assessments by Static-99 Score Category in B.C., 1997-2007 .....	99
Figure 12.	Percentage of LTO Assessments by Static-99 Score Category and by Profession in B.C., 1997-2007 .....	99
Figure 13.	Number of LTO Assessments by VRAG Score Category in B.C., 1997-2007 .....	101
Figure 14.	Percentage of LTO Assessments by VRAG Score Category and by Profession in B.C., 1997-2007 .....	102
Figure 15.	Percentage of LTO Assessments by Overall Risk Assessment Category and by Profession in B.C., 1997-2007.....	105
Figure 16.	Percentage of LTO Assessments by Treatability Evaluation and by Profession in B.C., 1997-2007 .....	107
Figure 17.	Interviewee Breakdown by Stakeholder Category .....	110
Figure 18.	Replicated: Interviewee Breakdown by Stakeholder Category .....	176

## Chapter 1.

### Introduction

The making of policy involves efforts to balance competing values and interests. This is particularly true in the case of crime policy, wherein basic social values, such as liberty and security, are often in direct conflict with government efforts to draft legislation that simultaneously protects the interests of individuals and those of society (Ekstedt, 1991). This conflict is even more pronounced in the case of correctional policies. As outlined in the *Criminal Code*, there are various competing goals of sentencing that ought to be considered by correctional agencies once the offender reaches this final phase of the criminal justice system. These goals include just deserts, deterrence, incapacitation, rehabilitation and reparation. Throughout history, the pendulum has swung back and forth between these competing and arguably contradicting goals of correctional policy.

In recent years, sex offender policymaking has been on the agenda of criminal justice officials and politicians at the national as well as international levels (Petrunik, 2002). One of the factors contributing to this increasing focus on sex offenders is the rise in the number of this subset of serious offenders under correctional controls, as seen in both the U.S. and Canada (Petrunik, 2002). The goal has been to successfully identify and appropriately classify those offenders who are the most dangerous and, therefore, in need of the most restrictive penalties available.

The dangerous offender (hereafter referred to as DO) legislation in Canada clearly illustrates this goal to identify the most serious types of offenders and to distinguish these offenders from the less threatening and more manageable type. As outlined in section 753 of the *Criminal Code*, the DO provisions include the requirement that the offence that leads to a DO application be a serious personal injury offence,

defined primarily as sexual in nature, with the behaviour in question being repetitive, persistent, aggressive, and/or brutal (*Criminal Code*, 1997). More specifically, s.753 reads as follows:

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

- i. 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
- ii. 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 (*Criminal Code*, 1997).

The long-term offender (hereafter referred to as LTO) provisions in the Canadian *Criminal Code*, added in the 1997 amendments, also illustrate these key components.

The criteria for this designation are found in s. 753.1 of the *Criminal Code* and read as follows:

The court may find an offender to be a LTO if it is satisfied that:

- (a) it would be appropriate to impose a sentence of imprisonment of more than two years for the offence of which he/she was convicted;
- (b) there is a substantial risk that the offender will re-offend;
- (c) there is a reasonable possibility of eventual control of the risk in the community. (*Criminal Code*, 1997)

The DO and LTO provisions are the only sentencing options in the *Criminal Code* that rely primarily on the notion of risk and dangerousness, with the risk of future behaviour being the chief criterion (MacAlister, 2005). The key difference between the DO and the LTO designations is that there is perceived to be a reasonable possibility of controlling the latter in the community (Eaves, Douglas, Webster, Ogloff & Hart, 2000). The emphasis of community risk management in the LTO provisions necessarily implies the relevance of the treatability and manageability of these offenders (Eaves et al., 2000).

## **Dissertation Overview**

The primary objectives of this dissertation are to describe and evaluate the application of the LTO provisions of the *Criminal Code* in British Columbia during the first 10 years since its inception in Canada in 1997. This dissertation begins with an historical overview of the development and evolution of DO legislation in Canada. This overview includes a discussion of the habitual offender and dangerous sexual offender provisions of the 1940s, and then tracks the main changes in legislation from this point in Canadian history through to the current DO and LTO provisions, with particular emphasis on the latter. Key government committee reports and Supreme Court of Canada decisions are included here.



Chapter 3 focuses on the theoretical considerations in DO legislation. This chapter begins with a review of the definition of dangerousness and how it has changed to include a preoccupation with the management of risk. Also included in this chapter is a discussion of Petrunik's models of dangerousness - the forensic-clinical model, the justice model, and the community protection model - as well as Feeley and Simon's 'new penology.' The role of psychiatrists in the designation and prediction of dangerousness is also discussed here. The nature of sex offender policy development in Canada and the United States are compared and contrasted in Chapter 4. The purpose of this comparison is to better understand the contextual background of policy development and the emergence of the community protection model in North America. This chapter ends with a descriptive account of DOs and LTOs in Canada in an effort to set the stage for a more detailed discussion of those offenders receiving the LTO designation in B.C.

In the Methods Chapter (Chapter 5), the data sources of the current research are described, along with the procedures used to analyse these data. The secondary data source consists of files housed at the Forensic Psychiatric Services Commission (hereafter referred to as the FPSC) which contain both judicial reasons for judgment and/or sentencing for those offenders designated as LTOs in B.C., as well as the written mental health expert assessments conducted on these offenders. In an effort to expand on the findings and the trends and patterns that emerge in the analysis of these file data and to triangulate these file review data, a series of interviews were also conducted. A number of stakeholders were interviewed from a variety of sectors and agencies, including criminal justice and mental health officials, as well as community service providers. In addition to asking interviewees clarifying questions which arise out of the review and analysis of the file data, the interviews focus on the supervision and treatment of the LTO in B.C. Some resource and overall legal policy implications of the LTO designation are discussed. Interviewees are also given the opportunity to make suggestions for policy reform. The Methods Chapter exclusively discusses the methods that are used; no results are revealed in this section.

Chapters 6 and 7 outline the results of the analyses from the file data and the interview data, respectively. An in-depth review and interpretation of these findings is found in the Discussion Chapter (Chapter 8). Throughout this interpretation, reference is

made to relevant points mentioned in the History, Theory and Contextual Background Chapters. The secondary file review data findings and the primary interview data findings are also cross-referenced with one another here.

There are numerous legal policy implications flowing from the current research. A key aspect of the evaluative focus of this work is the determination of the extent to which Parliament's intentions have been satisfied by the way in which the legislation is being applied and the way in which LTOs are being supervised. In other words, a key policy implication of this research is the determination of whether the targets of the LTO designation are indeed the intended targets. The exploration and evaluation of the use of the designation in the first 10 years of its existence and the review of its various outcomes, both intended and unintended, shall assist criminal justice, mental health and other government officials in their ongoing pursuit of managing the risks posed by this unique subset of offenders.

The inclusion of the perspectives of these various officials has been lacking in the literature to date, and is absolutely essential here in revealing the various outcomes of this legislation and in addressing crucial service delivery concerns. It is also necessary to explore the potential for policy development and reform. While the current research is focused on the first 10 years of the application of the LTO provisions in B.C. alone, it serves as a template for future research that seeks to expand on this provincial focus to include all provinces and territories in Canada.

## **Chapter 2.**

### **The Development of Dangerous Offender Legislation in Canada: An Historical Overview**

The concept of dangerousness and the way in which it has been translated into legislation has evolved throughout the decades. The intended target of dangerousness legislation has transformed, as have the correctional measures used to deal with this particular subset of offenders. Although more recently, the reliance on preventive detention has received a great deal of criticism from civil rights activists, this notion of preventive detention is not new in Canada, and was in fact originally adopted from early 20<sup>th</sup> century British statutes.

This chapter provides an historical overview of the development and evolution of legislation dealing with the DO in Canada.<sup>1</sup> This overview is necessary at this point in the dissertation to set the stage for an evaluation of whether the current LTO designation truly stands apart from its predecessors, and also whether the current application of the LTO designation is indeed in line with Parliament's intentions. It begins with a discussion of the habitual offender and dangerous sexual offender provisions of the 1940s, and tracks the main changes in legislation from this point in Canadian history through to the current DO and LTO provisions, with particular emphasis on the latter.

Key government reports and Supreme Court cases are also included in this overview. More specifically, the Ouimet Committee Report and the Goldenberg

<sup>1</sup> See Appendix B for a diagram of this historical chronology.

Committee Report, both of which were particularly influential in the development of the current model of DO legislation, are discussed. The two key Supreme Court cases pertaining to the constitutionality of DO provisions and the application of the LTO provisions—i.e. *R v. Lyons* (1987) and *R v. Johnson* (2003), respectively - are also discussed here, along with post-*Johnson* cases. Finally, the most recent *Tackling Violent Crime Act* (2008) is reviewed.

## Initial Canadian Dangerousness Legislation

### The Habitual Offender Legislation

In 1947, habitual offender legislation was enacted in Canada (Canadian Committee on Corrections, 1969; MacAlister, 2005). This legislation stemmed from the English statute *The Prevention of Crime Act* of 1908, which legislated preventive detention. Under the Canadian habitual offender legislation, an offender designated as an habitual criminal could be sentenced for an indeterminate period of time for preventative purposes for a period up to life with annual review (Canadian Committee on Corrections, 1969). The goal of preventive detention under this legislation was not to punish the offender, *per se*, but rather to remove the persistent, chronic offender from society for a significant period (Canadian Committee on Corrections, 1969; MacAlister, 2005). The then-present *Criminal Code* section 660.2(a) defined the habitual criminal as a person who

[h]as, on at least *three separate and independent occasions* been convicted of an indictable offence for which he was liable to imprisonment for five years or more and is leading persistently a criminal life, or (b) he has been previously sentenced to preventive detention (Canadian Committee on Corrections, 1969, p 242, emphasis added).

From the time of the enactment of this legislation in 1947 and the amendments made in 1960 and 1961, section 660 of the *Criminal Code* allowed for both an indeterminate as well as a determinate sentence to be imposed on the habitual offender (Canadian Committee on Corrections, 1969). The determinate sentence was to be for

the specific offence of which the offender was convicted, while the indeterminate sentence was imposed solely to ensure the protection of society. In the legislative amendments made in 1960 and 1961, the determinate component was eliminated (Canadian Committee on Corrections, 1969).

### **The Dangerous Sexual Offender Legislation**

One year after the enactment of the habitual offender legislation in Canada, the dangerous sexual offender legislation was passed (Canadian Committee on Corrections, 1969). The dangerous sexual offender legislation was contained in the then-present *Criminal Code* sections 659, 661 and 662 (Canadian Committee on Corrections, 1969). As was defined in s. 659 of the *Criminal Code*, a dangerous sexual offender was a person

[w]ho, by his conduct in any sexual matter, has shown a failure to control his sexual impulses, and who is likely to cause injury, pain or other evil to any person, through failure in the future to control his sexual impulses or is likely to commit a further sexual offence. (Canadian Committee on Corrections, 1969, p. 253)

The dangerous sexual offender provisions required the courts to hear the evidence of at least 2 psychiatrists, one of whom was to be nominated by the Attorney General, and also required the courts to sentence all offenders receiving this specific designation to preventive detention (Canadian Committee on Corrections, 1969). Like the habitual offender legislation, the dangerous sexual offender legislation was patterned after the English *Prevention of Crime Act* of 1908, as well as the criminal sexual psychopath legislation that had been gaining popularity in the United States (Heilburn et al., 1999).

As mentioned, amendments were made in 1960 and 1961. The reason for the amendments revolved mainly around the lack of clarity in the definition of the dangerous sexual offender, lending to uncertainty and making it difficult to meet the legal standard of proof (Petrunik, 1994). These amendments resulted in the elimination of the determinate component of sentencing that had been permitted under section 660 of the *Criminal Code*. Modifications to the three-conviction requirement were also made at this

time. Now, a finding of dangerousness was possible after only one conviction of the listed offences, and this conviction could be for the offence upon which the application of dangerousness was based (MacAlister, 2005).

Despite these changes, concerns with these initial DO provisions intensified between the 1960s and the 1980s. These critiques were based primarily on the findings of social science research, which drew attention to the errors made by mental health experts in accurately diagnosing mental disorder, and particularly psychopathy (Petrunik, 2002). The efficacy of treatment programs was also being questioned (Winick, 1998). Furthermore, civil rights arguments emerged during this period, criticizing the use of indeterminate sentencing options (MacAlister, 2005).

## **Government Committee Reports**

In response to these concerns, government committees were formed and charged with the duty of evaluating the effectiveness of these policies. The Report of the Canadian Committee on Corrections of 1969, also known as the Ouimet Report (chaired by Roger Ouimet), and the Report of the Standing Senate Committee on Legal and Constitutional Affairs, also known as the Goldenberg Report (chaired by the honourable H. Carl Goldenberg), were particularly influential in outlining some of the concerns with the then-current habitual offender and dangerous sexual offender provisions. In this section, these concerns as well as the relevant recommendations made by these committees are discussed.

### **The Ouimet Committee Report**

The Ouimet Committee Report of 1969 was instrumental in outlining some of the concerns with the habitual offender legislation and the dangerous sexual offender legislation (Canadian Committee on Corrections, 1969). Following their examination of the 159 persons who had been designated as habitual criminals between the enactment of the legislation in 1947 and August of 1968, the Committee found that the habitual offender legislation had *not* been applied in a consistent and rational manner and, as such, the deterrent effect of this legislation was described by the Committee as

insignificant (Canadian Committee on Corrections, 1969). In an effort to determine whether the legislation had in fact been used to target non-DOs, the offences of those persons who were serving a sentence of preventive detention as habitual offenders were analyzed. The findings of this examination revealed that the vast majority of the offences committed (approximately 55%) were in fact for theft and break-and-enter, while approximately 8% were offences against the person, ranging from assaults to armed robbery (Canadian Committee on Corrections, 1969).

As a result of these findings, the Committee concluded that the habitual offender legislation had not been used as intended and that close to 40% of those offenders who had been subject to preventive detention under this legislation did not in fact pose a threat to the personal safety of the public (Canadian Committee on Corrections, 1969). The Committee also found that the legislation had been applied quite unevenly across the nation, with British Columbia accounting for over half of these cases. Interestingly, similar findings had previously been revealed in English studies conducted to determine the utility of preventive detention outlined in the *Prevention of Crime Act* of 1908, with this *Act* nonetheless serving as the template for the Canadian habitual offender legislation (Canadian Committee on Corrections, 1969).

In the end, the Ouimet Committee recommended that the habitual offender provisions be repealed. This legislation was found to be too broad in scope and was being applied to non-DOs (Canadian Committee on Corrections, 1969). The Committee's recommendation to repeal the legislation was also based on the legislative requirement that eligible offenders be previously convicted of the requisite three indictable offences, as had been outlined in s. 660.2(a) of the *Criminal Code*, a requirement that put many offenders who committed cruel and brutal acts out of the reach of these provisions.

In comparing the application of the habitual offender legislation to the application of the dangerous sexual offender legislation, the Committee noted that the latter had in fact been more uniformly enforced throughout Canada, although significant disparities did persist (Canadian Committee on Corrections, 1969). As in their examination of habitual offenders, the Committee reviewed the cases of those offenders who had been

designated as dangerous sexual offenders since the enactment of the legislation in 1948 through to February of 1968. This snapshot revealed that there were, at that time, 57 persons in Canadian penitentiaries who had been sentenced to preventive detention as dangerous sexual offenders (Canadian Committee on Corrections, 1969).

The concerns of the Committee regarding the dangerous sexual offender legislation revolved primarily around the difficulties with the accurate identification of the dangerous sexual offender (Canadian Committee on Corrections, 1969). In fact, at the outset of the chapter in the Report dedicated to the DO, the Committee emphasized the immediate need for research to assist in the identification of this sub-population of offenders, which in turn would assist in reducing the use of imprisonment as a correctional measure for those offenders who were deemed to be non-dangerous. In their discussion on the identification of these offenders, the Committee made reference to the work of psychiatrists in the field who have highlighted the difficulties involved in accurately determining whether or not an offender is a dangerous sexual offender on the basis of one or two interviews with the offender (Canadian Committee on Corrections, 1969). As such, the Committee concluded that the basis upon which the dangerous sexual offender designation had rested was itself inadequate (Canadian Committee on Corrections, 1969).

As a result of their examination, the Committee also recommended that the dangerous sexual offender legislation be repealed. This recommendation was based on the following considerations: that the legislation was being applied to non-dangerous sexual offenders, that the then-current basis upon which a person was found to be a dangerous sexual offender was inadequate, and that the population of DOs includes both sexual and non-sexual offenders, while this legislation only recognized and targeted the former (Canadian Committee on Corrections, 1969). The need to precisely define the criteria of dangerousness and to provide an appropriate clinical procedure for identifying the DO was emphasized here (Canadian Committee on Corrections, 1969). The Committee envisioned this DO definition as including both sexual and non-sexual offenders, to the exclusion of situational offenders, offenders involved in organized crime, and essentially all those offenders who did not represent a *continuing* danger to society. Moreover, the Committee indicated that the intent of the proposed legislation



was to not only *protect the public*, but also to *treat the DO* (Canadian Committee on Corrections, 1969).

This proposed legislation included the option of imposing either a determinate or indeterminate sentence on the DO, at the discretion of the judge. The indeterminate sentencing scheme was deemed justifiable in order to allow for the protection of the public in only those more serious cases (Canadian Committee on Corrections, 1969). The appropriateness of this preventive detention component of the sentencing options proposed here persisted despite its abolition in England the previous year, in 1967, when the *Prevention of Crime Act* of 1908 was repealed and the new *Criminal Justice Act* was passed (Canadian Committee on Corrections, 1969).

### **The Goldenberg Report**

In 1974, the Goldenberg Committee Report was released. This report, titled "Parole in Canada," essentially provided a review of the Ouimet Committee Report, accepting the principle conclusions made by this Committee. More specifically, the Goldenberg Committee accepted the conclusion that this legislation was capable of - and was in fact - being applied against sexual offenders who were not dangerous (The Standing Committee on Legal and Constitutional Affairs, 1974). Moreover, the Goldenberg Committee reiterated the need to accurately identify and also assess those offenders who are deemed to be dangerous (The Standing Committee on Legal and Constitutional Affairs, 1974). The Report went on to state that the circumstances surrounding the offence are of utmost importance, and must receive adequate consideration in the determination of dangerousness. Examining the 'character' of the accused through the use of psychiatric examinations and social case histories was also recommended here (The Standing Committee on Legal and Constitutional Affairs, 1974).

With respect to indeterminate sentencing, the Goldenberg Committee concurred with the Ouimet Committee's finding that such sentences are justifiable and appropriate, but only for those offenders found to be dangerous (The Standing Committee on Legal and Constitutional Affairs, 1974). Moreover, the Committee emphasized in their Report that they concur with the Ouimet Committee's position that the dangerous sexual

offender is only one category of DOs and that the then-current legislation failed to recognize that in fact there are other categories of DOs against whom society must also be protected (The Standing Committee on Legal and Constitutional Affairs, 1974). The Committee goes so far as to state that there exists a need to control offenders who are dangerous even in those cases where there is believed to be a slight possibility the offender does not in fact pose a continuing threat of danger (The Standing Committee on Legal and Constitutional Affairs, 1974). Clearly, public protection continued to be a high priority in the development of DO policies.

## **The 1977 DO Legislation**

The direction of the Ouimet and Goldenberg Committee Reports served as the basis for the new DO legislation, passed in 1977. In fact, these government reports have been described as being even more influential in policy changes with respect to DO legislation than research findings highlighting the difficulties in predicting dangerousness with any degree of accuracy (Petrunik, 1982). These reports have also been described as more influential than the growing criticisms by civil libertarians who questioned the constitutionality of indeterminate sentencing (Petrunik, 1982).

Certainly, the timing of these debates had an enormous impact on the new ways of dealing with the DO. As Petrunik (1982) highlights, the 1977 changes must be understood within the context of the Federal Government's Peace and Security legislation, outlined in Bill C-84, which resulted in the abolition of capital punishment (Heilburn et al., 1999; Petrunik, 1982). Essentially, in order to succeed in abolishing capital punishment while maintaining the support of the public, whose fears of the DO were growing, a compromise was needed (Petrunik, 1982). This compromise came in the form of the new and broader DO legislation of 1977, which continues to serve as the basis of the current DO provisions.

The sole focus of the previous DO legislation, as mentioned, was the dangerous sexual offender to the exclusion of other categories of DOs. The changes enacted in the 1977 legislation essentially widened the net, extending the arms of the legislation to a

larger pool of potential offenders who would have escaped the designation in the former era, namely the violent but non-sexual offender group (Bonta et al., 1998).

Under this new legislation, Crown counsel was responsible for initiating the application for the DO designation, with the Attorney General consenting to such an application (MacAlister, 2005). In a DO hearing, the court was required to hear from at least 2 psychiatrists, one nominated by the Crown and one nominated by the offender; a criminologist's testimony was also optional under the legislation (MacAlister, 2005). If the statutory criteria for the designation were met, the declaration of dangerousness was required; the only discretion the judge had was to decide between imposing a determinate or indeterminate sentence upon the offender once the declaration of dangerousness had been made (MacAlister, 2005). In the case that the indeterminate sentencing option was chosen, the National Parole Board (hereafter referred to as the NPB) was required to review the sentence three years following the imposition of the sentence, and every two years thereafter (Connelly & Williamson, 2000). Under the 1977 provisions, parole eligibility was available for offenders after serving three years in custody (MacAlister, 2005).

### **The New DO Provisions in the Post-*Charter* era**

In 1982, only five years after the enactment of the new DO legislation, the Constitution of Canada was amended, and the *Charter of Rights and Freedoms* was enacted. Now, civil liberty arguments questioning the constitutionality of the DO legislation were intensifying, claiming that the designation of dangerousness was arbitrary and that it constituted cruel and unusual punishment, contrary to the *Charter*. The key Supreme Court case where the constitutionality of the legislation was challenged was that of *R v. Lyons* (1987). In this section, the circumstances of the *Lyons* case and the conclusions of the majority of the Supreme Court of Canada are discussed, with specific reference to the section 7, 9, 11 and 12 *Charter* arguments that were put forth in this case.

### ***R v. Lyons (1987)***

In the *R v. Lyons* (1987) case, the accused, Thomas Lyons, had pled guilty to four charges laid against him, including unlawfully breaking and entering a dwelling, unlawfully using a weapon or imitation thereof in committing a sexual assault, unlawfully using a firearm while committing an indictable offence, and unlawfully stealing property. Upon commencement of the sentencing hearing, Crown counsel initiated a DO application. Defence counsel argued that the *Criminal Code* provisions pertaining to DOs offended sections 7, 9 and 11(f) and 12 of the *Canadian Charter of Rights and Freedoms*. The trial judge rejected this argument, granted the Crown's application, and concluded that it had been proven beyond a reasonable doubt that the DO criteria were satisfied. An appeal was made on Lyons' behalf to the Nova Scotia Supreme Court (Appeals Division) and this appeal was dismissed. Leave to appeal to the Supreme Court of Canada was then granted.

At the Supreme Court of Canada, three issues were considered. The first issue was whether the DO provisions did violate sections 7, 9, 11 and/or 12 of the *Charter*. If so, the next issue to consider was whether the violation(s) were justifiable under s. 1 of the *Charter*. The final issue was whether there were other procedural violations of the *Charter* in this case. The majority of the Supreme Court panel of judges ruled that the DO provisions do not contravene these specified sections of the *Charter of Rights and Freedoms*. In the following paragraphs, each of these *Charter* claims and the majority's response to these claims are discussed.

With regards to the section 7 challenge—the section protecting the right to life, liberty and security of the person—Justice LaForest, writing for the majority, noted that the provisions do not violate Lyons' right to life, liberty and security (*R v. Lyons*, 1987). In support of this position, La Forest J. noted that the DO provisions of the *Criminal Code* do not authorize punishment for crimes for which an accused is not being tried or might do in the future; rather, the legislation simply authorizes punishment for the serious personal injury offence which the accused has been found guilty of committing. Second, La Forest noted that the provisions are consistent with the purpose of sentencing. The legislative intent is to protect society and serves both a punitive and

preventative role. As such, La Forest J. maintained that the provisions appropriately enable the court to consider the reality that the offender is not inhibited by normal standards of behavioural restraint. The standard of proof and the use of psychiatric evidence were also deemed not to be in violation of section 7 of the *Charter*, neither was the Crown's failure to notify the defendant of the application prior to the defendant's trial election and plea.

The DO provisions were also found not to violate section 12 of the *Charter*, which protects against cruel and unusual punishment (*R v. Lyons*, 1987). The majority in this case ruled that the legislative objectives were deemed to be sufficiently important to warrant limiting the rights and freedoms of DOs. Moreover, the majority ruled that the legislative classification of DOs was considered to meet the standards of rationality and proportionality; the preventive detention of DOs was deemed to not constitute cruel and unusual punishment; and finally, persons within the classification were said to demonstrate characteristics that make such detention necessary. La Forest J. also noted that the parole process in fact ensures that the sentences imposed under these provisions were not entirely indeterminate and that, in fact, incarceration may be imposed for only as long as the circumstances require.

With respect to the section 9 claim, the majority in this case ruled that the DO provisions do not result in arbitrary detainment or imprisonment (*R v. Lyons*, 1987). La Forest J. defended the majority's conclusion here by highlighting that, in fact, the incarceration applies only to a narrowly defined class of DOs, and that the criteria set out in the DO provisions are not arbitrary in relation to the legislation's objectives to protect and to punish. Much of the defence's concern in the *Lyons* case revolved around the amount of prosecutorial discretion involved in initiating the DO application process. La Forest J. described this prosecutorial discretion as not only logical, but in fact crucial to ensure that the selection process is reasoned and justifiable, based on evidence made available as the case proceeds through the trial process.

Finally, with respect to section 11(f) of the *Charter*, which states that anyone charged with an offence has the right to a jury trial where the maximum punishment for the offence is imprisonment for 5 years or more, the majority stated that the DO

application hearing has nothing to do with *charging* the offender (*R v. Lyons*, 1987). Rather, La Forest J. noted that the application process and the DO hearing are part of the sentencing stage of the criminal justice process with respect to an offender who has already been convicted of the offence for which he or she was charged. As such, the majority concluded that the provisions do not violate section 11(f) of the *Charter*.

## **The 1997 Amendments to the DO Provisions**

In the years leading to the development of the most recent version of DO provisions in Canada, many significant events had occurred in North America that called for political (re)action to what was perceived to be an increasing risk posed by dangerous, and primarily sexual, offenders. While there were many factors contributing to the development of the current, more restrictive provisions dealing with DOs in Canada, the murder and subsequent investigation into the death of 11-year-old Christopher Stephenson in Ontario in 1988 has been described as one of the most prominent (Grant, 1998). This high-profile case, much like similar cases in the United States played a significant role in instigating the development of a task force and eventually the development of modifications to the existing DO policy structure, passed in 1997. While these 1997 provisions are based almost entirely on the 1977 version of this legislation, there are some significant modifications that were made at this time. These changes have been described as illustrating an even more prominent “community protection” approach in the handling of DOs in this country.

As mentioned above, sections 753(1)(a)(i-iii) and 753(1)(b) of the *Criminal Code* outline the current DO provisions. These provisions include the requirement that the offence that leads to a DO application be a serious personal injury offence, defined primarily as sexual in nature, with the behaviour in question being repetitive, persistent, aggressive, and/or brutal (*Criminal Code*, 1997). Included in the provisions is the notion that the DO is one who is unable to control his impulses, with normal standards of behavioural constraints being ineffective (*Criminal Code*, 1997).

One element that remained constant in the 1997 changes is prosecutorial discretion. It is still in the hands of Crown counsel to put forth a DO application in those cases where they deem such a designation is warranted, and the consent of the Attorney General is still required in order to proceed with such a hearing.

One significant change was made with regards to the hearing of psychiatric testimony. No longer is the court required to hear testimony from two duelling psychiatrists. Rather, the new scheme calls for the use of a single assessment, which is described as being potentially more neutral and less contentious than the previous model (MacAlister, 2005). Moreover, establishing the criteria of dangerousness no longer automatically results in a finding of dangerousness. Instead, in addition to proving that a serious personal injury offence had been committed, Crown must also establish the offender's dangerousness as outlined in section 753(1) of the *Criminal Code* (Criminal Code, 1997). The new legislative scheme does, however, take away the judge's discretion in choosing between a determinate or indeterminate sentence; now, an indeterminate sentence is required in those cases where the criteria for both the serious personal injury offence and the finding of dangerousness have been established (MacAlister, 2005). Finally, the three-year parole eligibility period was extended to 7 years.

Perhaps the most significant addition to the DO provisions in 1997 was the inclusion of the LTO status.<sup>2</sup> While much of the language used in the original DO provisions have been replicated here, the key difference is that there is perceived to be a reasonable possibility of controlling the LTO in the community (Eaves et al., 2000). The designation is in fact based on a risk of recidivism assessment that indicates whether the offender may eventually be managed in the community, granted that the necessary

<sup>2</sup> Recognizance, or peace bond, provisions outlined in sections 810.1 and 810.2 of the *Criminal Code* have also been described as particularly significant, yet fall outside of the scope of this dissertation, which sets out to focus on long-term supervision.

supervision, intervention and treatment are made available to the offender (Solicitor General, 2001).

This LTO status is not nearly as restrictive as the DO designation, which requires indeterminate sentencing, and not as ‘forgiving’ as conventional sentencing, which does not necessitate post-sentence supervision. It essentially extends the length of time that an offender is supervised by the Correctional Service of Canada (hereafter referred to as the CSC) by allowing for their post-sentence supervision in the community. The supervision order, and the conditions outlined in this order, does not commence until the offender’s warrant expiry date, which marks the official end of the determinate sentence which has been imposed upon the offender for the index offence (Solicitor General, 2001). This does not, however, preclude the LTO from consideration for conditional release, a period during which the conditions of the long-term supervision order (hereafter referred to as LTSO) would in fact not apply (Solicitor General, 2001). The maximum number of years for which the offender can be supervised under this order is 10 years (Solicitor General, 2001).

As outlined in section 753(5) of the *Criminal Code*, the LTO application may be the result of a failed DO application. More specifically, if a DO application is unsuccessful

- (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 (*Criminal Code*, 1997).

The LTO status can also be declared as a result of a standalone application made by Crown counsel. As outlined in section 753.1(1) of the *Criminal Code*,

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 re-offend; and
- (c) there is a reasonable possibility of eventual control of the risk in the community (*Criminal Code*, 1997).

As in the case of a DO application, the Attorney General must consent in order for a LTO hearing to occur. Also as in the case of the DO designation, the hearing for LTO status occurs in front of a judge only.

Section 753.1(3) of the *Criminal Code* outlines what the court shall do in the case that an offender is declared to be a LTO. According to this section, the court shall

- (a) impose a sentence for the offence for which the offender has been convicted, which sentence must be a minimum punishment of imprisonment for a term of two years; and
- (b) order the offender to be supervised in the community, for a period not exceeding ten years, in accordance with section 753.2 and the *Corrections and Conditional Release Act* (*Criminal Code*, 1997).

As outlined in section 134.1(1) of the *Corrections and Conditional Release Act*, the conditions imposed upon the LTO are set by the NPB, are valid for as long as the Board specifies, and may be varied by the Board at any time during the long-term supervision of the offender (*Corrections and Conditional Release Act*, 1997). The breach of an LTO condition is considered to be an indictable offence (Solicitor General, 2001). An offender who is designated as an LTO remains under the federal jurisdiction until the expiration of the supervision order (Solicitor General, 2001).

### **The Application of the LTO Provisions: *R v. Johnson* (2003)**

While the long-term offender designation was added to the *Criminal Code* in 1997, it was not until 2003 when the Supreme Court of Canada rendered the *Johnson* decision, providing the courts with guidance on how to decipher between the DO and the LTO designations. This case was decided upon at the same time as *Edgar* (2003),

*Smith* (2003), *Mitchell* (2003) and *Kelly* (2003). Each of these five cases was on appeal from the B.C. Court of Appeal and was made by Crown in an effort to reverse the British Columbia Court of Appeal's decision allowing the accused individuals to appeal the DO designations imposed upon them in trial court.

In each of these cases, the accused committed the offences prior to the new LTO provisions, but the sentencing hearings were held after these amendments were made. While the sentencing judge in *Johnson* held that the accused was not entitled to the LTO provisions, and was to be designated as a DO and sentenced to an indeterminate sentence, the Court of Appeal allowed the appeal and ordered a new sentencing hearing. The Court of Appeal held that pursuant to section 11(i) of the *Canadian Charter of Rights and Freedoms*, the accused was in fact entitled to the benefit of the lesser punishment available under the new regime, so that the trial judge was required to consider the LTO provisions.

These cases were subsequently appealed by Crown to the Supreme Court of Canada, where the Crown's appeal was dismissed and the B.C. Court of Appeal's decision to send the cases back to trial court was affirmed. There were several issues discussed and guidelines provided by the Justices of the Supreme Court of Canada with respect to the applicability of the LTO designation.

One of the key issues discussed in this case deals with the sentencing judge's discretion to declare an offender as dangerous once the statutory criteria have been satisfied. In this regard, the majority stated

that there is no indication of a duty to find an offender dangerous once the statutory criteria have been met.....[n]either the purpose of the dangerous offender regime, nor the principles of sentencing, nor the principles of statutory interpretation suggest that a sentencing judge *must* designate an offender dangerous if the statutory criteria in s. 753(1)(a) or (b) have been met (para. 18, emphasis added).

The majority went on to state that the primary purpose of the DO regime is the protection of the public and that a judge's discretion whether to declare an offender dangerous must be guided by the relevant principles of sentencing contained in ss. 718 to 718.2 of

the *Code*. These include the principle of proportionality and, most relevant to this appeal, the principle of restraint.

The Supreme Court in *Johnson* also noted that “a sentencing judge *must* consider the possibility that a less restrictive sanction would attain the same sentencing objectives that a more restrictive sanction seeks to attain” (para. 28, emphasis added) and that the imposition of the respective indeterminate sentence is justifiable only insofar as it actually serves the objective of protecting society. Stated simply, prospective factors, including the possibility of eventual control of the risk in the community, must be considered prior to a DO designation.

With respect to legislative intent, the Supreme Court Justices in *Johnson* stated that Parliament did not intend the DO provisions and the LTO provisions to be considered in isolation of one another. Following from this, then, it is emphasized that an error of law can be said to have occurred in cases where the sentencing judge fails to consider the availability of the LTO provisions. Justices Iacobucci and Arbour, for the majority, went as far as to state that

it is in only the rarest of circumstances, if any, that there will be no reasonable possibility that the sentencing judge would have imposed a different sentence but for the error.....[A]bsent a thorough inquiry into the suitability of the long-term offender provisions at the sentencing hearing, it will be difficult, if not impossible, for an appellate court to be satisfied that the sentencing options available pursuant to the long-term offender provisions would have been incapable of reducing the threat of harm to an acceptable level (para. 50).

Finally, as indicated earlier, the accused committed the offences prior to the new LTO provisions, but the sentencing hearings were held after these amendments were made. The question the court is left with, then, is whether the sentencing judges in these cases were required to consider the applicability of the LTO provisions. As stated by the majority in *Johnson*, “[t]he introduction of the LTO provisions expands the range of sentencing options available to a sentencing judge who is satisfied that the DO criteria have been met...[T]he result is that some offenders who may have been declared dangerous under the former provisions could benefit from the LTO designation available under the current provisions” (para. 44). The majority in *Johnson* concluded that the BC

court of Appeal was indeed correct to state that the sentencing judges were required to consider the applicability of the LTO provisions, pursuant to s. 11(i) of the *Charter*.<sup>3</sup>

In sum, the court in *Johnson* noted that there is no reasonable possibility to conclude that the respondent would not have been declared a LTO if the sentencing judge had considered the LTO provisions when determining whether to declare him as dangerous. Following from this reasoning, as already stated, the Supreme Court of Canada upheld the B.C. Court of Appeal's ruling that a sentencing judge must take into account the LTO provisions prior to declaring an offender as dangerous and imposing an indeterminate sentence, and the case was sent back to trial. In 2004, Johnson was in the end declared an LTO in the B.C. Supreme Court, and the LTO supervision order length was set at the legislated maximum of 10 years.

### **The Application of the LTO provisions: Post-Johnson**

Since *Johnson*, the issue of eventual control of risk in the community, as outlined in s. 753.1(1) (c) of the *Criminal Code*, has been addressed in appellate court cases in Canada on numerous occasions. A Quicklaw search of appellate court cases in which s. 753.1(1) (c) was raised identified a total of 21 cases nationwide. A review of these appellate court cases from 2003 thru to 2010 reveals several common factors that enter into the judicial reasoning on this point. In this section, the factors that are raised in the RFJ are outlined.

In 12 of these 21 cases, the appeal from the DO designation was dismissed and the DO designation imposed by the trial judge was upheld. The offender's treatment history and also the evaluation of the offender's treatability were prominent factors considered in the decision to uphold the DO designation in these cases. Other factors considered in these cases in the interpretation of the possible eventual control of risk in

<sup>3</sup> S. 11(i) of the *Charter* provides that any person charged with an offence has the right if found guilty of the offence and if the punishment for the offence has been varied between the time of the commission and the time of sentencing, to the benefit of the lesser punishment.

the community include: the mental health expert's overall assessment of risk and, including the offender's assessment score(s) and/or a finding of psychopathy; the offender's overall attitude and acceptance of responsibility for his offending behavior, as well as the offender's expressions of remorse; and the offender's age. Public protection was emphasized as a key sentencing goal in these cases.

A lack of resources to address the offender's treatment and/or supervision needs was also included in the judicial consideration in some of these cases. For example, in *R v. RET* (2005), the fact that the supervisory facilities and programs available in the community for LTOs were limited, thus requiring self-management on the part of the offender, was a prominent factor leading to the decision that the offender could not be managed in the community.

With respect to the Crown's duty in these cases, it is stated in the B.C. case of *R v. Wormell* (2005) that the *Johnson* case does not state that the Crown must prove beyond a reasonable doubt that there is no reasonable possibility that the offender will eventually be manageable in the community. All that is required, rather, is that the court be satisfied that there is a reasonable possibility of eventual control of risk in the community. This position is stated again in the Saskatchewan case of *R v. Moosomin* (2008).

Finally, the details of the nature and seriousness of the offence and the characteristics of the victim were considered in these cases. For example, in *R v. DVB* (2010), the fact that the appellant was a pedophile factored into the determination of whether there was in fact a reasonable possibility of eventual control of risk.

Interestingly, the relationship between the LTO designation and s. 810.2 of the *Criminal Code* was also raised in the *R v. DVB* (2010) case. In this Ontario case, the appellate court expressly stated that s. 810.2 ought to be viewed solely as a "safety valve put in place to address those cases where the optimistic outcome envisaged by s. 753.1(1) (c) turns out to be unwarranted" (para. 56), and that s. 810.2 was not intended to protect society from those offenders who have failed to satisfy the requirements set out in s. 753.1 (1)(c).

In an additional 3 cases, the DO designation imposed by the trial court was set aside and either a new hearing was ordered (this occurred in 2 cases) or a determinate sentence was imposed (this occurred in one case). In both of the cases in which a new hearing was ordered (*R v. Ferguson* (2005) and *R v. Rathwell* (2005)), both of which are Ontario cases, it was stated that the trial judge erred in not considering the applicability of the LTO designation, and in both cases, it was found that the outcome would not have necessarily been the same had the LTO designation been considered. More specifically, in *R v. Ferguson* (2005), it was stated that the LTO designation cannot be reached by elimination, and that it is possible to meet the criteria for both the DO and the LTO designation. In the third case, *R v. Aylward* (2009), which was heard in the Nova Scotia Court of Appeal, it was decided that the DO designation could not be imposed in the absence of an application for this status, and a determinate sentence was imposed in lieu of the DO designation. In this case, the application for the LTO status was jointly made by Crown and defence counsel, and the appellate court noted that the trial judge could not then treat the LTO application as a DO application, nor could the trial judge consider the DO status without the Attorney General's consent to do so.

In an additional 3 cases, the LTO designation imposed by the trial judge was set aside and the DO designation was imposed instead, and in one other case, the LTO designation was set aside and a new hearing to consider the applicability of the DO designation was ordered. In one of the former cases (*R v. GL* (2007)), the legislative purpose of public protection was emphasized, as well as the resourcing limitations which made the supervision conditions recommended by the trial judge unrealistic. Treatability of the offender was raised in the other two cases in which the LTO designation was replaced by the DO designation (*R v. Johnson* (2008) and *R v. Goforth* (2007)), as well as in the case where the LTO designation was set aside and a new hearing to consider the DO designation was ordered (*R v. JSM* (2003)). Other factors to consider outlined in *R v. Goforth* (2007) specifically include: mental health expert testimony; offender's degree of denial; impulsivity; lack of commitment to deal with proclivity for violence; and failure on the part of the trial judge to consider whether the offender's problems could reasonably be addressed during the determinate portion of the offender's sentence.

Finally, in both *R v. Bouillon* (2006) and *R v. Moosomin* (2008), the LTO designation that was imposed by the trial judge was upheld in the respective appellate court. Factors that were dominant in the *Moosomin* (2008) case include the offender's stated desire to change and evidence of the offender seeking help to change. Despite the fact that the offender in this case had continued to offend despite years of participation in treatment programs, the offender's attitude in this regard was heavily weighted in the appellate court's reasoning.

In sum, it is clear that treatment history and prospects for treatment are key factors considered in determining whether there exists a reasonable possibility of eventual control of risk. In addition to this, the mental health expert's assessment of risk; the offender's attitude and willingness to change; the availability of resources; and the nature and seriousness of the offence were included in the reasoning of the courts in these appellate level cases, to varying degrees. Public protection was clearly outlined as the dominant sentencing goal of the dangerous offender regime.

### ***Tackling Violent Crime Act (2008): The Future of Judicial Decision-Making in DO/LTO Cases***

While the timeframe of the current research is from 1997 to 2007, thus preceding the most recent 2008 amendments to the *Criminal Code*, it is appropriate to briefly review these changes which will surely impact the future of judicial decision-making in DO and LTO cases in Canada. The main goals of this new legislation with regards to the DO focus are outlined in *Bill C-2* (Barnett, MacKay & Valiquet, 2007). First, clause 41 of the bill, now found in s. 752.01 of the *Criminal Code*, increases the likelihood that a DO application will be pursued as it requires Crown to make a declaration as to whether or not it had considered a DO application in all cases that an individual is convicted of a third designated serious violent/sexual offence. Moreover, clause 42(2) of the bill, now found in s. 753(1.1) of the *Criminal Code*, creates a presumption of dangerousness by placing the onus on any individual convicted three or more times of specific violent/sexual crimes to convince the court *not* to impose the DO designation.

Further, clause 42(1) of the bill states that, if the statutory conditions for a finding of dangerousness are met, such a finding *shall* be made. This differs from the former wording of s. 753(1) of the *Code*, when it was stated that such a finding *may* be made. While requiring the finding of dangerousness, however, this clause gives the court the discretion to choose whether an indeterminate sentence is necessary to protect the public or whether a lesser sentence would accomplish this, thereby amending s. 753(4) and (4.1) of the *Code*. This lesser sentence may be a determinate sentence for the offence, or a determinate sentence followed by an LTSO. In the case that such an offender is later convicted of a serious personal injury offence or a breach of an LTSO, clause 43 of the bill (adding new subsection 753.01(1) to the *Code*) requires that the offender be assessed by experts, and allows the court to impose either an indeterminate sentence (adding new subsection 753.01(5) to the *Code*) or to impose a determinate sentence followed by an additional LTSO (adding new subsection 753.01(6) to the *Code*). This, in essence, facilitates the conversion of an LTSO to an indeterminate period of incarceration in breach cases.

While a full analysis of the potential impacts of these amendments is beyond the scope of the current research, there are some features of these amendments that are worth highlighting here. The reverse onus feature introduced in the *Act* may arguably be the most likely feature to be challenged in the courts in future DO proceedings. The precedent set in *Oakes* (1986) establishes that reverse onus provisions violate the presumption of innocence entrenched in s. 11(d) of the *Charter*. While the legislative objective of the DO regime has already been deemed to be sufficiently important (*R v. Lyons*, 1987), it remains unclear how the reverse onus is *necessary* in order to achieve the intent of the DO legislation, which is ultimately the protection of society. It also remains unclear how the former regime failed to provide Crown with the necessary tools to put forth a DO application if the criteria are satisfied. Having said that, though, the presumption of innocence guaranteed in s. 11(d) of the *Charter* applies to ‘accused’ individuals, and in these DO cases, the individuals have already been convicted and, therefore, are no longer ‘accused.’

Also, the automatic finding of dangerousness that emerges in this new *Act* had, in fact, been eliminated in the 1997 amendments and this reintroduction signifies a



marked departure from an established history of the acceptance of judicial discretion to ensure the appropriateness of sentences. Actually, as outlined earlier in this chapter, a judge's failure to give adequate consideration to the less severe LTO designation is a failure that has been described by the Supreme Court Justices in *Johnson* as amounting to an error in law.

While critics may argue that it is likely that these changes will raise *Charter* challenges in future DO proceedings, the direction of future judicial decision-making in the arena of DO legislation remains to be seen. At first glance, though, these amendments do suggest that the pendulum has begun to swing back to an era when the objective of protecting society was used to justify legislation that goes beyond what is deemed to be a minimal impairment of offender rights.

## **Chapter 3.**

### **Theoretical Considerations in Designating Dangerousness and Assessing Risk**

While the general notion of dangerousness itself has a long history, the way in which the notion of dangerousness, and more recently the notion of risk, is currently conceptualized in legislation is the product of decades of change. These changes are intricately linked to changes in the theoretical explanations of dangerousness and risk. These explanations began with the view of offenders as rational and accountable for their behaviours. They then shifted to the view that the violent offender is ill and in need of rehabilitation and treatment. The traditional criminal model then re-emerged, followed finally by the current populist approach, which is concerned with community protection and the management of risk. Petrunik (2003) discusses this evolution and outlines the features of three distinct models of dangerousness: the forensic-clinical model, the justice model, and the current community protection model.

The purpose of this chapter is to explore this theoretical evolution. This overview begins with a discussion of the definition of dangerousness and how it has changed to include a preoccupation with the management of risk. This includes a more detailed examination of Petrunik's models listed above. This overview also focuses on the emergence of a new penology, which theorists such as Feeley and Simon (1992, 1994) term actuarial justice.

The focus then shifts to include a critical dialogue of the role of mental health experts in the designation and prediction of dangerousness and the assessment of risk, and the impact that this role has had on our ability to accurately identify and treat both the dangerous and the long-term (i.e. presumably 'less dangerous') offender.

## **Shifting Models of Dangerousness: The Predecessors to the Current Community Protection Approach**

### **The Forensic-Clinical Model**

In the late 1800s and early 1900s, the classical liberal criminological approach dominated the management of offenders (Petrunik, 2003) who were seen as rational individuals. Crime was viewed as a choice and, as such, offenders were to be held accountable for their actions. Principles of due process were emphasized during this period, and the goal of sentencing was to ensure that punishments were proportionate to the seriousness of the offences committed (Petrunik, 2003). Determinate sentencing was a central component of the classical approach.

Emerging in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, the forensic-clinical approach challenged the classical conceptions that were being applied to sexual offenders. In contrast to the due process concerns that were dominant in the classical era, proponents of the forensic-clinical model were more concerned with the treatment of the sexual offender (Petrunik, 2003) who, once believed to be criminal, was now being defined as ill (Winick, 1998). The policy outcomes of this changed conceptualization were clear: the sexual offender, who was once punished and sentenced determinately, was now subjected to rehabilitative efforts and sentenced indeterminately. Specialized facilities were designed to treat this sub-group of the offender population (Winick, 1998). This treatment model was premised on the assumption that sex offenders suffered from some mental or personality disorder and that it was indeed possible for mental health experts to reliably and validly define, diagnose, and treat these disorders (Petrunik, 2002).

### **The Justice Model**

Between the 1960s and the 1980s, critiques of the forensic-clinical model intensified. These critiques were primarily based on the findings of social science research, which drew attention to the errors made by mental health experts in diagnosing mental disorder (Petrunik, 2002). The efficacy of treatment programs was also being questioned (Winick, 1998). Critiques that emerged during this time period were also based on civil rights arguments questioning the constitutionality of the DO

provisions, as outlined in Chapter 2. Alongside the intensification of these arguments, influential government reports also described in Chapter 2, and the development and eventual passage of the *Charter* in 1982, the justice model emerged. Essentially, the illness model was being replaced by the traditional criminal model (Winick, 1998).

The justice era was characterized by a renaissance of classical principles, emphasizing due process and proportionate sentencing (Petrunik, 2003). This justice model was premised on the notion that all sane offenders do indeed act rationally, weighing the benefits and potential risks of their behaviours, and can therefore be deterred through the use of appropriate determinate sentencing (Petrunik, 2002). While offender rehabilitation was the emphasis of the forensic-clinical model, principles of individual civil rights and equality under the law were central to the justice model (Petrunik, 2002). The status of ownership had clearly shifted from mental health experts to legal professionals and civil rights activists. This was a change that was part of a larger rights revolution in the post-*Charter* era, which affected several segments of society, including women and youth (Petrunik, 2003).

## **The Community Protection Model: A (New) Penology**

Beginning in the late 1980s and early 1990s, various populist social movements called for increased attention to victims' rights and the protection of public safety (Petrunik, 2003). This community protection movement was occurring on a large scale, and was gaining momentum in the management of all risks, whether or not substantiated, as well as the public's fear of these risks (Petrunik, 2003).

Feeley and Simon (1992, 1994) argue that this community protection approach illustrates a fundamental transformation in penal strategy. This 'new penology,' which they term actuarial justice, is described not as a specific ideology or a specific technology (Feeley & Simon, 1994), but rather as a type of practice which involves changes in three distinct areas: discourse, objectives and techniques (Feeley & Simon, 1992). These new techniques seek to identify, classify and manage large groups of individuals who share the same risk indicators.

The purpose of this probabilistic, statistical aggregation is to facilitate surveillance, confinement and control. As O'Malley (1992) and Rigakos (1999) highlight, the techniques developed to fulfill this objective are 'amoral' and project an aura of 'neutrality,' concerning themselves with the rational efficiency of the 'system' of justice, and the production of expert knowledge to decrease risk (Rigakos, 1999). These techniques provide a way to relieve decision-makers and the public in general of their anxieties revolving around the uncertainty of human behaviour by quantifying this uncertainty in objective terminology (Rose, 1998).

While they describe this emergent shift from a concern with the individual to the group, Feeley and Simon (1994) recognize that concern with the group is not entirely new. The general deterrent effect of criminal punishments has a long history in considerations revolving around the goals of sentencing. They also recognize that the individual has not entirely disappeared in the new justice. What is argued, however, is that it is the role of the individual that has changed, once being viewed as a rational agent, and now being viewed as a member of a subpopulation of individuals who share common characteristics, and presumably a common destiny (Feeley & Simon, 1994). Individual experiences are now relevant only to the extent that they can be aggregated, in an effort to enhance the prediction of risk (Simon, 1987).

According to Feeley and Simon (1994), the new rationale of incapacitation, and more specifically selective incapacitation, best illustrates this new era. They argue that the goal of incapacitation has transformed, and is now focused on restraining offenders for a period of time for the sake of temporarily rearranging the distribution of offending behaviours in society, rather than for the sake of somehow transforming the offender or the offender's social setting. Moreover, decisions revolving around sentencing, while once focusing on the offender and the offence, now include a consideration of risk profiles (Feeley & Simon, 1992). The legal rights of individuals have become overshadowed by the assumed qualities of groups to which individuals presumably belong (Brown & Pratt, 2000). The amendments made to the DO provisions of the *Criminal Code* in the *Tackling Violent Crime Act* (2008) discussed in the History Chapter of this dissertation are an example of this overshadowing.

The increased reliance on community corrections over strict imprisonment also illustrates the emergence of this new era, with risk management and system efficiency being at the forefront of community-based correctional policies. While currently the use of incarceration has increased significantly in North America, and while Canada in particular has a law and order government, in the 1990s, the use of probation and parole was increasing dramatically (Feeley & Simon, 1992), a movement in which the development of new designations flourished, such as the LTO designation in Canada. These community-based sanctions have often been viewed more as a cost-effective method of managing risk, rather than as a humane method of rehabilitating and reintegrating offenders (Feeley & Simon, 1992). In the case that correctional intervention is unsuccessful and the offender re-offends, this recidivism has been seen as just one of many potential indicators of risk, rather than as a measure of program effectiveness, as it once was (Feeley & Simon, 1994).

While the argument that a new penal strategy has emerged has been criticized and questioned by some (see Broadhurst, 2000), theorists such as Garland (2000, 2001), Brown and Pratt (2000), and Ericson (2007) argue that the notion of risk as a way of theorizing about human behaviour has penetrated Western thought on numerous levels. In Garland's (2001) text The Culture of Control: Crime and Social Order in Contemporary Society, it is argued that changes in our contemporary responses to crime are best understood within the context of a larger process of cultural and social change - late modernity. According to Garland, it is the unique changes in social, economic and cultural spheres of late modernity that have created an environment conducive to a preoccupation with risks and insecurities (2001).

Within this environment, actuarial techniques have become so commonplace that they have become a central element in the organization of social life (Simon, 1988). For example, these methods are used to justify affirmative action ideals in hiring and recruitment policies (Simon, 1988); to calculate risk for the purposes of insurance (Garland, 2000; Feeley & Simon, 1994; Reiss, 1989); to govern corporate entities (Ericson, 2007); to distinguish between desirable and not-so-desirable real estate categories; and also for the purpose of ranking the newsworthiness of human tragedy (Garland, 2000). The changes that have occurred within these larger macro-level shifts

with respect to criminal justice policy more specifically include a move away from the rehabilitative ideal (with the exception of treatment programs targeting those offenders that have been identified and classified as high-risk); the re-emergence of retribution and punishment in correctional policy; the re-emerging role of the victim as seen in the role of victims advocates in the development of policies in Canada and the U.S.; and the focus on public protection through the restraint and exclusion of 'high-risk' offenders (Garland, 2000, 2001).

Related to these changes, Garland (1999, 2001) argues that criminology as a discipline has itself undergone a fundamental transformation, now viewing crime as a normal and routine aspect of modern life rather than as an indication of the need for welfare-based theories and policies. He refers to these new criminologies as the criminologies of everyday life, including theoretical approaches such as rational choice, routine activity and situational crime prevention (Garland, 2001). These theories differ fundamentally from their predecessors in that they view crime as an event—and more specifically as a 'normal' event—that ought to be viewed as a regular feature of social and economic life. Latent in this new managerial approach to risk and crime is a loss of confidence in the ability of the state to effectively reform offenders (Simon, 1988).

Garland (2000, 2001) goes on to argue that this preoccupation with crime prevention and community protection and community safety reveals itself quite prominently in new crime policy initiatives that focus on 'preventive partnerships,' whereby the state now shares the responsibility of policing communities with the communities themselves. Through new measures of community protection, such as notification and registration systems, the state has effectively delegated some of its responsibility of protecting the vulnerable to the vulnerable themselves (Garland, 1996; Rigakos, 1999) - a task which, some argue, communities are not equipped to handle (Garland, 1996). This sharing of responsibility and also a raised awareness of crime demands a methodical approach to calculating risk and increasing security. The general principles of modernity such as consumerism and choice have also gradually led to a reliance on economic calculations about risk and security. Following in this late modern tradition, according to Garland (2001), the commercialization of crime control and the

expansion of private security have become an appropriate measure to minimize harms, manage risk and increase safety.

The expansion of public security has also been identified as one of the many consequences of this new actuarial ideology. The proliferation of high-technology methods of supervision reveals this expansion (Rose, 2000), with surveillance techniques as the new instruments of penal practice (Ericson, 1994, 2007). These surveillance functions are not restricted to formal control agencies, however. As Mathiesen (1997) highlights, there are increasingly numerous social institutions that fulfill this role, including schools and medical and psychiatric systems, with surveillance being conceptualized as only one form of control in modern society.<sup>4</sup>

### **Mental Health Experts, the Designation of Dangerousness and the Assessment of Risk**

The original conceptualization of risk viewed it as a static factor, one that could not be altered, thus virtually ignoring the potential of treatment interventions. Now, risk has become understood as a more fluid, dynamic entity (Brown & Pratt, 2000; Garland, 2001; Hanson, Helmus & Thornton, 2010; Maurutto & Hannah-Moffat, 2006). The adoption of this more fluid conceptualization of the notion of risk has secured a somewhat new role for the mental health expert. As Rigakos (1999) notes, this assessment occurs at every level of criminal justice processing for all offenders, and is considered in decisions revolving around where to locate prisoners, when to release prisoners, and the dangers that these prisoners may pose if released. Essentially, this role now includes the continual re-evaluation of the level of risk throughout a DO's lifetime, both in and outside of the correctional institution.

<sup>4</sup> See Mathiesen (1997) for a more in-depth discussion of the fundamental role of the modern mass media in controlling our consciousness and our behaviours.



The concept of ownership discussed by Gusfield (1996) is relevant to our understanding of the new role of mental health experts in the designation of dangerousness and the assessment of risk. To 'own' a problem, according to Gusfield (1996), is to be in a position of power where not only the act of defining a condition as a problem is possible, but where the decision of what ought to be done about this problem is also possible. This concept of ownership is consistent with Foucault's (1978) description of the emerging role of psychiatrists in the field of law in the beginning of the 19<sup>th</sup> century, a role that he describes as being the by-product of a struggle to justify and secure power. In essence, the voices of mental health experts and the politicians who relied on their advice and expertise began to dominate the management of the DO, with the current understandings of risk allowing for this domination to persist.

Despite the increasing power of mental health experts in the designation of dangerousness and the assessment of risk that we see persisting in the current community protection model, the research on those offenders who are the primary targets of DO laws—i.e. sexual offenders—forces us to question the legitimacy of this new role. Research conducted in the 1970s, commonly referred to in the literature as the Baxstrom research, continues to be cited as the first successful attempt to reveal the problems associated with psychiatric decision-making. This research set out to critically examine the criteria used in psychiatric transfer and release decisions (Steadman, 1972; Cocozza & Steadman, 1978; Steadman, 2000). It compared a group of criminally insane patients whose transfer out of a psychiatric hospital to a civil hospital and/or into the community was authorized by the U.S. Supreme Court, contrary to psychiatric advice, to a group of patients whose transfer was the result of psychiatric approval. The findings revealed that both groups had comparable levels of success in both the civil hospitals and in the community following their release. Moreover, the research revealed that the psychiatric criteria that were associated with the transfer decision included the patients' race, age, the length of their hospitalization and the length of their criminal record, and *not* the offence for which they were being detained, despite the empirical evidence supporting the significance of this factor (Cocozza & Steadman, 1978). The authors here describe the psychiatric approach as unjustifiably conservative, over-predicting dangerousness, and intricately linked to the political and social forces in favour of

preventive detention as a means of social control. While this literature is really only of historical interest at this point, it does provide a context in which to understand more contemporary risk assessment literature.

More recent research by theorists such as Cooke and Michie (2010) cautions against the reliance on scientific tools and tests in the realm of legal decision-making. As they state, “while science seeks universal principles that apply across cases, the law seeks to apply universal principles to the individual case” (p. 259). While recognizing that their conclusions may be unwelcomed in an era of acceptance of the prediction paradigm, one of the main conclusions of their research is that statistical predictions about individuals used in tests such as the PCL-R and the VRAG, as well as other such tests and tools, will always lack accuracy.

In fact, many argue that even the best actuarial methods fail to accurately predict the future behaviours of the vast majority of offenders (see Coles & Veiel, 2001). One reason for this problem is the heterogeneity and multi-causal nature of offending, and particularly sex offending, behaviours (Becker & Murphy, 1998). Moreover, these risk assessment techniques are often embedded in data that have been drawn from limited populations, and while diagnostic tools such as the PCL-R do have considerable predictive accuracy for the population from which the data for the instrument were drawn, it may be difficult to generalize the findings to other populations (Tuddenham, 2000). Reducing human behaviour to a quantifiable score that can then be compared to some objective threshold inevitably results in the loss of personal information and the unjustified disregard of the role of dangerous situations and environments in human behaviour.

Undoubtedly, there are also ethical considerations relevant to our understanding of the impacts of the role of the mental health expert in assessing risk. Despite the common assumption that the expert’s observations are inherently neutral and scientific, as Ericson (2007) warns, risk assessment is “rarely based on perfect knowledge, and typically frays into uncertainty” (p. 4). Many theorists caution against this practice of relying on imperfect, sometimes second-hand knowledge, a practice which is particularly

concerning because of the increased reliance on mental health experts in the courtroom that has revealed itself in recent decades (Coles & Veiel, 2001).

Theorists critical of the role of mental health experts in the designation of dangerousness and the assessment of risk urge that the examination of this information be more comprehensive, and include both risk and protective factors. One of the main limitations of actuarial instruments of this era is that they include only static factors that do not account for change (Ducro & Pham, 2006; Hanson, Helmus & Thornton, 2010). Fortunately, more recent literature reveals that new tests have certainly been developed to include consideration of dynamic factors, such as the Static-2002 and the HCR-20. In their examination of the Static-2002 in particular, Hanson, Helmus and Thornton (2010) reveal that variation in recidivism rates across samples cannot be ignored.

Theorists critical of the role of mental health experts in the designation of dangerousness and the assessment of risk also urge clinicians who engage in the task of risk assessment and the (unenviable) task of designating dangerousness to be reflexive in their assessments, and conscious of the reality that the clinical information they produce does not exist independently of them (Grant, 1991; Tuddenham, 2000). These theorists point to the overrepresentation of minority ethnic groups and other marginalized groups in society amongst the 'dangerous' to support the argument that psychiatric assessments, whether actuarial or clinical, are not immune to cultural and moral influences (Maurutto & Hannah-Moffat, 2006; Silver & Miller, 2002; Rigakos, 1999). In fact, the emphasis on the group in actuarial approaches inherently relies on the task of grouping individuals into categories of dangerous individuals—i.e. 'them'—versus categories of non-dangerous individuals—i.e. 'us.'

Certainly, critical arguments have a place in our understanding of the impact of new discourse, objectives and techniques in protecting the public from the DO. The current overview of the theoretical arguments that have been introduced and that have evolved alongside the development of new ways to deal with the DO assists in guiding the analysis of the findings of the present research. This theoretical review is crucial in understanding how the new LTO designation fits into the history of the state's means of social control. It is also crucial in determining whether this new status has proven to be

instrumental in protecting society, as legislatively intended, or if it has merely been a symbolic tool to appease public concerns revolving around the prevalent perception of increased danger posed by the violent stranger.

## **Chapter 4.**

### **The Emergence of the Community Protection Model in North America and a Descriptive National Overview: The Contextual Background**

The emergence of the community protection model in North America has occurred in part in response to law enforcement officials' and victim advocates' concerns with the inability of the strategies of the forensic-clinical and justice models to protect society. While this community protection model surfaced in Canada and in the U.S. at approximately the same time, with both countries' policies being influenced by the sensational incidents of sexual violence involving children, the nature of these incidents and the way in which these incidents influenced the development of legislation to deal with the rising concerns of the public differ.

This chapter begins with a review and comparative analysis of the key events in both Canada and the U.S., and the initiation of policy in these two countries. This review and analysis provides a contextual background for an understanding of current dangerousness legislation in Canada, and particularly an understanding of the roots of the internationally unique LTO designation. Toward the end of this chapter, a descriptive national overview of DOs and LTOs in Canada is provided, again with the goal of providing a contextual background for the B.C. focus of the current research.

### **The North American Experience**

#### **Canada**

While there were many factors contributing to the development of the current, more restrictive provisions dealing with DOs in Canada, as mentioned in the History

Chapter, the murder and subsequent investigation into the death of 11-year-old Christopher Stephenson in Ontario in 1988 has been described as one of the most prominent (Grant, 1998). The perpetrator of this crime, Joseph Fredericks, was a known psychopath and homosexual pedophile who, at the time of the kidnapping, sexual assault and murder of Stephenson, was on statutory release for the sexual assault of another young boy (Grant, 1998). A DO application had been considered following this first incident, however it was not pursued owing to the child's parents' reluctance to subject the young boy to testifying in a court of law (Grant, 1998). One of the key challenges faced by authorities in this case was that the numerous sexual offences committed by Fredericks while he was a psychiatric patient were not available to prosecutors owing to privacy laws initiated in the justice era. Essentially, Fredericks had fallen between the cracks of the criminal justice and mental health systems (Petrunik, 2003).

Four years after the death of Stephenson, a Coroner's inquest was held in the province of Ontario (Petrunik, 2003). There were a total of 71 recommendations made at this inquest, including the post-sentence detention of sexually violent offenders, the development of a national sex offender registry, and the increased coordination of the federal and provincial levels of government in the management of DOs (Connelly & Williamson, 2000). As recommended in the verdict at this Coroner's inquest, this increased coordination was to be achieved through the development of a federal task force (Petrunik, 2003).

Shortly after the inquest, the federal government did indeed set up a High-Risk Offenders Working Group, and this task force was made up of political bureaucrats, whose primary focus were the DO provisions of the *Criminal Code* (Grant, 1998). Upon issuing its report in 1995, the federal task force made a total of 16 recommendations. One of these recommendations was to enhance the abilities of police and various community organizations to allow for the identification of those offenders who pose a danger to the public, and primarily to children (Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders, 1995; Petrunik, 2003). This was in line with the inquest recommendations discussed above.

Shortly thereafter, similar registries began to develop in provinces across Canada. The provincial governments were so strongly supportive of the development of such registries that they were willing to develop a system of inter-linked registration systems, independently of federal agencies (Petrunik, 2003). Finally, in response to persistent pressure from the provinces and interest groups, and also in response to the federal task force's recommendation, the federal government decided to establish a national registry in February of 2002. Through this registry, authorities can be more promptly alerted when an offender eligible for a DO or LTO designation re-offends (see Bonta & Yessine, 2005, for a more detailed discussion of this National Flagging System and its efficacy).

The task force also proposed the addition of the long-term supervision order (Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders, 1995; Petrunik, 2003). The task force characterized LTOs as primarily "paedophiles, who may not be susceptible to indeterminate incarceration as DOs but who are, nonetheless, capable of great harm to numerous victims as a result of their chronic behaviour" (Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders, 1995, p. 17). In this section of the report, the task force described the long-term supervision scheme as an alternative to indeterminate incarceration, while highlighting the inadequacy of the then-current probation scheme to deal with this subset of offenders. The task force also noted that this long-term supervision scheme "should have as its objective the enhanced safety of the public through targeting of those offenders who could be effectively controlled in the community...[S]uch control may be the most effective approach in helping to reduce violent criminal acts, fostering and maintaining pro-social behaviour, and reducing the adverse impact of incarceration" (Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders, 1995, p 18).

The task force went on to state that the success of their proposed long-term supervision scheme depended on the following key factors:

- a. The measure should be focused on particular classes of offender. The inclination to make long-term supervision widely available should be resisted as costly, unwarranted in most cases, and as contributing

to 'net widening'. The target group, and thus the expectations of the scheme, should be well defined;

- b. The criteria should selectively target those offenders who have a high likelihood of committing further violent or sexual crimes but who would not likely be found to be a DO;
- c. There should be a mechanism for varying or lifting LTS orders, given that while LTS may have been appropriate at the time of sentencing, once a custodial sentence has been served there may be a need for modification of the order based on intervening events;
- d. There should be a speedy and flexible mechanism for enforcing the orders which does not result in lengthy re-incarceration in the absence of the commission of a new crime. As stated above, the order should not become a mechanism for long term incarceration in the absence of re-offending. (Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders, 1995, p. 19, emphasis added)

As revealed here, the task force asserted that there are indeed identifiable classes of offenders for whom the risk of re-offending may be managed. It envisioned that such a determination of risk would be made after the offender has been convicted but before sentencing (Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders, 1995). As mentioned in the History Chapter, it was this post-conviction/pre-sentencing scheme that was enacted in August of 1997.

Interestingly though, although this scheme was chosen, there was another option that had been recommended in the Stephenson inquest and also proposed in a 1993 set of proposals termed the *Lewis Proposals* (Solicitor General, 1993) which did not envision the designation of dangerousness as occurring prior to the determinate sentence. In the introductory statement of the *Lewis Proposals*, it is noted that DO findings would be made *after* the commencement of the determinate portion of the sentence and that, while offenders served their sentences, the CSC would identify those offenders who were likely to commit dangerous offences, refer these offenders to the NPB, which would then refer the offender, if warranted, to the appropriate Attorney General no earlier than one year before the expiration of the offender's sentence (Solicitor General, 1993). Under this regime, the CSC would provide the NPB with any additional information that is relevant to the case. It would then be up to the Attorney



General to bring a DO application to the court which, if successful, would result in the offender's continued detention or supervision (Solicitor General, 1993). The *Lewis Proposals* were never tabled and in the end, as mentioned, the LTO designation was created in line with the federal task force's post-conviction/pre-sentencing format.

## **The United States**

As was the case in Canada, the development of protective and restrictive legislation in the U.S. was initiated by public outrage over the brutal murder of a young child (Petrunik, 2002). However, as described in the following paragraphs, the development of American legislation was much more immediate and extreme. In fact, in addition to registration and notification provisions, the community protection era in the United States has been characterized by the use of two other more drastic protection/risk-management strategies: sexually violent predator commitment statutes and chemical or surgical castration statutes. In this section, the relevant pieces of legislation enacted in the U.S. in the 1990s, as well as the incidents leading to these statutes, are discussed.

The *Washington Community Protection Act* of 1990 was the first important legislation passed in the U.S. dealing with the management of sex offenders (Petrunik, 2002). The influence of a victim's advocacy group, called 'Stop All Violent Unnecessary Suffering' (SAVUS), was instrumental in the development of this legislation (Faubert, 2003). SAVUS lobbied actively around several high-profile sexual victimization cases to further their goal of amending sex offender legislation. What became known as the 'tennis shoe brigade' is one example of how SAVUS urged politicians to respond, by encouraging members of the community to hang child sneakers on trees throughout the state, symbolizing children in need of protection (Faubert, 2003).

While there were several cases around which this group lobbied, the brutal and violent sexual assault of 7-year-old Ryan Alan Hade in 1989 was a key event. Hade was abducted, sexually assaulted and mutilated by a developmentally disabled repeat child sex offender and alleged murderer by the name of Earl Shriener (Connelly & Williamson, 2000; Petrunik, 2003). Shriener had an extensive history of violent and sexual assaults,

and authorities had, in fact, been aware of his post-release plans to engage in further violent acts against children (Connelly & Williamson, 2000). However, much like Fredericks in the Christopher Stephenson case, Shriner had slipped through the cracks, and attempts to civilly commit him through the then-current state mental health system were unsuccessful (Connelly & Williamson, 2000).

Only one year later, following the sensationalized media reports of this and other cases, and the success of the 'tennis shoe brigade,' a task force on community protection was formed. Unlike the Canadian federal task force, consisting of political officials, this Washington state task force, comprised largely of victims' advocates, involved public participation - and perhaps most significantly the participation of mothers of the victims of these crimes - in the development and formulation of policy recommendations (Faubert, 2003). Only six months following the creation of this task force, a report was presented to the state, and only four months later, the *Community Protection Act* was passed by Washington's legislature (Petrunik, 2003). The primary objective of this legislation was to allow for the civil commitment of sexual offenders deemed to be dangerous but without mental disease or defect (Connelly & Williamson, 2000), although the presence of a 'mental abnormality' of some kind was needed in order to meet constitutional requirements. At these beginning stages of the community protection era in the U.S., civil commitment had become the basis for statutes managing those sex offenders who had served their prison sentences (Connelly & Williamson, 2000).

In 1994, the community protection model had really begun to gain momentum, when several other American states followed in the development of similar civil commitment legislation. Registration statutes were also becoming an integral component of state sex offender legislation. For example, in both Indiana and New Jersey, the sexually violent murders of young children—Zachary Snider in Indiana and of 7-year-old Megan Kanka in New Jersey - led to intense community protest and the subsequent development of registration statutes named after them (Petrunik, 2003). During this phase of the community protection movement, the passage of sex offender statutes had become much more rapid, with the enactment of *Megan's Law* in 1994 occurring only 4 months following the death of the child victim (Petrunik, 2002).

Furthermore, there was an element of community participation that had permeated the task of managing sex offenders. Beginning in Indiana through the passage of *Zachary's Law* in 1994, the use of on-line registration systems had gained popularity, allowing members of the public to actively participate in the surveillance of this particular sub-group of offenders. The establishment of sex offender databases facilitated public access to this information, which could now be accomplished through the use of a computer, telephone or even a CD-Rom (Petrunik, 2003).

In 1994, the same year as the passage of *Megan's Law* and *Zachary's Law*, the federal government of the United States, appreciating the emphasis placed on sex offender legislation at the state level, decided to encourage other states to follow in this community protection movement through the development of their own sex offender registries (Petrunik, 2003). In fact, the Clinton administration, in an effort to ensure that the states would follow this federal recommendation, threatened to cut the federal contribution to state criminal justice funding if they failed to set up such registries (Petrunik, 2003). The federal Act outlining this recommendation, called the *Jacob Wetterling Act* (JWA), was named after a young boy from Minnesota who had been abducted in 1990 and had been missing ever since. Although deemed drastic by some, the initiative had come at a time when public fear of the dangerous violent stranger sex offender and support from highly influential members of society, such as media personalities Oprah Winfrey and John Walsh, had reached unprecedented heights (Petrunik, 2003). In addition to such coinciding factors, foundations that had been set up in memory of the child victims, such as the Jacob Wetterling Foundation and the Nicole Megan Kanka Foundation, were influential in encouraging state politicians to develop more restrictive and punitive sex offender policies (Petrunik, 2003).

In 1996, following the enactment of the JWA, the U.S. federal government took the management of sex offenders to the next level. Through the passage of the *Pam Lyncher Act*, an Act that was this time named after an adult-female victim, who had been attacked by a repeat-violent-sexual offender, a national sex offender registry was established (Petrunik, 2003). This registration system, run by the Federal Bureau of Investigation, amended the JWA by requiring a specific sub-set of especially dangerous sex offenders - those that had engaged in coercive penetrative sex or had victims under

the age of 12 years - to register *for life* (Petrunik, 2003). In the same year, the federal *Megan's Law* was passed, which now required states to enact notification provisions in order to avoid losing federal contributions to state criminal justice funding (Petrunik, 2003).

Finally, in 1998, the U.S. federal government passed the *Commerce, Justice and State, the Judiciary, and Related Agencies Appropriation Act*, which subjected those offenders considered to be sexually violent predators to both state and federal registration and notification requirements for life (Petrunik, 2003). What is particularly interesting about this legislation is that the onus was placed on the states to identify those offenders who were sexually violent predators, defined here as those offenders convicted of sexually violent offences who also suffer from some personality disorder or abnormality (Petrunik, 2002). Clearly, such legislation was premised on the notion that mentally disordered offenders pose an increased danger to the public, an assumption that research has challenged. Furthermore, the task of identifying such mentally disordered offenders would necessitate the expertise of mental health professionals and risk assessment tools.

In addition to state civil commitment, registration and notification provisions, which progressively became more and more restrictive and punitive in nature, some U.S. states have gone so far as to enact surgical or chemical castration statutes (Petrunik, 2002). For example, in 1997, the Florida legislature passed chemical castration provisions, allowing for court-ordered weekly injections of Depo-Provera to reduce the sex drive of some repeat sex offenders upon their release from prison (Spalding, 1998). California also has similar chemical castration statutes (Spalding, 1998). In the same year, the state of Texas passed surgical castration statutes, allowing for the voluntary surgical castration of incarcerated repeat child sex offenders (Council on sex offender treatment, Texas Department of State Health Services, 2003). These chemical and surgical castration initiatives were designed to complement other post-release risk-management/reduction strategies more typical in this community protection era, such as the registration and notification provisions discussed above.

## **The Canadian and U.S. Experiences: An Analysis**

As illustrated in this overview of Canadian and U.S. DO provisions, the passage of provisions dealing with the management of sex offenders has been closely linked to the occurrence and aftermath of highly publicized sexual offence cases, with the victims often being children. However, the transition between media coverage and legislative response has been much more immediate in the U.S. than in Canada. One of the reasons for this difference may be the differences in jurisdictional boundaries, with Canadian mental health policy falling under provincial jurisdiction and criminal policy falling under federal jurisdiction, while both mental health and criminal policy occur at the state level in the U.S. Certainly, the level of coordination between the criminal justice and mental health systems would have direct impacts on the nature, speed, and relative ease with which provisions dealing with sex offenders are enacted.

Related to this first point is the difference in the sequence of provincial/state legislation and federal sex offender legislation. In Canada, it was quite apparent that provincial pressures eventually did influence the federal level of government to develop a national sex offender registry, although this only occurred after it became apparent that the provinces were prepared to independently develop a complex system of inter-linked systems. On the other hand, in the U.S., following the lead of Washington, Indiana and New Jersey, the federal government was quite active in spreading the community protection movement through the other states. As mentioned, this was done through the development of federal policy initiatives which required states to develop registration and notification procedures in order to avoid financial cutbacks to criminal justice funding.

The composition of task forces set up to inform policy in these two countries also differed, with the Canadian task force being made up of federal and provincial bureaucrats and American task forces consisting of victims' advocates and family members of the deceased children. Certainly, this had an impact on the extent to which the subsequent task force recommendations encouraged restrictive provisions, with the Canadian approach rejecting civil commitment statutes and initially rejecting American-inspired registration provisions, and only reluctantly adopting the latter after years of persistent lobbying. Even with the acceptance of registration provisions, the Canadian

approach has not incorporated the community surveillance aspect that the U.S. approach has, with the exception of the province of Alberta (Petrunik, 2003). Rather, Canadian authorities are selective in which community groups and organizations are informed of the identities and whereabouts of convicted sex offenders, occurring only on a case-by-case basis, and only in those circumstances deemed to be especially high-risk (Petrunik, 2003).

It has also been noted in the literature that there are clear differences in the language used in policy to name the targets of the legislation. For example, as Lisle (Petrunik, 2003) and Sands (Petrunik, 2003) note, the 'high-risk offender' in Canada is called the 'sexually violent predator' in U.S. policy. In addition to this difference, which certainly has its ideological roots, differences in correctional policy in these two countries are evident, with treatment, rehabilitation and restorative justice being more prominently emphasized in Canada (Petrunik, 2003). Canadian volunteer groups such as the Circles of Support and Accountability are examples of this restorative influence (Petrunik, 2003). Overall, to borrow Rose's (Faubert, 2003) conceptualization, correctional policies in Canada have been described as more 'inclusionary' in nature, emphasizing efforts to reintegrate and supervise sex offenders in the community, while American correctional policy has been more 'exclusionary' in nature, with emphasis placed on civil commitment, public notification and even castration.

### ***Unintended Consequences***

While public safety has clearly been the main driving force of the development of sex offender laws in both the U.S. and Canada, many critics of the various policy initiatives argue that these policies, in fact, have several anti-therapeutic consequences. Winick (1998) offers several examples of the anti-therapeutic outcomes of sex offender laws on the offender. First, he discusses the role of guilty pleas in the criminal justice process and argues that the severity of sexual offence sanctions may lead to a decrease in these pleas. According to Winick (1998), this may have the unintended outcome of perpetuating the denial and cognitive distortions of these offenders, and consequently increase the likelihood of recidivism.

Related to this point is the impact of labelling these offenders as mentally abnormal. Labelling, according to Winick (1998), may not only impact the public's perception of these offenders, thus thwarting reintegration efforts, but also the offender's self-perceptions. This may deter offenders from engaging in rehabilitation and treatment programs. As mentioned, the perception that there is a causal relationship between severe mental disorder and violence has not been supported by the research (Bonta & et al., 1998; Winick, 1998).

The circularity of treatment initiatives may also prove to be detrimental to the rehabilitation and eventual reintegration of sex offenders. As Connelly and Williamson (2000) highlight, those offenders who are sentenced indeterminately are least likely to receive treatment within the prison or mental health setting prior to release as these scarce treatment resources are often geared toward those offenders approaching release and parole eligibility. The result is the ironic exclusion of a small sub-group of particularly dangerous offenders, who are presumably most in need of treatment and whose indeterminate sentence is premised on the need to rehabilitate.

Furthermore, as Winick (1998) highlights, provisions created to increase the restrictions placed on the lives of sex offenders both in and outside of the prison setting are extremely costly. The assessment of risk necessarily implicates the involvement of several mental health and other experts, as does the continual evaluation, treatment and supervision of this particular sub-group of offenders. The increased costs and strains placed on the various agencies affected by the sex offender provisions take resources away from efforts to investigate the more common forms of violence, in which the perpetrators are known to the victims (Grant, 1998). These strains also deplete treatment resources for other sub-groups of offenders (Winick, 1998).

Finally, Winick (1998) discusses the unintended effects that sex offender statutes have had on the community as a whole. While registration and notification provisions may have been designed to increase public safety, and also public perceptions of public safety, presumably empowering them with the information and knowledge needed to protect themselves and their children, it is quite possible that fear and anxiety may in fact increase as a result of these provisions. The layperson is simply not trained in

understanding clinical predictions of risk and dangerousness. The resulting often unsubstantiated heightened sense of fear and panic may have devastating impacts on community solidarity and involvement.

Having outlined some of the key similarities and differences between the development of sex offender legislation in these two countries, and the nature of unintended consequences in these two countries, this analysis proposes that the overall difference in the two approaches is more accurately described, to borrow Darwin's terminology, as a difference in degree rather than a difference in kind. In both countries, the community protection model has transferred the status of ownership to mental health experts, particularly those who employ risk assessment, as well as legal professionals and rights activists, with this influence being more subtle in some jurisdictions than others. This macro-level shift to a community protection approach has occurred in part in response to these professionals' and activists' concerns with the inability of the strategies of the forensic-clinical and justice models to protect the public. The role of the media in serving as a vehicle through which foundations, interest groups, political and media figures have furthered their goals and agendas has been clear. Fear and the political response to constituents' fears have formed the basis of much of the legislation, rather than evidence-based social science research (Petrunik, 2003), forcing social science researchers to question the policies' true effectiveness in reducing the real, rather than the perceived, dangers posed by sex offenders in the community.

In addition to questioning policy effectiveness, the development of new approaches for dealing with the dangerous offender has led social scientists to conduct research revealing the use of these designations and the characteristics of those receiving these designations in Canada. In the next section, the research which sets out to describe those offenders designated as DOs and as LTOs in Canada is briefly reviewed. Following this, a current descriptive national overview of DOs and LTOs in Canada is provided in an effort to set the stage for a more detailed discussion of those offenders receiving the LTO designation in B.C.



## **The LTO Provisions: An Even Longer Arm for the Canadian Correctional System**

### **The Long-Term Offender: Factors to Consider**

Much of the language used in the original DO provisions has been replicated in the LTO provisions, with the key difference being that there is perceived to be a reasonable possibility of controlling the LTO in the community (Eaves et al., 2000). The designation is in fact based on a risk of recidivism assessment that indicates whether the offender may eventually be managed in the community, granted the necessary supervision, intervention and treatment is made available to the offender (Solicitor General, 2001).

The factors that ought to be considered when deciding whether there is a reasonable possibility of eventual control of risk in the community are outlined by the National Joint Committee of Senior Criminal Justice Officials (2005). Amongst these is any expert evidence relating to the offender's psychiatric diagnoses, the ability to treat the identified diagnoses, and the timeframe within which this treatment may begin to show positive effects. Other relevant factors include the offender's previous experience with treatment interventions, any expert evidence pertaining to actuarial risk assessments conducted on the offender, and also any evidence relating to the offender's dynamic risk factors (National Joint Committee of Senior Criminal Justice Officials, 2005). The review of appellate court cases since *Johnson* (2003) outlined in Chapter 2 of this dissertation include these and other factors that have played a role in the determination of whether there exists a reasonable possibility of eventual control of risk in the community.

Interestingly, an additional factor that is relevant in the decision of whether to designate an offender as a DO or LTO raised by the National Joint Committee (2005) and also in the appellate court cases since *Johnson* (2003) is the availability of programs and resources to treat and also supervise the offender in the community during the long-term supervision period. The British Columbia Court of Appeal's ruling in *R v. Laboucan* (2002) also highlights the expectation that the availability of supervision and treatment for the LTO *after* the completion of the term of supervision be considered in this decision

(National Joint Committee of Senior Criminal Justice Officials, 2005). The role played by these resource-dependent factors outlined by the National Joint Committee of Senior Criminal Justice Officials and also outlined in *Laboucan*, as well as in some of the post-*Johnson* cases, will be explored in the qualitative portion of this research in an effort to shed some light on the actual practice in B.C.

### **The Long-Term Offender: Who is (S)he?**

As mentioned in the Theory Chapter, the assessment of dangerousness and risk has become central to the work of mental health experts in the community protection era, with new techniques and practices being created to assist in this task. Examples of this appear throughout the literature. For instance, research by Ferguson, Ogloff and Thomson (2009) sets out to examine the utility of an actuarial tool called the LSI-R: SV to predict recidivism by mentally disordered offenders, concluding that this tool is useful in assisting in the prediction of both nonviolent and violent recidivism by mentally ill offenders. Snowden, Gray, Taylor and MacCulloch (2007) also set out to examine the utility of an actuarial tool, but their work focused on the Violence Risk Appraisal Guide (VRAG). They found that this actuarial tool is useful in predicting both general and violent reconvictions. While they warn that actuarial risk tools are inflexible, they are described here as reliable and free of bias (Snowden et al., 2007).

Much of this research has focused on the diagnostic Psychopathy Checklist (the PCL-R). In their study, Canadian researchers Serin and Amos (1995) examine the role of psychopathy in the assessment of dangerousness, finding the PCL-R to be valuable in predicting violent recidivism. While concluding that “general guidelines might be instructive for clinicians ... psychopathy appears to be a useful method to anchor a case regarding risk level” (p 235). Canadian researchers Bonta, Harris, Zinger and Carriere (1996) also examine the role of the PCL-R. They found that a diagnosis of psychopathy or antisocial personality disorder was central in the Crown’s decision to put forth a DO application.

The province of British Columbia has been the specific focus of some of this Canadian research examining the role of the PCL-R. In her 2001 analysis of DO

hearings in B.C., Steinitz also found that psychopathy and/or antisocial personality disorder were considered in the majority of DO hearings. Steinitz (2001) discovered that the PCL-R has been the preferred diagnostic tool for determining psychopathy, with the percentage of cases involving the use of the PCL-R increasing substantially in the post-1995 cases examined in her research. According to Steinitz, this diagnostic instrument has “affected both the definition and the popularity of the concept of psychopathy.” (p. 102). Her research also revealed that even other popular risk assessment tools used in many of the DO assessments include psychopathy as a risk factor (Steinitz, 2001). This has been revealed in other studies on actuarial risk assessment (see Harris & Rice, 2007). According to Steinitz, the main purpose of the diagnosis of psychopathy has been to justify indeterminate incapacitation, and has served to rationalize the non-use of treatment options. A heavy reliance on actuarial methods of risk assessment has also increased in the same time period, according to Steinitz, with the use of statistics outweighing clinical judgment. The increasing use of actuarial and diagnostic tools in the last two decades has been documented by others (e.g. Durco & Pham, 2006; Hanson, Helmus & Thornton, 2010; Hanson & Thornton, 2000; Looman, 2006; Quinsey, Harris, Rice, & Cormier, 2006; Williams, 2008).

Faubert’s (2003) analysis of the use of psychopathy in DO proceedings in B.C. also reveals a change in the reliance on risk assessment tools over time. According to Faubert (2003), there are clear theoretical time frames, with risk assessment tools securing a position in the ‘DO landscape’ by 1998. In fact, Faubert (2003) found that psychopathy as a primary diagnosis increased substantially after 1995, from 34% pre-1995 to 64% post-1995.

In 2005, MacAlister produced one of the few studies examining the assessment of dangerousness that extends the examination to include the LTO. In his analysis of 148 separate cases, MacAlister (2005) found that, rather than reducing the number of DO declarations, the provision of LTO status appears to have supplemented the use of DO designations. In other words, another net-widening effect appears to have occurred since the 1997 changes to the legislation. This has occurred despite the High-Risk Offender task force’s explicit desire to avoid this outcome (Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders, 1995). One unintended impact of the

increased use of the LTO designation has been the decreased incentive for offenders to pursue treatment options within the prison setting. Owing to the determinate nature of the sentence imposed upon LTOs, MacAlister (2005) asserts that the motivation to pursue treatment in an effort to secure parole for DOs is lacking for LTOs, who are already aware of their warrant expiry date.

With respect to the relevance of psychopathy in the declaration of LTO status, MacAlister (2005) found that those offenders diagnosed as psychopaths were the least likely to be designated as LTOs. In fact, MacAlister (2005) found that there were various unsuccessful DO applications that resulted in the declaration of LTO status in light of their relatively low PCL-R scores. Also, MacAlister (2005) found that a high PCL-R score was expressly mentioned in the declaration of dangerousness in various DO judgments. Clearly then, the research that has been conducted to date on the Canadian LTO hints to the continued role played by personality disorder in the determination of dangerousness. This shall be examined in the current examination of LTO designations in British Columbia.

There has also been research conducted seeking to provide a descriptive profile of the LTO in Canada. For example, Trevethan, Crutcher and Moore (2002) examined the 95 cases of all LTOs designated as such from the enactment of the legislation on August 1, 1997 through to June 30, 2001. They found that all-but-one of these offenders were male, and the average age of these LTOs was 40 years, with the modal age range being that of 35-44 years. With regards to ethnicity, it was found that approximately 17% of LTOs were Aboriginal (Trevethan et al., 2002).

With regards to the index offence, approximately 91% of LTOs examined here had a current sexual offence, with sexual assault being the most prevalent sexual offence (85% of sexual offences were sexual assaults) (Trevethan et al., 2002). In 61% of these offences, the LTO had victimized a child. Approximately 70% of the victims of these LTOs were known to the offender.

The custodial sentences imposed on LTOs in Trevethan et al.'s (2002) study ranged in length from 6 months to 15 years, with an average length of 4.5 years. The LTOSO ranged in length from 4-10 years, with an average length of 8.4 years. The vast

majority of supervision orders (62%) were 10 years long. Finally, with respect to the risk posed by these 95 LTOs examined here, the vast majority (approximately 90%) were deemed to be at high risk to re-offend.

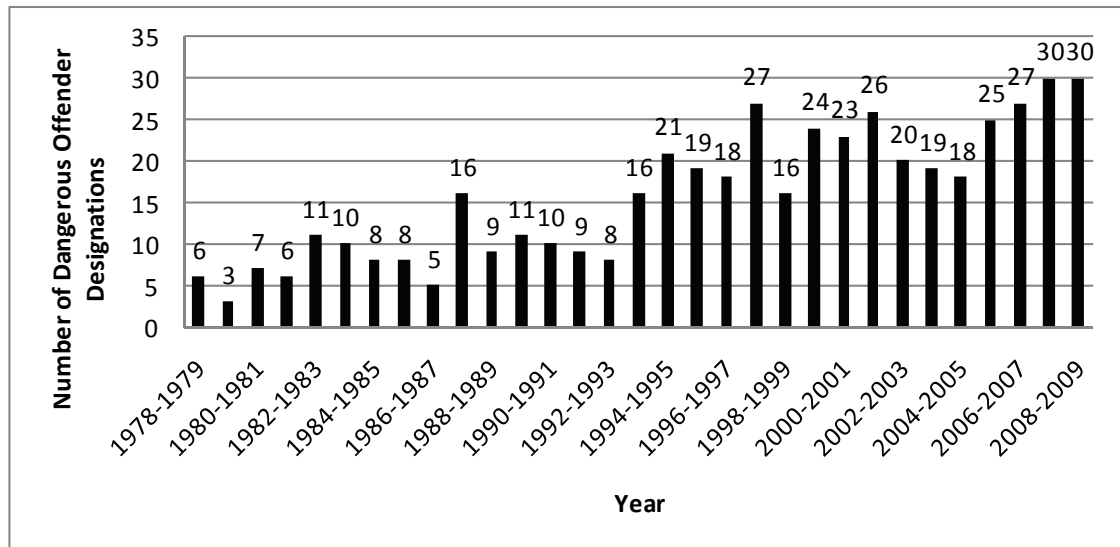
Having reviewed previous efforts to describe the long-term offender population, the focus will now turn to a more current review of the use of the DO and LTO designations in Canada on a national level. This shall set the stage for the in-depth analysis of B.C. LTO cases specifically in the first 10 years since the inception of the designation in 1997.

### **Descriptive National Overview**

The most recent figures provided by the Public Safety Canada Portfolio Corrections Statistics Committee (hereafter referred to as PSCPCSC) indicate that as of April 2009, there were 415 active DO cases nationwide and that there have been a total of 488 offenders designated as dangerous in Canada since 1978 (PSCPCSC, 2009). Approximately 78% of all DOs have at least one conviction for a sexual offence. Of the 415 active DO cases, 167 were from Ontario, followed by 86 in B.C. and 51 in Quebec (PSCPCSC, 2009).

As shown in Figure 1 below, the number of DOs in Canada has stabilized in the last four years. In fact, both 2007/2008 and 2008/2009 had the highest number of DO designations since 1978, with 30 such designations in each of these last 2 years. Between 1978 and 2008, the national average number of DO designations has been approximately 15.7 per year.

**Figure 1. Number of DOs in Canada per Year since 1978**

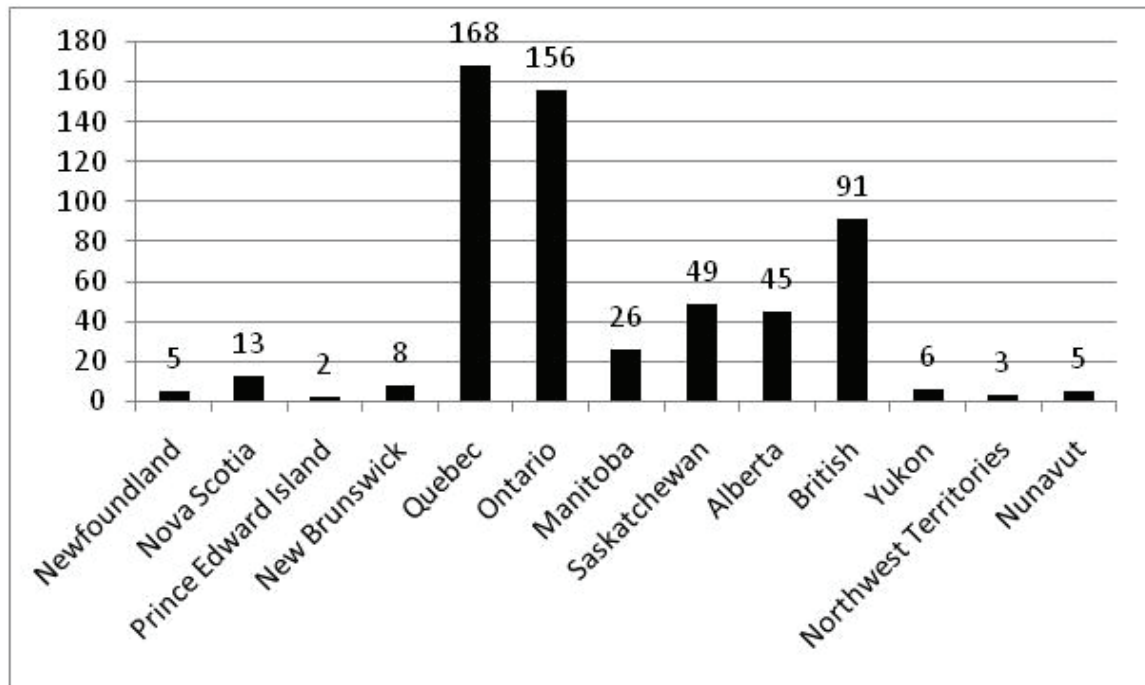


Source: PSCPCSC, 2009: p 107.

With respect to the LTO designation, the courts have imposed a total of 577 LTO designations nationwide since the inception of this new status in 1997. This equates to an annual average of 44.4 LTO designations nationwide. Approximately 71.4% of these LTOs have a 10-year supervision order imposed upon them (PSCPCSC, 2009). There are currently 549 offenders with LTOS in Canada, and 6 of these 549 offenders are women. A total of 290 of these 549 LTOs are currently being supervised in the community. This number of community-supervised LTOs has increased by approximately 36% since 2008, when the total was 213. A total of 394 (71.8%) of these current LTOs have at least one current conviction for a sexual offence (PSCPCSC, 2009).

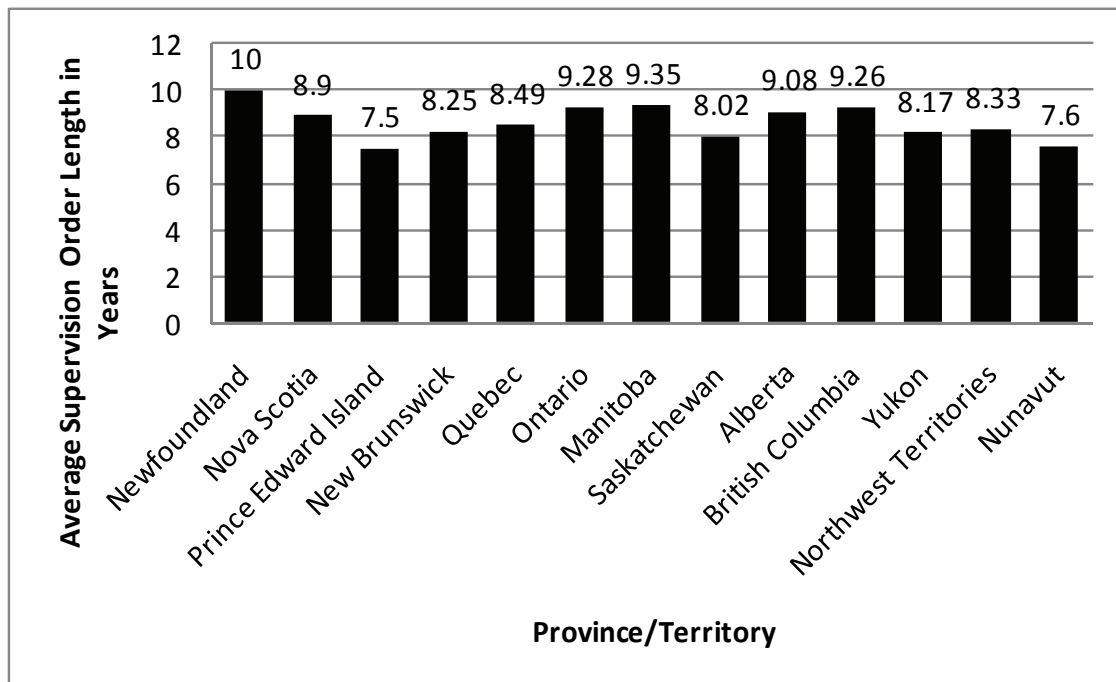
In 2007, Ontario was the province with the highest number of LTO designations imposed since this status was created in 1997 (113) (PSCPCSC, 2007). However, as of April 2009, Quebec is now the province with the highest number of LTO designations imposed (168), followed by Ontario with 156 LTO designations, and B.C. with 91 (PSCPCSC, 2009). Figure 2 reveals the number of LTOs by province.

**Figure 2. Number of LTO Designations by Province, 1997-2009**



With respect to the length of the LTO imposed on these offenders, there are some noteworthy provincial variations. As indicated earlier, approximately 412 (71.4%) of the 577 long-term supervision orders imposed in Canada since 1997 have been 10-years in length, which is the longest supervision order period permitted by the LTO provisions of the *Criminal Code*. When examining the length of supervision orders imposed by each province, though, it becomes quite clear that Quebec has imposed close to half of all long-term supervision orders that are 5 years in length (approximately 45%, n=33) and approximately 37% of all supervision orders imposed nationally that are shorter than 10 years in length. Furthermore, in comparing the average length of the supervision orders by province, as shown in Figure 3, second to Newfoundland (in which there were only 5 LTO supervision orders imposed, all of which were 10 years in length), Manitoba has the highest average supervision order length (9.35 years), followed by Ontario (9.28) and B.C. (9.26), while Prince Edward Island has the lowest average supervision order length (7.5 years). The national average length for LTOs since the passage of the legislation is 8.87 years.

**Figure 3. Average LTSO Length in Years by Province**



As mentioned, the annual national average number of DO designations has been 15.7, while the annual national average number of annual LTO designations has been 44.4. Examining the total number of DO designations and LTO designations since the inception of these designations over the last four years (see Table 1) reveals that the total number of LTO designations that have been imposed since 1997 (577) exceeds the total number of DO designations that have been imposed since 1978 (488), and that the number of each of these designations is increasing.

**Table 1. Total National Number of DO and LTO Designations Since the Inception of these Designations, 2006-2009**

Year	Total Number of DO designations since 1978	Total Number of LTO designations since 1997
As of April 2006*	403	384
As of April 2007**	427	441
As of April 2008***	455	513
As of April 2009****	488	577

Sources: \*PSCPCSC, 2006; \*\*PSCPCSC, 2007; \*\*\*PSCPCSC, 2008; \*\*\*\*PSCPCSC, 2009.



Figures from the NPB Performance Monitoring Report (2008-2009) re-created in Table 2 reveal that the total long-term supervision order population increases substantially every year. Figure 4 reveals the national annual increases in the long-term supervision population (including both federal and provincial populations).<sup>5</sup>

**Table 2. National LTSO Population, 1997-2009**

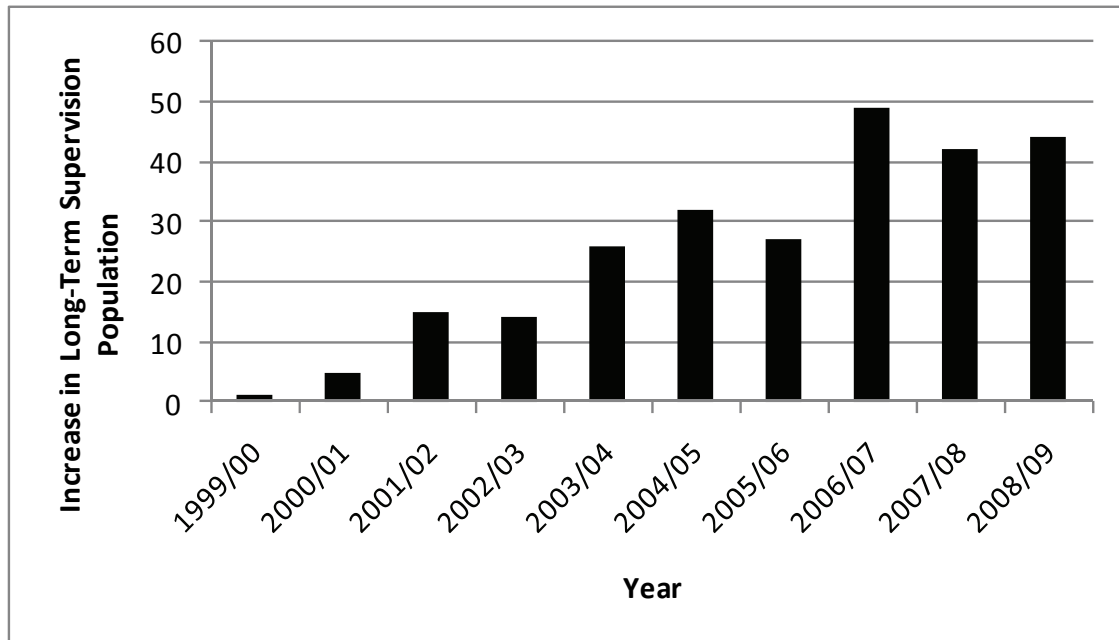
Year	Atlantic		Quebec		Ontario		Prairies		Pacific		Canada	
	Fed	Prov	Fed	Prov	Fed	Prov	Fed	Prov	Fed	Prov	Fed	Prov
1999/00	-	-	-	-	1	-	-	-	-	-	1	-
2000/01	2	-	1	-	1	-	1	-	1	-	6	-
2001/02	3	-	5	-	3	1	6	-	3	-	20	1
2002/03	3	-	11	-	7	1	9	-	4	-	34	1
2003/04	6	-	21	-	13	-	12	-	9	-	61	-
2004/05	10	-	29	-	26	-	16	-	12	-	93	-
2005/06	11	-	33	-	35	-	25	-	16	-	120	-
2006/07	12	-	41	-	51	-	34	-	31	-	169	-
2007/08	13	-	60	-	64	-	33	2	39	-	209	2
2008/09	14	-	74	-	77	-	45	2	43	-	253	2

Note. NPB, 2008-2009, p. 111.

As indicated in the NPB's Performance Monitoring Report, this long-term supervision order population is expected to continue to increase. At the time of writing, there were 266 offenders, both federally and provincially, who will be subject to a LTSO at the end of the determinate portion of their sentences (i.e. once they reach their warrant expiry dates). This raises serious concern for those correctional officials charged with the task of supervising LTOs during their period of community supervision.

<sup>5</sup> The first offender with a LTSO was released in 1999/2000 (NPB, 2008-2009).

**Figure 4. National Increases in LTSO Population, 1997-2009**



In comparing the American and Canadian policy contexts and in providing a descriptive overview of the national use of the DO and LTO designations in Canada, this chapter sets the contextual stage for a more in-depth focus of the LTO population in B.C. in the first 10 years since its inception in 1997. It is clear from the descriptive national overview that the use of the LTO has increased each year since its inception in 1997 and that the average annual number of LTO designations imposed nationwide is almost three times higher than the average number of annual DO designations (44.4 per year vs. 15.7 per year, respectively).. While it is not clear exactly what may be the cause of the provincial variation in the use of the LTO designation in particular, the differences certainly do identify a need to qualitatively explore these patterns nationally. The prevalence of the LTO designation in Quebec, and also the relatively short LTSOs imposed in Quebec as compared to other provinces is particularly noteworthy, and may point to cultural differences in definitions of dangerousness.

The analysis now shifts to a focus on the use of the LTO designation in B.C., beginning with a review of the methods used to analyse secondary file data, followed by

a review of the methods used to analyse the primary interview data. The latter were collected for the purpose of triangulating the findings revealed in the file review portion of the research and shall shed light on the B.C.-specific patterns revealed above along with those patterns revealed in the analysis of the file review data.

## Chapter 5.

### Methods

The primary objectives of the present study are to explore, describe and evaluate the application of the LTO provisions of the *Criminal Code* in British Columbia in the first 10 years since its inception in 1997. To fulfill these objectives, a review of LTO files was conducted, followed by a series of interviews with a variety of stakeholders affected by, and working with, offenders designated as LTOs in B.C. This section begins with a discussion of the data sources that were considered in the planning stages of this research. This is followed by a detailed description of the methods used in the analysis of the file review data and the interview data.

### Data Sources: The Options

In the initial stages of this research, efforts were made to access LTO files from the CSC. The main obstacles with this approach revolved around confidentiality. Accessing offender information without offender consent was of utmost concern to the CSC Director of Research.<sup>6</sup> The only alternative to receiving offender consent would have been much more rigorous on the CSC staff, and would have required that the files be vetted to ensure that all identifying information be removed from the files prior to

<sup>6</sup> This concern with consent and confidentiality in secondary data research has been growing in recent years and has certainly been documented in the literature in a new movement amongst research bodies concerned with liability and risk (see Haggerty, 2004).

access. Surely, this would have been quite a time-consuming and costly task for the CSC, an option that likely would not have been approved by the Service in any event.

Yet another option existed, which involved training practicum students who were currently working for the CSC in order to have them extract data from the files. There were numerous limitations with this option. First and foremost, this option would have involved indicating what data ought to be extracted from the files without being able to first see the files and evaluate the data that were in fact available. Second, the period of a practicum student's placement was quite short, meaning that it was likely that after receiving approval from the Pacific Region and then the CSC Headquarters, and then training these students and commencing the work, the period of the placement would have been nearing completion. Moreover, as these students did not have graduate research experience, there were concerns revolving around quality control.

In the end, the option to pursue the CSC files was abandoned, and the decision was made to work with the files housed at the FPSC in B.C. This decision and the nature of these files are discussed below. The ethical considerations relevant to these file data are discussed later in this chapter.

## **The File Review**

The files reviewed in this analysis are those files of offenders designated as LTOs in B.C. in the first 10 years since the inception of this legislation in 1997 (i.e. 1997-2007). Copies of these files are housed at the FPSC of B.C., and contain both judicial reasons for judgment (RFJ) and/or reasons for sentencing (RFS) for those offenders designated as LTOs in B.C., as well as the written psychological or psychiatric assessments conducted on these offenders by the court-ordered assessor. While the RFJ/RFS are public and can be accessed from public sources, the expert assessments that are conducted and the reports summarizing these assessments are not public and are housed at the FPSC. The Commission is the institution that coordinates these assessments in B.C. and, on occasion, provides the staff for these assessments, which are conducted in provincial jails by a psychologist or psychiatrist (Eaves, Lamb & Tien,

2000). These assessors are assigned cases on a rotating basis, so long as the next assessor on the roster is available and has not previously treated or seen the offender (Personal communication, December 14, 2009). Assessors are chosen to be included on the roster based on their extensive degree of experience (Personal communication, December 14, 2009).

As mentioned in Chapter 4, as of April 2009, a total of 91 LTO designations had been imposed in B.C. (PSCPCSC, 2009). While, in theory, the assessment for each of these offenders would have been coordinated through the FPSC, not all files were available through the Commission.<sup>7</sup> Moreover, several of the file folders were empty or incomplete and efforts to locate the relevant RFJ/RFS in online databases including Quicklaw, and the various British Columbia court judgment databases, were unsuccessful. In other cases, the LTO designation was overturned on appeal, and the offender was either labelled a DO or was given a determinate sentence in lieu of the LTO designation. These cases are not included in this analysis. Those appeal cases in which the LTO designation remained were included in the analysis even if the appeal was dated after 2007; however, LTO hearings and/or appeals that commenced after 2007 are not included here. In the end, the present analysis includes the remaining 67 LTO case files. Court-ordered mental health expert assessments are included in 56 of the 67 files reviewed.

Variables of interest in these files include: demographics, the index offence(s)<sup>8</sup> of the offenders, victim details, general court hearing information, sentencing information, and long-term supervision order details. Other variables that emerge in the assessments that are also of interest include: specific diagnoses, risk-assessment tools

<sup>7</sup> The process for obtaining the copies of the files has since been streamlined, ensuring that all copies are provided to the FPSC in a more timely and reliable manner (Personal communication, Oct 2, 2010).

<sup>8</sup> Index offence is defined as the offence(s) for which the offender was charged and tried in the RFJ/RFS included in the analysis (i.e. the most recent RFJ in the time period of interest in this study).

used and the offenders' scores on these risk-assessment tools. These variables are discussed in more detail below.

## **Demographics**

Gender, age and ethnic background are the three demographic characteristics that are discussed in the file data. The gender of the offender is noted on the coversheet of each file. While the literature suggests that those subject to the DO provisions of the *Criminal Code* are predominantly male (Faubert, 2003), the gender of the offender is noted here to determine how many females were designated as LTOs in B.C. during the 10-year time period examined in this analysis. This also allows for a comparative analysis of the types of offences committed by males and females receiving this designation.

The age of the LTO was calculated by relying on the date of birth of the offender and the date of the hearing, both of which are also noted on the coversheet of each file. The ages of the offenders were then grouped into the following mutually exclusive age categories: under 20 years; 20-24 years; 25-29 years; 30-34 years; 35-39 years; 40-44 years; 45-49 years; 50-54 years; 55-59 years; 60-64 years; 65-69 years; 70-74 years; 75 years and older. A bar chart (see Figure 5, Chapter 6) is used to represent the number of LTOs in each of the separate groups in order to reveal which age group(s) is most represented in this subset of offenders. The modal and average age is also provided here.

The ethnicity of the offender is not noted in the coversheet of each file. Rather, if available, this information is noted in the RFJ/RFS, which is not surprising as s. 718.2 of the *Criminal Code* requires sentencing judges to consider aboriginal status. Ethnicity may also be noted in the mental health expert's assessment. The context in which ethnicity is discussed is examined, as well as an absence of a discussion of the ethnicity of the offender, which is also deemed to be telling with respect to the role of this variable in the process of determining dangerousness.

## **General LTO Hearing Information**

In this section, the nature of the initial Crown application is discussed, as well as the court in which the LTO designation was imposed. The raw number and percentage of cases heard at each level of court is provided, as well as the raw number and percentage of LTO cases for which the initial Crown application was directed towards seeking the DO designation or the LTO designation.

## **Index Offence and Victim Information**

As outlined in the DO provisions of the *Criminal Code*, there is a legislative requirement that the offence that may lead to a DO or a LTO designation is a serious personal injury offence. A sexual element of the offence is also specifically mentioned in the provisions. As such, the number and percentage of cases involving an index offence that is sexual in nature is provided, along with the number and percentage of cases involving the most prevalent sexual index offence. The other specific types of sexual offences are listed as well, along with examples of index offences that are not sexual in nature.

The relationship between offenders and their victims is an important area of study in criminological research. There is a stranger-violence element that appears in the literature (see Petrunik, 2003; see Stanko, 2000). To explore the dynamics of the relationship between LTOs and victims in this study, the nature of the relationship between the victim of the index offence and the respective LTO is examined and the number and percentage of cases by victim-offender relationship is provided where possible. Other relevant victim details are also explored here.

## **Sentence Information**

As outlined in the DO provisions of the *Criminal Code*, the LTO designation involves imposing a determinate sentence upon the offender, followed by an LTSO to be



served in the community for a period up to 10 years in length. The range of global sentence length and actual sentence length are examined here.<sup>9</sup>

### **Long-term Supervision Orders**

As revealed in the literature and in the descriptive national overview, the majority of offenders receiving an LTSO in Canada receive the longest supervision order permitted under the legislation: 10 years. A bar chart (see Figure 6, Chapter 6) is used to represent the number of LTO cases by length of LTSO imposed in B.C. during the time period of interest (1-10 years). The nature of the provisions attached to these supervision orders is also textually described.

### **Long-term Supervision Order Breaches**

The LTO cases included in this analysis are reviewed to determine whether the hearing was in fact dealing with a breach of a LTSO, or some other form of conditional release, that had been previously imposed upon the offender. The nature of the index offence in these breach cases and the outcome of the breach hearings is examined.

It is possible that there are very few cases that involve breaches at this point as the LTO provisions are relatively new and many of these offenders may still be serving the determinate portion of their sentence and have, therefore, not had the opportunity to breach the conditions of the supervision order. Nonetheless, examining breaches is important here as it speaks to the effectiveness of conditions imposed on these offenders and most importantly, as indicated in the legislation, the manageability of these offenders while in the community. The issue of LTSO breaches is also explored in the interview portion of this research (see Topic D of the Interview Findings, Chapter 7)

<sup>9</sup> Note that Bill C-25 was passed in February 2010, limiting the credit given for time served from a 2-for-1 credit ration to a 1-for-1 credit ratio or a 1.5-for-1 credit ratio in exceptional circumstances. During the 10-year time period under examination in this study, though, the 2-for-1 practice still existed, thus having an impact on the difference between global sentence length and actual sentence length served by these LTOs.

## The Assessors

As mentioned at the outset of this chapter, the FPSC is the institution that coordinates the assessment of DOs and LTOs in B.C. These assessments are conducted in provincial jails by a psychologist or psychiatrist (Eaves, Lamb & Tien, 2000). The literature suggests that each profession - psychiatry and psychology - has its own preferences and ideological frameworks (see Faubert, 2003). In an effort to determine whether there are differences in the assessments performed by expert assessors in each of these professions, the profession of the assessor in these LTO cases is noted here for analytical purposes.

While the profession of the assessor is not itself noted on the coversheet of each file, the name of the assessor assigned by the Commission is included on this coversheet. This coversheet is included in each case file, whether or not the assessment itself is included in the file. These names were cross-referenced with the list of assessors in each professional group that was provided by the Commission. The accuracy of this list was confirmed by referring to the signatures and/or the *curricula vitae* of the assessors who were assigned to those cases for which the respective file did include an assessment.<sup>10</sup> With this information, it is possible to note the overall number and percentage of cases assigned to assessors in each group regardless of whether or not the assessment was included in the file. Furthermore, the number and percentage of assessments including an interview with the offender and the number and percentage of interviews conducted by assessors in each profession are noted.

The data for the next set of variables were extracted from the court-ordered assessments, which are available in 56 of the 67 LTO case files included in this research. For these 56 files that include the assessment, the diagnoses given by the assessors in each group (psychologist versus psychiatrist) are compared, along with the

<sup>10</sup> Note that each of the case files that did not include an assessment had an assessor that had been assigned to another case in the analysis that did indeed include an assessment, making it possible to confirm the profession of each assessor involved in these 67 cases.

risk assessment and/or actuarial tests/tools used, the scores on these tests/tools, and the overall assessment of risk and evaluation of treatability. These more detailed comparisons between psychologists and psychiatrists are included under their respective headings below. The purpose of these comparisons is to highlight any ideological professional differences that arise in the context of risk assessments.

## **Diagnoses**

One of the consistent subheadings appearing in these assessments is diagnosis. The nature of these diagnoses and the number and percentage of offenders receiving the more prevalent diagnoses are examined (see Table 3, Chapter 6). Any differences in diagnoses given by psychiatrists versus psychologists are also examined here. These diagnoses are those stated by the assessor, and may or may not be diagnoses that in fact appear in the Diagnostic Statistical Manual (DSM-IV-TR) or the International Statistical Classification of Diseases and Related Health Problems (ICD-10) (Personal communication, Dec 14, 2009).

## **Assessment Tests/Tools**

Various tests may be used to assess risk and dangerousness. A bar chart (see Figure 7, Chapter 6) is used to represent the frequency with which the various tests are relied upon in these assessments. In an effort to examine any professional differences in the risk-assessment tests used, a bar chart (see Figure 8, Chapter 6) is created, comparing the percentage of risk assessment tests by profession.

## **Assessment Test/Tool Scores**

The results of these tests discussed above are provided, along with the number of LTOs falling into the range of score categories for each of these tests. This section of the findings includes discussions and tables found in the literature revolving around the meaning of these scores and how they ought to be interpreted. Bar charts (see Figures 9, 11 & 13, Chapter 6) are used to represent the number of offenders falling into the score range categories of the two most frequently relied upon assessment tests/tools, and also the assessment test/tool that provides numeric scores conducive to descriptive

comparisons. Bar charts (see Figures 10, 12 & 14, Chapter 6) are also used to compare the percentage of assessments with test scores falling into the relevant score categories, by profession.

### **Overall Assessment of Risk Summary**

Following the detailed discussions included in those assessments revolving around diagnoses, assessment tests/tools used, and these test/tool scores, the assessments include a section in which the assessor typically provides a textual description of their evaluation of the overall risk posed by the offender. There are various descriptors used, including the degree of risk (high, moderate to high, and moderate) and/or the nature of risk (violent, sexual, or both). A table (see Table 4, Chapter 6) is used to represent the number and percentage of offenders who fall into one of the various risk categories appearing in the expert assessor's textual description. Again, professional differences are examined here: a bar chart (see Figure 15, Chapter 6) is used to compare the percentage of assessments in each overall risk-assessment category, by profession.

### **Treatability**

As mentioned, the key distinguishing characteristic of the LTO designation from the DO designation is the perceived controllability and manageability of the LTO in the community. It is for this reason that the assessors' evaluations of the treatability of these offenders is of particular interest. The number of cases and percentage of cases falling in each of the various degrees of optimism with respect to treatability (ex. high, moderate, low) is included here. Any notable professional differences in these evaluations of controllability and manageability are represented in a bar chart (see Figure 16, Chapter 6). The relationship between the assessors' evaluations of treatability and the judges' determination that the offender can be managed in the community speaks directly to the weight given to these mental health experts in the determination of dangerousness in LTO cases in B.C.

## The Interviews

Following the file review data analysis, a series of semi-structured interviews were conducted with a variety of stakeholders who were or are involved in some capacity with the LTO provisions and/or LTOs. The interviewee list includes: judges, Crown counsel, defence counsel, legislators, and other officials involved in the supervision of these offenders in the community, as well as psychologists and psychiatrists responsible for the assessment and/or treatment of offenders designated as LTOs in B.C. Interviewees also include other community service providers offering resources for LTOs during the supervision order period.

Interviewees were chosen specifically for their involvement with LTOs and/or the LTO provisions at the various stages of the criminal justice or mental health system; the sampling method, then, had a purposive element (Ritchie & Lewis, 2003). The goal was to have each stage of the system represented in the interviews, from the offender's sentencing hearing through to their supervision period in the community, and also to have as much diversity across interviewees as possible. The sample size was not predetermined; rather, it became apparent toward the end of the interviews that little new evidence was being obtained from each additional interview within each interviewee category. This is what qualitative researchers Ritchie and Lewis (2003: 83) call "a point of diminishing return."

In total, there were 31 interviews conducted. In 28 of these interviews, there was one interviewee; there were 2 interviewees in each of the remaining three interviews. In 2 of these remaining interviews, the reason for pairing interviewees together revolved primarily around scheduling restrictions; these interviewees are colleagues and have an established rapport with one another, and each interviewee had the opportunity to respond freely to each question posed in the interview. In the third such interview, the interviewee advised me that his assistant would also be attending the interview and in fact the assistant had prepared reference materials in advance. It is speculated that the assistant was also present as a witness; this assistant is not recorded as an 'interviewee,' *per se*. In total, then, there were 33 interviewees.

The majority of interviews were conducted by telephone; in fact, 10 interviews were conducted in person and the remaining 21 interviews were conducted by telephone. The reasons for opting for a telephone interview varied, and included the fact that the interviewee did not work or reside in the Lower Mainland, or simply for ease of scheduling. The interviews were not tape-recorded; however, there were many opportunities to capture direct quotes from the interviewee when deemed appropriate and these direct quotes were clearly identified in the note-taking so as to allow for their inclusion in the findings.

While stakeholders are traditionally divided into primary and secondary groups, with the primary group consisting of interviewees who are in constant and direct contact with the issue and the secondary group consisting of interviewees who are more indirectly connected to the issue, this dichotomization is not deemed appropriate for this dissertation. The reason for this is twofold: first, the 'direct' and 'indirect' groups are heterogeneous, and second, the interviewees may have filled differing roles since the creation of the LTO designation.

Rather, the interviewees are categorized by the nature of their work which was captured in the first interview question, as was the role of the interviewee *vis-a-vis* the LTO. It was deemed appropriate for the interviewee to provide this description rather than to categorize the interviewee based on their current professional title as many of these interviewees have fulfilled various roles since the inception of the legislation in 1997. Also, proceeding in this fashion allowed the interviewee to provide more detail about the nature of their work. Based on this information, these interviewees were divided into four categories: Legal, Mental Health, Supervision/Enforcement, and Community Service. The Legal category of stakeholders includes judges, Crown and defence counsel, and a legislator. A total of 12 interviews and 13 interviewees are in the Legal stakeholder category. The Mental Health category of stakeholders includes those psychologists and psychiatrists conducting assessments and/or providing treatment to LTOs, either in the institution or in the community. There are a total of 6 interviewees in this category. The Supervision/Enforcement category of interviewees includes those government officials who perform supervisory and monitoring duties while the offender is serving his or her LTO. There are a total of 9 interviews and 10 interviewees in this

category. Finally, the Community Service category includes those interviewees who provide a range of social support services to these LTOs during the supervision order and/or as the LTO is in the final stages of the determinate portion of their sentence. There are a total of 4 Community Service interviewees.

While these stakeholder categories capture the general nature of work performed by the interviewees within them, the categories are not homogenous. Rather, the role played by each interviewee within each group often differed, and the opinions expressed by interviewees varied, even for those stakeholders performing very similar duties. The responses to the questions organized under Topic A reveal this diversity.<sup>11</sup>

Each interviewee in each category is assigned a code that is made up of the first letter(s) of the stakeholder category (Legal = L; Mental Health = MH; Supervision/Enforcement = SE; Community Service = CS), followed by a number. The number simply signifies the order of the interview relative to the other interviews in the same stakeholder category (for example, the first Community Service interviewee that participated in this research was assigned the code CS1). Referring to interviewees by a code eliminates the possibility of revealing the gender of the interviewee and therefore perhaps inadvertently revealing their identity, which is of particular concern in those stakeholder categories or stakeholder sub-categories that comprise a relatively small number of highly-specialized stakeholders. As some stakeholder categories are more diverse than others, a more detailed coding system is required to distinguish between various sub-categories within the same broader stakeholder category. The details of the coding for each of the interviewee stakeholder categories are described in the findings section under the respective stakeholder category heading along with the responses of these same interviewees.

It is important to note, at this point, that the interviewees in this dissertation are by no means intended to represent the views of their respective organizations. In fact, it

<sup>11</sup> See Appendix D for interview questions.

was quite common to hear the interviewees state that their responses represented their own views and that these views may or may not differ from the views of their colleagues and/or the official views of the organization or institution to which they belong. In other words, these stakeholder categories are not homogenous. The intention was to represent each of the categories as much as possible in order to gain the most accurate understanding of both the intended and unintended outcomes of this legislation and the unique set of offenders whose behaviours it attempts to control and manage.

The decision was made to conduct these interviews *after* the completion and preliminary analysis of the file data rather than to gather these two forms of data concurrently in case trends and patterns would emerge in the analysis of the file data that would require clarification or input from the various interviewees. The questions posed in this research were predominantly open-ended in order to allow the interviewees to express their beliefs and attitudes in depth. Indeed, at the end of each interview, participants were given the opportunity to make additional comments, thus allowing them to elaborate on any point he or she may feel was not adequately addressed in the previous questions. This also allowed the interviewee to offer suggestions of other potential interviewees and/or sources of data that may be suitable for inclusion in the research. In addition to being a purposive method, then, the sampling technique also incorporated a snowball method, which involved drawing on interviewee referrals for more interviewees within the same stakeholder category, and at times in other stakeholder categories.

The interview questions were organized along five main topical categories: interviewee role in the process of the LTO provisions; interviewee perceptions of the LTO provisions; interviewee perceptions of the characteristics of LTOs; interviewee experiences and perceptions of LTOs in the system; and the future of supervising LTOs. The purpose of organizing the questions in such a manner was two-fold. First, this was undertaken in an effort to create a logical sequence and flow to the questions. After determining the role of the interviewee in relation to the LTO, addressed in the first question, the ordering of the remaining questions was intended to essentially guide the interviewee through a process beginning with their views of the designation itself, of the offender who receives the designation, of the system that deals with this offender, and



finally of how to improve the system's handling of this unique subset of offenders. Second, the purpose of organizing the questions into topical categories was to facilitate the analysis of the data. These categories serve as overarching topics in the analysis of these data without restricting the emergence of themes within and across these topical interview question categories.

## **Ethical Considerations**

Confidentiality is certainly a concern in both the file and interview data. While the file data include information that is available to the general public—such as the RFJ/RFS—the assessments in these files are not publicly available. Even though the names of mental health experts and other individuals may be mentioned in the RFJ/RFS, and even though these LTO hearings are held in open court, the identities of all those involved are kept confidential. This is particularly necessary as these individuals did not provide consent. Only information directly relevant to the dissertation was recorded. For example, while the names of the victim(s) in these cases are often included in the RFJ/RFS and/or the assessment documents, these names were neither recorded nor are they included in the analysis. Rather, the relationship that the victim had to the LTO was recorded. The identities of victims cannot be revealed in any work emanating from these data. Moreover, the identities of assessors and offenders, and any other participant in the court hearing, will not be revealed in any work emanating from these data. Having said this, though, there is reference made by name to those key legal cases that set legal precedents, such as those cases discussed in detail in the history section of this dissertation. Moreover, with respect to the assessing mental health experts, the professional affiliation (psychiatrist or psychologist) is recorded and is relevant for analytical purposes.

While several interviewees mentioned that they were at least comfortable with the publication of their names in the research, not all interviewees shared this sentiment. In order to ensure that the identities of these latter interviewees are kept confidential, it is necessary to ensure that the identities of all interviewees and also the specific agency they belong(ed) to (if applicable) are kept confidential so as to ensure that no one

interviewee could be inadvertently identifiable. In addition to removing specific names from the interview data and replacing these names with a number, and storing the master list in a secure cabinet in the Forensic Mental Health Research Office at Simon Fraser University, it was necessary in some instances to omit some of the information that is inherently identifying in nature, or to be somewhat vague in the reporting of some of the findings so as not to reveal the identities of the interviewees. In many instances, the interviewee is the only individual within their respective institution to fulfill their specific duties that pertain to LTOs, hence the justification for remaining vague with the reporting of some data which may have otherwise been included. Finally, as a precautionary measure, the interviewees were provided with a draft of the findings from the stakeholder category in which their responses were categorized to provide them with the opportunity to give input and/or to request the removal of any point that he or she may perceive as having the potential to reveal his or her identity.

As mentioned earlier, the interviewees are placed into one of four broad stakeholder categories. It is because of the absence of specific names that it may appear that the number of responses in the interview findings section within each stakeholder category does not equal the number of interviewees actually in that category. This perceived discrepancy simply signifies that the information provided in one interviewee's response may contain several issues and themes discussed by the other interviewees in the same stakeholder category.

Finally, voluntariness was undoubtedly a pre-requisite for participation in all of these interviews, and full informed consent was obtained prior to each and every interview. In the process of obtaining informed consent, interviewees were provided with a study information document that outlines the purpose and objectives of the research and also the benefits and risk of the research. Participants were assured confidentiality, as mentioned, and were also informed of their right to withdraw at any time.

## Strengths and Weaknesses

There are several strengths and weaknesses in the file data. One of the main strengths is that these files are housed in one location and organized in such a way that the assessments, which are not public information, are included together in the same file as the RFJ/RFS for each respective LTO. The fact that the FPSC is responsible for the coordination of assessments for these offenders in B.C. renders its records particularly suitable and convenient for research purposes. The standardized nature of the assessments and the high degree of consistency in categories and subheadings in these reports facilitates the collection and subsequent analysis of data found in these respective categories, and also facilitates the replication of this research. As shown in the file review section of this chapter, examples of categories consistently appearing in these assessments include: diagnosis, risk assessment and treatability.

The standardized nature of the assessments is in and of itself a finding, revealing the flow and rhythm of what a prototypical LTO case in B.C. looks like. This structure also speaks to the professional and ideological context in which these assessments are created and for this reason, as mentioned, comparisons between psychological and psychiatric assessments are made when possible. Essentially, these assessments are the product of a social process with its own standards and norms, inevitably shaping the readers' consumption of these seemingly objective and neutral data.

The standardized format for the mental health professionals' assessments, however, is not paralleled in the RFJ and/or RFS. There is in fact great variation in the manner in which judges discuss case details and offender information, as well as their own reasoning that supports the determination of the appropriate designation. For example, while some RFJ/RFS may include very detailed criminal records for the accused, other cases make virtually no mention of previous offences.

Each file varied in terms of length, content and completeness, all limitations that are quite common in secondary data analysis (Maxfield & Babbie, 2008). Every effort is made to cross-reference data in the RFJ/RFS with the data in the assessments, and *vice versa*, to make the resulting dataset as complete and accurate as possible. In other

words, these data are triangulated.<sup>12</sup> Overall, the data extracted from the RFJ/RFS are fairly general and are intended to provide only a snapshot description of this category of offender. This broad general description is followed by more specific and detailed information available in the assessments.

The use of file review data followed by interview data is also evidence of triangulation. Conducting the interviews after the completion of the file review data analysis is particularly advantageous as it provides the opportunity to ask questions in the interview that arise from the patterns and themes that may emerge from the file review. Furthermore, it is only through these primary data that a meaningful discussion of the various outcomes of the legislation—both manifest and latent - may occur. Interviewing stakeholders directly impacted by the legislation allows for a degree of depth and detail in relation to the evaluative aspects of this research that would likely not be possible by relying exclusively on secondary data sources, which are limited with respect to providing this contextual richness (Maxfield & Babbie, 2008).

The snowball sampling method is not without its weaknesses, however, since the initial contact shapes the final sample (Maxfield & Babbie, 2008). This is not of great concern in this research as the sampling process was quite iterative in nature and the list of initial contacts in the field was purposefully chosen and quite diverse. Furthermore, they included a wide spectrum of individuals from various agencies. This has led to what is believed to be a sufficiently complete list of those relatively few stakeholders who come into intimate contact with this unique subset of offenders in this province. Not only did the interviews reach a point of diminishing return, as mentioned earlier, but when the various interviewee referrals began to point to the same individuals, it became apparent that the core stakeholders had been captured in the sampling.

<sup>12</sup> As defined by Ritchie and Lewis (2003: 43), triangulation “involves the use of different methods and sources to check the integrity of, or extend, inferences drawn from the data.”

There was some difficulty in obtaining the participation of interviewees from two institutions in particular: B.C. Corrections and the Supreme Court of B.C. The obstacle with the participation of B.C. Corrections officials revolved around a long and delayed ethics review process that was required to simply interview one official. It was decided that the benefit of this one interview did not outweigh the harm of close to a 6-month delay in the research, with no guarantee of being granted ethics approval. With the assistance of a contact from B.C. Corrections, it was possible to informally poll the provincial correctional centres on the management of LTOs within the provincial system. It was revealed through this informal inquiry that LTOs are identified upon admission in a provincial institution and that the CSC is notified at this time, but no other special tracking of these offenders occurs (Personal communication, February 5, 2010). With regard to the challenges presented by these offenders, it was revealed that there are no special challenges in managing these inmates, although it was suggested that LTOs may at times be more demanding than other inmates in that they expect to be treated as federal inmates. Finally, with regards to the nature of contact between LTOs and the CSC or Parole Board staff during the provincial sentence, it was revealed through this informal inquiry that the nature of the contact varied, from there being little or no contact recollected, to there being occasional contact, to consistent contact made within days of admission. In general, it was found that LTOs are treated no differently than any other inmate within the provincial institution.

Further correspondence between B.C. Corrections officials and the CSC staff on this issue revealed that “CSC would *most likely* already be aware of the inmate’s location as they have a dedicated specialist who tracks and monitors locations of long-term offenders” (Personal communication, February 5, 2010, emphasis added). As per the *B.C. Corrections Adult Custody Division Policy*, section 3.1.5. (5), the responsibility for tracking the institutional status of the offender and initiating all processes necessary prior to commencement of the LTO does indeed fall on the CSC and the NPB. It is less clear, though, if this applies if the LTO has been sanctioned for a breach of a LTO that has already commenced and that has simply been suspended during the incarceration period. This issue of provincial custody is explored further in the interview portion of the research.

The nature of the difficulty of obtaining the participation of interviewees from the B.C. Supreme Court did not revolve around research ethics obstacles. Rather, for those Supreme Court justices who responded to the numerous calls for participation, the reluctance to participate revolved primarily around the fact that the respective justice felt that he or she was not able to participate in a meaningful way because of the relatively low number of DO or LTO cases that have been heard in their courts. Since there had been a total of only 91 LTO designations in B.C. from the creation of the designation in 1997 to April 2009, it is not terribly surprising that each judge in the Supreme Court would have relatively little experience with these cases. Some also mentioned that they felt it was inappropriate to make suggestions for legislative reform as the judiciary is an independent branch of government. Close to a dozen judges within the B.C. Supreme Court declined to participate in this research for these reasons. In the end, with the assistance of the court scheduling staff, it was possible to identify and directly contact those Supreme Court judges who had indeed presided in LTO cases, and in the end, a total of 2 Supreme Court judges did agree to participate. It is believed that the reliance on the court case scheduling staff to personally contact those judges who have presided in LTO cases was the key factor leading to their willingness to participate.

One weakness that revealed itself throughout the interviews with stakeholders in the Legal category pertained to the reliance on RFJ/RFS. These interviewees indicated that the actual court transcripts would have been much more informative and detailed. More specifically, the interviewees in the Legal stakeholder category indicated that, while the 1997 amendments to the *Criminal Code* allowed for a court-appointed assessor, this does not preclude the defence counsel or Crown counsel to call on the services of their own expert witnesses, and the transcripts would provide the detail of the assessment of *all* experts involved in the court process and would reveal the variation in assessments that commonly occurs in these DO and LTO hearings. Surely this is a criticism that could be made of any social science research that relies on RFJ/RFS as a source of data; however, while it would be costly, the use of transcripts ought to be considered in future research into DO and LTO hearings that include an examination of an expert assessment.

## **Methodological and Policy Considerations**

There are numerous resource and legal policy implications of this research. In addition to the potential strain that these LTO provisions place on the Courts, Crown and defence counsel, those professionals conducting the assessments to assist the courts in the determination of dangerousness and the manageability of the offender in the community are undoubtedly charged with a task that is daunting owing to the potential for false-negative or false-positive assessments. Furthermore, there is surely a great deal of strain that this subset of offenders places on the correctional system, both provincial and federal, owing to their treatment needs both in and out of custody, as well as their supervision needs.

A key aspect of the evaluative portion of this research is the determination of the extent to which Parliament's apparent intentions have been satisfied by the way in which the legislation is being applied and the way in which LTOs are being supervised. In other words, a key policy implication of this research is the determination of whether the targets of the LTO designation are indeed the intended targets of current enforcement practices. The focus on treatment and supervision concerns in the interview portion of the research, as well as the focus on which conditions are working/are not working for this subset of offenders, shall also assist in informing the development of a best practices manual that may be utilized by practitioners in the field. The exploration and evaluation of the use of the designation in the first 10 years of its existence and the review of its various outcomes, both intended and unintended, shall assist criminal justice, mental health and other government officials in their ongoing pursuit of managing the risks posed by this unique subset of offenders.

Having outlined the methods used in the current research and the various strengths and weaknesses of these methods, along with the ethical considerations involved, the focus now shifts to the analysis of the secondary file review data and the primary interview data, respectively. The interpretation of these data is reserved for the Discussion Chapter of the dissertation (Chapter 8).

## **Chapter 6.**

### **Findings: The File Review, Reasons for Judgment and Assessments**

In this chapter, the findings of the analysis of the file review data are revealed. This includes the data collected from the RFJ/RFS as well as the expert assessments. The RFJ/RFS variables include: demographics, general long-term offender hearing information, index offence and victim information, sentence information, long-term supervision orders, and long-term supervision order breaches. The expert assessment variables include: the assessors, diagnoses, assessment tests and tools, assessment test and tool scores, overall assessment of risk summary, and treatability. The interpretation of these data are reserved for the Discussion Chapter of this dissertation (Chapter 8).

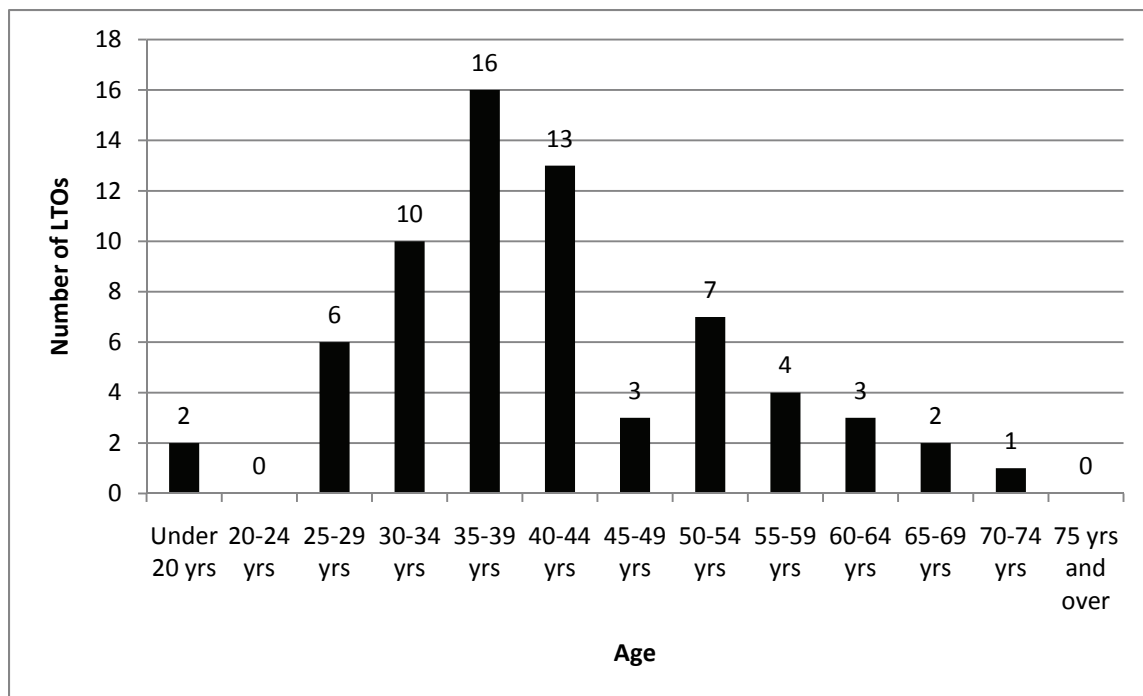
#### **Demographics**

Offenders designated as LTOs in B.C. in the time period of interest are overwhelmingly male; of the 67 case files included in this analysis, only one LTO is female. The specifics of the case of this one female LTO are described in more detail below (see Demographics—the Female LTO).

The average age of these LTOs at the time of the most recent decision was 41.5 years, with a range of 19 to 73 years. As shown in Figure 5, the modal age range was the 35-39 year range, representing approximately 16 (24%) of the cases.



**Figure 5. Number of LTOs by Age Range in B.C., 1997-2007**



While the ethnic background of the offender was initially a variable of interest, the RFJ/RFS did not consistently make mention of the ethnicity of the offender; surprisingly, more often than not, the ethnicity was not addressed at all. Nevertheless, it is noteworthy that, in 18 of the cases (27%), the aboriginal descent of the offender was explicitly mentioned in the RFJ/RFS, and/or in the assessment, while the ethnicity of the offender was rarely mentioned in the remaining 49 files included in this analysis, if at all. Again, this is not surprising due to the legislative requirement outlined in s. 718.2 of the *Code*. In four RFJ/RFS, the aboriginal status of the offender was specifically mentioned by the presiding judge as a factor taken into consideration. In two cases, the judge notes that the aboriginal status of the offender is a mitigating factor. In one of these two cases, the judge notes that the ethnicity of the offender led this judge to focus on the goal of rehabilitation. In another case, the judge referred to the offender's ethnicity in recommending programs that are specifically designed for aboriginal offenders. Lastly, in one case, the judge in fact states that the principles of sentencing for aboriginal

offenders set out in the *Criminal Code* in fact do not apply in the respective case in light of the serious nature of the crimes committed.

To examine Aboriginal LTO cases further, the diagnosis of psychopathy, the overall risk assessment summary, as well as the assessor's evaluation of the offender's treatability in these cases are reviewed. These findings are revealed under the respective subheading later in this chapter. Other features of these Aboriginal LTO cases are noteworthy, including the index offence and the nature of the initial application made by Crown counsel in these cases; these points are also reviewed under the respective subheadings later in this chapter.

### **The Female LTO**

The case of the one female LTO included in the analysis is unique on a number of levels, and as such, the details of this case are described here in more detail.

The index offence in this case was arson, and the offender had a total of 7 convictions under the arson provisions of the *Criminal Code*. This was one of the two cases in the analysis for which arson was one of the index offences. The initial application in this female LTO case was for a DO designation, and the presiding judge in this case noted that the evidence clearly established that this offence qualified as a serious personal injury offence and that there was a failure to restrain behaviour and a likelihood of causing death or injury to other persons. In fact, the offender's history of fire setting spanned over 40 years. Furthermore, the index offence was committed while the offender was serving a conditional sentence for another fire-setting offence.

Despite these factors, the judge noted that the offender is not the typical offender who is captured by this legislation. The mitigating factors listed by the presiding judge include the fact that the offender is not cruel, psychotic or mean-spirited, and that the offender is of limited intelligence. In fact, the offender suffered from a serious head injury at a very young age, and has been intellectually challenged since that time. The judge went on to agree with the characterization of defence counsel that the offender is a real victim. The judge emphasized that the justice system must be guided by compassion and humanitarian values in this case. In the end, the judge stated that the

evidence does not warrant or justify a finding of the DO designation as it cannot be said that the offender's pattern of conduct is substantially or pathologically intractable. As such, the offender was designated as an LTO.

## **General LTO Hearing Information**

For the majority of those cases for which the designation of LTO either remained or was imposed on appeal, the final decision was heard in the Supreme Court of B.C. (n = 38), followed by the Provincial Court of B.C. (n = 18), then the B.C. Court of Appeal (n = 10). One case had its final hearing in the Supreme Court of Canada. In 41 (61%) of these 67 cases, the initial application was for a DO designation, while in 23 (34%) cases, the initial application was for a LTO designation. In 12 cases, the offender had been initially designated as a DO, but that designation was later overturned and a LTO designation was imposed in its place. The nature of the initial application was not explicitly discussed and/or made clear in 3 of the RFJ/RFS.

When comparing the initial application for those LTOs identified as Aboriginal and those LTOs not identified as such, it was found that the proportion of LTOs with an initial DO application was approximately 61% in both groups.

## **Index Offence and Victim Information**

In the majority of cases included in this analysis (49/67 cases, 73%), at least one of the index offences was sexual in nature. When comparing those cases in which the offender was identified as Aboriginal and those cases in which the offender was not identified as such, it is found that the proportion of cases in which a sexual offence was included in the list of index offences was equal in both groups (13 of the 18 Aboriginal cases (72%) and 36 of the 49 non-Aboriginal cases (74%)).

Overall, sexual assault was the most prevalent sexual index offence, appearing in 30 of the 49 cases (61%) included in this analysis that involved a sexual index offence. Again, when comparing Aboriginal cases to those cases in which the offender

was not identified as Aboriginal, sexual assault remains the most prevalent sexual index offence. The other index offences that were sexual in nature include: aggravated sexual assault, sexual assault with a weapon, sexual interference, inviting sexual touching, and touching for a sexual purpose. Those index offences that were not sexual in nature ranged in nature and severity from uttering threats, break-and-enter and assault to arson, attempted murder and manslaughter.

While not all RFJ/RFS included specific information about the victim, in 47 of the 67 cases, there was enough information to determine the relationship of the victim(s) of the index offence and the LTO. In 35 of these 47 cases (approximately 75%), the victim was known to the offender and in 15 of these 35 cases, the victim was related to the offender. Four of these related victims were the offender's spouse or intimate partner. The remaining 12 of the 47 cases (approximately 26%) for which there was enough information to determine the victim-offender relationship, the RFJ/RFS revealed that the victim was not known to the offender. In 3 of these 12 cases, the victim was a sex-trade worker.

In 25 of the total 47 cases (53%) included in this analysis for which there was sufficient information to determine the victim-offender relationship, the victim(s) of the index offence was (were) described in enough detail to determine that he/she was a child at the time of the incident(s), and in 19 of these 25 cases (76%), the child was known and/or related to the offender.

## **Sentence Information**

The sentences imposed on the LTOs whose cases were analyzed varied. The discretionary use of credit for pre-trial and/or pre-sentencing custody that was available during the time period of examination in this research, as per s. 719(3) of the *Criminal Code* (*Criminal Code*, 1995), accounts for at least some of the variation in sentences served by these LTOs.

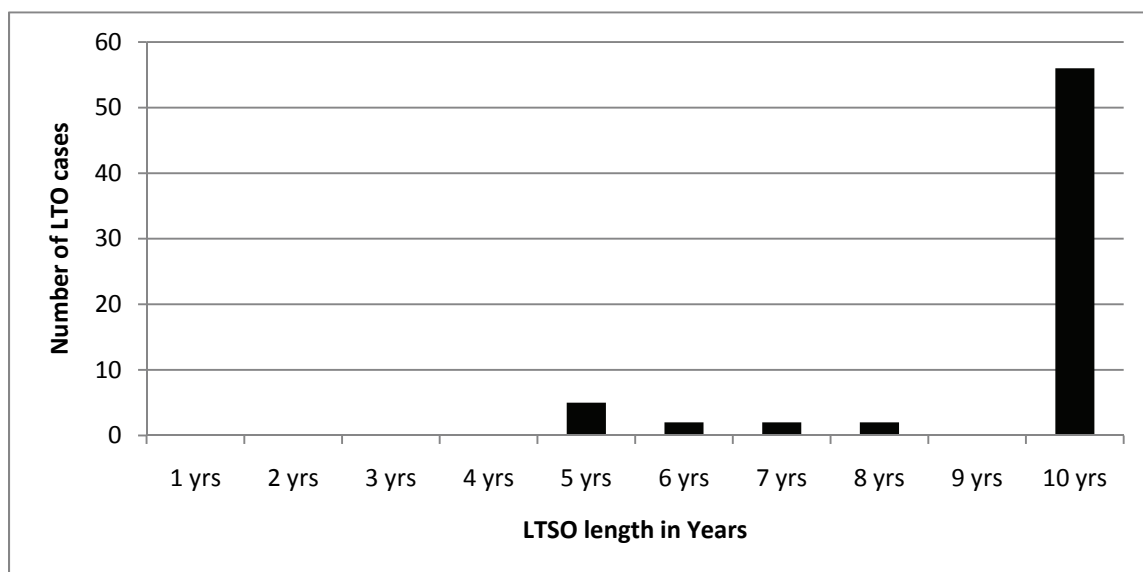
In terms of actual sentences imposed (i.e. sentence length *after* credit was given for pre-trial or pre-sentencing custody), the shortest sentence was 6 months in length,

while the longest was 18 years in length. In terms of global sentences though (i.e. sentence length *before* credit is given for pre-trial or pre-sentencing custody) the sentence length ranged from 2 years, which is the minimum sentence required as outlined in the legislation, to 21 years.

## Long-Term Supervision Orders

The vast majority of supervision orders were 10 years in length. In fact, as shown in Figure 6, for 56 (84%) of the 67 cases included in this analysis, the supervision order was 10 years in length, the maximum number of years permitted under the legislation, with the second most prevalent supervision order length being 5 years (n = 5). The average LTSO length is 9.35 years. In one of the cases for which the LTSO was 5 years in length, the initial order was 10 years in length but was reduced to 5 years on appeal to the B.C. Court of Appeal; the appellate judges argued that to add 10 years of supervision to a 7-year determinate sentence, resulting in a total of 17 years, was unduly long and harsh. The index offence in this case was sexual assault.

**Figure 6. Number of LTO Cases by Length of LTSO in Years in B.C., 1997-2007**



Common provisions attached to the LTSO included DNA-sample orders, firearm prohibitions and orders that all transcripts, testimony and reports be sent to the CSC. In some cases, judges simply made recommendations to parole authorities in relation to release conditions. However, in a number of cases, the sentencing judge did make orders that were tailored specifically to the offender in question. For example, in one case, the judge imposed a lifetime ban from attending a public park or a public swimming area where persons under the age of 14 years are present or can reasonably be expected to be present/seeking, pursuant to s. 161 of the *Criminal Code*; obtaining or continuing any employment, whether or not the employment is remunerated or becoming or being a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of 14 years; or using a computer system within the meaning of s. 342.1(2) for the purpose of communicating with a person under the age of 14 years. The index offences for this case were indecent assault, gross indecency, sexual assault and sexual interference. The victims included the offender's sister, stepdaughter and grandnieces. In another case, the judge ordered that the offender send a letter of apology to the victim if the victim so wishes. The victim in this case was the common-law partner of the offender, and the index offences were aggravated assault and uttering threats.

## **Long-Term Supervision Order Breaches**

There was one case included in this analysis that involves the violation of a condition of the LTSO. The offence leading to the breach was the fire-setting of a property that was inhabited, and the offender had a total of 6 previous convictions under the arson provisions of the *Criminal Code*, not including the conviction for the index offence. A stay of proceedings was entered on the breach of the LTSO, and the offender was sentenced to an additional period of 2 years in custody.

In addition to this one case in which the LTO was already on a LTSO at the time of the index offence, there were 4 other cases in which the RFJ/RFS specifically indicated that the offender was on probation at the time of the index offence resulting in the LTO designation. In another case, the offender was on bail for sexual assault at the

time of the index offence. In yet another case, the offender was on a s. 810 recognizance at the time of the index offence. There was also one case in which the offender was on parole at the time of the index offence. Finally, there was one case in which the offender was on a conditional sentence at the time of the index offence. In all, then, there were a total of 9 cases (13%) in which the offender had been conditionally released into the community at the time of the index offence. Nonetheless, these offenders received an LTO designation.

## **The Assessors**

As mentioned in the Methods Chapter, assessors are chosen to be included on the list of court-ordered assessors based on their level of experience. Currently, this list of assessors on the roster in B.C. includes 8 psychiatrists and 5 psychologists (Personal communication, Dec 14, 2009). The higher representation of psychiatrists also appears in the cases included in this analysis. In fact, in 47 of the 67 LTO cases (approximately 70%) included in this analysis (which includes those cases for which the assessment was not included in the file), the coversheet on the file revealed that the assessor was a psychiatrist.

As mentioned, a total of 56 of the 67 case files analyzed included the court-ordered assessment. Of these 56 assessments, 37 (approximately 66%) of the assessors were psychiatrists and the remaining 19 assessors (approximately 34%) were psychologists. Furthermore, of these 56 court-ordered assessments, 36 (approximately 64%) involved an interview with the offender as part of the assessment. A higher proportion of cases assessed by a psychiatrist involved an interview (25 of the 37 psychiatric assessments, 68%) as compared to the proportion of cases assessed by a psychologist (11 of the 19 psychological assessments, 58%).

## **Diagnoses**

While not all of the LTOs whose files were included in the analysis were assigned a specific psychiatric diagnosis, many others were diagnosed with more than one

disorder. Overall, as shown in Table 3, the most prevalent diagnosis falls into the category of alcohol and/or substance abuse or dependence, with reference to some alcohol and/or substance-related disorder appearing in 20 of the 56 (36%) assessments in the diagnosis section. While some of the diagnosing doctors were very specific in terms of the exact substance that is of concern for the respective offender, others describe the dependence or abuse in more general terms (e.g., alcohol and substance-abuse disorder, polysubstance dependence, or substance-related disorders). Overall, the second most prevalent diagnosis given was antisocial personality disorder, appearing in 18 of the 56 (32%) assessments in the diagnosis section, followed by pedophilia, appearing in 14 of the 56 (25%) assessments.

Also as shown in Table 3, there are some notable differences revealed when comparing those diagnoses given by psychiatrists to those given by psychologists. For example, while alcohol and/or substance-related disorder is the most prevalent diagnosis given by psychiatrists, followed by pedophilia and then antisocial personality disorder, antisocial personality disorder is the most frequently given diagnosis when the assessor was a psychologist, followed by alcohol and/or substance-related disorder, and lastly pedophilia.

**Table 3. Number and Percentage of LTO Assessments by Most Prevalent Diagnoses and by Profession in B.C., 1997-2007**

	Alcohol and/or Substance related disorder	Antisocial personality disorder	Pedophilia
Number and Percentage of Offenders Receiving Diagnosis in Psychiatric Assessments <sup>a</sup>	13 (35%)	10 (27%)	12 (32%)
Number and Percentage of Offenders Receiving Diagnosis in Psychological Assessments <sup>a</sup>	7 (37%)	8 (42%)	2 (11%)
Total Number of Offenders by Diagnosis	20 (36%)	18 (32%)	14 (25%)

<sup>a</sup> Total number of Psychological Assessments = 19.

When examining those cases that had more than one diagnosis, it becomes apparent that there were certain combinations of diagnoses that were more prevalent



than others. There were a total of 26 assessments that included more than one diagnosis. When examining the number of cases that included some combination of the three most prevalent diagnoses listed above (alcohol and/or substance-related disorder, antisocial personality disorder, and pedophilia), it is revealed that 8 assessments included a diagnosis of both antisocial personality disorder and alcohol and/or substance-related disorder, 4 cases included a diagnosis of both pedophilia and alcohol and/or substance-related disorder, and one case included all three diagnoses.

## **Assessment Tests and Tools**

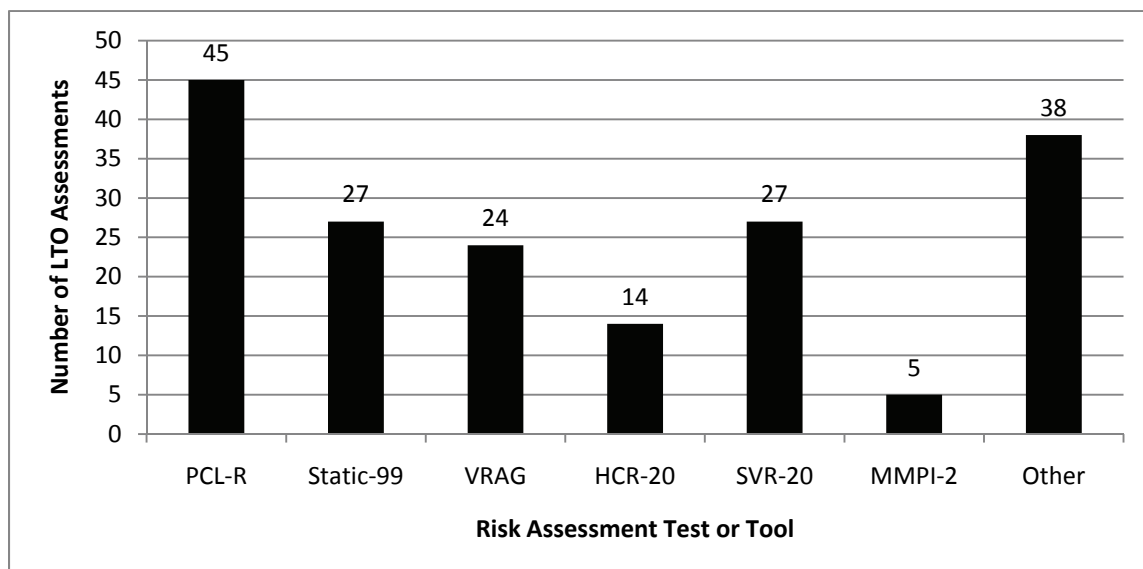
There were a total of 23 different tests/tools used throughout the 56 expert assessments included in the LTO files that were reviewed. Many of these tests/tools were conducted only once throughout the 56 assessments, while others were conducted much more regularly. As shown in Figure 7, the one test/tool that was conducted in 45 of the 56 expert assessments (80%) that were reviewed was the Psychopathy Checklist Revised (PCL-R). The second most frequently relied-upon tests/tools were the Static-99 and the Sexual Violence Risk-20 (SVR-20), both appearing in 27 (48%) of the 56 expert assessments, followed by the Violence Risk Appraisal Guide (VRAG) (n=24, 43%). The Historical, Clinical, Risk Management-20 (HCR-20) was used in 14 of the 56 assessments (25%), and the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) appeared in 5 of the assessments (9%).<sup>13</sup>

The tests/tools that were relied on in more than one—but fewer than 5 - of the assessments, coded as 'Other' in Figure 7, are: the Violence Prediction Scheme (VPS) (n=4); the Risk of Sexual Violence Protocol (RSVP) (n=4); the Spousal Assault Risk Assessment (SARA) (n=3); the Sex Offender Risk Appraisal Guide (SORAG) (n=3), the Sex Offender Need Assessment Rating (SONAR) (n = 2), the Personality Assessment

<sup>13</sup> See Appendix A for glossary of the assessment tests and tools relied upon in more than one assessment.

Inventory (PAI)(n=2); and the Millon Clinical Multiaxial Inventory-2 (MCMI-2) (n=2) and the MCMI-3 (n=2). Finally, the tests/tools appearing only once in the expert assessments reviewed here, also included in the 'Other' category in Figure 7, are as follows: the Corrections Interpretive Report Revised, the State-Trait Anger Inventory (STAXI), the Wechsler Adult Intelligence Scale (WAIS-R), the Sex Offender Risk Assessment Unit (SORA), the Multiphasic Sex Inventory (MSI), Raven's Standard Progressive Matrices, the Millon Report, the Paulus Deception Scale (PDS), the Rapid Risk Assessment for Sex Offender Recidivism, the Bumby Cognitive Scale, the Miller Social Intimacy Scale, the UCLA Loneliness Scale-revised, the Fear of Negative Evaluation Scale, the Holden Psychological Screening Inventory, the Beck Depression Inventory and the Aggression Questionnaire.

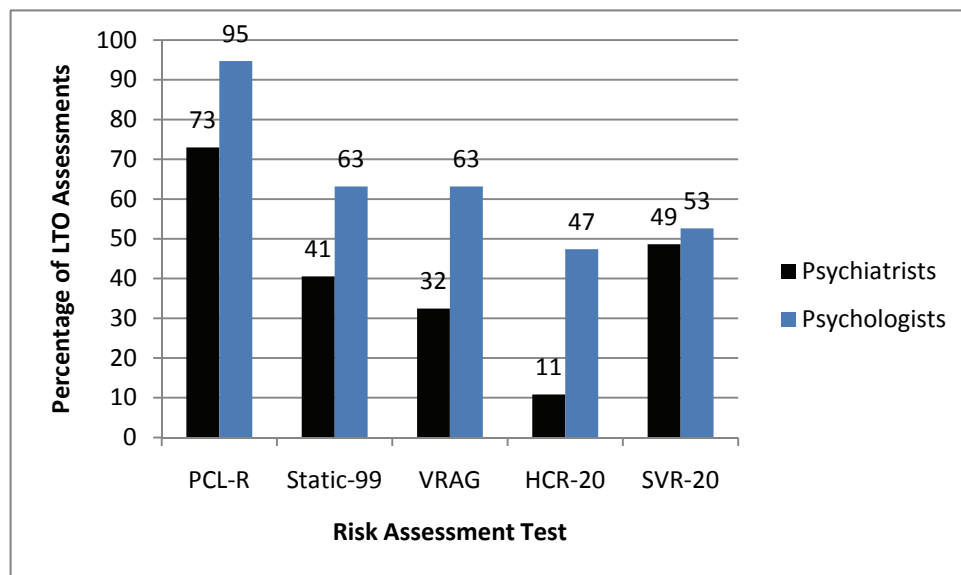
**Figure 7. Number of LTO Assessments by Tests and Tools Used in B.C., 1997-2007**



In an effort to examine any potential professional differences in tests/tools used, the tests/tools relied upon in psychiatric assessments were compared with those used in psychological assessments. The percentage of psychiatric assessments using any one of the 5 most relied upon tests/tools is compared to the percentage of psychological assessments using the same tests/tools in Figure 8. This proportional comparison

reveals that, while the PCL-R was the most utilized test/tool regardless of the profession of the assessor, almost all of the assessments (18/19, 95%) conducted by psychologists included the use of the PCL-R, while less than 75% (27/37) of the assessments conducted by psychiatrists used this test/tool. The tests/tools that take the second place for psychologists were the Static-99 and the VRAG, followed by the SVR-20. The test/tool taking the second place for psychiatrists, on the other hand, was the SVR-20, followed by the Static-99. The SVR-20 was used in approximately the same proportion of cases assessed by psychiatrists and psychologists (49% and 53%, respectively). Of these top five tests/tools used, the test/tool relied upon in the least proportion of cases, regardless of the profession of the assessor, was the HCR-20.

**Figure 8. Percentage of LTO Assessments by Most Prevalent Tools and Tests Used and by Profession in B.C., 1997-2007**



### **Assessment Test/Tool Scores: The PCL-R, the Static-99 and the VRAG**

As mentioned above, the test/tool most frequently relied upon in all the expert assessments included in this review was the PCL-R (n=45). The PCL-R is a diagnostic test, designed to identify and measure psychopathy. The PCL-R cut-off for a finding of psychopathy is a score of 30 (Hare, 2003). In fact, a score of 30 or higher is deemed to

be in the psychopathic range, a score greater than 20 but less than 30 is deemed to be in the intermediate range, while a score of 20 or less is deemed to be in the non-psychopathic range. While not initially designed as a risk assessment device, it has become commonly used to assess future violent recidivism. The second most frequently used test/tool was the Static-99 (n=27), and this test is actuarial. It is a sex offender risk assessment instrument designed to assess the long-term potential for sexual recidivism among male sexual offenders (Harris, Phenix, Hanson & Thornton, 2003). As both of these tests produce numeric scores, the ratings are conducive to descriptive comparisons here. The VRAG is also an actuarial test, which was designed to predict risk of violence following release (Quinsey, Rice, Harris & Cormier, 1998). This test also produces numeric scores conducive to descriptive comparisons, and is included in this analysis.

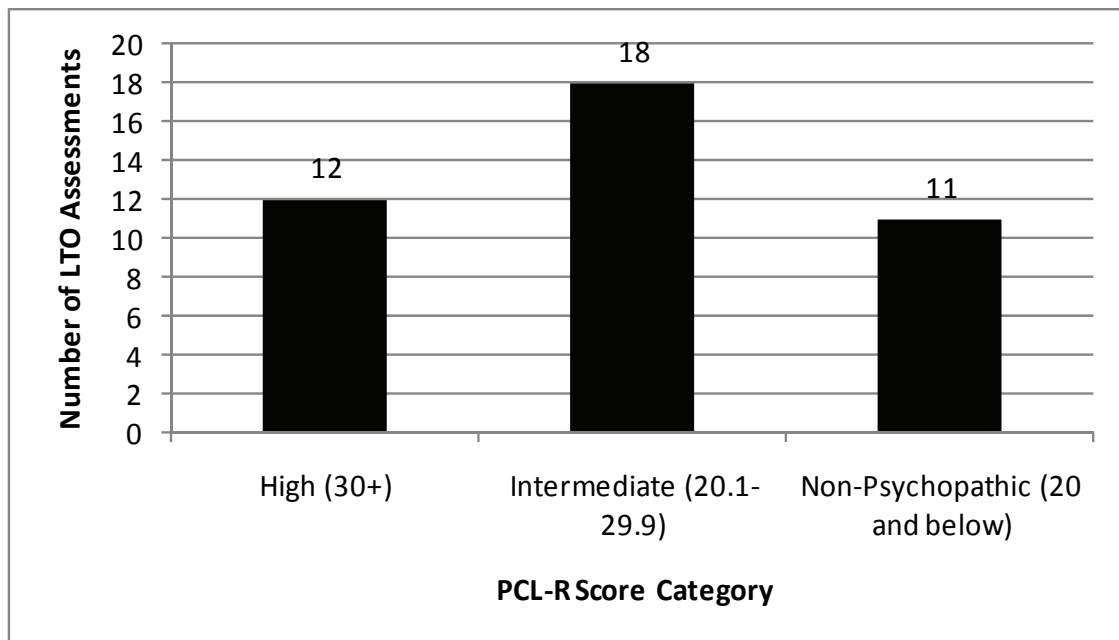
Of the 45 expert assessments in which the PCL-R was used, more than half (n=28) provide the PCL-R results in terms of raw scores. Of these 28 cases, 5 LTOs received a score of 30 or higher (psychopathic range), 16 received a score greater than 20 but less than 30 (intermediate range), and 7 received a score of 20 or less (non-psychopathic range).

Thirteen of the remaining 17 files provided PCL-R scores in percentile rankings. By referring to Hare's Psychopathy Checklist Revised Manual (2003), it was possible to convert these percentile rankings into the corresponding raw scores. As shown in Figure 9, combining these percentile rankings that were converted to raw scores with the raw scores mentioned above reveals that a total of 12 (29%) of the 41 offenders receiving either a raw score or a percentile score received a score of 30 or higher (psychopathic range), 18 (44%) of these 41 LTOs received a score greater than 20 but less than 30 (intermediate range), and a total of 11 (27%) of these 41 LTOs received a score of 20 or less (non-psychopathic range). The average PCL-R score for those individuals who were assigned raw scores was 23.6, and the average PCL-R score for those individuals who were assigned percentile rankings was 68<sup>th</sup> percentile.

The remaining four LTOs rated on the PCL-R were not assigned a score or a percentile, but rather, the assessor described the score textually. In each of these

cases, the assessor was a psychologist. One was ranked in the 'low-average range', one was ranked in the 'average range,' one was ranked in the high risk range, and finally one assessor described the ranking as being 'well below 34.'

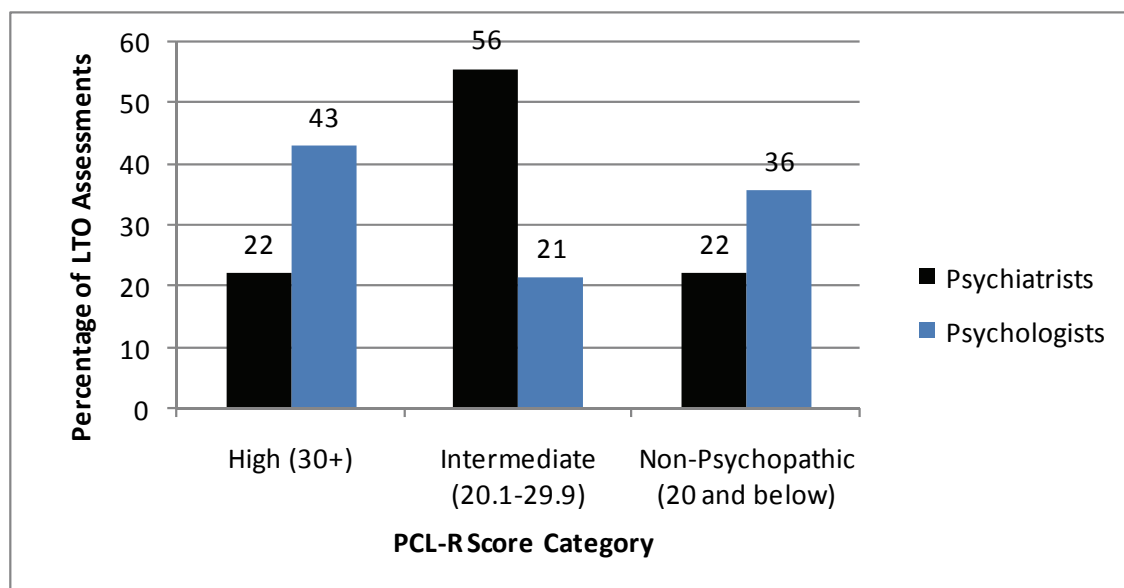
**Figure 9. Number of LTO Assessments by PCL-R Score Category in B.C., 1997-2007**



As mentioned in the Demographics section of this chapter, the prevalence of psychopathy amongst those offenders identified as Aboriginal and those not identified as Aboriginal was compared. In doing so, it was found that the percentage of LTOs in this analysis who were identified as Aboriginal and were categorized in the high psychopathic range was double the percentage of psychopathic LTOs not identified as Aboriginal (46% vs 23%, respectively), while the percentage of LTOs categorized in the intermediate category was approximately the same in these two groups (46% of the Aboriginal LTOs vs 43% of the offenders not identified as Aboriginal). Finally, only 1 (9%) of the Aboriginal LTOs assessed using the PCL-R was categorized in the non-psychopathic range, as compared to 10 (33%) of the LTOs not identified as Aboriginal.

As shown in Figure 10, of the 41 assessments in which the PCL-R was relied upon and a raw score or percentile ranking was assigned, the majority (15/27, 56%) of those offenders assessed by a psychiatrist with this test were ranked in the intermediate PCL-R score category, while the majority (5/14, 43%) of those offenders assessed by a psychologist with this diagnostic test were ranked in the high PCL-R score category. The remaining offenders assessed by a psychiatrist with this test and assigned a raw score or percentile ranking were equally divided into the high and non-psychopathic PCL-R score categories. The PCL-R score category with the 2<sup>nd</sup> highest number of offenders assessed by a psychologist was the non-psychopathic category (5/14, 36%), followed by the intermediate score category (3/14, 21%).

**Figure 10. Percentage of LTO Assessments by PCL-R Score Category and by Profession in B.C., 1997-2007**



As mentioned, 27 (48%) of the 56 expert assessments included in this analysis involved the use of the Static-99. This assessment tool predicts both sexual and violent recidivism rates and those in the high-risk category are expected to recidivate sexually at rates of 39%, 45% and 52% over a 5-year, 10-year, and 15-year time period, respectively (Harris et al., 2003). This same high-risk category of offenders is expected to recidivate violently at rates of 44%, 51% and 59% over a 5-year, 10-year, and 15-year

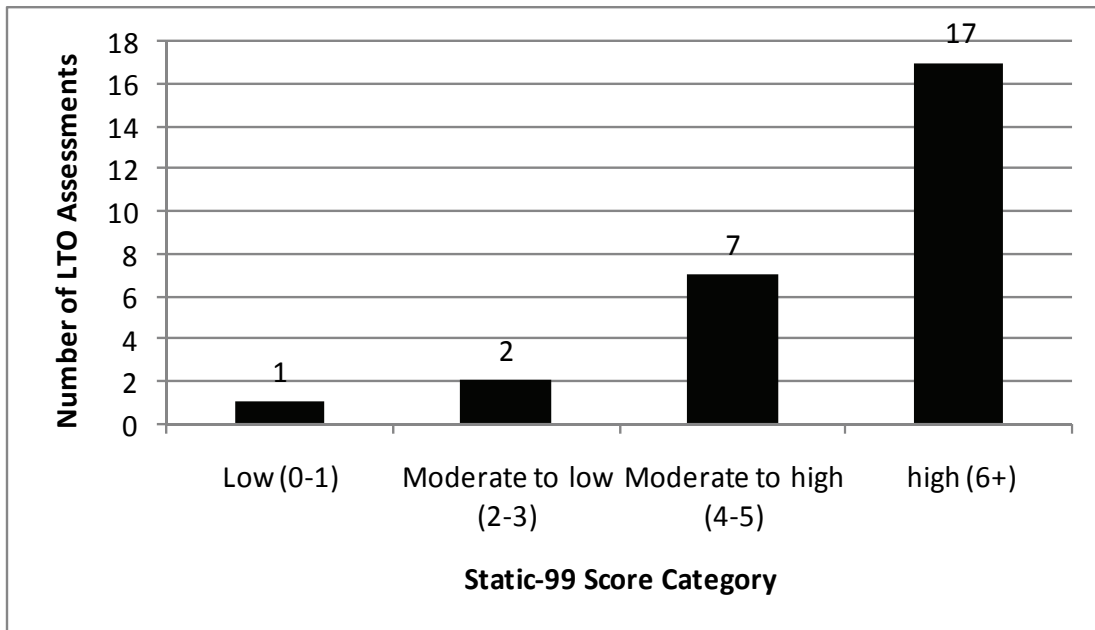
time period, respectively (Harris et al., 2003). In reviewing the Static-99 scores, it is revealed that an overwhelming majority of the scores placed the offender in the high-risk category. More specifically, in 17 (63%) of the 27 cases in which the Static-99 was used, the offender was given a score of 6 or higher, placing the offender in the high-risk category.

For a total of 7 (26%) of the 27 cases in which the Static-99 was used, the offender was given a score of 4/5, which is categorized in the moderate-to-low-risk category. Those receiving a score of 4 are expected to recidivate sexually at rates of 26%, 31% and 36% over a 5-year, 10-year, and 15-year time period, respectively, while those receiving a score of 5 are expected to recidivate sexually at rates of 33%, 38% and 40% over these same time intervals (Harris et al., 2003). With respect to violent offending, those receiving a score of 4 are expected to recidivate violently at rates of 36%, 44% and 52% over a 5-year, 10-year, and 15-year period, respectively, while those receiving a score of 5 are expected to recidivate violently at rates of 42%, 48% and 52% over these same time intervals (Harris et al., 2003).

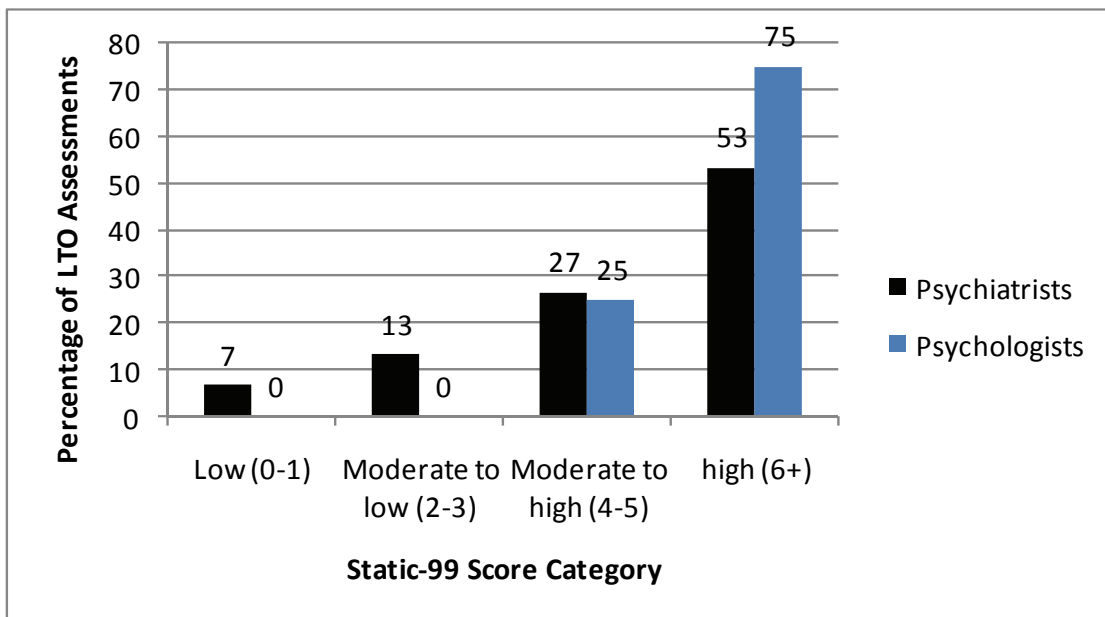
There were a total of 2 LTOs whose files were included in this analysis who received scores in the moderate-to-low category (scores of 2-3) while there was only one offender receiving a score in the low category (score of 1). Figure 11 below indicates the number of offenders assessed on the Static-99 who fall into each of these risk categories.

Comparing the Static-99 scores assigned by assessors in each profession reveals some interesting findings. As revealed in Figure 12, the majority of offenders who were assessed with the Static-99 were scored in the high-risk category, regardless of the profession of the assessor. The second most common Static-99 score category was the moderate-to-high category, and again this was true regardless of the profession of the assessor. There were no offenders assessed by a psychologist with the Static-99 who were scored in the moderate-to-low or low-risk Static-99 categories.

**Figure 11. Number of LTO Assessments by Static-99 Score Category in B.C., 1997-2007**



**Figure 12. Percentage of LTO Assessments by Static-99 Score Category and by Profession in B.C., 1997-2007**





The VRAG was used in 24 (43%) of the 56 expert assessments reviewed here. There are 9 possible VRAG categories, each with its own probability estimate of violent recidivism over 7-year and 10-year time periods. Table 4 below outlines these 9 categories with the corresponding score ranges and probability of violent recidivism at two different mean lengths of opportunity.

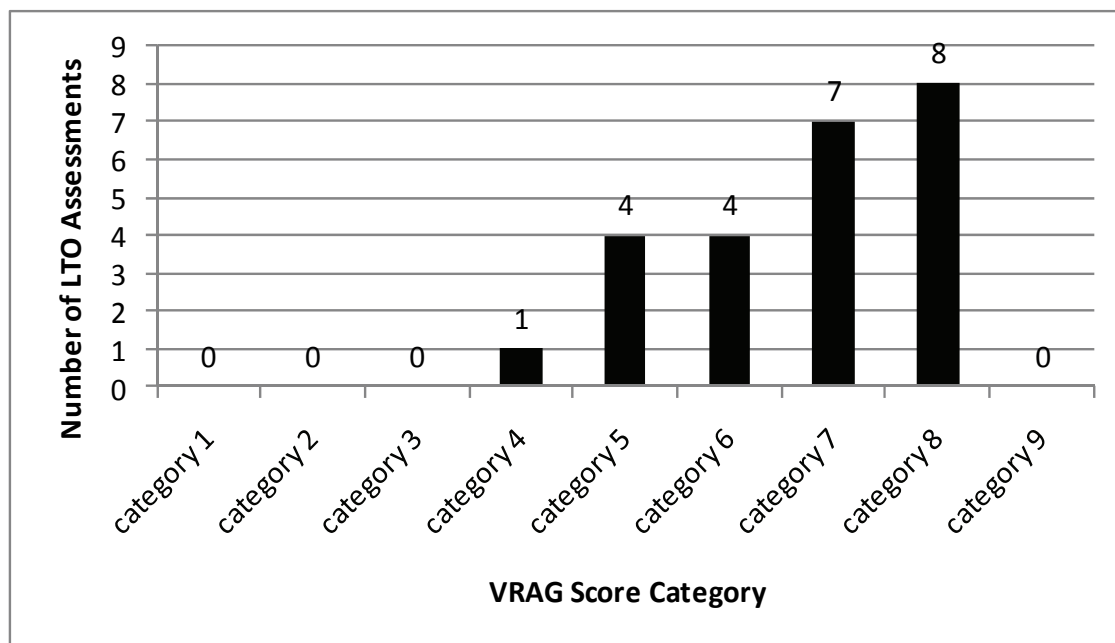
**Table 4. Probability of Violent Recidivism at Two Different Mean Lengths of Opportunity as a Function of Nine Equal-Sized VRAG Categories**

VRAG Category	VRAG Score	7 years	10 years
1	Less than or = -22	0.00	0.08
2	-21 to -15	0.08	0.10
3	-14 to -8	0.12	0.24
4	-7 to -1	0.17	0.31
5	0 to +6	0.35	0.48
6	+7 to +13	0.44	0.58
7	+14 to +20	0.55	0.64
8	+21 to +27	0.76	0.82
9	Greater than or = +28	1.00	1.00

*Note.* Quinsey et al., 1998, p. 240.

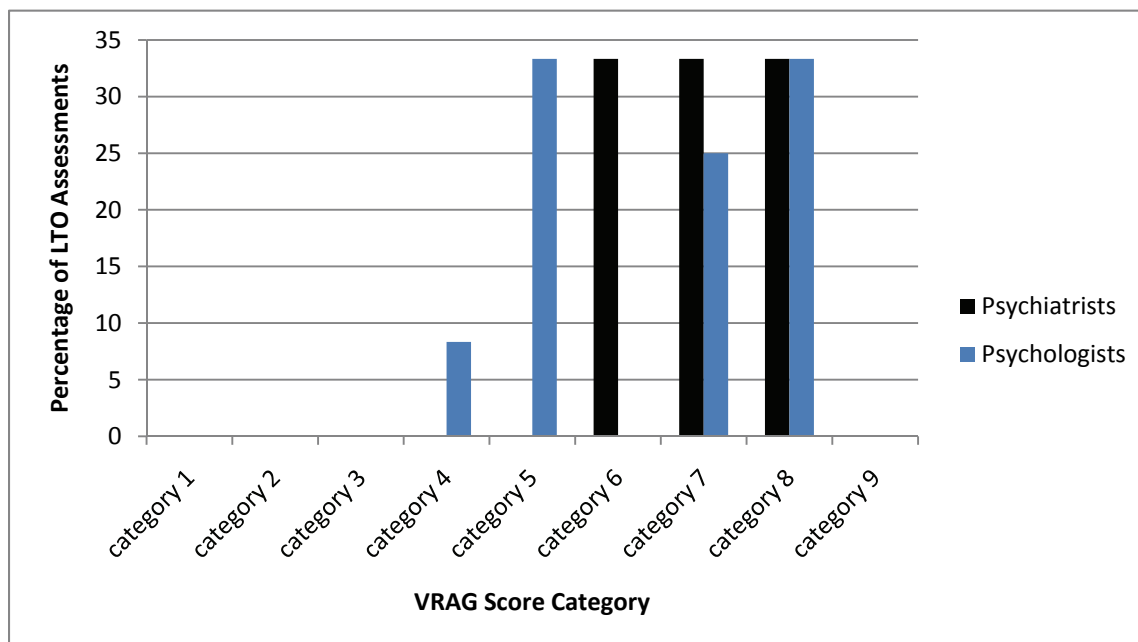
As shown in Figure 13, only one of the LTOs assessed using the VRAG received a category 4 score, which is described in the respective file as being in the moderate-to-average risk range (category 4 scores fall into the 32<sup>nd</sup> to 47<sup>th</sup> percentile). The majority (8/24, 33%) of those LTOs assessed using the VRAG received a category 8 score, which corresponds to a 76% probability of re-offending violently in 7 years and 82% in 10 years and is described as being high-risk (category 8 scores fall into the 94<sup>th</sup> to 98<sup>th</sup> percentile).

**Figure 13. Number of LTO Assessments by VRAG Score Category in B.C., 1997-2007**



The VRAG was used in 12 psychiatric and 12 psychological assessments. As shown in Figure 14, 33% (4/12) of psychiatric assessments and 33% (4/12) of psychological assessments in which the VRAG was relied upon revealed a VRAG score in the 8<sup>th</sup> category. Another 33% (4/12) of LTOs assessed by a psychiatrist with the VRAG were scored in the 7<sup>th</sup> category, while 25% (3/12) of offenders assessed by a psychologist with the VRAG were scored in the 7<sup>th</sup> category. The remaining 33% (4/12) of LTOs assessed by a psychiatrist with the VRAG were scored in the 6<sup>th</sup> category, while the remaining 5 LTOs assessed by a psychologist with the VRAG were scored in the 5<sup>th</sup> category (33%, 4/12) and the 4<sup>th</sup> category (8%, 1/12).

**Figure 14. Percentage of LTO Assessments by VRAG Score Category and by Profession in B.C., 1997-2007**



## Overall Assessment of Risk Summary

In 46 (82%) of the 56 assessments that were included in the LTO files reviewed here, the assessor made clear statements about the overall risk posed by the respective LTO. The offenders were considered to be high, moderate-to-high, moderate, or low-risk in terms of sexual and/or violent re-offending. The most prevalent risk-assessment summary category was the high- sexual-and-violent risk, with a total of 14 (30%) of these 46 LTOs ranked in this category. One of these offenders was deemed to be at high-risk of sexual and violent risk in relation to spousal assault in particular. Table 5 represents the number and percentage of LTOs who were ranked in one of the following overall risk-assessment categories: high, high-sexual, high-violent, high-sexual and violent, moderate, moderate-sexual, moderate-violent, moderate-sexual and violent risk. In total, the majority of assessments in which the assessor made clear statements about the overall risk posed by the LTO indicated an overall high-risk (n=27, 58.6%). Of these 27 cases, 11 (41%) LTOs were identified as Aboriginal. It was found that approximately

the same proportion of Aboriginal and non-Aboriginal LTO assessments indicated an overall high-risk categorization (55%, n=6 vs 60%, n=21, respectively).

**Table 5. Number and Percentage of LTO Assessments by Overall Risk-Assessment Category in B.C., 1997-2007**

<b>Risk Category</b>	<b>Number of LTOs</b>	<b>Percentage of LTOs*</b>
High-unspecified	5	10.9%
High- Sexual	6	13.0%
High- Violent	2	4.3%
High- Sexual & Violent	14	30.4%
<b>Total High</b>	<b>27</b>	<b>58.6%</b>
Moderate to High-Unspecified	3	6.5%
Moderate to High-Sexual	5	10.9%
Moderate to High-Violent	1	2.2%
Moderate to High-Sexual & Violent	3	6.5%
<b>Total Moderate To High</b>	<b>12</b>	<b>26.1%</b>
Moderate-Unspecified	1	2.2%
Moderate-Sexual	1	2.2%
Moderate-Violent	1	2.2%
Moderate-Sexual & Violent	0	0.0%
<b>Total Moderate</b>	<b>3</b>	<b>6.5%</b>
<b>Total Other</b>	<b>4</b>	<b>8.7%</b>
<b>Overall Total</b>	<b>46</b>	<b>100.0%</b>

\* rounded to the first decimal point.

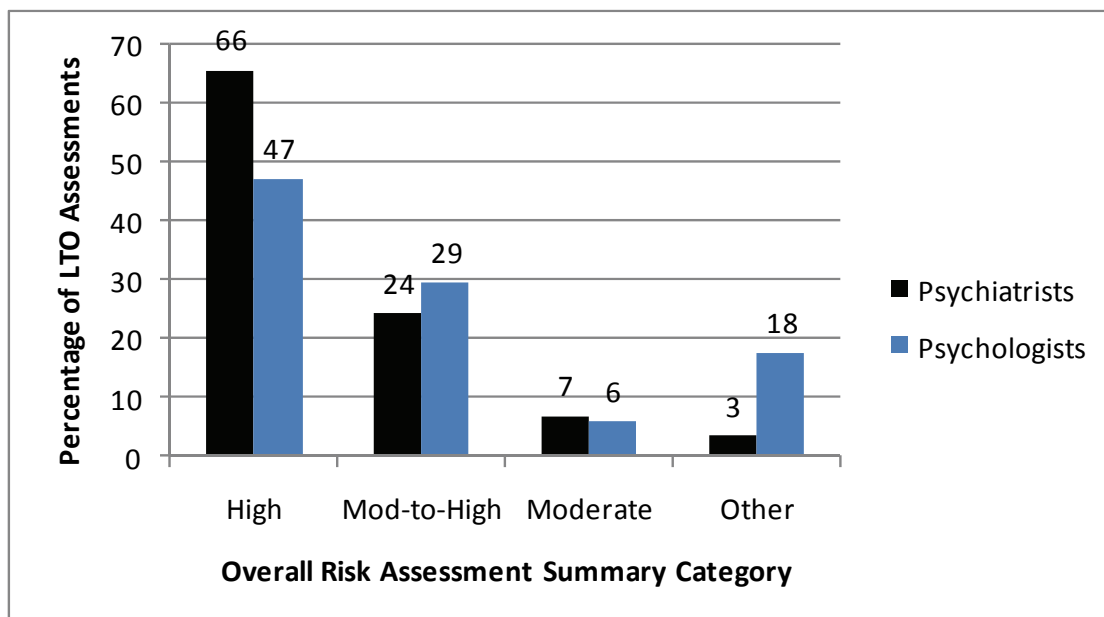
In these 46 assessments in which the assessor made clear statements about the overall risk posed by the respective LTO, there were no offenders ranked as being low-risk overall. However, there were 2 (4.3%) offenders who were ranked as low-risk for violence, but this low violence risk was coupled with high-sexual risk in one case, and moderate-sexual risk in the other. In two (4.3%) more cases, the ranking of risk was different in terms of violence risk and sexual risk: in one (2.2%) case, the sexual risk was high while the violence risk was moderate, while in another case, the violence risk was high with the sexual violence risk being assessed as moderate. These four cases, representing 8.7% of these 46 cases in which the assessor made clear statements about

the overall risk posed by the respective LTO, are categorized in Table 5 in the “total other” risk category.

In addition to these four cases, there were another 4 cases in which the assessor did not explicitly provide an overall risk-assessment description. For example, in one case, the assessor stated that the risk was deemed to be low based on actuarial predictors, but moderately high from a clinical standpoint. In another case, the assessor did not state the extent of risk, but stated what ought to be done to reduce the risk that the offender does pose. Finally, in another case, the assessor stated that the risk is high or low, depending on the community-release circumstances. These 4 cases are not included in Table 5.

As mentioned at the beginning of this subsection, a clear statement about the overall risk posed by the person being assessed was made in the majority (82%) of the assessments. Psychologists were more likely than psychiatrists to provide a clear statement about overall risk. Psychologists provided clear statements in 89% (17/19) of their assessments, while psychiatrists provided clear statements in 78% (29/37) of their assessments. As shown in Figure 15, when comparing the overall most prevalent risk-assessment summary category by profession, it is the case that, in the majority of LTO cases in which clear statements were made about the overall risk posed by the offender, the expert considered the offender to be in the high-risk category regardless of her/his profession. More specifically, of the 29 psychiatric assessments in which the assessing psychiatrist made clear statements about the overall risk posed by the LTO, approximately 66% (n=19) of the LTOs were categorized in the high-risk category; of the 17 psychological assessments in which the assessing psychologist made clear statements about the overall risk posed by the LTO, approximately 47% (n=8) of the LTOs were categorized in the high-risk category. The moderate-to-high risk category was the second most prevalent risk category for assessments, regardless of the assessor. It is the moderate and ‘other’ categories where the differences lie. The third most prevalent risk-assessment summary category for psychiatrists was the moderate category, while the ‘other’ category was the third most prevalent risk-assessment summary category for psychologists.

**Figure 15. Percentage of LTO Assessments by Overall Risk Assessment Category and by Profession in B.C., 1997-2007**



## Treatability

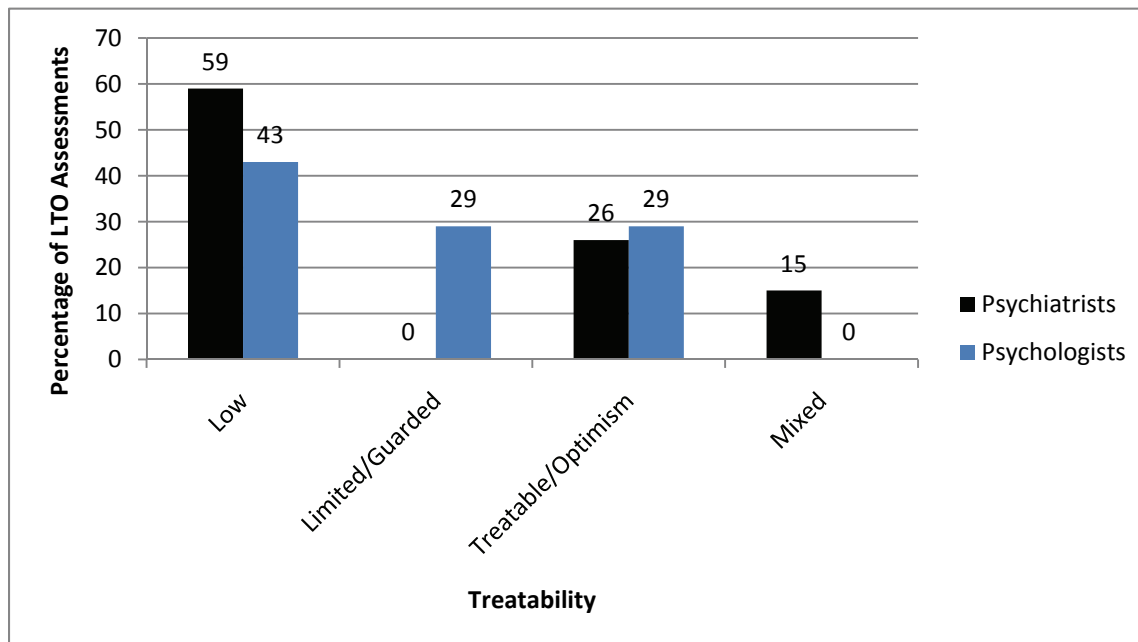
The assessor's evaluation of the treatability of these LTOs was explicitly stated in 41 (73%) of the 56 expert assessments that were included in this analysis. Psychiatrists and psychologists were equally likely to assess treatability. More specifically, psychiatrists provided treatability assessments in 27 of their 37 cases and psychologists in 14 of their 19 cases.

In the majority (22/41, 54%) of these cases in which treatability was clearly/explicitly stated, the treatability of the LTO was deemed to be low. This was true whether or not the LTO was identified as Aboriginal, although comparing Aboriginal LTO cases to those where the offender is not identified as Aboriginal reveals that a higher proportion of Aboriginals were deemed low on a continuum of treatability in those assessments in which the evaluation of treatability was explicitly stated by the assessor (70% of Aboriginals vs 48% of LTOs not identified as Aboriginal).

As shown in Figure 16, the prevalence of the low treatability finding was found regardless of the profession of the assessor. More specifically, of the 27 psychiatric assessments in which the evaluation of the offender's treatability was made explicit, in 16 assessments (approximately 59%), the respective LTO was deemed to be low on a continuum of treatability. Of the 14 psychological assessments in which the evaluation of the offender's treatability was made explicit, 6 LTOs (approximately 43%) were deemed to be low in terms of treatability.

In an additional four (10%) of these 41 assessments in which the assessor's evaluation of the LTO's treatability was explicitly stated, the treatability of the LTO was described as guarded or limited. The assessor was a psychologist in each of these four cases. A total of 11 (27%) of these LTO assessments in which treatability was explicitly addressed indicated optimism in relation to the offender's treatability. This optimistic evaluation category was the second most prevalent evaluation of offender treatability, regardless of the profession of the assessor. More specifically, approximately 26% (7/27) of psychiatric assessments in which treatability was explicitly addressed indicated optimism, and approximately 29% (4/14) of psychological assessments in which treatability was explicitly addressed indicated optimism. Finally, the assessor's overall evaluation of treatability was addressed - but was mixed or unclear - in 4 (10%) cases. Each of these mixed or unclear cases were assessed by a psychiatrist. In these unclear cases, the assessing psychiatrist was reluctant to make specific statements about the treatability of the offender mainly due to a lack of a clear track record of the offender's performance in treatment.

**Figure 16. Percentage of LTO Assessments by Treatability Evaluation and by Profession in B.C., 1997-2007**



The finding that the majority of offenders included in the analysis were evaluated as being low on a continuum of treatability, yet were nevertheless designated as LTOs, is particularly noteworthy. This apparently paradoxical finding will be explored further in the interview portion of the research.

## Summary of File Review

Table 6 below provides a brief summary of the themes that emerge in the findings of the file review portion of the current analysis. For the sake of efficiency, some of the variable categories discussed in this chapter have been collapsed. This summary profile will be referred to in the Discussion Chapter (Chapter 8) and will be triangulated with the interview data in an effort to draw parallels and also to identify any potential differences between the file review data and those data gleaned from the stakeholder interviews.



**Table 6. File Review Profile of the LTO in B.C., 1997-2007**

Demographics	<p>Male</p> <p>Average age: 41.5 yrs</p> <p>Modal age category: 35-39 years</p> <p>Disproportionately Aboriginal</p>
Hearing Information, Index Offence and Victim Information, Sentence Information	<p>Begin mostly as DO applications</p> <p>Heard mostly in the Supreme Court of B.C.</p> <p>Primarily sexual offences, mainly sexual assault</p> <p>Victim often known to the LTO</p> <p>High proportion of child victims</p> <p>Actual Sentence Range of 6 months—18 yrs</p>
Supervision Orders and Breaches	<p>10 year supervision order length most prevalent</p> <p>Average LTSO length of 9.35 years</p> <p>Next to no breach cases as of yet</p>
The Assessors	<p>Higher proportion of psychiatrists</p> <p>Assessors conducted interviews in approximately 2/3 of cases</p>
Diagnoses	<p>Top three diagnoses: Substance related disorder, antisocial personality disorder (ASPD), pedophilia</p> <p>ASPD more prevalent amongst psychological assessments</p> <p>Pedophilia more prevalent in psychiatric assessments</p>
Risk Assessment Tests and Diagnostic Tools	<p>Total of 23 tests/tools used overall</p> <p>PCL-R most commonly used</p> <p>Static-99 and VRAG also among most commonly used tests</p>
Test Scores and Overall Risk-Assessment Summary	<p>Majority score in intermediate range on PCL-R, below threshold for finding of psychopathy</p> <p>Average raw PCL-R score = 23.6</p> <p>Average percentile ranking = 68<sup>th</sup> percentile</p> <p>Majority of psychologists scored the respective LTO in the psychopathic category</p> <p>Majority of psychiatrists scored the respective LTO in the intermediate PCL-R score category</p> <p>Overall overrepresentation of Aboriginals in the psychopathic range</p> <p>Overall high risk scores on Static-99</p> <p>Overall high risk scores on VRAG</p> <p>Overall high risk assessment summary</p>
Treatability	<p>Majority of LTOs deemed low on continuum of treatability</p> <p>A higher proportion of Aboriginals deemed low on continuum of treatability</p>

## **Chapter 7.**

### **Findings: The Stakeholder Interviews**

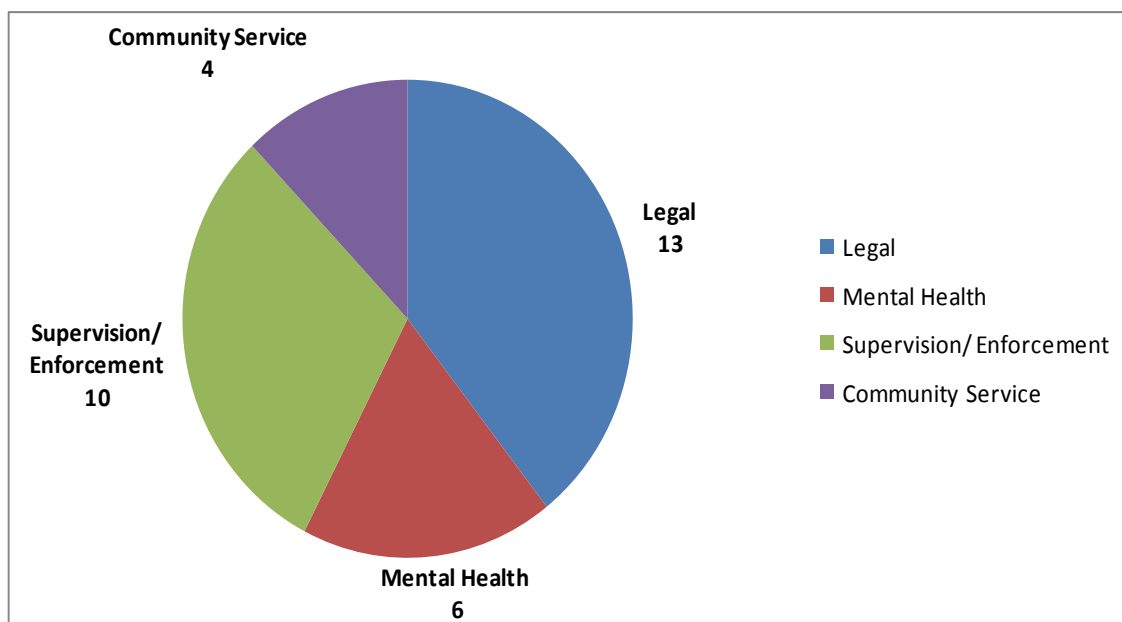
The interview questions were organized along five main topical categories: interviewee role in the process of the LTO provisions; interviewee perceptions of the LTO provisions; interviewee perceptions of the characteristics of LTOs; interviewee experiences and perceptions of LTOs in the system; and the future of dealing with LTOs. In this chapter, the responses of the stakeholders are provided under these topical interview question categories. For the sake of clarity and remaining brief, the findings for Topical Categories B-E provided are condensed; responses here are not necessarily linked to any particular interviewee, yet the stakeholder category or sub-category is noted. This is done, again, for the sake of remaining brief. An expansion of these stakeholder responses, with more detailed inclusion of specific interviewee quotes, is provided in Appendix C.

With the exception of Topic A, which categorized the interviewee in one of the stakeholder categories and captured the diversity within each stakeholder category, a summary table of findings is also provided after the discussion of each topical category. These tables provide a general overview of the findings and themes that emerge within each topical category, the majority of which are discussed textually in this chapter, and all of which are included in the more detailed review of stakeholder responses and themes found in Appendix C. A discussion of these findings and how they relate to the file review data occurs in the Discussion Chapter (Chapter 8).

## Topic A: Interviewee Role in the Process of the LTO Provisions

As outlined in the Methods Chapter of this dissertation, interviewees were divided into four categories based on their responses in the first topical category of questions posed. These four stakeholder categories are: Legal (13 interviewees), Mental Health (6 interviewees), Supervision/Enforcement (10 interviewees), and Community Service (4 interviewees). Figure 17 graphically displays the breakdown of interviewees by broad stakeholder category.

**Figure 17. Interviewee Breakdown by Stakeholder Category**



### Legal

The 13 interviewees organized in the Legal stakeholder category included judges, Crown counsel, defence counsel and a legislator. In fact, this stakeholder category was the most diverse of the four categories. In order to capture the differences amongst these various sub-categories within the Legal stakeholder category, the 'L' which signifies the Legal stakeholder category is followed by an additional letter(s) to signify the specific role played by the respective interviewee. For example, the four

judges are referred to in the analysis as LJ1 –LJ4 (LJ = Legal, Judge); the 4 Crown counsel are referred to as LCC1-LCC4 (LCC = Legal, Crown counsel); the four defence counsel are referred to as LDC1-LDC4 (LDC = Legal, Defence Counsel); and the one legislator is referred to as LL (LL = Legal, Legislator). The number that follows the lettering in the code signifies the order of the interview relative to other interviews within the same stakeholder *sub*-category.

The four judges interviewed are different in many respects. One judge is from the B.C. Court of Appeal, one judge is a provincial court judge, and two judges are Supreme Court judges. The average number of years of service of these 4 judges is 15.5 years. Both LJ1 and LJ2 stated that they have seen few DO or LTO cases throughout their careers; in fact, LJ2 has not presided in a single DO or LTO case. Despite these admissions, both of these judges noted that they are familiar with the provisions and that they would be able to participate in the interview, although their input may be limited. Responses are provided for these two judges where they are given. LJ3 and LJ4, on the other hand, have heard an average of 4 or 5 DO/LTO cases each.

The four Crown counsel interviewed vary in terms of their levels of experience with DO and LTO cases. One prosecutor began working on DO cases as early as 1992, before the LTO designation was even created; another began in 2004; another began in 2002; and finally, one Crown counsel interviewee began working on these cases in 1998, one year after the inception of the LTO designation. The number of DO or LTO applications made by each interviewee ranged from 3 to 9, with some of the Crown counsel having more experience with LTO breaches than others. LCC4 described the decision to proceed with an application as a collaborative one, involving the input of senior prosecutors to assess cases on an individual basis. The Crown counsel interviewed work in various offices throughout the Lower Mainland of British Columbia.

There were a total of 4 defence counsel included in this research, two of whom work in adjacent offices and were interviewed together in order to accommodate their schedules. The level of experience of each of these defence counsel varies tremendously, with the number of years of DO/LTO case experience ranging from approximately 5 to 12 years, and the number of cases ranging from 2 cases to

approximately 10 cases. LDC1 and LDC2a noted that they have not worked on one of these cases in a number of years and LDC1 noted that it would be rare for any defence counsel to exceed 1 to 2 of these cases per year.

Finally, the one legislator who was interviewed was involved in the development and passage of the provisions in the mid-1990s. LL's role has been ongoing since this stage.

## **Mental Health**

There were a total of 6 interviewees in the Mental Health stakeholder category. One of these interviewees is a psychologist involved in providing treatment to sex offenders, including LTOs, while in the community. This treatment is provided in groups and also on an individual basis. This interviewee also has extensive experience with institutional treatment. This interviewee is referred to as MHT (MHT = Mental Health, treatment provider).

The remaining 5 interviewees in the Mental Health stakeholder category provide expert assessments as court-appointed assessors, or for Crown counsel or defence counsel, and some also provide treatment. Four of these 5 assessors are psychiatrists, and the remaining assessor is a psychologist. The assessors who are psychiatrists are referred to as MHAP1-MHAP4 (MHAP = Mental Health, assessor, psychiatrist), and the assessor that is a psychologist is referred to as MHAPP (MHAPP = Mental Health, assessor, psychologist). These assessors vary in terms of their experience, with three of the five assessors beginning in this role prior to the creation of the LTO designation.

## **Supervision/Enforcement**

There were a total of 10 interviewees (and 9 interviews) in the Supervision/Enforcement stakeholder category. Three of these interviewees work for a police agency, and two of these three interviewees were interviewed together, again for the sake of accommodating their schedules. The first police interviewee is referred to as SEP1 (SEP = Supervision/Enforcement, police), and the two police interviewees who were interviewed at the same time are referred to as SEP2a and SEP2b. Due to the

relatively small number of police officers who work within the specialized units in various police agencies that supervise sex offenders in the community, the names of the specific police agencies are also kept confidential.

The remaining 7 interviews in the Supervision/Enforcement stakeholder category were conducted individually, and these 7 interviewees are responsible for the supervision of these offenders during the LTSO. These interviewees are referred to as SES1-SES7 (SES = Supervision/Enforcement, supervision). The specific roles of these 7 interviewees vary, from managerial roles to front-line supervisors. The number of years of service in a supervisory role ranged from 1.5 to 15 years. The front-line supervisors have extensive direct experience specifically with LTOs while they serve their LTSOs, although LTOs do not make up their entire caseload. These front-line supervisors are located in various jurisdictions throughout the province of British Columbia.

### **Community Service**

There were a total of four interviewees categorized in the Community Service stakeholder category. While each of these interviewees provide community services to LTOs in some capacity, the nature and extent of the contact each interviewee has with LTOs varies. For example, some interviewees in this category were at one point in a volunteer role with respect to LTOs, providing friendship and support to these offenders during the LTSO, and they are now involved in overseeing volunteers and/or coordinating projects that provide these services to high-risk offenders, including LTOs. Some of these interviewees worked on a local level, with others fulfilling national-level roles. Furthermore, while some of these interviewees are in some way affiliated to a religious institution, this was not true for each Community Service interviewee in this research.

The length of time each interviewee has spent in a Community Service role also varies, with this level of experience ranging from 3 years to 15 years. Furthermore, the extent of contact and experience specifically with LTOs varies. For example, CS1 has been in direct contact with LTOs, both in the institution prior to their warrant expiry date

and in the community during the supervision order, while CS4 had not yet had a LTO case at the time of the interview. Nonetheless, CS4's participation was still sought because CS4's organization does service LTOs and also because it is anticipated that there will be an increase in the number of the LTOs who will approach their warrant expiry dates and who will be serviced by CS4's organization.

Despite these differences, the overarching nature of the services provided by the interviewees' respective organizations is essentially the same. As CS4 described it, a prerequisite to seeking the services provided by these interviewees is taking accountability and committing to regular meetings with these service providers. Also, the needs of the offender are considered to determine the suitability of the offender for the program in question. These Community Service stakeholders are not counsellors and do not provide treatment; rather, they provide friendship and support. CS3 described these offenders as "resourceless" and in need of assistance with basic tasks, or "normal things"; CS3 went on to state that these offenders simply need relationships, and this is something that CS3 and the other interviewees in this stakeholder category seek to provide. As CS1 emphasized, though, a prerequisite to receiving such services is the taking of full ownership and responsibility for the crimes committed. An offender who denies responsibility and accountability is not an eligible candidate for participation in these programs.

## **Topic B: Interviewee Perceptions of LTO Provisions**

Topical Category B included questions on the interviewees' perceptions of the objectives and goals of the legislation, the advantages and limitations of the provisions, as well as questions on any perceived changes in the use of the LTO designation since its inception in 1997. There are notable differences within - and across - stakeholder categories. Depending on the extent of each interviewee's experiences with LTOs and the provisions themselves, the responses varied in content and detail.

## Legal

LL emphasized that the objective of the creation of the LTO designation was to create legislation that specifically targets sex offenders and that creates an option for the courts in the case that there is believed to be potential for the offender to re-offend. LL emphasized that the intention was to focus on sex offenders, although the wording of the provisions in the *Criminal Code* is not too clear on that point. LL noted that the direction that the courts have taken with this designation was not anticipated. Overall, LL stated that there is no evidence to suggest the provisions have been effective in achieving the objectives of the legislation. In LL's own words, the LTO provisions are being "distorted by virtue of sentence length and by virtue of offence." This interviewee went as far as to say that the LTO designation is a "crime creator" in the sense of breaches, and that "[I]t has turned into the worst nightmare: a version of federal probation."

As mentioned, there were four judges who participated in this research: one from the provincial Court of Appeal, one from the provincial court, and two from the B.C. Supreme Court. The responses from the first two interviewees differed in the level of detail; in fact, LJ1 opted to not respond to many questions pertaining to interviewee perceptions, and LJ2 admitted to having no experience presiding as a judge in a DO or LTO case. It is for these reasons that the responses from these two interviewees were limited. The responses from LJ3 and LJ4, on the other hand, were much more detailed.

When asked about the objectives of the legislation, one judge stated that the LTO designation is the Canadian version of the American "three-strikes" legislation. In this interviewee's view, the purpose of the legislation is to incapacitate recidivists. While the legislation has had some utility, in LJ2's view, it has not worked to deter recidivists. LJ1 declined to respond here.

The two remaining judges indicated that one of the objectives of the LTO provisions of the *Criminal Code* is public protection; one of these judges went on to indicate that an additional objective is to rehabilitate and reintegrate the offender. While LJ3 does not know whether the provisions have been effective in achieving the objective of public protection, LJ4 noted that the provisions are effective in some cases.



The 4 Crown counsel who participated in this research differed in their perceptions of the objectives of the LTO provisions of the *Criminal Code*. Two of these interviewees did agree that the legislation targets sex offenders, and more specifically those sex offenders who are deemed to be lower risk or less violent. For the most part, according to one of these Crown counsel interviewees, the objectives have been achieved. The other interviewee described the LTO designation as a type of “super probation” that is primarily geared toward pedophiles. The original objective, according to this interviewee, was to deal with these sex offenders federally and to have a middle ground to deal with these non-violent pedophiles who are still prolific in their offending. Overall, this interviewee described the provisions as fairly successful.

The other two Crown counsel (LCC2 & LCC3) described the target of the provisions as the “high-risk offender” and the “less serious of the serious offenders,” and they did not specifically mention sex offenders as the exclusive target of the legislation. In LCC2’s view, the purpose has been to maintain contact and supervision of high-risk offenders in the community, and to provide supportive resources, such as residency. In discussing the perceived objectives of the legislation, LCC3 emphasized public safety and, in this regard, the sentiment is that the provisions have been moderately effective.

Targeting pedophiles, ensuring public safety and providing supervision in the community to those offenders amenable to supervision were also objectives echoed in the responses of the 4 defence counsel who participated in this research. Two of these defence counsel described the legislation as a form of “mega parole.” Each of these defence counsel were cautious in their evaluation of the effectiveness of the LTO provisions. For example, while LDC1 states that the legislation was initially effective in reaching its objective, “[T]he intention has long since been lost...[and this has] turned into a mess.”

When asked what ought to be the goals of the system when dealing with LTOs, LL asserted that the goal ought to be to rehabilitate the predatory sex offender and that the designation ought to be a highly targeted measure, applied sparingly. LL stated that the current application is not in line with his goal. Rather than being applied in a tailored

and targeted fashion, “it is being thrown around like chicken soup [with the view that] a little won’t hurt.”

While LJ1 did not speak to perceptions of what ought to be the goals of the system when dealing with LTOs, the following goals were included in the responses of the remaining three judges: punishment, public protection, rehabilitation, applying the *Criminal Code*, and assessing the offender’s potential for recidivism. One interviewee stated that some of these goals are met in some cases, but not all. Another interviewee stated not being aware of how effective the provisions are in achieving these goals, but noted that breaches of LTOs are rare.

The Crown counsel interviewees offered many goals, including public safety, treatment, management of risk and providing stability as well as effective and efficient housing for these offenders. Some interviewees stated that some of these goals are being met; the lack of resources was quoted as the reason why some of these goals are not being met. LCC4 was more optimistic in this regard; this interviewee suggested that while the initial application of the provisions was not in line with the goal of treatment, the situation is improving.

Defence counsel interviewees also mentioned rehabilitation as well as the protection of society when asked what ought to be the goals of the system. While LDC1 described the legislation as effective in protecting society, both this interviewee and LDC3 argued that the goal of treating these offenders is not being met. Finally, LDC2a and LDC2b were reluctant to speak to whether their stated goal of protecting the public is being met without examining the recidivism data.

When asked whether there have been advantages to the LTO provisions, LL noted that if it is indeed the case that the LTO option is being considered for those offenders who are “not the worst of the worst,” then this is in and of itself a strength of the legislation. LL voiced the concern, however, that too many offenders are being “scooped up” by the more onerous and punitive DO designation, which was not the purpose of the legislation. It is the implementation of the LTO legislation that was described by LL as the principal disadvantage. In LL’s view, it would be ideal to abolish the designation altogether as “it has been expanded in a direction that is not workable.”

LJ2 offered a rather cynical response to the interview question on the perceived advantages and limitations of the LTO provisions. While this interviewee stated that perhaps the designation does remove some high-risk offenders from the public, more than anything, it “makes for good PR [public relations].” The main limitation, in LJ2’s view, is that the designation decision rests too heavily on the persuasiveness of the expert providing the assessment.

Other advantages listed by judges included the fact that the LTO designation serves as a middle ground between the indeterminate sentencing option under the DO designation and a determinate or conventional sentence; it allows for more control over the offender for a longer period, thus protecting society; and it allows for treatment.

The Crown counsel, who participated in this research, listed various advantages to the LTO provisions. Included here was the higher level of supervision and stability it provides for offenders. Overall, it was described as a good option as not all offenders need to be incarcerated indeterminately. LCC4 also noted that the designation is a “useful negotiation point.”

When asked about the limitations of the provisions, high cost and lack of treatment resources were listed by the Crown counsel interviewees, along with difficulty in managing and supervising these often manipulative and needy offenders. According to LCC4, the main limitation is that the supervision period of 10 years is not long enough, especially in cases when the offender designated as a LTO is quite young and would still be at the peak of their offending career upon completion of the supervision period.

The defence counsel interviewees also stated that the designation provides an alternative to the DO designation as advantageous. In LDC3’s own words, in some cases, the DO designation “is like using a warhead to do what a hammer could do.” Other advantages mentioned by these defence counsel interviewees included the fact that it allows for a graduated return to the community and it provides services in the community to these offenders who are in need of stability and treatment.

Some defence counsel interviewees listed the lack of community treatment resources as one of the main limitations of the provisions. Other limitations mentioned

included the broad nature of the wording of the provisions. The majority of defence counsel interviewees noted that the misinterpretation of the courts in this regard is particularly problematic. The discretion of Crown counsel to put forth a DO or LTO application and the regional variation in this regard was also listed as a limitation.

Finally, interviewees were asked whether they have seen an increase, decrease or any change in the use of the provisions since their enactment in 1997. Almost all of the Legal stakeholder category interviewees noted that there has indeed been an increase. In this regard, LDC3 voiced concern that Crown Counsel are applying for the more punitive DO designation knowing that the judge will see the LTO designation as a compromise. LDC2 voiced similar concerns and stated that the political climate and the designation, which is seen as the “flavour of the month,” influence defence counsel decisions to advise their clients to render a plea.

Each of the judges, on the other hand, reported that there has not been much of a change in the use of the provisions. Furthermore, according to LCC2, appropriate cases have always been flagged.

Finally, LCC1 and LDC1 offered different responses with regard to the use of the provisions since 1997. According to LCC1, there was an initial influx of LTO cases but, in recent years, this has rectified itself. LDC1 also suggested that the use of the DO designation has increased relative to the LTO designation, although this interviewee suggested that, rather than “evening out,” as suggested by LCC1, the use of the DO designation has in fact surpassed the use of the LTO designation.

## **Mental Health**

With respect to the interviewee perceptions on the objectives of the legislation, three of the six Mental Health stakeholder interviewees stated that long-term risk management in the community is one of the key objectives of the legislation. In addition to allowing for management in the community, one of these interviewees (MHAPP) stated that the legislation sets out to balance the rights of the offender and the rights of the public, as well as to protect the public.

Two of the Mental Health stakeholder interviewees were reluctant to speak at length about the objectives of the legislation. In their view, the objectives of the legislation ought not to be their concern. Having said that, however, it was stated that the LTO designation provides another alternative to the DO designation, thus allowing what MHAP1 described as a “better fit to the situation.”

With respect to the effectiveness of the provisions in reaching these objectives, according to one Mental Health stakeholder category interviewee, the designation has indeed effectively allowed for a more appropriate tailoring of sentences to meet the risks and needs of the offender. Some of these interviewees were less optimistic, though. According to MHAPP, some criminal justice officials are not privy to information pertaining to the specifics of how supervision is actually carried out and parole officers are not supervising LTOs any differently than other parolees. This was described as defeating the purpose of having a different designation in the first place. One interviewee went so far as to state that the Parole Board has “gutted the purpose” of the LTO provisions.

If effectiveness may be measured in terms of re-offence rates, three of the Mental Health interviewees stated that it is far too early to comment on these outcomes as there is a lack of data in this regard. Furthermore, it was stated that as an assessor, the outcome of cases is rarely known, and that knowing the outcome of a case would not be helpful for assessment purposes. Finally, with respect to MHT’s view of the objective of providing management in the community over the long-term, this interviewee noted that, while facilitated risk management is beneficial and is occurring in some cases, receiving the adequate resources to achieve this objective in all cases is a challenge. This resourcing issue was discussed further later in the interview.

When asked what ought to be the goals of the system when dealing with LTOs, the responses varied, but all Mental Health stakeholder interviewees included treatment and rehabilitation in their responses. What varied primarily was whether or not treatment was accompanied by another goal, namely public safety as well as offender rights.

When asked whether these aforementioned goals of the system are being met by the current application of the LTO provisions, the responses varied. While MHAP2

stated that treatment and effective graduated supervision are goals that are not being met by the current application, the other Mental Health stakeholder category interviewees were more positive in their evaluation. A theme that revealed itself in these responses is the role that limited resources play in the inability of truly achieving these goals. In MHAP1's words, "[the LTO provisions] creates a potential for better outcomes but the implementation falls short mainly because of resource limitations."

When asked to list the advantages and limitations of the LTO provisions, there was greater consensus on the limitations than the advantages. What was described as particularly advantageous is that the designation serves as a suitable "middle-ground" option for many offenders, at least allowing for supervision of these offenders in the community and the collection of more detailed information on these offenders, which in turn allows for the assessment of risk and the delivery of appropriate treatment. With regard to supervision in particular, MHAP4 notes that the supervision period should in fact be extended to life-long supervision because "these people do not change."

The majority of Mental Health interviewee stakeholders listed a lack of resources as the main limitation with the LTO designation, making it difficult, if not impossible for services to be delivered. In addition to a lack of resources, MHAP2 noted that another limitation is the public reluctance to have these offenders in the community. Finally, MHT discussed limitations specific to treatment. Due to credit given for pre-sentence and pre-trial detention, and the fact that no treatment is provided during these detention periods referred to as "dead time," in MHT's experience, offenders are sometimes not getting the types of institutional treatment that they require. MHT highlighted the fact that the resources made available to these offenders during the LTSO are sometimes actually maintenance programs, not treatment programs, and as such, they are premised on the fact that the offender has actually already undergone intensive institutional treatment.

When asked whether the use of the LTO provisions has changed since the inception of the designation, three Mental Health stakeholder interviewees stated that they are not certain what the trend has been, and they stated that the numbers, in their perception, have remained relatively low over the years.

According to one Mental Health stakeholder interviewee, the nature of cases leading to an application has changed. According to this interviewee, offenders now facing a DO or a LTO application have less severe crime histories than they used to, and they are also on average much younger than their predecessors.

Finally, MHT noted that there has been a clear increase in the number of LTOs in the community. According to MHT, the number of LTOs approaching the end of the determinate portion of their sentences is on the rise, meaning that the need for community resources to effectively manage and supervise these offenders will only continue to increase.

### **Supervision/Enforcement**

The three interviewees in the Supervision/Enforcement stakeholder category, who are policing- or enforcement-oriented in their roles relative to LTOs, described the objective of the LTO provisions of the *Criminal Code* as providing an alternative to the DO designation. These interviewees also noted that the designation provides an opportunity to manage these offenders in the community and to protect the public in doing so. The designation is described as “the poor man’s DO” and as a form of “federal probation with more teeth.” While some stated that this legislation has been effective in achieving this goal, others maintained that it is too early to tell whether the legislation has been effective in achieving these goals, but so far, they have not witnessed high re-offence rates amongst these offenders.

The supervision-oriented interviewees in this stakeholder category (SES1-SES7) were also in consensus that the objective of the legislation has been to provide an alternative to the more restrictive DO designation, and also to provide a middle ground between the latter and a conventional sentence. Two of these interviewees stated that the provisions have been effective in achieving these goals, two interviewees rated the provisions as somewhat effective, one stated that the provisions have not been effective in terms of how these offenders are managed, and finally one stated not knowing whether the provisions have been effective. This latter interviewee states that all the

agencies involved with LTOs “are on a different page,” thus complicating the task of providing effective supervision.

SES5 placed specific emphasis on the objective of safely managing these offenders in the community and hopefully, in turn, making the community a safer place. In SES5’s view, the objective of making the community feel safer has not been achieved, but the provisions have effectively allowed correctional authorities to interrupt an offender’s crime cycle prior to the commission of another offence.

When asked what ought to be the goals of the system in dealing with LTOs, 6 of the 10 Supervision/Enforcement stakeholder category interviewees agreed that public safety is the most important goal. These 6 interviewees listed rehabilitation and reintegration as the second priority. When asked whether the current application of the LTO provisions have been in line with these goals, one interviewee stated that it has been in line with the goals, one interviewee stated that it has not been in line with the goals, and the remaining 4 interviewees were more cautious in their responses here and noted that while there are some successful cases, there is much room for improvement.

The remaining 4 of the 10 Supervision/Enforcement stakeholder category interviewees provided varying responses with respect to what ought to be the goals of the system when dealing with these offenders, including treatment and the need to provide these offenders with a structured environment. While some stated that these goals are being met, others were less positive in their evaluation in this regard.

Overall, the policing-oriented interviewees in this stakeholder category stated that the LTO designation does increase public safety. All three of the policing-oriented interviewees described the designation as an advantage over simply having the DO designation and a conventional sentence as the former is too difficult to achieve in court. As SEP2a stated, “[N]ot everyone can be a DO, [and the LTO designation] is an advantage over WED [warrant expiry date.]”

While SEP2a and SEP2b acknowledged that not all high-risk offenders can be designated as a DO, they described this reality is a limitation, namely because of their concern over what will happen to these offenders at the end of the LTSO. Furthermore,



the process of breaching an offender was described as unduly cumbersome, and the lack of resources was also listed as a limitation.

The majority of the supervision-oriented stakeholders mentioned the fact that the LTO designation allows for supervision in the community as the key advantage of this option. These supervision-oriented interviewees also listed numerous limitations with the LTO provisions. The majority of the limitations mentioned revolve around the difficulty in supervising these particularly high-needs offenders and the problems posed by the wording of conditions in LTSOs.

It was also noted here that there is a lack of understanding on behalf of both the policing agencies and Crown counsel about their roles and responsibilities when dealing with LTOs. These offenders were described as lacking motivation to seek institutional treatment as their determinate sentence length is pre-determined: therefore, there is a lack of incentive to rehabilitate. Finally, the supervision-oriented interviewees in this stakeholder category voiced concern about what will happen with these offenders after the LTO.

With regards to any perceived changes in the use of the LTO designation since its inception in 1997, SEP1 stated that the use has been quite stable, while both SEP2a and SEP2b have witnessed increases. Each of the supervision-oriented interviewees in this stakeholder category noted that there has been an increase of LTOs. This increase was described as an “exponential growth” and there is much anxiety expressed by these officials who are the front-line workers charged with the task of supervising these offenders.

### **Community Service**

With respect to the interviewee perceptions of the objectives of the legislation, two of the Community Service stakeholder interviewees described the provisions as an alternative to the DO designation. With respect to the effectiveness of the provisions in reaching these objectives, both CS1 and CS3 stated that the provisions have been effective in expanding the mechanisms of control from the prison into the community. CS3 was somewhat less critical than CS1 here, stating that the provisions have been

partially effective in allowing people to live in the community while maintaining supervision.

CS2 described the objectives of the legislation as being more in tune with the research on recidivism patterns of sex offenders. With regards to effectiveness, CS2 stated that the legislation has been effective in placing offenders under supervision for a longer period of time, but was uncertain whether recidivism has decreased.

Due to a lack of experience with LTOs to this point, CS4 was unable to speak to the objectives of the legislation and whether the provisions have been effective in meeting these objectives. In fact, the input provided by CS4 was limited throughout the interview due to a lack of experience with LTOs at the time of the interview, and responses provided by CS4 are included where available.

When asked about what ought to be the goals of the system, responses included: safety/ protection of society, community reintegration, resources/support for long-term care, holding offenders accountable, determining risk and needs, and the reduction of risk. The ordering of these goals varied by interviewee. CS2 stated that the current application of the provisions is “more or less” in line with these goals.

CS1’s views with regard to the goals of the system were unique as compared to the other interviewees in this stakeholder category. CS1 went as far as to state that the LTSO should not even exist and that those offenders labelled as LTOs ought to be paroled in the usual manner.

In describing the advantages and limitations of the LTO provisions, the Community Service stakeholder category interviewees did list more limitations overall. These limitations included: inappropriately applying this designation to offenders with mental health problems; lack of clarity in the guidelines for supervising officials; unjust and vague wording in the legislation; the arbitrary nature of parole decision-making; the lack of resources; and the stigmatizing effects of being labelled a LTO. The frequency with which the 10-year supervision order period is imposed was also questioned.

CS2 and CS3 agreed that the key advantage of the provisions is that it provides for a period of supervision during which offenders can be observed and offenders can be reintegrated more gradually into the community. Housing resources, treatment, public safety and crime prevention were also listed as advantages of the provisions.

Standing apart from the other Community Service stakeholder interviewees, CS1 stated that there are no advantages to the LTO provisions. Upon further reflection, CS1 did offer one advantage: the determinate sentence is shorter in length.

Finally, with respect to perceived changes in the use of the LTO provisions since the inception of the designation in 1997, one interviewee was not sure of the numbers and did not provide a response here, while the remaining three Community Service stakeholder interviewees stated that they have indeed experienced an increase in the need for services for LTOs specifically. CS3 described LTO applications as having become “routine” and an “addendum to expand control in the community.”

## **Summary**

Table 7 below provides a snapshot of the findings here of the interviewee responses categorized under Topic B. The goal here is to visually display the prominent and general themes that emerge in the responses by stakeholder category. For the sake of clarity, any differences between sub-categories within the broader stakeholder categories (for example between Crown counsel, defence counsel, judges and the legislator within the broader Legal stakeholder category) are reported textually above and are not captured in this table.

**Table 7. Summary of Topic B:  
Interviewee Perceptions of LTO Provisions by Stakeholder Category**

<b>Question Responses</b>	<b>Legal</b>	<b>Mental Health</b>	<b>Supervision/ Enforcement</b>	<b>Community Service</b>
<i>Objectives</i>				
To target sex offenders	X			
To provide a sentencing alternative to the courts	X	X	X	X
To provide long-term community risk management and supervision		X	X	
<i>Goals</i>				
Rehabilitation/Treatment	X	X	X	X
Public Safety/Protection	X	X	X	X
Manage/Reduce risk	X			X
Effective supervision		X		
Providing resources and support/stability	X		X	X
Punishment/Deterrence	X			
Protection of offender rights		X		
Reintegration			X	X
<i>Benefits/Advantages</i>				
Provides another alternative	X	X	X	X
Allows for community supervision and services	X	X	X	X
<i>Limitations/ Challenges</i>				
Lack of resources for effective supervision and treatment	X	X	X	X
Overuse of designation	X			X
Over-reliance on experts	X			
Wording of the provisions/conditions	X		X	X
Arbitrary powers of various actors	X			X
No post-supervision order plans			X	
Burden of proof in breach cases			X	
Misunderstanding of roles/responsibilities of various actors in the system			X	
Lack of incentive for offenders to rehabilitate			X	
Overuse of 10-year supervision order				X
Offender stigma				X
<i>Changes in Use</i>				
Increase	X	X	X	X
Decrease				
No change	X		X	
Unknown		X		X

## **Topic C: Interviewee Perceptions of LTO Characteristics**

The first three questions in Topical Category C of the interview were designed to ascertain the interviewee's perceptions of the characteristics of those offenders declared LTOs relative to those offenders who are declared dangerous and those offenders who receive neither the DO nor the LTO designation, and are instead given a conventional sentence. Interviewees were probed on a range of characteristics, including demographic characteristics, offence history, and mental health. Other questions in Topical Category C pertained to the treatability and controllability of the offender, as well as offender characteristics that are believed to influence the length of the LTO.

### **Legal**

While many of the Legal stakeholder category interviewees described the characteristics of DOs and those offenders receiving a conventional sentence as being on a continuum, this was not a view shared by all. Numerous interviewees in this stakeholder category suggested that there is no scientific basis to this decision. One went so far as to state that it is usually dependent on "the flavour of the month." Another stated that it comes down to "the luck of litigation."

Those Legal stakeholder category interviewees who did position these three groups of offenders on a continuum described DOs as follows: older, higher risk, more likely to recidivate, more likely to deny wrongdoing, more likely to have failed at treatment, more psychopathic, and more likely to have longer criminal histories. DOs were also described as having a lower IQ and being less educated. Childhood victimization and low socio-economic status were also mentioned as being common features in these cases. LTOs were described as being in the middle of the continuum on these characteristics, with those offenders receiving a conventional sentence at the other extreme, committing offences that differ in nature and severity. LTOs were described as exhibiting some hope for reform. Sexual offending was described as being prominent amongst both DOs and LTOs, and Aboriginals were said to be disproportionately represented in both of these groups. There was a clear suggestion,

though, that while they may be “different in degree rather than in kind,” as LDC3 suggested, the distinction between DOs and LTOs is sometimes blurry.

With regards to those characteristics that are key in persuading the judge that an offender is indeed controllable in the community, and therefore suitable for the LTO designation, some of the interviewees listed characteristics of the offender and others listed characteristics of the system. Offender characteristics mentioned that suggest controllability included: willingness to participate in treatment, low degree of psychopathy, past success in treatment and/or supervision, demonstrated ability to live lawfully, and treatability. The mental health expert’s assessment of risk was also said to be prominent in this decision. Furthermore, the accused’s presentation was said to play a role, along with expressions of remorse.

While almost all of the Legal stakeholder category interviewees mentioned such individual offender characteristics, the availability of treatment resources was also said to play a role. According to LDC2a and LDC2b, “[I]f you can link availability of treatment to likelihood of success, this leaves no other choice than the LTO designation.”

When asked about the role of treatability in deciding whether an offender is a LTO or a DO, and why it may be that LTOs deemed to be low on a continuum of treatability are designated as LTOs, 6 of the 13 interviewees in the Legal stakeholder category distinguished treatability from manageability. Other factors that were offered to make sense of this finding included the dynamics of the courtroom and the persuasiveness of the defence counsel’s mental health expert. Judicial discretion was also mentioned as a factor, which is related to the extent to which the civil liberties of the offender are considered.

When responding to this question, two defence counsel voiced great concern about the lack of impartiality on behalf of court-appointed assessors. These defence counsel stated that it is essential to obtain their own mental health expert to provide testimony, but the hours required by these experts often exceeds that which is authorized by the Legal Services Society (hereafter referred to as LSS) . As LDC3 stated, “counsel usually bear the brunt of those extra costs, as counsel must honour their professional and law society obligations to the expert.” Moreover, the funds allotted

to defence counsel's expert testimony and Crown's expert testimony are reportedly unequal, with the former receiving a quarter of the funds from LSS that the latter has access to.

The last question under this topical category of questions addressed the length of the LTSOs and the prevalence of the 10-year supervision order. The majority of the Legal stakeholder category interviewees stated that the maximum length allowed is often chosen as these offenders are on the threshold of a DO designation and judges want to err on the side of caution and provide for the longest supervision possible. One judge described the 10-year length as "convenient." Some suggested that a maximum supervision order period of life would be more appropriate; yet others mentioned the role that the age of the offender plays in this decision. In their view, judges prefer that these offenders are as old as possible upon completion of the supervision order in the hopes that the offender will "burn out."

LL went on to discuss the problems with the reliance on the 10-year supervision order length. In LL's view, judges lack an understanding of what actually occurs during the supervision order.

## **Mental Health**

Four of the 6 Mental Health stakeholder category interviewees described the characteristics of DOs, LTOs and those offenders receiving a conventional sentence as being on a continuum, with DOs at one extreme, LTOs in the middle, and other offenders at the other extreme. DOs were described as being more psychopathic than LTOs, committing more serious crimes that cause greater harm to the victims, and exhibiting a higher degree of risk. In general, these interviewees described LTOs as being more treatable.

These four interviewees also listed other factors that come into play in differentiating between the more serious DO and the less serious LTO, such as willingness to participate in an interview with the assessor, the profile of the crime and the media attention around the incident.

MHT did agree that those offenders receiving conventional sentences are distinct, but the differences are less clear between LTOs and DOs. MHT highlighted the fact that many LTOs were in fact initially designated as DOs, blurring the distinction even further.

MHAP2's responses in this regard were markedly different from the other interviewees in this stakeholder category. In MHAP2's view, the main difference between DOs, LTOs, and those offenders that receive conventional sentences is their lawyers and the judges. In MHAP2's experience, the non-legal factors that play a role in this decision included race, class, and overall demeanour of the offender. In this interviewee's experience, Aboriginals are deemed to be more likely to receive the DO designation, and offenders who are "upwardly mobile, with education, white [and] charming" are more likely to receive a conventional sentence.

In determining which characteristics are key in persuading the judge that an offender is indeed controllable in the community and, therefore, suitable for a LTO, some of the interviewees listed characteristics of the offender and others listed characteristics of the system. Offender characteristics that suggest controllability included: expressions of remorse, willingness to participate in treatment, low degree of psychopathy, past success in treatment and/or supervision, and treatability. While almost all of the Mental Health stakeholder category interviewees mentioned such individual offender characteristics, three interviewees specifically highlighted the relevance of resources in making this decision. In MHAP3's own words, "anyone is manageable in the community with all the resources."

When asked about the role of treatability in designating an offender as a LTO or a DO, and why it may be that LTOs deemed to be low on a continuum of treatability are designated as LTOs, three of the Mental Health stakeholder interviewees made a distinction between treatability and manageability, suggesting that an offender that is relatively less treatable may still be effectively managed in the community. According to these interviewees, there are other factors that may lead the judge to deem an offender manageable in the community, such as older age and health issues that are seen as decreasing the risk they pose.



MHAP2 was much more sceptical in response to this question on treatability. According to this interviewee, it is the impression that the offender makes on the judge and the other actors in the courtroom that is most influential in the decision to designate an offender either as a DO or a LTO, and not the offender's actual treatability. MHAP2 states that "[A] large Native [impresses the court less] than a freshly scrubbed, nice-looking guy." The decision-making process was described by this interviewee as "impression management" and a "charade." MHAP4 echoed this scepticism.

Finally, when asked about the length of the LTSOs, all Mental Health interviewees agreed that judges tend to choose the 10-year supervision order length to ensure the longest supervision and risk management possible and the greatest public protection possible. Overall, this was described as being completely appropriate. According to MHAP2, though, what is particularly concerning is that judges often make the decision of the appropriate LTO length without accurate or current information about what treatment programs and supervision resources are actually available. This interviewee went on to describe the status of community treatment as a "constantly changing landscape...[a] field with moving posts...[with] most if not all treatment programming cancelled."

### **Supervision/Enforcement**

The policing-oriented interviewees in the Supervision/Enforcement stakeholder category differed in their perceptions of the characteristics of LTOs. One of these interviewees suggested that there is no clear standard in distinguishing between LTOs, DOs, and those offenders that receive a conventional sentence, while the remaining two policing-oriented interviewees suggested there are notable differences between these groups of offenders, with DOs having a greater number of previous offences and a higher ranking of risk, as per the assessor's evaluations. Offenders designated as LTOs were described as being considerably more miserable than regular parolees as the latter have a release date to look forward to, while the former have a relatively long period of supervision. The LTO designation is described here as being "the scarlet letter."

The remaining interviewees in the Supervision/Enforcement stakeholder category, all of whom perform supervisory roles, did differentiate between these three offender groups (DOs, LTOs, and those that receive a conventional sentence), although some see the distinction as being much clearer than others. Those who stated that the distinction between these three groups of offenders is clearer described DOs as being more psychopathic and as having lengthier criminal histories. DOs were also described as being different in how they treat their releases: according to SES2, the fact that DOs must earn their releases makes them more respectful of the process. Aboriginals were said to be disproportionately represented in all three offender categories by the majority of interviewees in the Supervision/Enforcement stakeholder category.

In describing LTOs, the majority of these supervision-oriented interviewees noted that they exhibit unique intellectual and cognitive limitations, and also social disadvantages, such as having a history of childhood abuse. These offenders were also described as having a clear history of sexual offending, and to be relatively more needy as compared to the other two groups of offenders.

Those offenders who receive a conventional sentence differ in many respects; they were described as causing less harm to their victims and as being less likely to have significant personality disorders. They were also described by interviewees in this stakeholder category as being on average younger than both DOs and LTOs.

When asked which characteristics are believed to be the most influential in determining whether an offender is indeed controllable in the community and, therefore, eligible for a LTO designation, characteristics of the offender and also characteristics of the system were discussed. Offender characteristics included: willingness to participate in treatment, remorse, past success on supervision and/or in treatment, the number of offences committed by the offender, the nature of the index offences, institutional adjustment (i.e. how well the offender does in jail), insightfulness of the offender, and pleas of guilt. Characteristics of the system itself that were described as playing a role, according to the minority of these Supervision/Enforcement stakeholder category interviewees, included: the persuasiveness of the assessor who provides testimony on the risk posed by the offender, as well as the persuasiveness of the defence counsel in

suggesting that the offender is indeed manageable in the community and that the necessary resources to effectively supervise the offender do actually exist.

When asked about the role of treatability in designating an offender as a LTO or a DO, and why it may be that LTOs deemed to be low on a continuum of treatability are designated as LTOs, several of the interviewees in this stakeholder category were surprised by this finding. Three interviewees in this stakeholder category mentioned various dynamics of the courtroom and the hearing as possible factors to explain this finding. Others made a distinction between treatability and manageability.

Finally, when asked about the prevalence of the 10-year supervision order length, the Supervision/Enforcement stakeholder category interviewees were virtually unanimous in stating that the judges are erring on the side of caution and choosing the longest supervision order period possible to maximize public protection. Another equally prominent theme in these interviewee responses was that these offenders are seen as being on the threshold of being designated as a DO, making the most restrictive option under the LTO provisions the most appealing to the courts in these cases. The prevalence of the ten-year supervision length was described as appropriate and warranted due to the extensive criminal histories of these offenders. In fact, SEP1 suggested that the maximum supervision order length ought to be increased, and that there ought to be a mechanism to extend it with ease. Finally, according to SES2, it is not the longer supervision orders that ought to be of concern; rather, it is the shorter determinate sentences that need to be changed in order to allow for much-needed institutional treatment prior to the commencement of the period of community supervision.

### **Community Service**

While CS4 was not able to comment on the characteristics of these offenders in particular owing to a relative lack of experience, the other three interviewees in this stakeholder category shared similar views on the features that characterize these offenders. They were described as “resourceless” and “needy.” When asked whether these LTOs are qualitatively different from DOs, two of the Community Service

stakeholder category interviewees stated that there seems to be more “hope” with LTOs, although they were cautious in relying on this as a distinguishing factor. This hope, according to these two interviewees, is dependent on the availability of resources to effectively work with these offenders in the institution and also in the community. Other factors listed as factors distinguishing DOs from LTOs included: differences in psychopathy scores to draw a distinction, differences in the nature of the crimes committed, and differences in the persistence of criminal offending.

When asked whether LTOs are qualitatively different from offenders who receive conventional sentences, LTOs were said to exhibit greater social inadequacies and to be more needy than those offenders receiving conventional sentences. According to CS2, it is often “a crap shoot” and those sex offenders who were not designated as LTOs may have simply had a combination of “a great defence lawyer and a lazy or inexperienced Crown.”

CS1’s responses were unique here; this interviewee stated that there is little difference between LTOs and those offenders receiving conventional sentences. The only key difference, according to CS1, is the number of offences, with DOs having a greater number of offences, followed by LTOs, and then finally by those offenders receiving conventional sentences.

After asking interviewees to describe LTOs in their own words and to compare them to DOs and those offenders who receive conventional sentences, interviewees were asked to identify which characteristics they believe are relied upon most to determine controllability in the community. The characteristics listed included: the “potentiality” of the offender, defined as the severity of the crime and the level of denial of the offender; changes in severity in the offending pattern; the offender’s risk-assessment scores; past supervision experiences; and the characteristics of the victim, with offenders who commit crimes against children generally being deemed lower on a scale of controllability.

Again, CS1’s responses were unique here. This interviewee stated that the decision to pursue a LTO designation has less to do with some observable characteristic

in the offender and more to do with whether the more punitive DO designation is achievable.

Next, interviewees were asked about the issue of treatability. They were informed that through the file review data analysis, it was revealed that the majority of those offenders in B.C. who have received the LTO designation were in fact deemed to be low on a continuum of treatability by the assessing mental health expert. When asked why they thought that offenders deemed to be low on a continuum of treatability still receive a LTO designation, a distinction was made between treatability and manageability. It was also noted that it is possible that cognitive deficits in these offenders that may lead to the conclusion that the offender is low on a scale of treatability. It was also noted that past supervision experiences may lead to the conclusion that the offender is controllable in the community, despite the assessor's concerns regarding the offender's perceived treatability. In response to the treatability issue, CS1 maintained the position that the decision to pursue a LTO designation has less to do with some observable characteristic in the offender and more to do with whether the more punitive DO designation is attainable.

Finally, interviewees were asked about the length of supervision orders. When asked why they thought that 10 years was the most prevalent LTSO length, two of the Community Service stakeholder category interviewees stated that the courts are simply erring on the side of caution. CS3 described this as "covering [its] rear, both publicly and politically."

CS3 went so far as to say that perhaps this is the most commonly chosen supervision order length because "the criminal justice industry has become self-serving." CS1 also pointed to the increased control that is allowed for with a longer supervision order, warning that there is far too much power given to parole officers under the LTO provisions.

CS2 was less sceptical in this regard. According to CS2, it is possible that the courts feel that the 10-year supervision period is needed to truly allow the offender to "get back on [his] feet."

## Summary

Table 8 below provides a summary of the responses provided under Topical Category C. As mentioned at the outset of this chapter, these summary tables are intended to provide a brief visual summary of the findings and to reveal the main themes that emerge in the interviewee responses.

**Table 8. Summary of Topic C:  
Interviewee Perceptions of LTO Characteristics**

<b>Question</b>	<b>Responses</b>
<i>LTOs (relative to DOs and Offenders receiving conventional sentences)</i>	<ul style="list-style-type: none"> <li>In the middle of the continuum</li> <li>Younger than DOs</li> <li>Overrepresentation of Aboriginals</li> <li>Lower levels of education and intelligence than conventional offenders</li> <li>Poor demeanour as compared to conventional offenders</li> <li>Less previous offences than DOs/more than conventional offenders</li> <li>Less severe offences than DOs/more than conventional offenders</li> <li>Less victim harm than DOs/more than conventional offenders</li> <li>Less persistent offending than DOs/more than conventional offenders</li> <li>Sexual offending is prevalent among LTOs as well as DOs, as compared to conventional offenders</li> <li>Less psychopathic than DOs/more psychopathic than conventional offenders</li> <li>Less risk posed than DOs/more risk posed than conventional offenders</li> <li>Less likely to reoffend than DOs/more likely to reoffend than conventional offenders</li> <li>Fewer mental health deficits/challenges than DOs/more than conventional offenders</li> <li>More treatable than DOs</li> <li>More willing to participate in interviews than DOs</li> <li>More “needy” and resourceless than conventional offenders</li> <li>Some indication of a higher prevalence of Fetal Alcohol Syndrome among LTOs</li> <li>More litigious than DOs</li> <li>More miserable than regular parolees</li> <li>Less motivated to participate in institutional treatment than DOs</li> </ul>
<i>LTO characteristics leading to finding of controllability</i>	<ul style="list-style-type: none"> <li>Willingness to participate in treatment/treatability</li> <li>Past success in treatment and on conditional release</li> <li>Low degree of psychopathy</li> <li>Low assessment of risk</li> <li>Expressions of remorse</li> <li>Overall good presentation/demeanour</li> <li>Fewer previous offences</li> <li>Relatively less serious index offence</li> <li>Good institutional adjustment</li> <li>Insightfulness and “potentiality”</li> <li>Low degree of denial</li> <li>Victim of index offence not a child</li> <li>Availability of resources for treatment/supervision</li> </ul>

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**Question****Responses**

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*Role of treatability: Why offenders deemed low on treatability still designated as LTO?*

Not treatable/low on treatability does not mean not manageable

Dynamics of courtroom

Persuasiveness of defence counsel

Lack of understanding of judges regarding resources while on supervision

Increased age of offender

Health problems of offender

Offender's demeanour

Past success on supervision

Cognitive deficits may explain low treatability overall, but does not mean untreatable

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*Reason for Prevalence for 10-year supervision period*

Judges erring on the side of caution

To provide as much public safety as possible

Some view this as appropriate

Others say it is overused/self-serving

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## **Topic D: Interviewee Experiences and Perceptions of LTOs in the System**

In Topical Category D, the questions pertained to the interviewees' views on the impacts that LTOs have had on the criminal justice system, and also how the task of supervising LTOs is actually carried out.

### **Legal**

The impact that LTO cases have had on interviewee workload depends on the interviewee's role in the process. Since the provisions have been more problematic than expected, LL reported that the workload impact has been much greater than anticipated.

The judges reported that these cases have had little or no impact on their workload. Two judges stated that little is known about the nature of supervision for these offenders and that such knowledge would be of interest.

The four Crown counsel interviewees reported that, while the actual number of LTO cases is relatively small, when these cases do come along, they are very time-

consuming and intensive. It was stated that, owing to a lack of resources, there are not many junior Crown counsel available to assist with these cases, leaving a heavy workload for the prosecuting counsel. It was also reported that the work generated by one case often continues after the case has been adjudicated, particularly when the case exhibits rare and unique features; in one Crown counsel interviewee's words, the work "doesn't end when the case ends."

The sentiment that these cases are less frequent but more intensive is a theme that also emerged in the responses of defence counsel interviewees. These interviewees also discussed the features of the client that add to the intensive nature of these cases. Offenders that are subject to a DO or LTO application were described as more high maintenance and needy; the cases were also described as "depressing and traumatizing." Furthermore, these defence counsel interviewees reported being frustrated with the inability to obtain the CSC records on their own clients in a timely manner, making it difficult to appropriately defend their clients.

Finally, all four defence counsel emphasized the challenges of dealing with LSS, noting that these cases are under-funded. LDC2a and LDC2b reported being in constant conflict with LSS. In their experience, the funding that is provided for expert input amounts to only 12 seconds per page, which was described as clearly inadequate. Two defence counsel even reported paying for that portion of the mental health expert's bill that is not paid by LSS "out of their own pockets."

In describing the relationship that these Legal stakeholders have with the other agencies involved in the application of the LTO provisions, LL reported having a close and positive relationship with the CSC, the NPB, the Department of Justice and also with Provincial Crown counsel. This interviewee did report having no relationship or contact with judges. In fact, as per the judges' responses and also the responses of Crown counsel, the judiciary has no contact with the other agencies involved in the application of the LTO provisions. The only contact that occurs between the judiciary and the other agencies comes in the form of testimony provided in court.

Crown counsel described the relationship with Corrections, including B.C. corrections, in positive terms. LCC3 went on to note that while this relationship may be



the most important, the most challenging aspect of this relationship is that parole officers are not “*Charter* rights sensitive.”

With regard to the relationship between Crown and the FPSC, LCC3 again described the correspondence with this agency as limited, while LCC1 and LCC4 did provide more information on the nature of this relationship. In LCC1’s experience, mental health experts are called upon to determine what services are available in the community for these offenders during the supervision period; this was described as useful input. LCC4, on the other hand, noted that the relationship between Crown and the mental health experts who provide assessments in court has become “tense” over the years and that the amendment that requires a court-appointed assessment has in fact complicated the process.

LCC2 is the only Crown counsel who spoke to the relationship with police. In this interviewee’s experience, this relationship is positive.

Overall, while the general theme in Crown counsel responses here was that the various agencies are for the most part accommodating, there was some indication here that there is a disconnect and lack of understanding among the agencies with regard to each one’s role, responsibilities, and privileges.

Finally, the four defence counsel interviewees offered varying responses regarding their relationship with the other agencies involved in the application of the LTO provisions. With respect to Crown, each of the four defence counsel described the relationship as positive. With regard to the relationship with the judiciary, LDC1’s response was unique as compared to the other Legal category interviewees. LDC1 noted that there is indeed a relationship, and this interviewee described this relationship in positive terms. LDC1 and LDC3 also described the relationship with the FPSC in positive terms.

It is the relationship with Corrections that was described in more negative terms by the defence counsel interviewees. The majority of these interviewees voiced their frustration in not having access to their own clients’ records. They went on to note that

they should not have to subpoena the records of their own clients and that it is unjust that Crown counsel enjoy free access to these records.

With regard to how supervision is actually carried out in the community, LL voiced great concern about the lack of resources available to the CSC parole officers to effectively carry out the supervision of these offenders while in the community. This concern about a lack of resources for supervising authorities was also raised by Crown and defence counsel interviewees. In addition, concern about judges' understanding of how supervision is actually carried out was raised by Crown and defence counsel. This is consistent with the judges' own responses on this question on supervision, wherein they indicated knowing little about what occurs during the supervision period.

Overall, there appeared to be varying degrees of knowledge among the Legal stakeholder category interviewees with regard to the details of how supervision is carried out, the obstacles faced by these supervisory officials, and the training received by them to carry out this duty. While some stated that they are not familiar with the work of supervisory officials, others identified these supervision officials by name and discussed in great detail the role of volunteers in halfway houses, for example. In general though, the mechanics of supervision were revealed to Legal stakeholder category interviewees only when a supervision official is asked to provide testimony in court.

When asked about the nature of treatment services provided for LTOs during the supervision order, LL admitted to having no knowledge of the specific treatment provided. LL noted that when imposing the LTO designation, judges are doing so with little or no knowledge of what occurs during the supervision order, and that they rely on Crown and defence counsel for this information who also, in LL's view, often lack knowledge in this regard.

The judicial responses here confirmed that information about the nature of treatment programs and the availability of such programs is provided by correctional officials, defence counsel and also Crown counsel. The majority of these judges did indicate that availability and accessibility of treatment programs, along with the offender's willingness to participate in such programs, do indeed impact their decision to impose a LTO designation. This information was also said to impact their view of the

appropriate length of the supervision order, and the likelihood of a program being available at the end of the offender's determinate sentence was described as not being of immediate concern.

There was general agreement among Crown counsel interviewees that there is a lack of treatment in the community for LTOs. What is provided was described as maintenance rather than actual treatment and these maintenance programs are premised on the assumption that institutional treatment is being provided and that offenders are actually taking part in these treatment programs. As LCC2 warned, though, the problem is that, if offenders do not partake in these institutional treatment programs, they are able to simply wait until the sentence ends to be released into the community on the LTSO. In some instances, the length of the sentence does not even allow for an offender who is willing to partake in treatment to actually do so. Furthermore, as LCC1 noted, if the offender is in fact given a provincial sentence, then institutional treatment is not even an option. Each of the Crown counsel interviewees stated that information pertaining to the accessibility of these programs does indeed impact the judge's decisions to impose the LTO designation and the judge's choice of supervision order length.

Overall, the defence counsel interviewees also reported that there is a lack of treatment services available in the community for LTOs. One interviewee stated that the programs are no different than those for other parolees and LTOs are at the bottom of the priority for treatment as they are supervised by the CSC for a much longer period of time. The majority of defence counsel interviewees agreed that the perception of the accessibility of these programs impacts the decision to impose the LTO designation and also to choose the length of the supervision order.

When asked about the types of conditions imposed on LTOs and the appropriateness of these conditions, the Legal stakeholder category interviewees expressed different degrees of familiarity. LL stated that the expectation is that these conditions are similar to regular parole conditions, but cannot recall, while the judges offered little information on the nature of these conditions.

The Crown counsel interviewees listed some common conditions, including treatment conditions, no-go conditions, and reporting requirements. LCC3 described the conditions as appropriate and stated that they “must be” effective, given the low re-offence rate of LTOs during the supervision order. LCC4, though, emphasized the problematic nature of the wording of conditions. In this interviewee’s view, the conditions are vague and “wishy-washy” and therefore do not stand up in court. LCC4 goes on to state that these conditions “need to be read in the eye of a psychopath who can find an interpretation that suits them.”

Defence counsel interviewees described the conditions imposed on LTOs as generally strict and crafted to the offender’s needs. The general consensus was that these conditions are appropriate, yet there was concern mentioned regarding whether the resources actually exist to properly supervise these offenders. Whether or not some of the conditions are realistic was also raised.

With regards to breaches, only Crown counsel and defence counsel offered a response. Overall, the Crown counsel interviewees noted that LTO breaches are relatively infrequent but when they do occur, the sanctions are severe yet still appropriate. The one defence counsel interviewee who offered a response on the nature of sanctions imposed when the LTO is breached noted that these sanctions are often too severe and often times, “the punishment does not fit the crime.”

While the judges interviewed did not indicate having had any experience with breach cases, LJ4 did express an appreciation for the discretion held by parole officers to breach LTOs. This degree of flexibility and discretion was described by LJ4 as essential for effective supervision.

Finally, when asked about the role of community reintegration when dealing with LTOs, all-but-one Legal stakeholder category interviewee discussed the importance of community reintegration, although to varying degrees. For example, LL described community reintegration as the “essential foundation of the LTO objective” and warned against an alternative focus. Yet, there was a suggestion made in the responses of interviewees in this Legal stakeholder sub-category and also in the responses of judges that it must go hand in hand with other goals, such as treatment, risk management,

supervision and public protection. Interestingly, there was some agreement between Crown and defence counsel on the impact of public notification, which was described as counterproductive in efforts to effectively reintegrate LTOs.

LJ2 was the only Legal stakeholder interviewee who did not support the idea of community reintegration. In this interviewee's view, community reintegration is "too risky" and "should be the last thing to consider."

## **Mental Health**

The impact that LTO cases have had on interviewee workload depends on their role in the process. Two of the Mental Health stakeholder category interviewees stated that the workload has increased significantly, and the anticipation is that this increase will continue. For others, though, all of whom are involved in the assessment of these offenders, the number of cases per year was described as relatively low, amounting to approximately 1 to 2 cases per year. While the absolute number of offenders assessed was reported as being low by the majority of assessors, the cases are described as being very intensive and time-consuming.

In describing the relationship that these Mental Health stakeholder interviewees have with other agencies involved in the application of the LTO provisions, MHT noted that the relationship with policing and correctional authorities is quite positive. The remaining Mental Health stakeholder category interviewees, all of whom are assessors, reported having little or no contact with other agencies when they have been appointed by the court to conduct an "objective assessment." The CSC is perhaps the only agency with which assessors come into contact when working as a court-ordered assessor in order to arrange for access to the offender's file and to arrange for an interview with the offender.

MHAPP described being disappointed that there is no contact with Crown and defence counsel when working as the court-appointed assessor as such contact prior to appearing in court would be rather productive. MHAP2 also discussed a flaw with the court-appointed assessment model. In this interviewee's opinion, the addition of a court-appointed assessor has not eliminated the adversarial nature of the process, and Crown

and defence counsel continue to obtain the services of additional mental health experts to present polar viewpoints to the court, simply complicating the process. What would be particularly helpful to the process, according to MHAP2, is the implementation of a standardized presentation to the court by those mental health experts providing testimony and assessments. While this is seen as ideal, MHAP2 admitted that this is not realistic, partly because of the “narcissism of assessing psy-experts,” and partly because even the experts themselves cannot agree on the interpretation of the literature.

With regards to how supervision is actually carried out in the community, three of the Mental Health stakeholder category interviewees described the nature of supervision. Parole officers that work with LTOs were described as having received specialized training in this regard, the programs offered to LTOs during the supervision period were described as maintenance programs, and the relevant policing units were described as being quite cooperative and helpful in the supervision of these offenders. The resources available for effective supervision, and specifically for providing residence to these offenders, were described as rather limited.

The supervision of these offenders was described by some as closely resembling the supervision of other federal parolees. One Mental Health stakeholder category interviewee suggested that it would be much more appropriate to have LTOs “cascade down to minimum security” during the determinate portion of their sentence, which would require longer determinate sentences. This was described as necessary in order to ensure that these offenders are indeed able to take part in institutional treatment prior to being released into a maintenance program in the community. It was stated that without the pre-requisite of institutional treatment, efforts to maintain the offender in the community are futile.

With regards to what treatment is available for LTOs in the community, MHT again mentioned the availability of maintenance programs, and not treatment, *per se*. The resources for this treatment were described as being rather limited. According to two of the Mental Health stakeholder interviewees, testimony from a CSC witness is often relied upon to provide the court with information on current community-treatment

resources. These interviewees described being hopeful that this input influences the judge's decision to appropriately tailor the sentence type and length.

When asked about the types of conditions imposed on LTOs and the appropriateness of these conditions, the detail in the Mental Health stakeholder interviewee responses was limited. Two of these interviewees described the conditions as being rather generic; they were described by one interviewee as generally ineffective in reducing recidivism. In MHAP2's view, these conditions "[j]ust give [an] excuse to arrest for breaches." The remaining three interviewees in this stakeholder category reported not being familiar with the type of conditions imposed on these offenders. With respect to breaches, all interviewees reported not having experience in this regard.

Finally, when asked about the role of community reintegration when dealing with LTOs, four of the interviewees described it as essential. The remaining two Mental Health stakeholder category interviewees were more cautious in their responses here; in their view, the appropriateness of focusing on community reintegration when dealing with LTOs depends on other factors, including the individual offender's characteristics and their ability to reform. The appropriateness was also said to depend on whether the community reintegration efforts are "realistic" and include teaching vocational, educational and recreational skills.

### **Supervision/Enforcement**

While the three policing-oriented Supervision/Enforcement interviewees agreed that LTOs make up a proportion of the sex offenders supervised by their respective police agency units, they did note that the supervision of LTOs is particularly intensive, primarily as a consequence of the relatively long period during which the LTO is supervised. These policing-oriented also noted that the requirement to renew residency conditions every 6 months is unduly laborious.

The supervision-oriented interviewees agreed that, while the LTOs make up only a proportion of offenders supervised, these cases are significantly more intensive than the cases of regular parolees. According to one of these supervision-oriented interviewees, the task of supervising LTOs has fundamentally transformed the nature of

their work. The consensus amongst these supervision-oriented interviewees was that this workload will increase in coming years.

The supervision-oriented stakeholders and the policing-oriented stakeholders agreed that the workload increases in the case of a breach. SES5 also described the difficulty in monitoring LTOs who are placed in a provincial institution as the result of a breach, since parole officers are federal employees and do not have access to the provincial electronic systems that house the information necessary to track these offenders when they are released from provincial custody. Suggestions for reform on this issue of provincial custody were made in response to questions categorized under Topic E.

All three policing-oriented interviewees in this stakeholder category described the relationship between their respective high-risk offender policing units and the other agencies involved in the application of the LTO provisions in positive terms. All of the relevant players who make up the community management team were described as working co-operatively to effectively manage these offenders. SEP1 also described a positive relationship with Canada Border Services (CBS); this interviewee emphasized the need to think of sex offenders in an international context, and a positive working relationship with CBS is deemed essential in this regard. Recommendations to improve agency coordination were discussed further under Topic E.

The supervision-oriented interviewees in this stakeholder category focused mostly on their relationships with Crown counsel and police agencies and they generally reported positive relationships with Crown counsel, although the relationship with police is described in less positive terms. According to one of these interviewees, police are often not aware of their role and the roles of other agencies involved in the supervision of LTOs.

With regard to how the supervision is actually carried out in B.C., the availability of training, and the existence of obstacles to effectively supervise these LTOs, the police-oriented interviewees in this stakeholder category differed in their responses. On the one hand, one policing-oriented interviewee claimed that the training is on-going for police officers in this interviewee's specialized unit. On the other hand, the other two



policing-oriented interviewees suggested that the officers in these specialized units themselves have received no special training for LTO cases. The information they have received has come in the form of information bulletins and occasional seminars. In SEP2a's words, "[W]e learn as we go." These interviewees described the conditions placed on LTOs as the biggest obstacle they face in effectively supervising these offenders. The nature and wording of conditions and the number of conditions imposed on these offenders were described as problematic.

The majority of supervision-oriented interviewees in this stakeholder category described the task of supervising LTOs as challenging, with the main obstacle being the nature and wording of the conditions imposed on these offenders. SES2 again stated that the most problematic issue is that these offenders do not earn their release from the determinate portion of their sentence, which leads to resistant offenders who have often taken little - or no - institutional treatment. Meeting the residency needs of these offenders when the residency condition is lifted was also described as extremely problematic. There was concern expressed here that the already-limited resources will decrease with the anticipated increase of LTOs soon to begin their supervision orders.

The length of the supervision orders was also described as a major obstacle. Over the 10-year period, the team supervising the offender often changes, or retires, leading to a lack of continuity in their supervision. This is further exacerbated by the fact that LTOs are often much longer than ten years in cases where the offender is repeatedly suspended as the supervision order is paused during the suspension. In theory, a 10-year supervision order may turn into a 20-year period of supervision.

With regard to training, the majority of these supervision-oriented stakeholder interviewees described the training as lacking. The training that was provided to these interviewees came in the form of on-line training, which was described as limited and confusing. The majority of the learning was said to occur "on the job." With regard to the timing of the training opportunities, two of the supervision-oriented interviewees stated that there was a lag in training resources and that at the outset, there was little or no training provided.

The one supervision-oriented stakeholder who described the training opportunities in more positive terms is not currently working as a front-line worker. In this interviewee's view, the specialized training for correctional officials supervising LTOs includes motivation-based intervention strategy training (for difficult offenders) as well as conferences. In this interviewee's experience, those in charge of supervising these offenders also have the opportunity to meet regularly to discuss cases and explore alternatives to offender management. Other than that, no specialized training was said to occur.

When asked about the treatment services provided to LTOs during the supervision period, one policing-oriented interviewee admitted to not being aware of what treatment these offenders are receiving, while the other two did note that these offenders partake in group counselling, particularly when participation in treatment is listed as a condition. They are, however, both sceptical about the gains made in treatment. The policing-oriented interviewees made no mention of their perceptions of the impact of program availability on judicial decision-making.

Five of the 7 supervision-oriented stakeholder interviewees described the treatment services available to LTOs as being quite similar to the services available for regular parolees. Three of the supervision-oriented stakeholder interviewees noted that the treatment amounts more to maintenance than actual treatment. Finally, the resources for treatment for these offenders were said to vary by community, with smaller, rural communities having less correctional resources for such services. The Lower Mainland, and specifically the Vancouver area, was described as the jurisdiction with the resources needed to deal with the particularly high-risk LTOs. With regard to the impact of program availability on the judge's decision to designate an offender as a LTO, three of the 7 supervision-oriented interviewees stated that they are unsure of the impact, while three of these interviewees stated that they do suspect that treatment availability does impact the decision.

When asked about the nature and appropriateness of conditions imposed on LTOs, the policing-oriented stakeholder interviewees all agreed that the wording of conditions is often problematic. With regards to breaches, the policing-oriented

stakeholders agreed that the types of behaviours leading to a breach include breaching no-contact conditions or abstaining from intoxicants. Each of the policing-oriented stakeholders noted that the likelihood of a breach resulting in a conviction is quite low.

All but one supervision-oriented stakeholder interviewee described the conditions imposed on LTOs as generally appropriate. The wording of some conditions was described by 6 of the 7 supervision-oriented stakeholder interviewees as the main problem. The wording was described as often too specific, or too general, making the enforcement of them very difficult.

The one supervision-oriented interviewee who did not describe the conditions as being generally appropriate in nature emphasized the difficulty of supervising offenders with residency conditions, which must be reviewed every 6 months. This was described as redundant and, in this interviewee's view, an application for consideration by the Parole Board should occur only when the supervising official wants to lift the residency conditions, and not if the official simply seeks to have the condition maintained.

While some of the supervision-oriented stakeholder interviewees did report having some experience with breaches, the consensus was that there are relatively few breach cases, and rarely do these cases result in a charge or a conviction. These supervision-oriented interviewees differed in their evaluation of the appropriateness of the sanctions imposed in the case of a breach of a LTSO. SES5 was particularly critical of the fact that sentences for breaches often result in time served. This was seen as being completely ineffective in protecting the community and reintegrating the offender.

SES6 described an interesting set of circumstances in response to the question addressing sanctions for breaches. In this interviewee's experience, non-custodial sanctions (such as provincial probation) are often relied upon by the courts in the case of a LTSO breach and such sanctions are served concurrently to the LTSO, unlike custodial sentences, which suspend the *federal* LTSO during the period of *provincial* incarceration. This leads to a lack of continuity between provincial and federal jurisdictions. This interviewee stated that this likely was not intended by the legislators.

Finally, each of the interviewees in the Supervision/Enforcement stakeholder category agreed that community reintegration plays a prominent role when dealing with LTOs.

### **Community Service**

With regards to the impact that LTO cases have on their workload, Community Service interviewees responded differently, depending largely on the extent of the contact each interviewee has with this subset of offenders. Overall, though, the consensus among these Community Service stakeholder interviewees was that the impact is best measured not in the absolute number of LTOs serviced; rather, the fact that these offenders are very needy as compared to other offenders serviced is what needs to be considered most when measuring impact on workload. There was also consensus that this demand is increasing. The lack of funding from CSC was described as being an obstacle to appropriately supporting LTOs in the community.

In describing their respective organization's relationships with other agencies involved in the application of the LTO provisions, both CS1 and CS3 noted that the only agency that they have direct contact with is parole and other community service agencies and that, generally speaking, this relationship is positive.

CS2 went into greater detail on this point, stating that building positive relationships with other agencies within the system is always important and that extra time must be spent to ensure that these relationships are healthy. CS2 described the relationship with correctional officials as being the most challenging. Overall, though, CS2 described the relationship between agencies and organizations as healthy.

With regards to the way in which supervision is carried out in B.C. and the obstacles that exist here, as well as the training provided to those who are responsible for the supervision of LTOs, the responses of interviewees varied greatly in length and detail. Two of the Community Service stakeholder category interviewees described the supervision of LTOs as resembling the supervision of other parolees. One of these interviewees went into greater detail about the obstacles with this supervisory task, noting that the difficulty with LTO cases is that cases must be brought to court when a

breach occurs, while for “ordinary parolees,” a case can simply be sent back to the NPB and dealt with internally.

With regard to training, one interviewee questioned whether parole officers in fact receive any specific training to assist in supervising LTOs specifically. Another interviewee noted that “some” training occurs, and that breaching LTOs and bringing them to court certainly requires a new set of skills for parole officers.

When asked about the treatment services provided for LTOs while serving the LTSO, one interviewee noted that, while there are “some treatment services for LTOs in the community, ... the last few years in prison have better treatment services.” It was noted that institutional treatment is offered in priority order, meaning LTOs, like other offenders, are at the bottom of the list to receive treatment at the beginning of their sentences, and are higher on the list of priority toward the end of their sentence.

According to another Community Service stakeholder category interviewee, LTOs partake in treatment services, if encouraged by their parole officer. This interviewee stated that, as compared to warrant-expiry offenders, LTOs do have access to treatment services and to the limited bed space that is available in community correctional facilities and these services are most often available in the Lower Mainland. Finally, in CS3’s experience, LTOs are provided with the necessary medical and/or psychiatric treatment, yet many do not participate in cognitive treatment programs due to their cognitive deficits.

When asked whether interviewees perceive the availability of treatment services as impacting sentence type or length, only one interviewee of the Community Service stakeholder category offered a response here, stating that treatment accessibility does not impact a judge’s decision to impose the LTO designation.

With regard to the conditions imposed on LTOs while serving the supervision order, the majority of Community Service stakeholder interviewees agreed that the conditions imposed are linked to the offence and the offender and that the conditions imposed are appropriate and do address the individual offender’s needs. However, each of these interviewees also expressed concern with the impact that some of these

conditions have on the offender. CS3 was quite specific in discussing one condition that is deemed to be particularly troublesome, and that is the condition that prohibits offenders from associating with other offenders. CS3 argued that this condition makes “little sense as they are the only people they know” and because sex offenders do not offend in groups. The discretionary power of parole officers was also described as quite problematic.

When offenders breach the conditions of the LTSO, the sanctions imposed include prison time and the imposition of additional conditions. The prevalence of actual breaches, though, according to the majority of Community Service stakeholder category interviewees, is quite low.

Finally, each of the four Community Service stakeholder category interviewees agreed that community reintegration is essential when dealing with LTOs. The importance of community service providers to assist these offenders to reintegrate was emphasized.

## Summary

Table 9 provides a brief summary of the themes that emerge in the responses under Topic D. For the sake of simplicity, these responses are not organized by stakeholder category. These details are provided in the textual review of findings above.

**Table 9. Summary of Topic D:  
Interviewee Experiences and Perceptions of LTOs in the System**

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<b>Question</b>	<b>Responses</b>
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*Workload*

- Consensus is that LTO cases do not make up majority of cases, but they are relatively more intensive and time-consuming
  - Breaches intensify workload
  - Impact of LTO cases was not anticipated
  - Judges' workload least affected by LTO designation
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**Question  
Responses**

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*Relationship with other agencies*

- No agency reports relationship with judiciary
- Overall disconnect reported between various agencies, namely between Crown counsel and other agencies
- Relationship with Corrections described by many as the most challenging
- Lack of collaboration described as frustrating and unfortunate across stakeholder categories
- Relationship between various agencies Mixed - described by some in positive terms and by others in negative terms

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*How supervision is carried out in B.C.*

- Varying degrees of familiarity with how supervision is carried out in B.C.
- Limited knowledge of how supervision is carried out among the Legal stakeholder interviewees
- Parole officers and police identified as the key agencies involved in the task of supervision
- Consensus that there is a lack of resources to effectively supervise LTOs
- Belief expressed that the supervision of LTOs in fact closely resembles the supervision of other parolees
- Treatment provided for LTOs during the supervision order more accurately described as maintenance according to interviewees across stakeholder categories
- Mixed responses/misconceptions regarding the type of training that parole officers are believed to receive
- Those conducting supervision (parole officers and police) describe training as limited and not specific to LTOs
- Nature and wording of conditions in supervision orders described as the most challenging obstacle in supervising LTOs—described as very difficult to enforce
- Actual length of supervision orders makes it difficult to ensure continuity in supervision
- Meeting residency needs is very challenging

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*Treatment during supervision*

- Varying degrees of knowledge regarding the nature and availability of treatment programs for LTOs during the supervision order
  - Lack of treatment resources
  - Treatment described as maintenance
  - Treatment believed to closely resemble treatment available for regular parolees
  - Legal stakeholder category interviewees, including judges, indicate that accessibility of treatment programs and willingness of offender to participate in treatment does influence designation decision
  - Legal stakeholder interviewees, including judges, report having limited knowledge of the actual treatment provided and admit relying on Crown and/or defence for this information
  - Testimony from correctional officials also relied upon to inform the court on current community treatment resources
  - Failure to partake in institutional treatment is described as a major obstacle to success in maintenance programs in the community which are premised on institutional treatment
  - Voluntary nature of program participation is described as problematic
-

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**Question  
Responses**


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*Conditions and Breaches*

- Varying degrees of knowledge regarding the types of conditions imposed in supervision orders
  - Interviewees in Legal stakeholder category are the least knowledgeable of the types of conditions imposed on these offenders
  - Conditions described as primarily generic and appropriate
  - Main concern with conditions is the wording
  - Conditions described as unrealistic, unenforceable
  - Evaluation of the effectiveness of the conditions is mixed—some quote low recidivism rates as an indication that the conditions are effective
  - Process of maintaining residency conditions described as overly laborious
  - Breaches described as infrequent
  - Process of breaching described as overly laborious and problematic
  - Supervision/Enforcement interviewees list problems with breaches, including the common sentence of time served, the negative impacts on the offender, lack of continuity when a provincial sanction is imposed
  - Sanctions for breaches described for the most part as severe yet appropriate; defence counsel and Community Service interviewees are critical of the severity of sanctions here
  - Discretionary power of parole officers described as problematic
- 

*Community Reintegration*

- Described as essential across stakeholder categories
  - Deemed by many to complement other goals of sentencing, such as treatment and public protection
  - Offender characteristics and offender ability to reform also listed as factors to consider when deciding appropriateness of community reintegration
  - Lifting residency conditions described as damaging for the community reintegration process
- 

## **Topic E: The Future of Dealing with LTOs**

At the end of the interview, interviewees were given the opportunity to offer suggestions for reform, for best practices, and/or also to provide any additional comments or suggestions that were not captured in the previous interview questions. The responses given are categorized below by stakeholder category.

### **Legal**

In LL's view, there is a need for the courts to be more sparing in the use of the LTO designation, and to be more individualized in their approaches in dealing with these offenders. LTSOs ought to be shorter, in LL's opinion. This interviewee also



recommended speaking to LTOs themselves to ascertain their perceptions as to how well the provisions are working.

While the judges included in this research were reluctant to comment on how the system ought to be reformed, some suggestions were offered, including the increased reliance on restorative justice options and greater continuity in treatment services for these offenders. It was also stated that the parole officer providing testimony and the Crown and defence counsel ought to be specialized in these cases, and that it would be quite helpful if judges were informed of the outcome of LTO cases, either individual cases or generally, to have a better sense of how these offenders are being dealt with following sentencing.

Crown counsel offered various suggestions for the reform of the LTO provisions and how these cases are currently dealt with in the system. These suggestions included: increasing resources to allow for the assistance of junior Crown counsel in these cases; extending the 10-year maximum supervision order length; encouraging the continued education of parole officers in dealing with LTOs; re-vamping the wording of the conditions so that they can in fact be upheld in court; streamlining the process of converting the LTO designation into the DO designation; standardizing the format of judicial reasoning; and decreasing the time period between DO designation reviews. With respect to this latter suggestion, according to one Crown counsel interviewee, if DO designations were reviewed every 3 years rather than every 7 years, there would be more DO designations imposed, and there would be fewer LTO cases which likely ought to have been DO cases in the first place. This same interviewee suggested that the courts ought not seek to identify the offenders that are the “worst of the worst” and therefore eligible for the DO designation. In this interviewee’s view, the “worst of the worst” approach is a relativistic approach which leads to an over-reliance on the less punitive and less restrictive LTO designation due to what this interviewee describes as “false hope.” Finally, one interviewee in the Crown counsel stakeholder sub-category raised the question of what can be used to deal with these offenders upon the completion of the LTSO. This interviewee hopes that reliance on section 810 peace bonds will not be necessary, but stated that they will be relied upon, if necessary.

There were numerous suggestions for reform offered by the defence counsel interviewees as well. The need for clarity in the definitions and wording of the legislation was mentioned by the majority of these interviewees. The majority of defence counsel interviewees also urged that changes be made to the funding allowance by LSS. The need to allow open access to correctional materials without delays was also emphasized by defence counsel.

One of the defence counsel interviewees went on to suggest that the decision whether to designate an offender as either a DO or a LTO, or neither, come after the completion of the determinate portion of the sentence. In this interviewee's view, the current state of treatment opportunities and the current risk posed by the offender would be available at this time and would more appropriately inform this important designation decision.

## **Mental Health**

Three of the Mental Health stakeholder category interviewees, all of whom are involved in the assessment of these offenders, noted how helpful regular meetings with the FPSC would be in providing ongoing education on assessments and treatment. One Mental Health interviewee stated that the involvement of Crown counsel, judges, and other actors in the criminal justice system in these meetings would be beneficial, and that learning how helpful their assessment reports are to the system, knowing the outcome of cases, and also being updated on the constantly changing research in this area would enhance the practice of assessors. This same interviewee also noted that ongoing education for assessors provided by the CSC on treatment resources that are actually available in the community, as well as information on how supervision is actually carried out, would really assist assessors in accurately informing the court on these points.

Other suggestions for reform mentioned by interviewees in the Mental Health stakeholder category included: extending the maximum supervision order period of 10 years to life-long supervision; moving the decision to designate the offender as a DO or LTO to the end of the determinate sentence rather than before in order to provide a

more accurate picture of what resources are actually available at the time of release; amending the provisions to require a sentence long enough to allow the offender to partake in meaningful institutional treatment; increasing community resources; ensuring that parole officers who are charged with the task of supervising these offenders are well-trained in supervision strategies that facilitate change; ensuring that LTSO conditions be more evidence-based and flexible, and that the drafting of such conditions include the input of those officials who are actually carrying out the supervision; and standardizing the format of expert assessments. Finally, it was suggested here that future research include efforts to interview LTOs themselves to gauge whether the supervision strategies currently being used are in fact working.

### **Supervision/Enforcement**

The policing-oriented interviewees in the Supervision/Enforcement stakeholder category offered several recommendations for reform. A common theme in these responses was the need to rework the nature and wording of conditions. Incorporating input from Crown counsel and police in the writing of these conditions to ensure that they are indeed enforceable was suggested; providing investigative training to supervision officials to ensure that they are familiar with the rules of the court was also mentioned here. Other suggestions made by policing-oriented interviewees included: ensuring the majority of LTOs are given a 10-year supervision order; giving judges the power to extend the supervision order in cases where doing so is warranted; prohibiting Crown counsel from putting forth a DO application when the LTO designation is sought; maintaining the practice of making the designation decision after the conviction but before serving the determinate sentence; facilitating communication between the various agencies that assist in supervising LTOs, including the Canadian Border Services (hereafter referred to as CBS); facilitating police-agency-to-police-agency communication; and creating more specialized units within a greater number of police agencies to assist in the monitoring and supervision of LTOs while in the community.

The majority of the supervision-oriented interviewees offered suggestions to improve upon the conditions imposed on LTOs. The wording was again described as problematic; many of these interviewees suggested creating a standard set of conditions

that have been tested in the courts. Training supervision officials on the rules of the court was also suggested by several of these supervision-oriented stakeholder interviewees. Other recommendations for reform made by supervision-oriented interviewees included: making changes to residence conditions; making the transition from the halfway house to the community more fluid; increasing efforts to consider resources when imposing residence conditions; creating more specialized units for dealing with high-risk offenders, both in correctional agencies and police agencies in order to facilitate and streamline the process, and to contribute to a higher level of efficiency and effectiveness; and requiring LTOs to earn their release from the determinate sentence in order to decrease the pace at which they are being released into the community to a manageable level.

A lack of continuity between provincial and federal authorities was also described as problematic by supervision-oriented interviewees. This lack of continuity was said to create an opportunity for high-risk LTOs to fall between the cracks. Finally, with regard to a best practices manual, it was suggested that more basic information on what is happening across the country be offered to supervising officials. It was stated that technical tips on testifying in court and dealing with other agencies, and also information on investigations and breaches, would be useful for supervising officials.

### **Community Service**

Three of the Community Service stakeholder interviewees emphasized the need for greater community-based resources to assist in the successful reintegration of LTOs. The need for greater collaboration between the various agencies that provide support to these offenders while in the community was also mentioned. Other recommendations for reform included: decreasing the reliance on the 10-year supervision order length; eliminating credit for time served; and creating a “2-year-plus-rule” in order to impose a LTSO in order to ensure the sentence is served in a federal institution, thus eliminating the problem of coordinating between provincial and federal jurisdictions when dealing with LTOs.

The problems posed by the degree of power held by parole officers when dealing with LTOs was raised again here. According to CS1, there is “[t]oo much opportunity for individual personality conflicts.” Overall, CS1 was not in support of the LTO designation, and suggested that it be eliminated.

With regards to residence, one Community Service stakeholder interviewee suggested that perhaps LTOs ought to be separated from other parolees in halfway houses to allow them to become more mutually supportive. This interviewee also suggested that the 24-hour escorts that currently exist in halfway houses ought to be eliminated and that there ought to be specialized parole officers to deal specifically with LTOs. Overall, according to CS3, the LTO designation was created too quickly in an effort to appease the public, and it was not devised with enough caution or forethought.

## Summary

Table 10 provides an overview of the recommendations for reform made by interviewees under Topic E, with reference made to the stakeholder category/ies from which these recommendations emerged. While some of these recommendations were listed by interviewees within one stakeholder category, many recommendations were made by interviewees across stakeholder categories. While it may be the case that all recommendations are important, those that are listed by more than one stakeholder category are deemed to be particularly significant and in need of immediate attention.

**Table 10. Summary of Topic E: Recommendations for Reform by Stakeholder Category**

<i>Recommendation Category</i> Recommendation	Legal	Mental Health	Supervision/ Enforcement	Community Service
<i>Provisions</i>				
· Change legislative target to solely sexual predator			x	
· Extend maximum supervision order length/eliminate maximum outlined in legislation	x	x	x	
· Judges to have legislative power to extend LTSO			x	
· Streamline conversion of LTO to DO	x			
· Reduce review period for DO to allow for more DO designations	x			
· More clarity/logic in definitions and wording of legislation	x			

· Changes in onus and standard of proof/more stringent criteria in legislation for the initiation of DO/LTO applications	x		
· Extend length of actual determinate sentence requirement in legislation to allow for institutional treatment		x	
· Eliminate 2-yr determinate sentence minimum to allow for more offenders to be captured by legislation			x
· Legislative guidance/formula for judges to follow	x	x	
· Require all LTO sentences be no less than 2 years in practice to ensure they are all served in a federal institution			x
· Eliminate LTO designation	x		x
<i>Court Hearing and Court-ordered Assessment</i>			
· Reduce number of LTO designations imposed	x		
· Decrease length of LTSOs imposed/prevalence of 10-year LTSO	x		x
· Increase reliance on restorative justice options	x		
· Funding for additional counsel assistance in these cases	x		
· Increase organization of correctional files for counsel	x		
· Equal and more open access to correctional files for counsel	x		
· Crown to stop initiation of LTO process with DO applications/Stop using LTO as default when DO application fails	x	x	
· More information for judges on outcome of cases/what occurs during supervision and treatment	x		
· More emphasis on treatment/continuity in treatment in community when making sentencing decisions	x		
· More information for assessors on outcome of cases/on what occurs during supervision and on what community-treatment resources exist		x	
· More accessible funding for LSS	x		
· Move designation to the end of the determinate sentence	x	x	
· More individual rather than relativistic approach in assessment and designations	x		
· More attention paid to relative risk in assessments			x
· Standardization of assessments and expert testimony		x	
· Standardization of RFJ	x		
· Specialization of counsel and parole officers who provide testimony	x		
<i>Determinate Sentence</i>			
· Increase length of determinate sentences to allow for mandatory institutional treatment and gradual decrease in institutional security (maximum to minimum security)		x	
· Require LTOs to earn release from determinate sentence			x

<i>Supervision</i>				
· Improve wording of conditions	x	x	x	
· Input from judges in wording of conditions			x	
· Input from Crown counsel/police and/or parole officers in wording of conditions		x	x	
· Creation of standard set of conditions to draw from			x	
· Change renewal requirement for residence/plan when residence lifted		x	x	
· Eliminate 24-hour escort requirement while in residence				x
· Require residence conditions for all LTOs at beginning of LTSO			x	
· Separate LTOs from other offenders while in residence				x
· Greater residence resources			x	
· Specialized training and resources for parole officers in dealing with LTO cases/province-specific training	x	x	x	x
· More specialized police units to deal with LTOs/more police involvement in monitoring of LTOs			x	
· Improve the way breaches are dealt with and resulting extended LTSO length			x	
· Decrease discretionary power of parole officers				x
· Allow federal parole officers to access provincial systems/ensure continuity when breach results in provincial sentence			x	
· Guidance/clarity for post-supervision order plan/more gradual move from residency to community	x		x	
· Ask LTOs for their views on how the supervision conditions are working	x	x		
· More resources/ coordination of services to allow for successful reintegration, including obtaining gainful employment			x	
<i>Overall</i>				
· Increased funding for treatment and supervision of LTOs	x	x	x	x
· Increased collaboration between agencies and continuity in services/clarification of roles	x	x	x	x

Having outlined the various findings and themes that emerge across the five topical interview question categories, the focus now shifts to an analysis of the file review findings together with the interview findings. The goal is to triangulate these secondary file data and primary interview data, and to also make reference to relevant points in the History, Theory and Contextual Background Chapters of the dissertation.

## Chapter 8.

### Discussion

#### The File Review

##### Demographics

The finding that almost all of the LTOs whose files were included in this analysis were male is consistent with the profile of LTOs provided by the PSCPCSC (2009), and is also consistent with Petrunik's (Faubert, 2003) research which notes that those subject to the DO provisions of the *Criminal Code* are predominantly male.

The examination of the one female LTO case reveals some interesting findings. First, the index offence is quite atypical: this was one of only two cases in this analysis in which arson was one of the index offences. Aside from the index offence, this case is unique on a number of levels, a point that is even noted by the presiding judge in the respective RFJ/RFS. As mentioned in the file review findings section, this female LTO is characterized as a real victim and as someone who is not cruel, psychotic or mean-spirited. The judicial emphasis on compassionate or humanitarian values differed from the general focus in other LTO cases. Indeed, the way in which the sex of the offender in this one case was deemed to be a mitigating factor more closely resembles the sentencing principles applied in cases of Aboriginal offenders, discussed later in this demographics section of the Discussion Chapter, than it does the case of male LTOs. While it is difficult to make any conclusions with regards to the treatment of female LTOs in B.C. due to the relative infrequency of these cases, the approach taken by the presiding judge in this one female LTO case may be perceived as chivalrous, a perception that has been discussed in the literature on female offenders more generally (see Boritch, 1997).



The average age of LTOs in this study (41.5 years) and the modal age range category (35-39 years) is also consistent with what was found in the literature for this group of offenders. More specifically, as found by Trevethan et al. (2002), the average age of LTOs in the first four years since the legislation was enacted was 40 years and the modal age range category was 35-44 years. By changing the age category breakdown to 10 year intervals for the purposes of comparison to the Trevethan et al. (2002) findings (i.e. by merging together age categories), it was found that the 35-44 year age range did indeed capture the largest proportion of LTOs in the current analysis. Having said that, though, it was found that there are considerably more LTOs that fall into that age category in B.C. in the current analysis (43%) as compared to the proportion of LTOs that fall into this same category in Trevethan et al.'s (2002) analysis (30%).

One aspect of the age findings that is particularly surprising pertains to the two cases in the current analysis in which the offenders were under 20 years of age. This is surprising as the DO legislation appears to target persistent, repeat offenders who have shown a failure to control his or her impulses, a pattern that is arguably difficult to have established by such a relatively young age (the offenders were 19 years at the time of sentencing in both cases). It is interesting to note that the index offence(s) in both of these cases were sexual in nature and the initial application in both cases was for a DO designation. Moreover, the criminal histories of both offenders were made up of offences that were committed exclusively while they were young offenders, and one of these two offenders had no prior sexual offence convictions. While these 2 cases represent a small proportion of cases included in this analysis, the Crown's efforts to pursue a DO designation and the willingness of the judiciary to impose the LTO designation indicates perhaps a rather inclusive application of this label and may speak to the net-widening impact that the long-term designation has had, as alluded to in the literature (see MacAlister, 2005).

The findings pertaining to the offender's ethnicity are noteworthy. While the ethnic background of the offender was not consistently recorded in the RFJ/RFS or in the mental health expert assessments (if such an assessment was indeed included in the file), and while the data pertaining to ethnicity do not reflect the offender's own

perception of his or her identity, it is interesting that the only ethnicity that was mentioned was if the offender was of Aboriginal descent. Again, this may be because of the statutory requirement for sentencing judges to consider aboriginal status. This may also speak to the professional and ideological context of the creators of these documents - the presiding judges. Furthermore, this may suggest that perhaps ethnicity of the offender is not relevant unless the offender is Aboriginal, which begs the question of whether being Aboriginal is in and of itself deemed to be a risk factor in this age of actuarial justice. To examine this further, those offenders identified as Aboriginal and those not identified as Aboriginal are compared in terms of their diagnosis as psychopaths, their overall assessment of risk and their overall evaluation of treatability. This comparison is included under these respective subheadings later in this chapter.

It is also interesting that the proportion of those offenders identified as Aboriginal (27%) in the current analysis not only exceeds the 2.2% proportion of the Canadian population that is Aboriginal (Gionet, 2009), but it also exceeds the proportion of Aboriginals (17.2%) in the federal prison population that is Aboriginal (PSPCSC, 2009). Indeed, the proportion of offenders who are Aboriginal in this research even exceeds the proportion of the national LTO population that is Aboriginal, as per Trevethan et al.'s 2002 study, in which 17% of LTOs were Aboriginal.

The role that the ethnicity of the offender played in these Aboriginal LTO cases differed. As mentioned, the aboriginal status of the offender was taken into consideration in four of the RFF/RFS, with it playing a mitigating role in 2 of the cases, and with it leading to an emphasis on rehabilitation in another case. The judicial reasoning in these cases is consistent with the sentencing principles outlined in s. 718.2(e) of the *Criminal Code*.

### **General LTO Hearing Information**

As noted in the literature (see Trevethan et al., 2002), it has been deemed difficult to determine the exact number of LTO cases that began as DO applications. In fact, the only way to determine the exact number of LTO cases that actually commenced as a DO case with absolute confidence is to obtain the official application transcripts for

each and every case. Again, this is a limitation of relying on the files housed at the FPSC for this research. It was, however, possible to ascertain the prevalence of initial LTO applications by examining the RFJ/RFS in the 67 cases included in this analysis, and it appears that the majority (61%) of the LTO cases were initiated as DO applications. This is consistent with the findings in Faubert's (2003) study, in which all of the hearings in which dangerousness was to be determined were initiated by actual DO applications. In comparing the proportion of applications for Aboriginal offenders that were initially for the DO designation to the proportion of applications for those offenders not identified as Aboriginal that were for the DO designation, it was found that in fact approximately 61% of these LTO cases were initiated with a DO application in both groups.

As mentioned above, the most precise way of determining the prevalence of DO applications would be to access the applications themselves. While this was not an option explored in the current analysis, the nature of the application process was explored in the interview portion of this study. The reliance on the DO application in the initial application process, with the hope of achieving at least the less punitive LTO designation, is documented by several of the interviewees. This finding is examined further in the section of this chapter where the interview findings are interpreted.

The finding that the majority of these LTO cases included in this analysis were heard in the Supreme Court of B.C. is not surprising. The nature of the index offence, as outlined in the legislation, must be a serious personal injury offence, and as such, the nature of the offence leading to a dangerous or LTO application by definition ought to be heard in the Supreme Court, where most other serious indictable offence cases are heard.

### **Index Offence and Victim Information**

The finding that the majority of index offences were sexual in nature is consistent with the literature. As found by Trevethan et al. (2002), the prevalence of sexual offences in the list of current offences is clear; however, the percentage of current offences that are sexual in Trevethan et al.'s (2002) study is higher than the percentage

of index offences that are sexual in nature in the current analysis (91% and 73%, respectively). This may be due to a lag in time before the courts began to apply the LTO provisions to non-sexual offences. When comparing the percentage of index offences that are sexual in nature for those LTOs identified as Aboriginal (approximately 72%, 13/18) to those offenders not identified as Aboriginal (approximately 74%, 36/49), it is found that the prevalence of sexual offences among the index offences is approximately the same in both groups.

Also consistent with Trevethan et al.'s (2002) findings, sexual assault is the most common type of sexual offence among the index offences. Again, though, the percentage of current sexual offences that were sexual assault in Trevethan et al.'s (2002) study is higher than the percentage of index offences that were sexual assault in the current study (85% and 61%, respectively). When comparing the percentage of cases in which sexual assault was listed as one of the index offences and the LTO was identified as Aboriginal in the current analysis (approximately 61%, 8/13) to the percentage of cases in which sexual assault was listed as one of the index offences and the LTO is not identified as Aboriginal (approximately 61%, 22/36), again it is found that in fact the prevalence of sexual assault among the index offences is approximately the same in both groups.

With regards to the victim information, as noted in the File Review Findings Chapter of this dissertation, the victim(s) of the index offence was described in enough detail to determine the relationship with the respective LTO in 47 of the 67 cases included in this analysis. The lack of consistent information in the RFJ/RFS is a limitation of the data, as discussed in the Methods Chapter of this dissertation. As such, these data must be interpreted with caution.

The vast majority (approximately 75%) of the cases included in this analysis include victims and offenders who were known to one another. This is consistent with the findings in Trevethan et al.'s (2002) study, in which 70% of the victims of the index offence were known to the respective LTO. Moreover, in the current analysis, the high proportion of cases in which there was enough information to determine that the known victims were actually related to the offender (15/35, 43%) speaks to the erroneous focus

of current efforts on the violent stranger rather than the domestic perpetrator, as discussed by Stanko (2000) and Petrunik (2003) and mentioned in the Theory Chapter of this dissertation.

The high proportion of child victims in both the current study (found in 25 of the 47 cases in which enough victim information was included, 53%) and in Trevethan et al.'s (2002) study (61%) demonstrates a focus on offenders who prey on children. Only 2 of the 25 cases indicating that the victim was a child involved index offences that were non-sexual in nature; the remaining 23 cases involved a sexual index offence. A total of 19 of the 25 child cases in the current analysis involved children known and/or related to the offender. Again, this suggests that the focus on those perpetrators who are strangers is misplaced, and it is much more common for the offender targeted by this legislation to be known to the victim in some capacity. In other words, the domestic perpetrator appears to be more of a threat than the violent stranger, despite the violent stranger focus of sex offender legislation and the media portrayal of the violent stranger sex offender, as discussed in the Contextual Background Chapter of this dissertation (Chapter 4).

### **Sentence Information**

The range of actual sentences imposed in the current study (6 months to 15 years) is comparable to the range of custodial sentences being served by the LTOs included in Trevethan et al.'s (2002) study (6 months to 18 years). As noted in the File Review Findings Chapter of this dissertation, the length of the actual sentence served by these LTOs has been affected by the credit given for pre-trial and/or pre-sentencing custody, which was typically given at a rate of 2-for-1 credit during the time frame of interest in the current analysis. As mentioned in the Methods Chapter of this dissertation, however, this has changed as of February 2010 with the enactment of Bill C-25, which limits the credit given for such pre-trial or pre-sentencing custody to a 1-for-1 ratio, or a 1.5-for-1 ratio in exceptional cases. The impact that this credit has had prior to the relatively recent passage of Bill C-25 is explored further in the discussion of the interview data.

## LTSOs and Breaches

Consistent with the findings in the study by Trevethan et al. (2002) and also the descriptive national overview provided in Chapter 4 of this dissertation, the 10-year supervision order length is the most frequently imposed. However, the prevalence of the 10-year supervision order length in this research (84%) is higher than the prevalence of the 10-year supervision order in the study by Trevethan et al. (2002) (62%), as well as the proportion of this supervision order length in the more recent descriptive national overview data (71.4%). Furthermore, the average length of the LTSO in this study (9.35 years) was higher than the average length of the LTSO in the Trevethan et al. (2002) study (8.4 years), higher than the average based on the data relied upon in the national descriptive overview section in Chapter 4 of this dissertation (8.87 years), and also higher than the average supervision order length in B.C. as per the national descriptive overview which takes into account the years 1997-2009 (9.26 years). These differences may be a consequence of the fact that the time frames under consideration in each of these calculations vary and, therefore, this must be taken into account when interpreting these findings. Nonetheless, whether relying on the data included in this analysis or the data relied upon in the national descriptive overview, the average length of LTSOs in B.C. is higher than the national average and also higher than most other provinces in Canada (with the exception only of Manitoba and Ontario, where the average LTSO length is 9.35 years and 9.28 years, respectively). The popularity of the 10-year supervision length in B.C. is discussed further in the interview data section of this chapter (more specifically, under Topic C).

As mentioned in the File Review Findings Chapter, there was only one case in the current analysis that involves the violation of a condition of the LTSO. It appears as though it is too early to identify any 'success rates' in terms of compliance (and essentially, in terms of non-recidivism) of LTSOs, owing to the relatively recent implementation of the applicable provisions of the *Criminal Code* and the fact that many of the LTOs may still be serving the determinate portion of their sentences and/or were released only recently on long-term supervision. It is noteworthy, though, that in a total of 9 cases (13%), the LTO was conditionally released in the community at the time of the index offence that resulted in this LTO designation. This raises the question of which

factors are considered in deeming an offender manageable in the community and, therefore, suitable for the LTO designation. The topics of supervision-order breaches and factors considered in the designation decision are further explored in the interview data discussion section of this chapter (under Topic C & Topic D, respectively).

### **The Assessors**

The higher proportion of psychiatrists among those mental health expert assessors who are eligible to conduct DO and LTO assessments in B.C., and the higher proportion of psychiatrists among those assessors in the 56 court-ordered assessments examined in this analysis, speaks to the continued dominance of this profession in the designation of dangerousness noted in the literature and discussed in the Theory Chapter of this dissertation. In other words, not only does the mental health expert have a dominant role in the designation of dangerousness through the process of requiring court-ordered expert assessments in all DO hearings, demonstrating the shift to a community protection model, but the psychiatrists among them appear to play a dominant role in these cases. This dominant role of psychiatrists in the field of law was raised by theorists such as Foucault as early as 1978 and the legislative requirement for a court-ordered assessment has certainly secured this dominance in the assessment of risk in this era of community protection. In Gusfield's (1996) words, the assessors, and more specifically these psychiatric assessors, 'own' the problem of dangerousness. With the development of increasingly restrictive and punitive policies, such as the *Tackling Violent Crime Act* (2008), and the increasing reliance on risk assessment tools such the VRAG and the PCL-R which has been documented in the literature (see Steinitz, 2001; see Faubert, 2003), this domination will undoubtedly persist.

Psychiatrists and psychologists differed on a number of variables examined in the 56 assessments included in this analysis. For example, an interview was conducted in 68% of cases assessed by psychiatrists compared with 58% of the cases assessed by psychologists. Surely, the reluctance of an offender to participate in an interview must be taken into consideration here, but so should the impact of the lack of an interview in appropriately assessing the risk posed by the offender. The overall proportion of cases involving an interview (64%) and the professional differences between psychiatrists and

psychologists ought to be considered when interpreting any professional differences outlined in the discussion of the qualitative interview findings regarding diagnoses, risk-assessment tests and scores, as well as overall evaluations of risk and treatability of these LTOs.

## **Diagnoses**

The prevalence of substance-related disorders in the current analysis (36%) is consistent with the findings in Trevethan et al.'s (2002) study, in which approximately 45% of LTOs examined had substance abuse-related problems.

The finding that antisocial personality disorder appears as a diagnosis in 32% of the cases overall in this analysis is also consistent with the literature. As mentioned in Chapter 4 of this dissertation, Bonta et al. (1996) found that a diagnosis of either psychopathy or antisocial personality disorder was central in Crown counsel's decision to put forth a DO application. The findings specific to a diagnosis of psychopathy (as a result of a high PCL-R score) will be discussed further under the sub-headings *Assessment Tests and Tools, Assessment Test/Tool Scores, and Overall Assessment of Risk Summary* below.

While approximately the same proportion of assessments conducted by a psychologist and by a psychiatrist contained a diagnosis of alcohol and/or substance related disorder, psychiatrists and psychologists differed considerably in regards to the diagnosis of antisocial personality disorder and also the diagnosis of pedophilia. More specifically, psychologists relied on the diagnosis of antisocial personality disorder in approximately 1.5 times more cases than psychiatrists, and psychiatrists relied on the diagnosis of pedophilia in almost 3 times more cases than psychologists. As cases are described as being more or less randomly assigned to an assessor who is available at the time that the assessment is needed, regardless of the profession of the assessor, the higher prevalence of antisocial personality disorder in psychological assessments along with Bonta et al.'s (1996) finding of the centrality of antisocial personality disorder in the Crown's decision to pursue an application begs the question of the impact that the profession of the assessor has on the assessment and in turn on the outcome of the



case. The same can also be said for the higher prevalence of pedophilia in psychiatric assessments. Having said that, though, it is still possible that there is an element of bias in the selection of assessors for certain cases, which may account for these differences.

### **Risk Assessment Tests and Tools**

The prominent role of the PCL-R that is revealed in the literature, as discussed in Chapter 4 (see Bonta et al., 1996; Faubert, 2003; Harris & Rice, 2007; MacAlister, 2005; Serin and Amos, 1995; Steinitz, 2001) is clear in the current analysis. Not only is the PCL-R the most relied upon tool overall in the 56 assessments included in this analysis, appearing in approximately 80% of these assessments, but this was the most prevalent tool used regardless of the profession of the assessor.

The wide range of tests and tools relied upon in the 56 assessments included in this analysis (23 tests in total) is consistent with the increased use of actuarial methods in the last two decades that has been documented in the literature (e.g. Hanson & Thornton, 2000; Quinsey et al., 2006). The preference for those tests that produce numeric scores is also noteworthy. More specifically, the PCL-R, the Static-99 and the VRAG all produce numeric scores, and were among the most relied upon tests and tools in the 56 assessments included in the current analysis. As discussed in the Theory Chapter (Chapter 3), this reduction of human behaviour to a quantifiable score results in an undeniable loss of personal information, and it suggests that the individual LTO is not an 'individual', *per se*, but rather a member of a subpopulation whose experiences have been aggregated. The fact that close to one-third of the assessments included in this analysis did not include an interview with the respective LTO further adds to this loss of personal information. As Cooke and Michie (2010) and Coles and Veiel (2001) warn, this quantification of human behaviour inevitably lacks accuracy.

### **Test Scores and Overall Assessment of Risk Summary**

As mentioned above, the PCL-R was the most frequently relied upon tool in the 56 assessments examined in this analysis, regardless of the profession of the assessor. The majority of the LTOs assessed using the PCL-R was categorized in the intermediate psychopathic range. In fact, the average PCL-R score for those LTOs assigned a raw

score was 23.6, and the average PCL-R score for those LTOs assigned a percentile ranking was the 68<sup>th</sup> percentile. The finding that the majority of these LTOs were in the intermediate range, and below the 30 point threshold identified in Hare (2003), is consistent with the findings in MacAlister's (2005) study, in which it was revealed that the declaration of LTO status was correlated with relatively low PCL-R scores.

The proportion of LTOs categorized in the high PCL-R score category did vary by the profession of the assessor, however. More specifically, the majority of LTOs assessed by a psychologist were scored in the high PCL-R score category. Taken together with the higher prevalence of a finding of antisocial personality disorder by psychologists, this higher prevalence of a finding of psychopathy points to the professional and ideological context in which these assessments are created. As discussed in the Theory Chapter of this dissertation, the information provided in these assessments does not exist independently of the assessors themselves (Grant, 1991; Tuddenham, 2000). Once again, though, one must be cautious in speaking to the extent of the impact of professional status on case outcome as one plausible explanation for this finding is that there may be some systemic degree of bias in the selection of the assessor. It may be that psychologists are more likely to be appointed to assess those individuals who are clearly not mentally disordered, and who rather exhibit features of antisocial personality disorder or psychopathy, while psychiatrists may be more likely to be appointed to assess those individuals with mental illness.

Also as discussed in the Theory Chapter, assessments are not immune to cultural influences (Maurutto & Hannah-Moffat, 2006; Silver & Miller, 2002; Rigakos, 1999). The finding that twice as many LTOs categorized in the psychopathic category were Aboriginal speaks to the potential impact of these influences in the current analysis, as does the finding that those offenders identified as Aboriginal were far less represented in the non-psychopathic category. This clear overrepresentation calls into question the objectivity and neutrality of the tests used to assess these individuals.

As Cook, Kosson and Michie (2001) note, the validity of the construct of psychopathy in non-Caucasian males has indeed been raised in the literature. While much of this research reports similar correlations between psychopathy and criminality

between Caucasian and non-Caucasian offenders (see Harris, Cousineau, Page, Sonnichsen & Varrette, 2009; see Kosson, Smith & Newman, 1990; see Sullivan & Kosson, 2006), it has been noted in the literature that the nature and extent of ethnic bias in psychopathy measures remain to be evaluated in detail (Cook, Kosson & Michie, 2001) and that the absence of ethnic group differences does not necessarily mean that the test or construct itself is not biased (Sullivan, Abramowitz, Lopez & Kosson, 2006). Even Hare (1998, 2003) notes that socio-cultural factors may influence the presentation of personality disorders, and more specifically that they are important influences on the manifestation of psychopathy. Research assessing the cross-cultural validity of other tools used to predict violence (such as the HCR-20) has also identified unique ethnic differences (see Fujii, Tokioka, Lichten & Hishinuma, 2005).

With respect to Aboriginal populations in particular, researchers such as Allan and Dawson (2004) caution the use of assessment and diagnostic tools that have been developed for non-Aboriginal cultures which do not take into account geographical and cultural factors. As stated by Ruge (2006) and Sullivan and Kosson (2006), the little research that has been conducted examining psychopathy amongst Aboriginals is inconclusive and conflicting, with some research indicating higher rates of psychopathy amongst Aboriginal populations, and others finding no consistent racial differences. Clearly, the research on the applicability of the PCL-R on male Aboriginal offenders is lacking and further examination of this applicability is warranted; the literature also indicates that an examination of biased application is also warranted (Cooke, Kosson & Michie, 2001). While there is no indication that the assessors in the current analysis are biased in the application of the PCL-R or other tests and tools, certainly the findings pertaining to the overrepresentation of Aboriginals amongst LTOs and also amongst LTOs deemed psychopathic in the current analysis warrant further examination.

While the majority of LTOs in this analysis were scored in the intermediate psychopathic range, falling below the threshold for the finding of psychopathy, the finding that these offenders were scored in a high-risk category on the Static-99 and the VRAG, and the fact that the overall risk-assessment summary placed these offenders in the high-risk category, regardless of the profession of the assessor, does suggest that the lower PCL-R score was the one feature of these assessments that led to a

designation as a LTO rather than as a DO. Had the PCL-R score also placed the offender in a psychopathic, or comparably high-risk category, the speculation here is that these offenders may have indeed been designated as dangerous and given an indeterminate sentence. In other words, the lower PCL-R score seems to have decreased the perceived risk posed by these offenders just enough to spare them from being deemed unmanageable and ineligible for community supervision. This is not surprising, of course, as the PCL-R score is an integral component of most of the risk assessment tools used in relation to offender populations.

The ethnicity of the LTO did not appear to play as large a role in the overall assessment of risk. More specifically, a slightly lower proportion of offenders identified as Aboriginal were assessed as being in an overall high-risk category as compared to those offenders not identified as Aboriginal (55% to 60%, respectively). It appears as though ethnicity plays the largest role in the finding of psychopathy and in the offenders' scores on the PCL-R discussed above than it does in other assessment tools and methods.

### **Treatability**

The finding that the majority of LTOs whose files were included in this analysis were deemed low on a continuum of treatability, regardless of the profession of the assessor, was initially quite surprising. This finding was true regardless of the ethnicity of the offender, although a considerably higher proportion of Aboriginal LTOs were deemed untreatable. Again, this may speak to the cultural and moral influences inherent in these assessments and also in the treatment programs developed to assist these offenders; it may also reflect the lack of resources available in many Aboriginal communities.

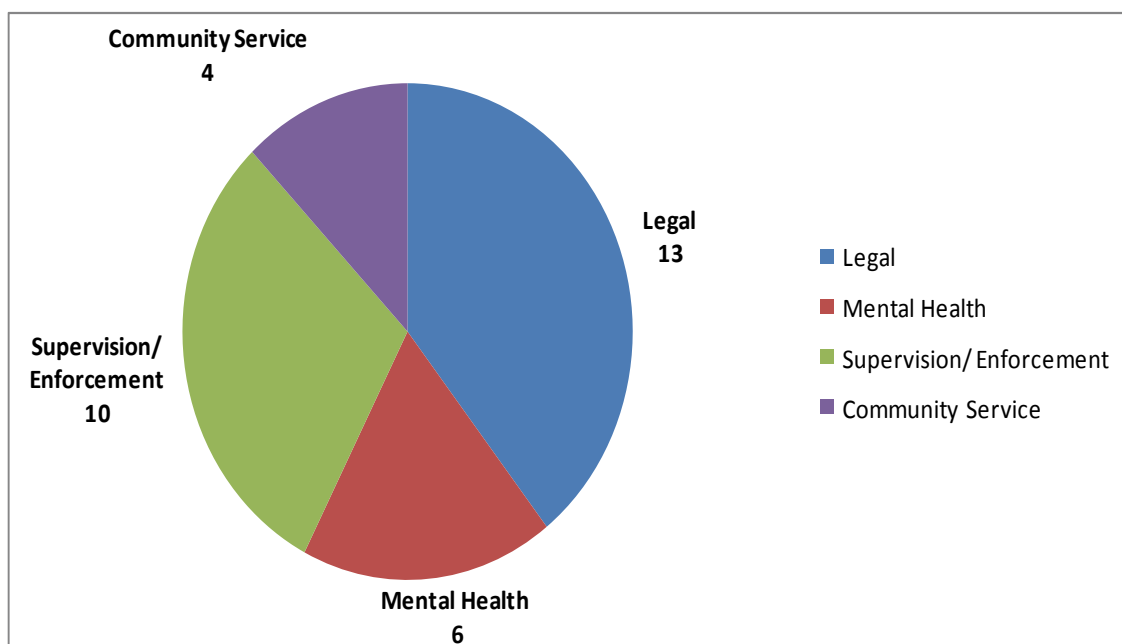
To make sense of this seemingly paradoxical finding, interviewees were asked to offer their explanations as to why an offender deemed low on a continuum of treatability would be designated as a LTO and not as a DO. The responses to this question are categorized under Topic C in the interviews section of this chapter.

## The Interviews

### Topic A: Interviewee Role in the Process of LTO Provisions

As mentioned in the Methods Chapter (Chapter 5), there were a total of 31 interviews and 33 interviewees in the current analysis. Figure 18, which displays the breakdown of interviewees by stakeholder category, is presented again here for the sake of convenience.

**Figure 18. Replicated: Interviewee Breakdown by Stakeholder Category**



In the next subsections, the responses of the stakeholders are discussed, analyzed and interpreted under the various interview question topical categories outlined in the Methods and Interview Findings Chapters of this dissertation. The goal in this analysis is to summarize the prominent, over-arching patterns and themes that emerge in the responses and to triangulate these interview data with the literature discussed to date and also the file review data.

## **Topic B: Interviewee Perceptions of the LTO Provisions**

### ***Objective(s)***

Overall, the Legal stakeholder category interviewees generally agreed that the objective(s) of the LTO legislation are to target sex offenders, or 'high-risk offenders', and also to provide an alternative to the courts that is less extreme than the DO legislation. In general, the interviewees in the Legal stakeholder category reported that the legislation has been ineffective in reaching its objective(s). Effectiveness was assessed in terms of the rate at which these LTOs re-offend; the extent to which the judicial interpretation of the provisions is in line with the Parliamentary intent of the legislation; the extent to which the legislation is believed to increase public safety; the extent to which services are being provided to these offenders; the extent to which the conditions imposed on these offenders assist in their reintegration; and the extent to which assessments of risk provide useful accurate information.

The Legal stakeholder category was not totally homogenous in their views on the effectiveness of the legislation, however. The Crown counsel interviewees were relatively more positive in their evaluation of the effectiveness of the legislation, referring to what they perceive to be decreases in recidivism and increases in public safety to support this position.

Two judges in particular (LJ3 and LJ4) emphasized that public protection is a key objective of the legislation; LJ4 also mentioned that rehabilitating and reintegrating the offender are key objectives. While LJ3 indicated not being aware of whether the provisions have been effective in achieving these objectives, LJ4 did note that effectiveness has been shown in some cases. This same interviewee, however, admitted being unaware of the outcome of these cases, therefore it is unclear on what information this perceived effectiveness is based.

Like the Legal stakeholder interviewees, the Mental Health stakeholder interviewees stated that one of the main objectives of the legislation was to provide an alternative to the more extreme DO designation. Mental Health interviewees also emphasized long-term community risk management as one of the key objectives of the legislation. There appeared to be much less consensus among the Mental Health

interviewees regarding the effectiveness of the provisions in reaching these objectives. In fact, these interviewees were quite split in terms of their views of the effectiveness, with some being more optimistic than others. Also, some of these interviewees felt it is too early to speak to the effectiveness in terms of re-offence rates.

The policing-oriented and also the supervision-oriented Supervision/Enforcement stakeholder interviewees also suggested that one of the key objectives of the legislation has been that it provides an alternative option for dealing with high-risk offenders. The policing-oriented sub-category, much like the Mental Health interviewees, also listed community risk management as a key objective of the legislation. Overall, these Supervision/Enforcement interviewees were split with regards to the perceived effectiveness of the provisions in reaching the objectives. Effectiveness here was assessed in a variety of ways, namely in re-offence rates, and also in terms of how management of the offenders is actually carried out in the community. Some noted that it is too early to speak to the effectiveness of the provisions as many of these offenders have not yet completed their supervision orders.

Finally, the objective of providing an alternative also emerged in the responses of the Community Service stakeholders. Much like the Mental Health and Supervision/Enforcement stakeholder category interviewees, these Community Service interviewees were split in terms of their views on the effectiveness of the provisions. In fact, as mentioned in the Interview Findings Chapter, two interviewees from this stakeholder category noted that all that the provisions have been effective in doing is essentially to expand the mechanisms of control.

There was a clear theme of criticism that emerged across stakeholder categories. For example, as described in the Stakeholder Interview Findings Chapter (Chapter 7), LL suggested that the provisions are being distorted. More specifically, LL noted that, while the intention was clear, as a consequence of poor wording in the provisions and erroneous judicial interpretation, this intention has been lost. The wording of the legislation was also criticized for failing to define what supervision and community management are to look like.

This theme of criticism also emerged in defence counsel responses, yet these defence counsel extended the target of this criticism. While they were also critical of the courts, noting that their interpretation of the notion of controllability has been erroneous and must be changed, they were also particularly critical of Crown counsel, court-ordered assessors and parole officers. With regard to Crown counsel, defence counsel criticized the common Crown practice of putting forward a DO application even when it is not necessary and for disproportionately targeting Aboriginal offenders. With regards to the assessors, defence counsel described them as being too subjective. The supervision order conditions (set by the NPB) were also criticized for being ineffective and for essentially setting these LTOs up for failure.

The theme of criticism emerged in the Mental Health stakeholder categories as well. As discussed in the Interview Findings Chapter, judges, parole officers and the Parole Board appeared to be the targets of criticism for some of these Mental Health interviewees. Judges were described as making decisions about LTO supervision without really being aware of how supervision is carried out, and parole officers were criticized for not modifying their supervision strategies for LTOs, which was described as defeating the purpose of the designation. The Parole Board was even described as being responsible for “gutting the purpose” of the provisions and failing to meet the residency needs of these LTOs. While these actors were the targets of criticism here, there was some recognition in the Mental Health interviewee responses that part of the problem rests on the various levels of government which all play a role in dealing with LTOs.

Criticism also emerged in the responses of Supervision/Enforcement interviewees and Community Service interviewees, with the former targeting the actual wording of the conditions and the latter targeting the correctional authorities themselves, stating that parole officers are arbitrary and subjective in their decision-making. The Community Service stakeholder interviewees also expressed concern about the nature of restrictions in the LTOs, which are deemed to have “deleterious effects” on the reintegration efforts of LTOs.



Net-widening also emerged as a theme in the responses across stakeholder categories. The use of this designation for non-sex offenders, which was not said to be the initial intention of the creators of the legislation, was described in the responses of interviewees in the Legal stakeholder category as evidence of net-widening. Net-widening is also discussed in the responses of the Mental Health interviewees. Here, according to these interviewees, the fact that yet another option has been provided to “give judges an ‘out’” has resulted in a larger number of offenders being captured by this legislation who would have perhaps previously escaped such a designation. Evidence of such net-widening also emerges in the literature (see MacAlister, 2005). This theme of net-widening was discussed further at the end of Topic B as the last question in this section of the interview instrument addressed the issue of perceived changes in the use of the designation since its inception in 1997.

### **Goals**

Rehabilitation or treatment was listed by Legal stakeholder category interviewees in each of the sub-categories. Overall, the view was that treatment goals are not being met, primarily owing to a lack of resources, although one interviewee in the Crown counsel sub-category expressed the view that the situation is improving in this regard and one judge indicated that, in some cases, support is available for sufficient treatment.

Another goal that was listed by interviewees in all but one Legal stakeholder sub-category is public protection/safety. These interviewees were split with regard to whether the current application of these provisions is in line with this goal of public protection/safety. Other goals mentioned less frequently by these interviewees included management of risk and providing resources, such as housing, and stability to the offender.

The one Legal stakeholder sub-category that was unique in what it views as the goals of the provisions is that of judges. More specifically, one of the four judges interviewed emphasized that the goal of the legislation ought to be punitive. This judge noted that the current application of the provisions is indeed in line with this punitive goal. In addition to punishment, deterrence also emerged in this judge’s response; more specifically, LJ2 noted that offenders are “scared” when subjected to a DO

application and this fear is referred to as evidence that the provisions are meeting the goal of punishing the offender. While punishment ought not to be reflected in the length of the LTSO, and rather only in the length of the determinate sentence, it appears as though this judge views the length of the LTSO as an extension of that punishment. The perception that the length of the LTSO has a punitive element was also reflected in the responses of Community Service stakeholders.

Again, the theme of criticism emerged in these responses. While judges in particular were not referred to in LL's responses, criticism or fault was implied in this interviewee's view that the frequency with which judges are imposing the LTO designation is wasteful and not in line with the intended goals of the legislation. Criticism or fault also emerged in the responses of some of the defence counsel interviewees, although - in this instance - the target of criticism was the CSC. As indicated in the Interview Findings Chapter, LDC3 in particular noted that the CSC ignores often useful recommendations made in court in relation to treatment options for the offender and the CSC also does not place these offenders in high enough priority for treatment and it is for these reasons that the stated goals of rehabilitation are not being met.

It is not surprising that the majority of Mental Health stakeholder interviewees also listed rehabilitation or treatment as the primary goal of the system when dealing with LTOs. There was also an emphasis here on the need for evidence-based research on treatment effectiveness to assist in the decision of what treatment options to rely upon when dealing with LTOs. Overall, these interviewees were split in their evaluation of whether the goal of rehabilitation or treatment is being met by the current application of the LTO application. Other goals that emerged in the responses of Mental Health stakeholder interviewees, sometimes listed as equally important as rehabilitation or as essential to allow for rehabilitation to take place, included public protection, protection of offender rights, and effective supervision.

It is also not surprising that the majority of the Supervision/Enforcement stakeholder interviewees listed public safety as the primary goal of the system when dealing with LTOs. Overall, those who listed the goal of public safety as a high priority were either negative or cautious in their evaluation of whether the current application of

the provisions is in line with this goal. When examining the sub-categories separately, though, it appears as though the policing-oriented interviewees in the Supervision/Enforcement stakeholder category did feel that public safety is a goal that is being achieved. Other goals that emerged in the Supervision/Enforcement responses included treatment, reintegration and providing resources for these offenders.

Fault or criticism again emerged as a theme in the responses of Supervision/Enforcement stakeholder category interviewees when discussing the goals of the legislation. While the legislators were not specifically mentioned as a target of this criticism, the lack of sentencing guidelines to deal with breaches was noted as one of the problematic features of the legislation.

Like the Supervision/Enforcement interviewees, the majority of the Community Service interviewees listed public safety/protection as the primary goal of the system when dealing with LTOs. Other goals listed by these interviewees included treatment, community reintegration, reduction of risk, and providing resources and support to these offenders. These other goals were often listed as being at the same priority level, or complimentary, to the goal of public protection. While some of these interviewees stated that the current application of the provisions is at least somewhat in line with these goals, others were much less optimistic in this regard. In fact, in CS1's negative evaluation of the current application of the provisions, the theme of criticism was clear. In this interviewee's view, the current "anti-sex offender climate" is to blame for the lack of treatment options made available to these LTOs.

### ***Advantages/Limitations***

The fact that the LTO designation provides another alternative or option in dealing with the high-risk offender was said to be a key advantage across three of the four Legal stakeholder sub-categories. Indeed, this was an advantage that was listed in each of the four stakeholder categories, although the priority given to this advantage varied by category. The fact that the LTO designation allows for community supervision and services for these offenders was also listed as a key advantage across the four stakeholder categories.

The lack of resources for effective supervision and treatment was raised as a limitation across stakeholder categories. When the lack of resources for treatment was discussed by Mental Health stakeholder category interviewees, it was specifically noted that the then-current 2-for-1 credit given for time served was particularly problematic as it reduced the determinate portion of the sentence so much that it resulted in the elimination of the possibility of meaningful participation in institutional treatment programs. Efforts made to assist offenders with community maintenance programs have therefore become futile.

There were also several other limitations listed by the interviewees in this research, with some variation by stakeholder category and also stakeholder sub-category. For example, in the Legal stakeholder category, other limitations listed included the wide use of the designation by the courts; the over-reliance on mental health experts in the assessment of dangerousness; the wording of the provisions; and the discretion and power held by Crown counsel and correctional officials. The theme of criticism emerged yet again in the discussion of the limitations here, with the perceived misuse of the designation by the courts and the perceived arbitrary and subjective decision-making of correctional authorities being the targets of this criticism. Mental Health interviewee responses also exhibited features of this criticism, with the public and their reluctance to have LTOs treated or residing in their communities as the focus of this criticism.

The limitations listed by the Supervision/Enforcement stakeholder categories revolved around the challenges in supervising these offenders, including the lack of a post-supervision order plan for LTOs. Yet again, the criticism emerged as a theme here, with the targets of this criticism being the wording of the conditions in the orders, the burden of proof required in breach cases, and the lack of understanding of the NPB and the CSC regarding the rules of evidence in the courtroom. Policing agencies and Crown counsel were also the targets of the criticism factor which emerged in the Supervision/Enforcement stakeholder category interviewee responses. This criticism revolved namely around their lack of understanding about the roles and responsibilities when dealing with these LTOs. Finally, the offenders themselves, and more specifically their lack of incentive to rehabilitate, were targets of this criticism. This is an unintended

impact of the LTO designation that was raised by MacAlister (2005), as discussed in Chapter 4, and is linked to the suggestions for future reform under Topic E in this chapter.

As in the Legal stakeholder category, the wide use of the designation and the arbitrary nature of the decision-making of correctional officials were listed as limitations by the Community Service stakeholder category interviewees. The problematic wording of the provisions and/or conditions mentioned in the Legal stakeholder category as well as the Supervision/Enforcement category was also listed in the Community Service stakeholder category. Other limitations listed by these Community Service interviewees included the overuse of the 10-year supervision period and the stigmatizing effects of the LTO label.

### ***Changes in the Use of the Provisions***

Overall, the stakeholder interviewees in this analysis reported an increase in the use of the LTO provisions since the inception of the legislation in 1997. There was some variation by stakeholder category and also stakeholder sub-category on this issue, however. As compared to the three other stakeholder categories, the Mental Health stakeholder category only had one interviewee (MHT) who reported a perceived increase, while others in this category reported either being unaware of the trends or reported witnessing a change in the type of offender being subjected to the designation, with the net widening to include offenders that would not have been previously captured by the legislation.

Differences also emerged within stakeholder categories and even within stakeholder sub-categories. For example, in the Legal stakeholder category, while the majority reported an increase, some Legal stakeholder category interviewees either reported that there has been little or no change in the use of the provisions, that any initial influx has now rectified itself, or that the use of the DO designation has actually surpassed the use of the LTO designation.

### ***Topic B Overview***

As shown in this discussion of Topical Category B, the theme of criticism was prominent throughout the interviewee responses here. These findings suggest that there exists a lack of understanding of the roles and responsibilities among the various agencies involved with the LTO legislation and/or the offenders themselves and a general lack of satisfaction as to how the system is currently dealing with these offenders. This is explored further in the discussion of Topic D of the interview findings, where the relationship between the various agencies involved is discussed.

There are responses provided under Topic B that can be linked to issues raised in the previous chapters in this dissertation. For example, the input of LL in regards to the development stages of the legislation and the role played by the heightened public and political concern and also by the media in the development of the legislation is noteworthy. The impact of the political climate was also raised by LDC2, who stated that changes in the “flavour of the month” impact designation decisions and in turn the decisions revolving around how to best advise one’s clients (the LTO). The impact of the political agenda was also mentioned by SES5, who stated that the agenda has been to focus on increasing public safety. Finally, what is referred to as an “anti-sex offender climate” by CS1 was said to influence how the system prioritizes the treatment of LTOs as compared to other offenders. Taken together, all of these responses speak to the role of the political climate in policy development. As discussed in the review of the emergence of the community protection model in Chapter 4 of this dissertation, these influences on the development, implementation and application of the LTO designation in Canada clearly illustrate the various features of the policy context believed to be at play by stakeholders in all categories and that must be taken into consideration when discussing the development of sex offender legislation in this country.

The theme of net-widening that emerged in these responses can also be linked to the literature, namely the work of MacAlister (2005). As discussed in Chapter 4, MacAlister’s examination of the use of the LTO designation revealed that rather than reducing the number of DO declarations, the LTO status appears to have supplemented the use of the DO designation. Furthermore, as outlined in the descriptive national

overview in Chapter 4, the number of both DO and LTO designations imposed has increased in recent years. Together, the net-widening theme that emerged in the interview findings and the national statistics support the conclusion that the LTO designation has indeed led to a net-widening effect, contrary to the ideal factors listed by the Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders (1995) discussed in Chapter 4.

There were also responses provided under Topic B of the interview that can be linked to specific file review findings summarized in Table 6. As noted in the defence counsel interviewee responses regarding the effectiveness of the LTO provisions in achieving certain objectives, there is a sense that this designation is being over-used in the case of Aboriginal offenders. This finding is consistent with the disproportionate representation of Aboriginals revealed in the file review findings, the disproportionate number of Aboriginals categorized in the high psychopathy category, and also the disproportionately high representation of Aboriginals among those offenders receiving the LTO designation as found by Trevethan et al. (2002). Together then, the findings of the current research and the findings expressed in the literature suggest that the race of the offender may play a role in the finding of dangerousness, at least if the offender is Aboriginal, thus calling into question the objectivity and neutrality of the various tools and methods used in this designation process and the potential systemic bias inherent in them. It is possible that the behavioural features captured under Factor 2 of the PCL-R which have been described in the literature as being more strongly related to violence (see Douglas, Yeomans and Boer, 2005), such as antisocial and unstable lifestyle and childhood behavioural problems, are more common among Aboriginals living in socially disorganized environments. If this is the case, this may explain the disproportionately higher finding of psychopathy among Aboriginal offenders, as found in the current study, consequently increasing the likelihood of being designated as an LTO. This hypothesis ought to be tested in future research. The ethnicity along with other demographic characteristics of LTOs are specifically explored under Topic C of the interview questions, where interviewees are asked to specifically describe the characteristics of the prototypical LTO.

Finally, Crown counsel's practice of putting forward a DO application in almost every instance that is reported in the interview findings corroborates the file review finding that the initial application in these LTO cases was for the DO designation in 61% of the cases included in this analysis (see Table 6). It appears as though the preferred method of achieving an LTO designation is to seek the more punitive DO designation in hopes of persuading the judge that if the criteria for the more punitive label are not met, at least the less punitive LTO label (and not a conventional sentence) is the most suitable alternative.

### **Topic C: Interviewee Perceptions of LTO Characteristics**

#### ***DOs vs LTOs vs "Normal" Offenders***

The first three questions organized under Topic C of the interview schedule seek to ascertain the interviewees' descriptions of LTOs relative to DOs and those offenders receiving a conventional sentence. The majority of the 33 interviewees included in this research described the differences between these three categories on a continuum, although there are some variations across - and within - stakeholder categories with regard to how distinct these groups of offenders are perceived to be. However, even in those responses where there are differences that are outlined by the interviewee, many of these interviewees described the line that differentiates these offenders as blurry in many cases.

Demographic features that are used to describe and differentiate between these 3 groups of offenders include age, class and ethnicity. Level of education, IQ and overall demeanour of the offender were also included as distinguishing characteristics. In this regard, DOs were generally described as being older than LTOs as well as those offenders that receive conventional sentences. Aboriginals were also said to be disproportionately represented in all offender groups, but particularly in the DO and LTO groups. One Mental Health stakeholder interviewee also noted that the class and overall demeanour of the offender plays a role in the designation decision, with offenders with a poor demeanour and of a lower class being more likely the targets of these more punitive designations. DOs as well as LTOs were described as having lower levels of education and lower intelligence than those offenders receiving conventional sentences.



Features related to the offender's pattern of offending included: their criminal histories, the nature of offences committed, the frequency with which these crimes are committed, and the degree of victim harm. Overall, as compared to DOs and offenders receiving conventional sentences, LTOs are described as falling in the middle with regards to the length of their criminal records, the persistence in their offending patterns, the severity of the crime and the degree of victim harm. Sexual offending was described as being more prominent among both DOs and LTOs.

Finally, features pertaining to the offender's assessment of risk and/or mental health that were said to distinguish these offenders included: overall level of risk, likelihood to reoffend, treatability/treatment success, degree of psychopathy, presence of mental health problems/deficits, and willingness to participate in an interview with the mental health expert assessor. DOs were said to pose a higher risk, to be more likely to reoffend and to be more psychopathic than LTOs, and even moreso as compared to offenders receiving a conventional sentence. In fact, interviewees across stakeholder categories stated that a finding of psychopathy is a determining factor in designating an offender as a DO rather than as a LTO, or in deciding that neither of these designations is appropriate. In addition to being less psychopathic than DOs, LTOs were described as suffering from fewer mental health deficits/problems than DOs, as being more treatable, and as being more willing to participate in an interview. As compared to those offenders receiving a conventional sentence, LTOs were described as being more "needy" and resourceless. One interviewee in the Community Service stakeholder category noted that fetal alcohol syndrome is common among those LTOs with whom this interviewee has come into contact. The presence of FASD among offenders subjected to a DO application has been documented in the literature and in some cases, it has been found to be referred to as a mitigating factor in judicial decision-making, leading to a designation as a LTO rather than as a DO (see Fraser, 2009; see Freedman, 2008).

Interestingly, LTOs were described by some as being more litigious than DOs as they are aware of the lack of enforceability of the conditions imposed upon them in the LTOs. They were also described as being more miserable than regular parolees owing to the relatively longer period of supervision to which LTOs are subjected. LTOs were

also described as being less motivated to participate in institutional treatment than DOs as the former are released from the custodial portion of their sentence, regardless of whether they have taken advantage of available treatment resources while in prison. This lack of motivation for institutional treatment raised here, and also raised as one of the key limitations of the designation under Topic B, is addressed in the section on suggestions for reform, under Topic E of this chapter.

Other features that were listed as playing a role in the distinction between these groups of offenders included the political climate, the profile of the crime and the media attention it receives, the skills of the lawyers in the courtroom, as well as the philosophies of the judges presiding in these cases. In fact, these features that are related to the political context in which these decisions are made were mentioned by at least one interview in each of the 4 stakeholder categories. Again, this relates to the role played by the political context that must be taken into consideration in our understanding of the development of this legislation.

### ***Characteristics Leading to Finding of Controllability***

Many of the characteristics of LTOs that emerged in the responses described above are listed again in response to the question regarding those key characteristics that suggest an offender's controllability and, therefore, their eligibility for the LTO designation. Characteristics of the offender that were listed as leading to the determination of controllability included: willingness to participate in treatment/treatability, past success in treatment and on conditional release, low degree of psychopathy, low assessment of risk, expressions of remorse, and the offender's overall presentation or demeanour. Some combination of these characteristics emerged in the responses in all of the 4 stakeholder categories.

Other offender characteristics that emerged in the responses of interviewees in the Supervision/Enforcement stakeholder category included the number of offences committed by the offender, the nature of the index offence(s), institutional adjustment of the offender, the offender's insightfulness, and also whether the offender has pled guilty. The "potentiality" of the offender, defined as the severity of the index offence and the level of denial exhibited by the offender, is yet another characteristic that emerged in the

response of a Community Service stakeholder interviewee. Characteristics of the victim were also said to play a role, as per the response of a Community Service stakeholder category interviewee, with offenders who prey on children being deemed less controllable than those who do not.

Certain features of the system also emerged in the responses regarding the decision to deem an offender controllable and therefore eligible for the LTO designation. Interviewees in all stakeholder categories, with the exception of the Community Service stakeholder category, listed the availability of resources—for treatment and/or for supervision—as a key factor in deciding whether an offender is indeed controllable in the community.

### ***Role of Treatability***

When asked to provide an explanation as to why offenders deemed low on a continuum of treatability may still be designated as a LTO, the distinction between treatability and manageability was made in each stakeholder category. Essentially, the responses indicated that even though an offender may not be “cured of [his] impulses,” this does not mean that that same offender cannot be supervised successfully.

There are also a myriad of other factors that were said to influence a judge to designate an offender as a LTO despite a relatively low evaluation in terms of treatability. The dynamics of the courtroom, the persuasiveness of defence counsel, and the lack of understanding of judges regarding the resources that are provided to LTOs while in the community are among these factors. The increased age and health issues of the offender were also listed by some and are seen as factors that decrease the perceived risk posed by the offender while in the community, thereby leading to a finding of controllability despite low evaluations of treatability. The impression the offender makes on the judge, or the offender’s demeanour, again emerged in the responses of interviewees as an influential factor, along with past success on supervision. Finally, two interviewees in the Community Service stakeholder category noted that any cognitive deficits that may result in the assessor’s conclusion that the offender is less treatable does not necessarily mean that there are no methods that may assist in treating these offenders.

Overall, it is noteworthy that interviewees were initially quite surprised when they were informed of the file review finding that the majority of the LTO assessments contained the conclusion that the offender was ranked as low on a continuum of treatability. This theme of surprise emerged most prominently in the responses of interviewees in the Supervision/Enforcement stakeholder category.

### ***Views on the 10-year Supervision Order***

Finally, interviewees in all stakeholder categories indicated that the reason that the 10-year supervision order length is the most prevalent is because judges are erring on the side of caution and/or wanting to provide the most supervision possible. While this was a dominant theme across stakeholder categories, there were differences within categories and across categories in terms of whether this practice is seen as appropriate. For example, some interviewees indicated in their responses that the 10-year supervision period is being overused or that judges are making this decision without accurate information on what services are in fact being provided for these offenders while on supervision. One Community Service stakeholder category interviewee went so far as to argue that this long supervision order period is so popular because it contributes to the survival of the criminal justice system, which this interviewee described as a self-serving industry or business. On the other hand, other interviewees stated that the practice of choosing the 10-year supervision order length is completely appropriate and that the 10-year maximum ought to be raised to 15 or 20 years to allow for an even longer period of public protection. Some interviewees even mentioned the option of life-long supervision orders. This suggestion for reform is elaborated upon under Topic E later in this chapter.

### ***Topic C Overview***

The theme of criticism that emerged in Topic B emerged again in the responses to the questions organized under Topic C, although to a somewhat lesser degree. The subjectivity of judges presiding in these cases, as well as the subjectivity of assessing mental health experts, was mentioned in responses, along with a lack of understanding of judges as well as defence counsel regarding what supervision actually consists of. The system as a whole, and its various features, was the target of much of this criticism,

namely in the description of the blurry line that distinguishes DOs from LTOs and the line that distinguish both of these groups from offenders receiving a conventional sentence. These concerns emerged in some form in the responses across stakeholder categories.

There were various characteristics of LTOs that emerged in the responses under Topic C that corroborate the findings that emerged in the file review, as listed in Table 6. First, the disproportionate representation of Aboriginals among those offenders designated as LTOs was revealed in the interview responses in Topic C (as well as Topic B). The prevalence of sexual offences was also found in the interview responses in Topic C as well as in the file review, along with the prevalence of the 10-year supervision period. The intermediate score range on the PCL-R that was revealed in the file review findings was also expressed in the interview responses under Topic C, wherein LTOs were described as less psychopathic than DOs and more psychopathic than those offenders receiving a conventional sentence.

The one finding in the interview responses that appears to be inconsistent with the file review findings pertains to the risk posed by the LTO. As shown in Table 6, the majority of assessments of LTOs included in the analysis described an overall high-risk assessment; however, in the interview responses, these offenders are described as posing less risk than DOs and more risk than conventional offenders. In essence, these LTOs are described in the interviews as posing a somewhat intermediate, rather than high, risk. This seemingly paradoxical finding may simply be the result of having asked interviewees to describe LTOs relative to the DO or conventional offender, thereby essentially leading interviewees to respond in relative terms rather than to describe the level of risk posed by these offenders in their own terms. Yet another plausible explanation for this finding may exist: it may be that the majority view that LTOs are less psychopathic than DOs leads to their conclusion that these offenders pose less of a risk, despite any knowledge these same interviewees may have of the risk rating these offenders have received on other risk assessment or actuarial tools. If this is the case, this finding would support the finding that the PCL-R plays a dominant role in the decisions made in these cases, as noted in the File Review Findings Chapter and file review section of this chapter of the dissertation, as well as in the literature.

## **Topic D: Interviewee Experiences and Perceptions of LTOs in the System**

### ***Workload***

The consensus across - and also within - stakeholder categories was that LTOs may not make up the majority of offenders on one's caseload, but that these cases are very intensive and the number of cases is increasing. There was also a consensus among those Supervision/Enforcement stakeholder category interviewees who deal with LTOs when they breach the supervision order that the occurrence of a breach intensifies the workload significantly. Overall, the sentiment was that the impact of LTO cases on workload was not anticipated. The one stakeholder sub-category that reported little or no impact on workload is that of judges.

### ***Relationship with Other Agencies***

The one actor/agency involved in the application of the LTO provisions that reported having little or no relationship/contact with the other agencies/actors is the judiciary. There was variation within - and across - stakeholder categories regarding the nature of the relationship with each of the other agencies involved in the application of the LTO provisions of the *Criminal Code*.

Overall, the relationship with correctional officials was described as being the most challenging, namely by interviewees in the Community Service and the Legal stakeholder categories. A dominant theme throughout these responses was the view that there is a disconnect between many of the various agencies, according to several of the interviewees across stakeholder categories. Aside from the lack of relationship and collaboration between the judiciary and the other agencies involved in the application of the LTO provisions, the disconnect between Crown counsel and other agencies was a common theme, whether this disconnect was reported by the other agency(ies) or by a Crown counsel interviewee.

### ***How Supervision Is Carried Out in B.C.***

The extent to which the various interviewees were familiar with the way in which the supervision of LTOs is actually carried out in B.C. varied depending on the specific role of the interviewee. However, there was an overall consensus across - and also

within - stakeholder categories that there is a clear lack of resources to effectively supervise the increasing number of LTOs entering into their community supervision orders.

Interestingly, interviewees in the Mental Health and also the Community Service stakeholder category indicated that they believe the supervision of LTOs closely resembles the supervision for other parolees, with parole officers and police agencies being the key agencies involved in this supervision. Mental Health stakeholder category interviewees emphasized that the treatment that is made available to LTOs during the supervision period is more accurately described as maintenance. This point is elaborated upon later in Topic D of this chapter, when discussing the responses pertaining specifically to treatment programs during the supervision order.

The level of familiarity with the work of supervisory officials varied in the Legal stakeholder category, with some interviewees, including judges, having indicated that they have limited knowledge of what actually occurs during the supervision order. As mentioned by one Legal stakeholder category interviewee, the mechanics of supervision are really only revealed to interviewees in this category when a supervisory official is asked to provide testimony in court. This finding raises serious concerns as these are the individuals who are making the key designation decisions. Certainly, a more accurate and detailed understanding of what actually occurs and what can realistically be provided during the supervision period ought to be taken into consideration when making these decisions. Suggestions for reform here are provided under Topic E of this chapter.

With regard to training for those supervising LTOs, the responses of interviewees in the Mental Health stakeholder category indicated a belief that specialized training does indeed occur. The Community Service stakeholder interviewees, on the other hand, were less optimistic in their description of the extent of this training. While they indicated that some training may occur, the consensus within this stakeholder category was that the skills needed to deal with these cases are quite specific and, therefore, the officials carrying out the supervision require more specialized training than what is currently being provided.

These views expressed by interviewees in the Community Service stakeholder category were corroborated by the interviewees in the Supervision/Enforcement stakeholder category, all of whom are charged with the task of actually supervising LTOs in some capacity. While there was some indication by one of the enforcement-oriented stakeholder interviewees that the training for LTO supervision is well-rounded, with room for some improvement, the consensus among the remaining enforcement-oriented interviewees, as well as the supervision-oriented interviewees, was that the training is fairly limited and not specific to the supervision of LTOs. The nature of training was said to come in various forms, including: occasional seminars, information bulletins, and on-line training. Whatever training was provided came too late, according to some of the interviewees, and much of the learning came “on the job.”

The enforcement- and supervision-oriented also agreed that the nature and the wording of conditions imposed on these offenders is the most challenging obstacle they face in supervising LTOs. These conditions were described as being very difficult to enforce. The length of the supervision orders also poses as a major problem, due to the difficulties in ensuring continuity in supervision. Meeting the residency needs of these offenders was also listed as a major challenge during the supervision order. It is clear, then, that there is a great need to revise the conditions imposed on these offenders in order to facilitate the effective supervision of LTOs during the supervision order. There was a great deal of frustration expressed by those interviewees who actually carry out the task of supervising this unique subset of offenders. Suggestions for reform in this regard are included under Topic E of this chapter.

### ***Treatment During Supervision***

Interviewees across - and within - stakeholder categories expressed varying degrees of knowledge regarding the nature and availability of treatment programs for LTOs during the supervision order. In the Legal stakeholder category, Crown and defence counsel interviewees stated that there is a lack of treatment available for these offenders and that the treatment that does exist is more accurately described as maintenance rather than treatment. The interviewees in these two Legal sub-categories also stated that the perceived accessibility of such programs does indeed influence the



designation decision. This latter finding was corroborated by the responses of interviewees in the Judge sub-category, who note that the availability and accessibility of such programs, along with the offender's willingness to participate in such programs, are factors that do indeed influence their decisions to designate an offender as a LTO. LL and the judges admitted having little knowledge of the actual treatment provided and admitted relying on Crown and/or defence counsel for this information.

The perception amongst Supervision/Enforcement stakeholder category interviewees as well as Community Service stakeholder category interviewees was also that there is a lack of treatment services, and that availability of services varies by region and also by the offender's cognitive capacity. According to the Supervision/Enforcement category interviewees, the treatment that does exist is more accurately described as maintenance, and does not differ from the programs provided to regular parolees. There was scepticism expressed in this same stakeholder category regarding the gains made in treatment. Community Service and Supervision/Enforcement interviewees indicated that these maintenance programs are premised on the assumption that these offenders are partaking in institutional treatment which is often not the case.

The voluntary nature of program participation was also described as problematic; in fact, the consensus across these two stakeholder categories was that participation in treatment programs is highest when such participation is listed as a condition in the supervision order. While the policing-oriented sub-category interviewees made no mention of the impact of treatment availability and accessibility on the designation decision, the supervision-oriented sub-category interviewees were split on this point: some stated that they feel that these factors influence the decision to designate an offender as a LTO, while others do not.

The views expressed above by interviewees in the Legal, Supervision/Enforcement and Community Service stakeholder categories regarding the lack of treatment and the fact that those programs that are available amount to maintenance rather than actual treatment were corroborated by interviewees in the Mental Health stakeholder category, which is comprised of interviewees who are actually charged with the task of assessing the offenders and/or providing this maintenance/treatment. The

interviewees in the Mental Health stakeholder category, who also conduct the court-ordered assessments, further indicated that testimony from correctional officials on current community treatment resources are often relied upon in the court and, while they are unsure whether this directly influences judges' decision-making, they are hopeful that such information regarding treatment availability and accessibility does indeed influence designation decisions.

### ***Conditions and Breaches***

The level of familiarity with the types of conditions imposed in supervision orders for LTOs varied depending on the role of the interviewee. Interestingly, the interviewees in the Legal sub-category that comprises the judges offered the least amount of information on the types of conditions imposed in these orders. This finding corroborates the finding discussed earlier regarding the knowledge that judges possess about what actually occurs during the period of supervision. A suggestion for reform to provide the crucial information to judges in this regard are explored under Topic E.

Overall, those interviewees who commented on the types of conditions imposed indicated that they are usually generic and that they are, for the most part, appropriate. Conditions included participation in treatment programs, no-go conditions, reporting requirements and residency conditions. The main concern that emerged in responses across stakeholder categories pertains to the wording of the conditions, which is deemed to be the reason that the conditions are unenforceable. The conditions included in the supervision orders were also described by some as somewhat unrealistic, which also contributes to their unenforceability. The effectiveness of the conditions in reducing recidivism was questioned by some, yet others noted that the recidivism is rather low and therefore the conditions must be effective.

The Supervision/Enforcement stakeholder category interviewees, who actually carry out the supervision, were also particularly concerned with the difficulty in supervising LTOs with residence conditions. Constantly having to re-apply for residence conditions to be maintained was described as unnecessarily laborious and difficult. This point is elaborated upon under Topic E of this chapter.

While the consensus was that breaches of LTO supervision order conditions are relatively infrequent, the sanctions imposed for breaches are generally described as severe, yet appropriate. The main exception emerged in the responses of interviewees in the Legal sub-category that includes defence counsel, as well as in the Community Service stakeholder category. These interviewees expressed disapproval with the severity of sanctions, describing them as excessive and overly punitive. The discretionary power of parole officers in breaching LTOs was described as particularly problematic by the Community Service stakeholder interviewees.

The overly laborious process of breaching a LTO also emerged as a theme in the responses provided here. Unlike regular parole breaches, when a breach of a LTSO occurs, the issue must be heard in a court of law and this is an area in which parole officers are not trained. Those supervision-oriented interviewees in the Supervision/Enforcement stakeholder category listed a range of issues that arise when a supervision order is breached, such as: the negative impacts of aggravating the often litigious LTO; the inappropriateness of the sentence of time served that is often given if a sentence is indeed imposed for a breach; and also the lack of continuity between provincial and federal jurisdictions that occurs if the sanction imposed results in a provincial sentence. Suggestions for reform with these listed problems are included under Topic E.

### ***Community Reintegration***

While the majority of interviewees across the stakeholder categories agreed that community reintegration is essential, there is some variation within stakeholder categories about the priority given to community reintegration relative to various other goals when dealing with LTOs. For example, the interviewees in the Legal sub-category that is made up of Crown counsel indicated that the goal of community reintegration ought to go hand-in-hand with other goals, such as treatment, risk management, supervision and public protection. There was also concern expressed by interviewees in the defence counsel and Crown counsel sub-categories regarding the potentially damaging effects that public notification may have on reintegration efforts. Furthermore, interestingly, the one judge who provided a response here is not in support of the idea of

community reintegration: it was described by this judge as too risky and more appropriately considered as a last priority.

There was also some caution expressed by the minority of interviewees within the Mental Health stakeholder category. According to them, the appropriateness of community reintegration depends on other factors, such as the offender's characteristics and his or her ability to reform. The minority within the Supervision/Enforcement stakeholder category, who are in fact within the policing sub-category of this stakeholder category, expressed similar concerns. For them, the lifting of residence conditions in order to reintegrate the offender into the community can sometimes be damaging for the offender if he or she is not yet ready for such reintegration to occur.

The one stakeholder category in which all the interviewees agreed with the importance of community reintegration is the Community Service stakeholder category. The consensus here was that the services provided by their respective organizations are crucial to ensure that this reintegration is smooth and effective.

### ***Topic D Overview***

The theme of criticism emerged yet again in the responses under Topic D. In response to workload questions, it was mainly the responses of defence counsel that exemplified this theme of criticism. As outlined in the Interview Findings Chapter of this dissertation, the target of criticism for defence counsel included both Crown counsel and LSS. The initiation of DO cases was the main issue that defence counsel have with Crown counsel and the lack of funding from LSS was emphasized by each of the four defence counsel interviewees.

The theme of criticism emerged, perhaps most prominently, in the responses to the question pertaining to the relationship interviewees have with other stakeholder agencies that deal with LTOs. The lack of familiarity or understanding of the role other stakeholders have in dealing with this subset of offenders was a common theme here. For example, parole officers were described by Crown counsel as lacking the appropriate knowledge of the *Charter*, making them the target of criticism for difficulties ensuing from this lack of knowledge when admitting evidence in court. On the other

hand, interviewees in the Supervision/Enforcement stakeholder category, which includes parole officers, criticized Crown counsel, who are described as being unfamiliar with the provisions. Supervision/Enforcement stakeholders also mentioned the lack of knowledge of police as a cause for this ensuing disconnect. The lack of familiarity among judges regarding the supervision process was also described as problematic. It appears as though the pattern is that the target of criticism is external to the respective interviewee's agency.

It was clear that not only was the theme of criticism apparent, but also what emerged as a theme in interviewee responses was a true lack of understanding of the experiences of the other stakeholders. For example, as indicated in the Interview Findings Chapter, there was some indication amongst the Mental Health interviewee responses that parole officers working with LTOs received specialized training in this regard, but it was later revealed in the Supervision/Enforcement interviewee responses that this is not the case. This is just one example of this lack of understanding and the disconnect between the various agencies and stakeholders involved with LTOs throughout the various stages of the criminal justice system.

While the target of criticism was often another agency or stakeholder, specific legislative features were also the focus of criticism. For example, the amendment which requires a court-ordered assessment was described as complicating rather than facilitating the process, adding only to the tension that is said to already exist between the FPSC and Crown counsel. As mentioned in the responses of Mental Health interviewees, this court-ordered assessment model is inherently flawed, and does not alleviate the adversarial nature of the process. Furthermore, the fact that LTOs do not earn their release from the determinate sentence was highlighted as particularly problematic; this feature of the provisions was described as blameworthy due to the fact that LTOs are left with no incentive to partake in institutional treatment.

Defence counsel mentioned the privacy legislation as a key source of problems, indicating that changes must be made in order to allow defence counsel to provide adequate defence for their clients. The reluctance of the CSC officials to release information was also described as problematic and this practice of withholding

information is a target of criticism that emerged in the responses of Crown counsel. The way in which residency conditions must be renewed every 6 months was also identified as a cause for many of the problems and challenges that emerge in the supervision of LTOs. The length of determinate sentences and the voluntary nature of treatment program participation are two additional aspects of how LTOs are dealt with that were targets of criticism here. These aspects make it nearly impossible for LTOs to meaningfully participate in their own rehabilitation. Ways to rectify these and other issues are discussed under Topic E.

Finally, the theme of criticism emerged in discussing the role that the wording of LTO supervision conditions has in complicating the supervision of this subset of offenders. The Parole Board was the target of criticism here, as they are the creators of what has been described as “wishy-washy conditions” that do not stand up in a court of law. Related to this problem is the length of supervision orders, which makes it difficult to ensure continuity in service and to ensure adequate coordination between federal and provincial jurisdictions, along with the discretion of parole officers to breach LTOs during the supervision period. The fact that breaches of LTOs must go through the court system, unlike breaches of other forms of conditional release, was also highlighted as problematic. This court involvement was described as further complicating an already unduly laborious process.

Regardless of whether the theme of criticism was direct or indirect, or whether it targeted another stakeholder agency or some specific legislative feature, there was clearly a theme of frustration expressed in the responses of many of the interviewees here. There appears to be a lack of guidance and clarity with respect to the appropriate role of the various stakeholders involved with LTOs, with stakeholders expressing the difficulties they experience in successfully fulfilling their own responsibilities owing to the various obstacles that exist in dealing with LTOs throughout the various stages of the system. The interview itself appeared to have served as an outlet for these interviewees to voice their numerous concerns, an opportunity which many of these interviewees indicated is much needed. The suggestions for reform offered as potential solutions to these various problems experienced by stakeholders across categories are discussed next, under Topic E.

## **Topic E: The Future of Dealing with LTOs**

There were numerous recommendations for reform and for best practices that were expressed under Topic E, many of which were recommendations that emerged across stakeholder categories. There were, however, some recommendations that were more stakeholder-category-specific, and these recommendations may or may not be specific to the interviewee's own role with respect to LTOs. In this section, the recommendations are organized by the stage of the criminal justice process, beginning with the provisions themselves, the court hearing and the court-ordered assessment of these offenders, then the determinate sentence, and finally the long-term supervision order period. These stages are not mutually exclusive; however, this sequence does provide a logical organization of suggestions for reform. Some recommendations apply to more than one stage of the criminal justice process and are therefore organized under the heading "overall recommendations."

### ***The Provisions***

There were certain elements of the legislation that were identified as problematic and in need of reform. The most general problem identified, emerging as a dominant theme in interviewee responses, is the lack of clarity in the definitions and wording of the provisions. This problem is related to the next concern, which pertains to the type of offender being captured by the legislation. There were some interviewees who expressed concern with the wide range of offenders being targeted by the legislation, and who suggested a legislative amendment to clarify that the designations ought to be reserved only for predatory sex offenders. Defence counsel interviewees also recommended that there be changes made to the onus and standard of proof currently outlined in the legislation. In their view, Crown counsel ought to have greater responsibilities in establishing the criteria for dangerousness and ought to have less liberty in initiating the DO or LTO application process.

The length of the determinate sentence for LTOs was also raised as a concern. Some interviewees mentioned that the credit for time served was a problem as it reduced the length of the determinate sentence to less than two years, thus resulting in a provincial rather than a federal sentence; however, this problem has been partially

addressed by the elimination of the 2-for-1 credit. Nonetheless, a 1-for-1 credit may still result in the reduction of the actual determinate sentence length. The suggestion here, then, was to reform the legislation in such a way that the actual sentence served be no less than two years in length. This was deemed necessary by several of the interviewees across stakeholder categories to allow for meaningful participation in institutional treatment programs.

While the suggestion was made to ensure a minimum of a 2-year actual sentence, it was also suggested by others that the 2-year sentence requirement be eliminated altogether to allow for more offenders to be captured by the LTO designation. While the inference here was that the net ought to be widened to include an even greater range of offending behaviours, this view was shared by the minority of interviewees included in this research.

Other recommendations for legislative reform pertained to the supervision order. There were several interviewees across stakeholder categories who expressed the need to extend the supervision order length beyond the current legislative maximum of ten years; some even suggested that the option ought to exist to have lifetime supervision for these offenders. There were interviewees who recommended that judges have the authority to extend the supervision order with relative ease.

Some interviewees suggested that the use of the DO designation should increase and that, in order to allow for this, the 7-year review for DOs outlined in the legislation ought to be reduced to 3 years. Others indicated that there is a need to streamline the process to convert an LTO designation into a DO designation with ease when the LTO designation is simply not working for the respective offender. Others simply suggested that the LTO designation ought to be eliminated altogether. These latter interviewees stated that the designation has been used in a way that was not at all intended by the creators and that the only solution to rectify the problem at this stage is to remove it as an option altogether.



### ***The Court Hearing and the Court-Ordered Assessment***

A theme of concern emerged in the responses of some interviewees, and the concern was specific to the increased reliance on the LTO designation and the prevalence of the 10-year supervision order length. These interviewees stated that the LTO designation ought not to be a default option for judges when the DO application fails and that the process ought not to be initiated through a DO application when it is the LTO designation that is really being sought. As one defence counsel interviewee (LDC3) stated, using the DO designation when it is the LTO designation that is sought is like using “a warhead to do what a hammer could do.”

The recommendation was also made to provide judges with more education and guidance with regard to the types of treatment programs that are actually available for LTOs and also the nature of actual programs and resources that are made available to LTOs during the supervision order. In fact, judges themselves stated that they know little about what happens with the LTO after the sentencing hearing. It was also recommended that assessors learn more about what actually occurs during the supervision order so that their prognosis and risk assessment can take this information into account.

Interviewees also emphasized that there is a need to take into account what will be available to the offender in terms of treatment and supervision resources upon release from the determinate sentence, not at the time of sentencing itself. Certainly, it is impossible to predict what might be available following the determinate sentence, which is (in theory) at least 2 years long. As such, the recommendation was made by interviewees across stakeholder categories to move the designation decision until *after* the completion of the determinate sentence. This was suggested in order to allow for a more accurate understanding of the offender’s needs at the time of actual release into the community and also for a more accurate understanding of what is indeed available in the community to which the offender is released. It was suggested that, perhaps, offenders would be forewarned that the designation would be an option toward the end of the determinate sentence so as to survive constitutional challenges and also so that there would be an incentive for them to partake in institutional treatment. While this is a

recommendation made by a select few interviewees, not all interviewees stated that this would be an appropriate reform.

It was also recommended that judges consider more restorative justice options for these offenders so as to ensure that they take accountability for their actions. It was noted that these offenders tend to be particularly resistant to punitive sanctions and that, perhaps, a restorative approach would be more successful. Some interviewees also recommended that judges impose longer determinate sentences to ensure that there is an opportunity to participate in treatment, and also to allow offenders to gradually move from maximum security to minimum security prior to being released under supervision in the community. This cascading in supervision intensity was described as crucial for successful reintegration.

Some stated that it is necessary for judges to become more involved in the writing of supervision order conditions. This was emphasized as a suitable amendment as the conditions imposed by the Parole Board are not written in such a way that can be sustained by a court of law, and judicial input in this regard was described by some as essential in the imposition of enforceable conditions.

There were also recommendations made to “equal the playing field” between defence and Crown counsel. Access to correctional files was identified as a problem by defence counsel, and it was suggested that both Crown and defence receive these files in a timely and equitable manner. Certainly, equal access to correctional files ought to be facilitated to ensure defence counsel are able to provide adequate defence. It was also recommended that these correctional files be re-organized to eliminate duplication of files and thus to save precious time during the preparation of these highly complex and already time-consuming cases.

It was also recommended that both Crown and defence have equal funding and access to mental health expert assessors. In fact, defence counsel unanimously stated that the process of receiving sufficient funding from LSS to obtain expert assistance is deeply flawed and makes it nearly impossible to provide a just and equitable representation. These offenders were described as predominantly under-privileged as

compared to other offenders, making the need for adequate funding for legal representation that much more prominent in these cases.

With respect to the court-ordered assessment, it was noted that standardization of the assessment report and testimony provided by assessors would be quite helpful to the court. The language used by assessors was described as difficult for judges and the various actors in the court hearing to comprehend and apply. While this recommendation was made by some and while this would be a reform that would certainly be very beneficial in many respects, there was some acknowledgment that, owing to professional differences between psychiatrists and psychologists, and even within these professional groups, there would likely be much resistance to any attempts to standardize the reports, the tests used, and the presentation of evidence.

### ***The Determinate Sentence***

In addition to having judges impose longer determinate sentences in order to allow for LTOs to partake in institutional programs, which was already mentioned in the court hearing sub-section of Topic E, the recommendation to require LTOs to earn release from the institution was made by several interviewees. In fact, many of these interviewees stated that DOs who are eventually released from the institution are often better off than LTOs upon their completion from the determinate portion of their sentences because they have at least had to demonstrate that they are ready for community supervision and this often comes through the form of successful treatment efforts. The argument made here was that since these LTOs—who are described as high-risk and as already resistant to conventional forms of punishment - are aware of the length of the determinate sentence, they have little incentive to reform or to partake in institutional treatment. The suggestion to make it a requirement to participate in and successfully complete institutional treatment was emphasized by several interviewees. This is deemed to be so important for LTOs because the nature of treatment in the community is best characterized as maintenance and, as mentioned, the maintenance programs are premised on the circumstance that these offenders will have already received more formal institutional treatment. In other words, institutional treatment is a pre-requisite for what is currently offered in the community and therefore without it,

efforts to provide maintenance in the community are futile. Clearly, then, changes need to be made to make institutional treatment mandatory for this sub-group of offenders and an incentive for release is a logical and reasonable reform that would promote successful community reintegration.

### ***Supervision***

The majority of recommendations made under Topic E pertain to the actual supervision period and the main challenge raised with supervision deals with the wording of supervision order conditions. These conditions were described as unenforceable and often unrealistic. For example, the condition that prohibits internet usage was described as completely unrealistic as these offenders often attempt to obtain employment during the supervision order as part of their reintegration process, which inevitably involves searching for employment opportunities on-line and/or communicating with prospective employers through electronic mail. Furthermore, even cellular telephones allow for internet access. It was suggested that police and Crown counsel have some input in the writing of these conditions in order to ensure that they are indeed enforceable. It was also suggested that a set of standardized and enforceable conditions be created so that they can be drawn upon by those supervising LTOs without the concern that they may not be enforceable. Taken together with the recommendation that judges have input in the writing of the supervision order conditions, as mentioned in the court hearing section of these recommendations, it can reasonably be inferred that efforts need to be made to create a set of conditions for LTOs that are indeed enforceable and that will allow for effective supervision. This was a recommendation made across stakeholder categories and the unenforceability of the supervision order conditions was identified as the key obstacle in effectively supervising LTOs and in promoting their successful reintegration.

The one condition that was mentioned most frequently and described as particularly problematic is the residence condition. This is a condition that must be renewed every 6 months, and this was described as unnecessarily tedious and difficult to achieve. A reasonable reform here would be to ensure that residence conditions not be lifted until the supervising officer deems it appropriate, rather than requiring these

officers to continually apply to have the condition maintained. The difficulty created when a residence condition is lifted goes beyond an increased workload for the supervising officials; in fact, the lifting of a residence condition was described as quite a stressful part of the supervision order for LTOs, which raises concerns for many parole officers in regards to triggering the offender's relapse into their offending cycle.

In an effort to facilitate effective supervision, it was further recommended that those parole officers as well as police officers charged with the task of supervising LTOs receive more specialized training to fulfill this role. It was also recommended that more police departments create specialized units for this specific purpose so as to allow for greater participation of police officers in the supervision of these offenders. The lack of specific training for the supervision of LTOs revealed in the interview responses in the Supervision/Enforcement stakeholder category supports these recommendations. These cases clearly require a new set of skills and require parole officers to attend court in a way that is unprecedented, and the majority of stakeholder interviewees across categories emphasized that these officers have not been well-equipped for this new role. Certainly, this new training would require increased funding for the supervision of these offenders.

The manner in which LTOs are breached was also described as problematic by interviewees across stakeholder categories. While some argued that parole officers have far too much discretion in breaching these offenders and that the requirement to have a breach heard in a court of law is excessively punitive and laborious, others argued that this discretion is necessary to allow for the effective supervision of these offenders. Regardless of the position that the interviewee took in this regard, the consensus among those interviewees that raise the challenge of breaches was that there needs to be greater continuity between the federal and provincial bodies in the case that the breach sanction entails a provincial sentence, whether or not this sentence is custodial. The lack of continuity between federal and provincial jurisdictions creates a range of challenges for supervision officials and this problem needs to be addressed in order to allow for effective supervision of this subset of offenders. This is particularly true when an offender is continuously breached as the supervision order is suspended while the offender is serving the breach sanction, thus continuously extending the actual length of

the supervision order. A reasonable recommendation that was made to alleviate this problem was to allow federal supervision officials to have temporary access to provincial electronic systems to ensure that these offenders may be tracked and to eliminate the possibility for an offender to fall between the cracks of these two jurisdictions.

While an increased need for resources was mentioned in relation to almost every stage of the processing of LTOs, the need for resources was emphasized with regard to the community supervision of these offenders. One interviewee in the Supervision/Enforcement stakeholder category described a case wherein the offender was successful in obtaining gainful employment in another jurisdiction but was forced to reject the position owing to a lack of funding in that jurisdiction for his supervision. The supervising official in this case described being frustrated and saddened by this set of circumstances, emphasizing the role that meaningful employment plays in the self-confidence of the LTO and subsequently in their reintegration. Increased funding for all forms of community support was highlighted by interviewees across stakeholder categories, and is elaborated upon below.

Finally, several interviewees across stakeholder categories voiced great concern about what is to occur with these LTOs at the end of the supervision order. There is a complete lack of a post-supervision order plan for these offenders, and several of the Supervision/Enforcement stakeholder interviewees stated that many of the offenders approaching the end of their supervision orders are in fact not ready to self-manage without supervision. These interviewees argued that there is little or no guidance from the legislation as to what ought to occur at the end of the supervision period and now, 13 years after the creation of this designation which permits a maximum ten-year supervision order, this concern has come to the forefront. While some described the peace bond provisions of the *Criminal Code* (s. 810.1 and s. 810.2) as a reasonable option at this point, there appears to be a lack of clarity in what is considered an appropriate post-supervision order plan. With the anticipated influx of LTOs completing their supervision orders in the very near future, efforts clearly need to be made immediately to implement a post-supervision order plan and parole officers need to be specifically trained to effectively deal with this influx.

### ***Topic E Overview***

As mentioned above, the need for greater resources was mentioned by interviewees across stakeholder categories. This was raised in relation to treatment resources, supervision resources, residency resources, and adequate funding for legal representation.

Aside from the need for greater resources, the most prevalent recommendation made under Topic E was for increased continuity in services for LTOs and increased collaboration between the various agencies that deal with LTOs throughout the various stages of the criminal justice process. The issue of continuity in service was emphasized in regards to those instances in which LTOs are housed in a provincial institution as a result of a determinate sentence that is less than two years in length, and also in regards to those instances in which a breach of a LTSO occurs and a provincial sanction is imposed. Owing to barriers that prevent open access to provincial records by federal correctional authorities, LTOs are falling between the cracks when released from custody, at which point the supervision order is to resume. The concern here is heightened when the respective LTO requires residence, which was described by interviewees as limited at the best of times. The anticipated increase in LTOs to soon be released from the determinate portion of their sentences makes this a particularly pertinent issue in need of attention.

The lack of coordination and collaboration is deemed to be the root cause of the prominent theme of criticism, and the overall sense of frustration expressed by interviewees in all stakeholder categories. There appears to be confusion of roles and responsibilities between the various agencies. Inter-agency training sessions and/or seminars are one way to alleviate this confusion. It was mentioned that this inter-agency training ought to be intra-provincial as there are provincial variations in terms of how supervision of these offenders is actually carried out as well as differences in the resources available in each province and each jurisdiction within each province to supervise and manage these offenders.

## Chapter 9.

### Conclusion

Beginning with the History Chapter, this dissertation provides an overview of the evolution of dangerousness legislation in Canada leading to the internationally unique long-term offender designation. This historical overview reveals the roots of preventive detention and discusses the impacts of key government reports and Supreme Court cases that have led to the development of current approaches in dealing with dangerousness. The impact of the *Charter* in considerations of the constitutionality of dangerousness legislation in Canada is also considered here.

Included in the History Chapter is a review of appellate court cases that have been heard in Canada following the Johnson (2003) case. This review reveals that there are several factors that are prominent in the judicial determination of whether there exists a possibility that an offender may reasonably be controlled in the community, including treatability, assessment of risk, the nature and seriousness of the offence, the offender's attitude and willingness to change, and the resources that are realistically available to effectively treat and/or supervise these offenders in the community. These factors are quite consistent with the factors outlined by the National Joint Committee of Senior Criminal Justice Officials (2005).

The parallel theoretical evolution is presented in Chapter 3, where the definition of dangerousness and the role of professionals in designating dangerousness are critically assessed. Included in this theoretical overview is a discussion of the applicability of Petrunik's models outlining differing ways of defining and explaining deviance and dangerousness, including the current community protection model. The policy context in which this community protection model emerged in North America is analysed in Chapter 4. In this chapter, the similarities and the differences in Canadian



and American dangerousness legislation are reviewed, as well as the unintended consequences of policy initiatives that seek to manage and control the risk of dangerous offenders. The analysis here reveals that the overall difference in the Canadian and American strategies under this community protection model is more accurately described as a difference in degree rather than in kind, wherein a macro-level shift has occurred and the status of ownership has transferred to mental health experts as well as legal professionals and rights activists in both countries. The role of mental health experts in particular is clearly revealed in the current analysis, namely in the role that mental health expert assessments play in designation decisions.

In relying on secondary file review data and primary interview data, and triangulating the findings emanating from both data sources, the results of this study suggest that while there have been positive impacts of the long-term offender designation, there is a great need for reform. Key findings of the file review data include the prominence of sexual offences, and primarily sexual assault, among long-term offenders in B.C., and the prevalence of victims that are known to the offender, which is contrary to the stranger danger element that emerges in the literature and that seems to have guided dangerousness legislation in North America. The file review findings also reveal a high proportion of child victims, and an overrepresentation of Aboriginals among long-term offenders.

The analysis of the expert assessments reveals that the PCL-R is the dominant tool relied upon in the court-ordered assessments of long-term offenders, and that the majority of long-term offenders who were assessed with the PCL-R scored in the intermediate range. However, the majority of offenders assessed with the Static-99 and the VRAG were ranked in the high-risk category. Moreover, the overall assessment of these offenders places the majority of them in the high-risk category and in the low treatability category. Despite these latter findings, the lower PCL-R scores appear to have been the key factor leading to a designation as a long-term rather than as a dangerous offender, thus suggesting the continuing dominant role of psychopathy as a determining factor in designating dangerousness. This was later corroborated in the interview data. The overrepresentation of Aboriginals ranked in the psychopathic range raises serious concerns about the role that this diagnostic tool has played in the

determination of dangerousness. The role of ethnic bias in the PCL-R and other tests and tools used in DO and LTO cases ought to be explored in future research.

As a whole, the reliance on these risk assessment tools which produce numerical scores and categorize offenders based on pre-determined risk categories exemplifies the new role for mental health experts discussed in the Theory Chapter. It serves as evidence of the era of actuarial justice that theorists such as Feeley and Simon (1992, 1994), O'Malley (1992) and Rigakos (1999) outline. These risk profiles place offenders into groups with assumed qualities, and the individual offender has been lost in this process. The net-widening that was expressed in the interviews suggests that the long-term offender designation has increased the state's surveillance of this subset of offenders, as Foucault would say. The particularly punitive response to a breach of the LTSO conditions—i.e. the requirement that a breach be considered an indictable offence—further facilitates the surveillance of long-term offenders while in the community.

The interview findings reveal a significant disconnect between the various agencies that are involved with long-term offenders at the various stages of the criminal justice system. It is this disconnect that is believed to be the root cause of the theme of criticism that emerged throughout the interviews. It is strongly recommended that efforts be made to facilitate inter-agency communication and to ensure the continuity of services between the various agencies that play a role in LTO cases in order to ensure that the fundamental goal of public protection is met. The use of intra-provincial inter-agency training is one possible way to bring together the various agencies involved with long-term offenders at the various stages of the system in an effort to ensure there is adequate information sharing and education on the appropriate roles of each of the relevant actors in the system. Shared access to provincial correctional tracking systems was also a suggestion made in order to increase the continuity of services and to ensure these long-term offenders are not falling between the cracks of the provincial and federal systems when a breach occurs.

The interview findings also reveal an overall sense that the use of the designation continues to increase and that this increase and the work associated with

these cases was not anticipated. The ability of those charged with the task of treating and supervising these offenders in the future will largely depend on the resources made available to deal with these increases. As it currently stands, the current level of resources and services for these offenders in the community will not be able to withstand the anticipated influx of cases.

Interviewees certainly expressed differing views with regard to the perceived goals and objectives of the legislation, the perceived targets of the legislation, and the perceived effectiveness of the legislation in achieving these stated goals. Overall, though, it is clear that there is little support that the provisions are currently working as they were intended. Having said that, though, there appeared to be general agreement across stakeholder categories that one of the key benefits of the long-term offender designation is that it provides an alternative to the courts that is less extreme than the dangerous offender designation, while still making provisions for a higher degree of supervision and risk management than a conventional sentence. The task of identifying, classifying and managing these long-term offenders and distinguishing them from those deserving of the more restricting dangerous offender designation and those who only require a conventional sentence reinforces the need to rely on risk tools, and to rely on those experts with the exclusive ability to administer them.

There was a clear concern revealed in the interviews regarding the lack of a post-supervision order plan and concerns around how to deal with those long-term offenders now approaching the end of their supervision period who are still believed to lack the ability to effectively self-manage in the community. Certainly, without the immediate and coordinated implementation of such a post-supervision plan, it will not be possible to meet the intended goal of protecting the public.

The need for increased training and education for various agency members throughout the system to more effectively make designation decisions and to more effectively treat and supervise these offenders was also raised here. The general lack of information made available for judges specifically regarding the details of how supervision is actually carried out highlights the need for such training and education to occur. Without having the necessary information regarding the nature of supervision

and treatment provided to these offenders, there have been challenges and there will continue to be challenges in appropriately accounting for the offender's treatment prospects and supervision needs in designation decisions in these cases.

It was also emphasized that institutional treatment ought to be made mandatory and that long-term offenders ought to earn their release from the determinate portion of their sentences in order to maximize successful community reintegration. Finally, the creation of a set of enforceable long-term supervision order conditions which can stand up in a court of law was strongly suggested as a much needed reform. Future research ought to examine the feasibility of creating such a set of enforceable conditions; it is crucial that the relevant stakeholders, and most importantly the parole officers charged with the task of supervising these offenders, be included in this process.

The inclusion of the voice of stakeholders from a variety of agencies dealing with long-term offenders in the literature has been lacking to date and the suggestions for reform made by the interviewees in the present study shall assist in improving the way in which the system is currently dealing with this unique subset of offenders. Future research examining the application of the long-term offender designation should continue to include the voices of those actually working with long-term offenders on a variety of different levels. This inclusion is indeed one of the main strengths of the current research.

Inclusion of the long-term offender should also be considered in future research. Input from this often forgotten stakeholder may assist in addressing other obstacles that are present in the treatment and supervision of these offenders and that are not experienced by the criminal justice and mental health officials, or even community service providers themselves.

As mentioned, future research ought to also examine the potential ethnic bias in tools such as the PCL-R with respect to Aboriginal offenders in Canada in particular. As reviewed in the Discussion Chapter of the dissertation, the overrepresentation of Aboriginals in the LTO cases included in this analysis and in the proportion of LTOs categorized in the psychopathic range raises serious concerns regarding the role of this

tool in systemically targeting Aboriginal offenders in decisions revolving around dangerousness.

With regard to the secondary data sources relied upon in this study, future research into the long-term offender designation should consider including the transcripts of court hearings rather than the RFJ/RFS in order to gain a more complete and accurate picture of the dynamic of the courtroom in these dangerous offender hearings. As outlined in the Methods Chapter, there are limitations of relying on the RFJ/RFS which may be diminished if court transcripts were included in the analysis.

As mentioned by several of the interviewees included in this research, it is anticipated that the use of the long-term offender designation will only continue to increase. The features of the *Tackling Violent Crime Act* (2008) - namely the presumption of dangerousness and the reverse onus - will certainly contribute to this increase. With these increases will come greater demands on criminal justice and mental health officials to accurately identify those offenders eligible for the long-term offender designation, and to effectively prosecute and defend, assess, designate, treat and supervise these long-term offenders. As this research reveals, though, the agency coordination, training and education, as well as resources needed to satisfy the goal of public protection, and to effectively treat and supervise these offenders, are at best only partially being met, and this most recent crime-control-inspired amendment to the dangerous offender regime in this country offers little to ameliorate the situation. This analysis of the first 10 years since the inception of the designation, albeit with a B.C. focus, should assist in improving the delivery of services to this unique subset of offenders nationwide. With long-term offenders approaching the end of their determinate sentences or the end of their supervision periods at record numbers, this unprecedented stakeholder input is needed now more than ever.

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## **Appendices**

## Appendix A.

### Glossary of Assessment Tests and Tools

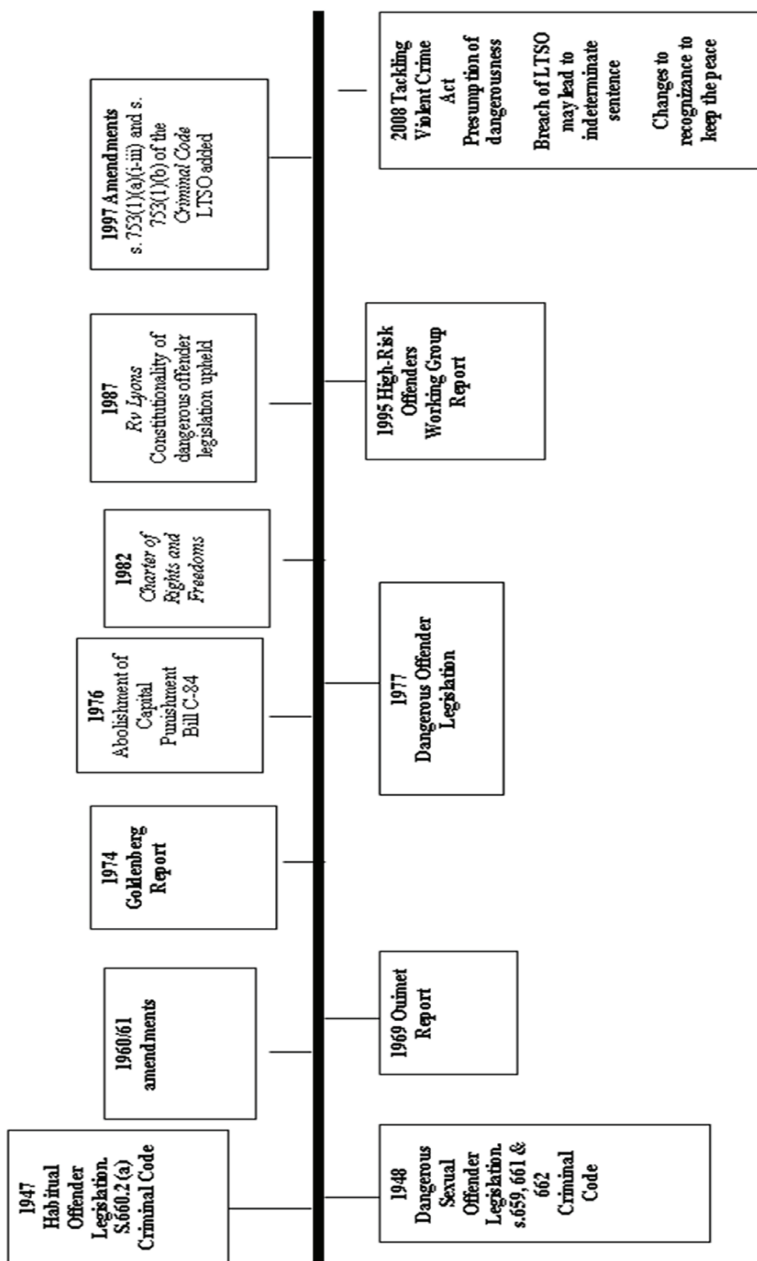
Test/Tool Name	Abbreviated Name	Description
Historical, Clinical, Risk Management-20	HCR-20	A 20-item assessment tool to evaluate for violence. Involves collection of qualitative information to assist in making treatment decisions. The HCR-20 consists of three main areas: historical, clinical and risk management (Webster, Douglas, Eaves, & Hart, 1997).
Millon Clinical Multiaxial Inventory-2	MCMI-2	Instrument that is designed as a clinical measure to assist with psychiatric screening and with clinical diagnosis. It provides a measure of 22 personality disorders and clinical syndromes and is designed specifically to help assess both Axis I and Axis II disorders (Millon Clinical Multiaxial Inventory—II[n.d.]).
Millon Clinical Multiaxial Inventory-3	MCMI-3	This third revision adds the Grossman Facet Scales to the basic personality scales of the instrument. These Grossman Facet Scales are therapy-guiding facet subscales (Millon, Davis, Millon & Grossman, 2009).
Minnesota Multiphasic Personality Inventory	MMPI-2	A 567-item psychometric test for measuring adult psychopathology in mental health, medical and employment settings. It has validity scales as well as many clinical scales assessing mental health problems, personality characteristics and general personality traits (Drayton, 2009).
Personality Assessment Inventory	PAI	A 344-item instrument that provides information relevant for clinical diagnosis, treatment planning and screening for psychopathology. It covers constructs most relevant to a broad-based assessment of mental disorders (Morey, 1991).
Psychopathy Checklist - Revised	PCL-R	A diagnostic, 20-item rating scale which is scored on the basis of both semi-structured interview and collateral information. While it has been designed to identify and measure psychopathy, it has become commonly used to assess future violent recidivism (Hare, 2003).
Risk of Sexual Violence Protocol	RSVP	A set of professional guidelines for the assessment of risk of sexual violence among males over the age of 18 with a known or suspected history of sexual violence. It identifies static and dynamic risk factors, and is based on a rejection of actuarial approaches to the assessment of risk and sexual violence (Hart, Kropp, Laws, Klaver, Logan, & Watt, 2003).
Spousal Assault Risk Assessment Guide	SARA	Tool consisting of a 20-item checklist covering criminal history, psychological functioning and current social adjustment designed to assess the risk of future of abuse in adult male offenders. The evaluators' professional judgment is part of the assessment (Kropp, Hart, Webster, & Eaves, 1995).
Sex Offender Need Assessment Rating	SONAR	A 9-item scale designed to measure change in risk level for sexual offenders. It includes 5 stable factors and 4 acute factors (Hanson & Harris, 1999).



Test/Tool Name	Abbreviated Name	Description
Sex Offender Risk Appraisal Guide	SORAG	A 14-item instrument used to assess the risk of violent and sexual recidivism of previously convicted sex offenders within a specific period of release (Quinsey, Harris, Rice & Cormier, 1998).
Static-99	Static-99	A 10-item actuarial assessment instrument for use with adult male sex offenders who are at least 18 years of age at time of release into the community. It provides probability estimates of violent and sexual reconviction by relying on static risk factors (Harris, Phenix, Hanson, & Thornton, 2003).
Sexual Violence Risk-20	SVR-20	A 20-item guide for assessing violence risk in sex offenders. Mainly used in assisting to structure clinical assessments (Boer, Hart, Kropp, & Webster, 1997).
Violence Prediction Scheme	VPS	A scheme designed for the assessment of dangerousness by utilising the 12 items of the VRAG to produce an actuarial score, combined with structured assessment of ten, largely dynamic, items (Webster, Harris, Rice, Cormier, & Quinsey, 1994).
Violence Risk Assessment Guide	VRAG	A 12-item actuarial scale that is used to predict risk of violence within a specific time frame following release in violent, mentally disordered offenders (Quinsey, Rice, Harris, & Cormier, 1998).

Appendix B.

Chronology of Dangerousness Legislation in Canada: 1947-2008



## **Appendix C.**

### **Findings: The Stakeholder Interviews**

As mentioned in Chapter 7, the expanded version of the stakeholder interviewee responses including more specific reference to individual interviewee responses for Topics B-E are provided here. Again, these topical categories were: interviewee perceptions of the LTO provisions; interviewee perceptions of the characteristics of LTOs; interviewee experiences and perceptions of LTOs in the system; and the future of dealing with LTOs. For the sake of convenience, the summary tables of findings provided after the discussion of each theme in Chapter 7 are replicated here.

#### **Topic B: Interviewee Perceptions of LTO Provisions**

Topic B included questions on the interviewees' perceptions of the objectives and goals of the legislation, the advantages and limitations of the provisions, as well as questions on any perceived changes in the use of the LTO designation since its inception in 1997. There were notable differences within - and across - stakeholder categories. Depending on the extent of each interviewee's experiences with LTOs and the provisions themselves, the responses varied in content and detail.

#### ***Legal***

As mentioned in Topic A, one of the Legal stakeholder category interviewees (LL) was involved in the development and passage of the LTO provisions in the mid-1990s, and has had an ongoing role since that time. This interviewee provided a great deal of detail in relation to the perceived objectives of the provisions and whether or not they have been effective in achieving these objectives. LL indicated that there was an American influence in the development of this designation; this interviewee also discussed the heightened public and political concern at the time, much of which was driven by highly publicized cases. There were several legislative options that were created and considered, including post-sentence detention and also the LTO provisions. The primary concern with the former, in LL's view, revolved around the *Charter* rights of

the offender: the belief was that detaining an offender after the completion of their sentence would likely not survive a constitutional challenge.

LL emphasized that the objective of the creation of the LTO designation was to create legislation that specifically targets sex offenders and that creates an option for the courts in the case that there is believed to be potential for the offender to re-offend. LL emphasized that the intention was to focus on sex offenders, although the wording of the provisions in the *Criminal Code* is not too clear on that point. LL noted that the direction that the courts have taken with this designation was not anticipated; applying the designation to non-sex offenders was not at all envisioned by the creators, according to LL, and the pattern of offending of non-sex offenders is so different from what the research reveals about the pattern of sex offending, making the designation inappropriate for the former. Furthermore, LL stated that it was not the intention of the creators of the legislation that offenders receiving this designation be given credit for time served and, therefore, receive a determinate sentence that is shorter than 2 years. Nor did the creators of the legislation anticipate the prevalence of the 10-year supervision order length. In LL's view, an unnecessarily long supervision period can in fact be counterproductive.

Overall, then, LL stated that there is no evidence to suggest the provisions have been effective in achieving the objectives of the legislation. In this interviewee's own words, the LTO provisions are being "distorted by virtue of sentence length and by virtue of offence." LL went so far as to say that the LTO designation is a "crime creator" in the sense of breaches. In LL's view, the intention of the legislation itself was clear, but this intention was lost in the wording of the actual provisions, and has been further lost by the courts' interpretation of the provisions. LL stated that the legislation fails to define the exact nature of supervision and community management, and judges often impose the LTO designation with the belief that supervision does indeed exist. LL went on to state that "[I]t has turned into the worst nightmare: a version of federal probation." Despite consideration made to re-vamp the language in the *Code*, according to LL, "things had gone too far to persuade anyone to come back."

As mentioned, there were four judges who participated in this research: one from the provincial appellate court, one from the provincial court, and two from the B.C. Supreme Court. The responses from the first two interviewees differed in the level of detail; in fact, LJ1 opted to not respond to many questions pertaining to interviewee perceptions, and LJ2 admitted to having no experience presiding as a judge in a DO or LTO case. It is for these reasons that the responses from these two interviewees were limited. The responses from LJ3 and LJ4, on the other hand, were much more detailed.

When asked about the objectives of the legislation, LJ2 described the LTO designation as the Canadian version of the American “three-strikes” legislation. In this interviewee’s view, the purpose of the legislation is to incapacitate recidivists. While the legislation has had some utility, in LJ2’s view, it has not worked to deter recidivists. LJ1 declined to respond here.

Both LJ3 and LJ4 indicated that one of the objectives of the LTO provisions of the *Criminal Code* is public protection; LJ4 went on to indicate that an additional objective is to rehabilitate and reintegrate the offender. While LJ3 does not know whether the provisions have been effective in achieving the objective of public protection, LJ4 noted that the provisions are effective in some cases. This interviewee indicated that, in order to ensure the effectiveness of the provisions to protect society, and rehabilitate and reintegrate the offender, a considerable amount of support and resources are needed. LJ4 expressed doubt that this support is available in all cases and in all jurisdictions.

The 4 Crown counsel who participated in this research differed in their perceptions of the objectives of the LTO provisions of the *Criminal Code*. Two of these interviewees (LCC1 and LCC4) did agree that the legislation targets sex offenders, and more specifically those sex offenders who are deemed to be lower risk or less violent. In LCC1’s view, those who fall under the LTO umbrella are those offenders who are deemed treatable. For the most part, LCC1 stated that the objectives have been achieved; however, this interviewee did state that there was a period during which some offenders who should have been deemed dangerous were instead designated as LTOs, a situation which this interviewee feels has since been rectified.

LCC4 went on to describe the LTO designation as a type of “super probation” that is primarily geared toward pedophiles. The original objective, according to LCC4, was to deal with these sex offenders federally, hence the 2-year minimum determinate sentence length, and to have a middle ground to deal with these non-violent pedophiles who are still prolific in their offending. Overall, this interviewee stated that the provisions have been fairly successful. This effectiveness was measured by the number of offences committed during the supervision period, which this interviewee claimed is relatively low.

The other two Crown counsel (LCC2 & LCC3) described the target of the provisions as the “high-risk offender” (LCC2) and the “less serious of the serious offenders” (LCC3), and they did not specifically mention sex offenders as the exclusive target of the legislation. In LCC2’s view, the purpose has been to maintain contact and supervision of high-risk offenders in the community, and to provide supportive resources, such as residency. According to this interviewee, the fact that parole will help was described as a “bargaining pitch” to convince defence counsel of the appropriateness of the LTO designation. In discussing the perceived objectives of the legislation, LCC3 emphasized public safety and, in this regard, the sentiment is that the provisions have been moderately effective, working better for some offenders than others. In LCC3’s experience, some offenders designated as LTOs should have received the more punitive DO label.

Targeting pedophiles, ensuring public safety and providing supervision in the community to those offenders amenable to supervision were also objectives echoed in the responses of the 4 defence counsel who participated in this research. LDC2a and LDC2b described the legislation as a form of “mega parole.” LDC3 described the LTO designation as a midway point or a compromise between the DO designation and a conventional sentence.

Each of these defence counsel was cautious in his/her evaluation of the effectiveness of the LTO provisions. LDC2a and LC2b noted that the provisions are only as successful as the availability of resources to provide the required services. In LDC3’s view, the legislation has been effective in some cases but not in others. It has at times

been effective in ensuring public safety, but this interviewee argued that the overuse of the legislation, particularly for Aboriginal offenders in Northern and rural communities, and the subjectivity of the assessment of risk are problematic. This interviewee equated assessing risk to judging figure skating.

In LDC1's view, the legislation was initially effective in reaching its objective, but "[T]he intention has long since been lost ... [and this has] turned into a mess." According to LDC1, Crown counsel are now putting forward DO cases in almost every instance, which was not the objective of the legislation. The intention, as articulated by LDC1, was to have Crown counsel choose the most appropriate designation depending on the facts of the case, but now the LTO designation is being used as a default option when the more punitive DO designation application fails. In LDC1's view, the notion of controllability in the community needs to be reinterpreted by the courts. Furthermore, LDC1 described the conditions as ineffective in that they essentially set offenders up for breaches.

Another problem LDC1 mentioned in discussing the ineffectiveness of the legislation revolves around the experts who are providing the assessments. In this interviewee's view, these assessors are "a different breed" and are now unwilling to take the risk and to say that an offender is indeed controllable in the community. According to LDC1, the assessment of risk and the decision to designate an offender as a DO or a LTO should in fact be occurring at the end of the determinate portion of the sentence and not before. This suggestion for reform was discussed further under Topic E where the future of dealing with LTOs was discussed.

When asked what ought to be the goals of the system when dealing with LTOs, LL asserted that the goal ought to be to rehabilitate the predatory sex offender. In this interviewee's view, the designation should be a highly targeted measure, applied sparingly. LL argued that the current application is not in line with this goal. Rather than being applied in a tailored and targeted fashion, "it is being thrown around like chicken soup [with the view that] a little won't hurt." This was described by LL as being a waste of both time and money.

While LJ1 did not speak to perceptions of what ought to be the goals of the system when dealing with LTOs, LJ2 did state that the primary goal ought to be punitive in nature, and the second goal ought to be public protection. According to LJ2, the current application of the provisions is in line with the punitive aspect as it requires offenders to “jump through hoops” and it “scares the offender.” If the offender is not frightened through the process, LJ2 suggested that he or she must be a psychopath and “truly nuts.”

LJ4 also listed public protection as a goal of the system, along with rehabilitation of the offender. In this interviewee’s view, both of these goals are important, and there should be programs and resources in place to ensure both goals are met. According to LJ4, these goals are met in some cases, but not all. This judge stated that it would be helpful to learn more about the long-term outcomes of these cases to see if indeed the system is working effectively to deal with these offenders.

LJ3 was much more brief in responding to this question about what ought to be the goals of the system. In this interviewee’s view, the goal ought to be to apply the *Criminal Code* and, once that is done, the goal ought to be simply to assess the offender’s potential for recidivism. This interviewee indicated that he or she was not aware of how effective the provisions are in achieving these goals, but noted that breaches of LTSOs are rare.

The Crown counsel interviewees offered many goals, including public safety, treatment, management of risk and providing stability as well as effective and efficient housing for these offenders. The goals of public safety and efficient and effective housing listed by LCC3, in this interviewee’s perspective, are not being met. Both LCC1 and LCC2 referred to a lack of resources as the reason why treatment goals and management of risk and providing stability are not currently being achieved. LCC4 was more optimistic in this regard; this interviewee suggested that while the initial application of the provisions was not in line with the goal of treatment, the situation is improving.

Defence counsel interviewees also mentioned rehabilitation as well as the protection of society when asked what ought to be the goals of the system. While LDC1 described the legislation as effective in protecting society, both this interviewee and



LDC3 argued that the goal of treating these offenders is not being met. LDC3 noted that these offenders are often at the bottom of the priority list for treatment and that the recommendations made in court for treatment are unfortunately often ignored by the CSC. Finally, LDC2a and LDC2b were reluctant to speak to whether their stated goal of protecting the public is being met without examining the recidivism data.

When asked whether there have been advantages to the LTO provisions, LL noted that if it is indeed the case that the LTO option is being considered for those offenders who are “not the worst of the worst,” then this is in and of itself a strength of the legislation. LL’s concern, however, is that too many offenders are being “scooped up” by the more onerous and punitive DO designation, which was not the purpose of the legislation.

It is the implementation of the LTO legislation that is seen by LL as the principal disadvantage. The fact that this designation is not being used for a specific targeted group of sex offenders is in direct conflict with the intentions of the creators of the legislation, in LL’s view. LL went so far as to say that it would be ideal to abolish the designation altogether as “it has been expanded in a direction that is not workable.”

LJ2 offered a rather cynical response to the interview question on the perceived advantages and limitations of the LTO provisions. While this interviewee stated that perhaps the designation does remove some high-risk offenders from the public, more than anything, it “makes for good PR [public relations].” The main limitation, in LJ2’s view, is that the designation decision rests too heavily on the persuasiveness of the expert providing the assessment and “how good of a salesman he is.” LJ2 noted that the assessor does not always have the answers, but also admitted that judges may not have the answers either.

LJ3 stated that one of the key advantages of the LTO provisions is that they serve as a middle ground between the indeterminate sentencing option under the DO designation and a determinate or conventional sentence. LJ3 went on to describe the LTO designation as a form of “super probation.” In theory, this interviewee stated that this is a positive option, although was unsure whether it is an effective option in practice.

LJ4 listed the ability to exert control over the offender for a longer period - and to thus protect society for this longer period - as one of the key advantages of the provisions, along with the potential it provides for treatment.

The Crown counsel, who participated in this research, listed various advantages to the LTO provisions. Included here was the higher level of supervision and stability it provides for offenders. Overall, it was described as a good option as not all offenders need to be incarcerated indeterminately. LCC4 also noted that the LTO designation is a “useful negotiation point” and it serves as a suitable middle ground that assists in resolving cases.

When asked about the limitations of the provisions, high cost and lack of treatment resources were listed by the Crown counsel interviewees, along with difficulty in managing and supervising these often manipulative and needy offenders. According to LCC4, the main limitation is that the supervision period of 10 years is not long enough, especially in cases when the offender designated as a LTO is quite young and would still be at the peak of their offending career upon completion of the supervision period. This interviewee noted that, in some cases, “it is clear that the offender is a lifelong pedophile” and it is worrisome that the LTO designation is sometimes applied in such instances.

The defence counsel interviewees also stated that the designation provides an alternative to the DO designation as advantageous. In LDC3’s own words, in some cases, the DO designation “is like using a warhead to do what a hammer could do.” LDC1 went so far as to suggest that the LTO designation be provided as an option for all indictable offences. Other advantages mentioned by these defence counsel interviewees included the fact that it allows for a graduated return to the community and it provides services in the community to these offenders who are in need of stability and treatment.

Some defence counsel interviewees listed the lack of community treatment resources as one of the main limitations of the provisions. LDC3 voiced a specific concern about the location of some of the residency facilities for these offenders, suggesting that these locations are not always conducive to rehabilitation and

reintegration. As this interviewee stated, “[W]hat do you *think* will happen in a Downtown Eastside halfway house?” LDC3 went on to express limited confidence in how these offenders are actually being dealt with in the community. Other limitations mentioned included the broad nature of the wording of the provisions, which - in theory - allows for the application of the designation to offenders who have only two sex offence convictions. LDC1 noted that the misinterpretation of the courts in this regard is particularly problematic. This concern was echoed by LDC2a and LDC2b, who described these cases as particularly labour-intensive, even more so than first-degree murder cases. The discretion of Crown counsel to put forth a DO or LTO application and the regional variation in this regard was also described as a limitation, along with the power held by correctional officials to “arbitrarily suspend” LTOs during the supervision period.

Finally, interviewees were asked whether they have seen an increase, decrease or any change in the use of the provisions since their enactment in 1997. Almost all of the Legal stakeholder category interviewees noted that there has indeed been an increase, although there is some variation in the responses both within - and across - the Legal stakeholder sub-categories in this regard.

LL did report that there has been an increase, and this increase was described as being in part a consequence of the federal government’s law-and-order agenda, along with the media’s portrayal of and emphasis on the worst cases, despite their rarity. LCC3 and LCC4 also noted that there has been an increase, although LCC3 did admit to not being certain whether the actual number of LTO applications has increased as the majority of the applications are for the DO designation “[U]nless it is really clear that the person is a LTO.” Characteristics that were listed as being considered by this Crown counsel in making this application decision included the recommendations made by the expert, the age of the offender and the seriousness of the offence.

LDC3 and LDC2 also reported an increase. LDC3 voiced concern that Crown counsel are applying for the more punitive DO designation knowing that the judge will see the LTO designation as a compromise. LDC2 voiced similar concerns and stated

that the political climate and the designation, which is seen as the “flavour of the month,” influence defence counsel decisions to advise their clients to render a plea.

Each of the judges, on the other hand, reported that there has not been much of a change in the use of the provisions. LJ1 noted that the majority of cases heard in the provincial appellate court proceed as appeals of DO designations seeking to have the designation reduced to that of LTO. According to LCC2, appropriate cases have always been flagged.

Finally, LCC1 and LDC1 offered different responses with regard to the use of the provisions since 1997. According to LCC1, there was an initial influx of LTO cases but, in recent years, this has rectified itself. LDC1 also suggested that the use of the DO designation has increased relative to the LTO designation, although this interviewee suggested that, rather than “evening out,” as suggested by LCC1, the use of the DO designation has in fact surpassed the use of the LTO designation. LDC1 described this as extremely problematic as there will never be solid evidence that an offender can indeed reasonably be controlled in the community. Without being given a chance, according to LDC1, such a conclusion could never realistically be made.

### ***Mental Health***

With respect to the interviewee perceptions on the objectives of the legislation, three of the Mental Health stakeholder interviewees (MHT, MHAPP and MHAP2) listed long-term risk management in the community as one of the key objectives of the legislation. According to MHT, DOs and LTOs are distinct in terms of risk manageability in the community and the LTO provisions do, in theory, allow for a longer and more gradual period of reintegration. In addition to allowing for management in the community, MHAPP stated that the legislation sets out to balance the rights of the offender and the rights of the public, as well as to protect the public.

Both MHAP1 and MHAP3 were reluctant to speak at length about the objectives of the legislation. In their view, the objectives of the legislation ought not to be their concern. MHAP1 stated that, “[W]hether it fits with principles of sentencing is someone else’s issue ... [and it is] not my business.” The assessor’s role, according to MHAP1, is

to provide a clinical opinion which includes a time frame and treatment resources. Having said that, however, both MHAP1 and MHAP2 stated that the LTO designation provides another alternative to the DO designation, thus allowing what MHAP1 describes as a “better fit to the situation.” MHAP4 also mentioned that the LTO designation provides yet another option for the courts, although MHAP4 went one step further in stating that the objective of the legislation was in fact to “widen the net” and to “give judges an ‘out’”.

With respect to the effectiveness of the provisions, in MHAP1’s experience, the designation has indeed effectively allowed for a more appropriate tailoring of sentences to meet the risks and needs of the offender. MHAP4 agreed that the provisions have been effective in achieving the objectives, although recall that MHAP4’s perception of the objectives is slightly different than MHAP1’s perception: what MHAP1 calls “tailoring of sentences,” MHAP4 calls “net widening.” This net widening was described as a positive change; in MHAP4’s words, the process of deeming an offender a LTO is more well-defined, thus appropriately widening the scope to include offenders who may not have previously been considered high-risk.

MHAPP and MHAP2 were less optimistic, though. According to MHAPP, some criminal justice officials are not privy to information pertaining to the specifics of how supervision is actually carried out and parole officers are not supervising LTOs any differently than other parolees. In MHAPP’s view, this defeats the purpose of having a different designation in the first place. While MHAPP discussed the role of judges and parole officers in this regard, MHAP2 discussed the role of the Parole Board. In fact, MHAP2 specifically stated the Parole Board has “gutted the purpose” of the LTO provisions. MHAP2 went on to state that the Parole Board has not met the residency needs of these offenders, and that the underlying problem is that the task of dealing with this particular subset of offenders is divided among various levels of government, all of which have differing mandates and resources.

If effectiveness may be measured in terms of re-offence rates, MHAP2, MHAP3 and MHT stated that it is far too early to comment on these outcomes as there is a lack of data in this regard. MHAP3 went on to state that, as an assessor, the outcome of

cases is rarely known, and that knowing the outcome of a case would not be helpful for assessment purposes. This relates to MHAP1 and MHAP3's opinions expressed earlier regarding the exclusive role of assessors in providing a clinical opinion. Finally, with respect to MHT's view of the objective of providing management in the community over the long-term, this interviewee noted that, while facilitated risk management is beneficial and is occurring in some cases, receiving the adequate resources to achieve this objective in all cases is a challenge. This resourcing issue was discussed further later in the interview.

When asked what ought to be the goals of the system when dealing with LTOs, the responses varied, but all Mental Health stakeholder interviewees included treatment and rehabilitation in their responses. What varied primarily is whether or not treatment was accompanied by another goal. For example, while MHAP4 exclusively listed treatment and rehabilitation when asked what ought to be the goals of the system, making no distinction between the goals of the system for LTOs and all other types of offenders, MHT and MHAP1 both indicated that the goal ought to be to simultaneously balance treatment and rehabilitation with public safety as well as offenders' rights. MHT went on to describe American sex offender policies to highlight the dangers of trying to appease the public and alleviate fear which, in MHT's view, only leads to the development of draconian and counterproductive policies.

While MHAPP listed public protection as well, this goal was described as being more important than rehabilitation. In fact, both MHAPP and MHAP2 noted the importance of treatment, but they both indicated that effective supervision is the key to having any chance of effectively rehabilitating and reintegrating LTOs. MHAP2 went on to describe the need for graduated supervision throughout the LTSO, in an effort to make this transition as smooth and effective as possible. MHAP2 voiced great concern with the treatment programs that are currently in effect, stating that not only is there a lack of robust research on treatment effectiveness, but also that the qualifications of those professionals providing the treatment vary tremendously.

Finally, while also listing treatment as a goal, MHAP3 made a clear distinction between criminal justice and mental health goals. According to MHAP3, criminal justice

agencies ought to select more carefully which offenders require assessment and they ought to be more efficient in collecting the appropriate collateral information for these assessments. MHAP3 went on to state that the criminal justice system ought to ensure “timely and well-orchestrated court hearings” as well as appropriate supervision upon release. With respect to mental health goals, MHAP3 admitted knowing little about what is actually working in terms of correctional treatment programs, but did state that evidence-based research ought to be taken into consideration when deciding which treatment options to rely on.

When asked whether these aforementioned goals of the system are being met by the current application of the LTO provisions, the responses varied as much as the stated goals. While MHAP2 stated that treatment and effective graduated supervision are goals that are not being met by the current application, the other Mental Health stakeholder category interviewees were more positive in their evaluation. A theme that revealed itself in these responses is the role that limited resources play in the inability of truly achieving these goals. In MHAP1’s words, “[the LTO provisions] create a potential for better outcomes but the implementation falls short mainly because of resource limitations.” Again drawing a comparison between American and Canadian policies, MHT noted that the task of balancing the goals of treatment, public safety and offenders’ rights is being accomplished with greater success in Canada.

When asked to list the advantages and limitations of the LTO provisions, there was greater consensus on the limitations than the advantages. Advantages ranged from the designation serving as a suitable “middle-ground” option for many offenders, at least allowing for the collection of more detailed information on these offenders, which in turn allows for the assessment of risk and the delivery of appropriate treatment. As compared to offenders receiving a conventional sentence, the LTO designation was described as beneficial since it allows for the supervision of these offenders while in the community. On this point of supervision, though, MHAP4’s response was qualified; according to MHAP4, the supervision period should be extended to life-long supervision because “these people do not change.”

The majority of Mental Health interviewee stakeholders listed a lack of resources as the main limitation with the LTO designation, making it difficult, if not impossible for services to be delivered. In addition to a lack of resources, MHAP2 noted that another limitation is the public reluctance to have these offenders in the community. Finally, MHT discussed limitations specific to treatment. Due to credit given for pre-sentence and pre-trial detention, and the fact that no treatment is provided during these detention periods referred to as “dead time,” in MHT’s experience, offenders are sometimes not getting the types of institutional treatment that they require. MHT highlighted the fact that the resources made available to these offenders during the LTSO are sometimes actually maintenance programs, not treatment programs, and as such, they are premised on the fact that the offender has actually already undergone intensive institutional treatment. Furthermore, MHT noted that the community to which the offender is released from prison impacts the ability to manage these offenders due to geographic variations in resource availability. This is a factor that judgments cannot predict with any degree of accuracy, which MHT warned has the unintended impact of leaving some offenders without the resources they desperately need to successfully rehabilitate and reintegrate.

Finally, when asked whether the use of the LTO provisions has changed since the inception of the designation, three Mental Health stakeholder interviewees (MHAPP, MHAP1 & MHAP3) stated that they are not certain what the trend has been, and they state that the numbers, in their perception, have remained relatively low over the years.

MHAP2 also responded with some uncertainty regarding whether there has been a clear change in the prevalence of cases, but MHAP2 did speak to a change in the nature of cases leading to an application. In MHAP2’s experience, offenders now facing a DO or a LTO application have less severe crime histories than they used to, and they are also on average much younger than their predecessors. According to this interviewee, once an application is brought forward, the process has been triggered, and the likelihood that the judge imposes a conventional sentence is very low. MHAP4 agreed that applications are now being brought forward by Crown counsel that would not have been brought forward in the past.



Finally, MHT noted that there has been a clear increase in the number of LTOs in the community. According to MHT, the number of LTOs approaching the end of the determinate portion of their sentences is on the rise, meaning that the need for community resources to effectively manage and supervise these offenders will only continue to increase. MHT voiced concern regarding the impact that this future influx of offenders in the community will have on the already strained volunteer and residency resources. This interviewee warned that, if there are not enough resources to allow for escorts for those higher risk offenders who do indeed require the services of an escort when leaving halfway houses, the resulting frustration may have the unintended impact of increasing the risk posed by those high-risk offenders during the period of long-term supervision.

### ***Supervision/Enforcement***

The three interviewees in the Supervision/Enforcement stakeholder category, who are policing- or enforcement-oriented in their roles relative to LTOs, both described the objective of the LTO provisions of the *Criminal Code* as providing an alternative to the DO designation. They described the designation as a “middle ground” for the courts and a “second chance” for the offender; SEP2a went on to describe the LTO designation as “the poor man’s DO [DO designation].” These interviewees also noted that the designation provides an opportunity to manage these offenders in the community and to protect the public in doing so. Finally, SEP2a and SEP2b described the legislation as a form of “federal probation with more teeth.” SEP1 echoed this sentiment, stating that enforcement agencies desperately needed the authority to deal with these offenders in a way that protects the public, and according to this interviewee, this legislation has been effective in achieving this goal. SEP1 did suggest, though, that the legislation be updated to include a contingency plan for when LTOs reach the end of the supervision order, such as the option to extend the supervision order in the case of repeat breaches, without having to go to court. SEP2a and SEP2b, on the other hand, maintained that it is too early to tell whether the legislation has been effective in achieving these goals, but so far, they have not witnessed high re-offence rates amongst these offenders.

The supervision-oriented interviewees in this stakeholder category (SES1-SES7) were also in consensus that the objective of the legislation has been to provide an alternative to the more restrictive DO designation, and also to provide a middle ground between the latter and a conventional sentence. Two of these interviewees described the provisions as effective in achieving these goals. More specifically, SES7 referred to relatively low re-offence rates during the supervision order to support this position. Two interviewees (SES3 & SES4) rated the provisions as somewhat effective, noting that the provisions do allow for much-needed supervision and reintegration, but they do highlight some limitations that make the effective management of these offenders difficult. SES1 did not know whether the provisions have been effective; in this interviewee's experience, all the agencies involved with LTOs "are on a different page," thus complicating the task of providing effective supervision. Finally, SES2 stated that the provisions have not been effective in terms of how these offenders are managed. In this interviewee's opinion, the creators of the legislation could not have anticipated how difficult it is to manage these offenders in the community and how difficult it is to motivate them to seek treatment during their incarceration. SES2 emphasized that, while "DOs must earn their way out of jail," LTOs lack such an incentive. SES2 also noted that the way in which supervision-order conditions are worded makes them far too difficult to enforce, which in turn reduces the effectiveness of the legislation.

SES5 placed specific emphasis on the objective of safely managing these offenders in the community and hopefully, in turn, making the community a safer place. This interviewee also suggested that the political agenda has been to make the community feel as though as much as possible is being done to protect it. In SES5's view, the objective of making the community feel safer has not been achieved, but the provisions have effectively allowed correctional authorities to interrupt an offender's crime cycle prior to the commission of another offence.

When asked what ought to be the goals of the system in dealing with LTOs, 6 of the 10 Supervision/Enforcement stakeholder category interviewees agreed that public safety is the most important goal. These 6 interviewees listed rehabilitation and reintegration as the second priority. When asked whether the current application of the LTO provisions have been in line with these goals, one interviewee (SES6) stated that it

has been in line with the goals, one interviewee (SES5) stated that it has not been in line with the goals, and the remaining 4 interviewees were more cautious in their responses here, noting that while there are some successful cases, there is much room for improvement.

The remaining 4 of the 10 Supervision/Enforcement stakeholder category interviewees provided varying responses with respect to what ought to be the goals of the system when dealing with these offenders. For example, while SES2 emphasized the need for treatment, SEP2a, SEP2b and SES4 all mentioned the need to provide these offenders with a structured environment with the necessary supports in place. While SEP2a and SEP2b believed that structure is being provided for these offenders, each of these four remaining interviewees was guarded in their evaluation of the current application of these provisions. SEP2a and SEP2b highlighted the lack of sentencing guidelines and case law in the case of breaches as particularly problematic. SES2 again emphasized the need for earned release, which in this interviewee's view would ensure that these offenders are motivated to take part in institutional treatment rather than simply waiting for their warrant expiry dates. The presence of such an incentive would better serve the goal of treating these offenders, which this interviewee listed in the highest priority.

Overall, the policing-oriented interviewees in this stakeholder category stated that the LTO designation does increase public safety. According to SEP1, SEP2a and SEP2b, the designation provides an avenue to supervise these offenders and monitor their behaviours closely, which in turn reduces their chances of reoffending. All three of the policing-oriented interviewees described the designation as an advantage over simply having the DO designation and a conventional sentence as the former is too difficult to achieve in court. As SEP2a stated, “[N]ot everyone can be a DO, [and the LTO designation] is an advantage over WED [warrant expiry date].”

While SEP2a and SEP2b acknowledged that not all high-risk offenders can be designated as a DO, they described this reality is a limitation, namely because of their concern over what will happen to these offenders at the end of the LTSO. SEP1 also described the process of breaching an offender as unduly cumbersome, with time limits

that are often difficult to meet, thus resulting in offenders being released prior to officials having the opportunity to proceed with charges when appropriate. The rules of evidence involved when these offenders breach were described as complicating the process; to address this problem, SEP1 suggested giving judges the ability to extend the LTSO without such legal obstacles. Lack of resources was also listed as a limitation.

The majority of the supervision-oriented stakeholders mentioned the fact that the LTO designation allows for supervision in the community as the key advantage of this option. The community support and structure was described as integral to successful reintegration, along with access to treatment programs and resources. The majority of LTOs, as noted by SES6, do in fact do very well under supervision. SES5 also noted that the ability to interrupt an offender's crime cycle over a long period of time will prove to have benefits over the long-term.

These supervision-oriented interviewees listed numerous limitations with the LTO provisions. The majority of these limitations revolved around the difficulty in supervising these particularly high-needs offenders and the problems posed by the wording of conditions in LTSOs. As SES7 claimed, the burden of proof for proceeding on breach charges is different than it is for regular parolees; for LTOs, the requirement of going to court on each and every breach rather than to the Parole Board (as in the case of parolees) adds a complex dimension to the supervision of these already difficult-to-manage offenders. In SES5's experience, both the CSC and the NPB do not understand the rules of evidence in the courtroom, and so the conditions that are imposed by the Board are far too general to meet rigid court requirements. In this interviewee's view, these conditions are written to meet the burden of proof in civil court, which is a balance of probabilities, and not the burden of proof in criminal court, which is beyond a reasonable doubt. These conditions, according to SES5, are written more "for a quasi-criminal process." This interviewee would prefer the courts to impose the conditions to ensure that they would indeed stand up in court. This and other related recommendations for reform suggested by SES5 were discussed further in Topic E.

SES5 also noted that there is a lack of understanding on behalf of both the policing agencies and Crown counsel about their roles and responsibilities when dealing

with LTOs. SES2 once again emphasized the problem that these offenders are not motivated to seek institutional treatment as their determinate sentence length is pre-determined; therefore, there is a lack of incentive to rehabilitate. According to SES2, this makes it particularly difficult to enforce treatment conditions when the community-based maintenance programs are premised on the offender having received institutional treatment.

Finally, the supervision-oriented interviewees in this stakeholder category voiced concern about what will happen with these offenders after the LTSO. While SES2 acknowledged that this is a concern for all parolees, this is even more concerning when dealing with LTOs.

With regards to any perceived changes in the use of the LTO designation since its inception in 1997, SEP1 stated that the use has been quite stable, while both SEP2a and SEP2b have witnessed increases. Both of these interviewees also anticipated continued increases. They went on to describe the LTO designation “as an out for [judges] to give.”

Each of the supervision-oriented interviewees in this stakeholder category noted that there has been an increase of LTOs. This increase was described as an “exponential growth” and there is much anxiety expressed by these officials who are the front-line workers charged with the task of supervising these offenders. In SES4’s words, they are “waiting for the big wave” and there was expressed concern about the availability of resources to deal with this anticipated surge.

### ***Community Service***

With respect to the interviewee perceptions of the objectives of the legislation, two of the Community Service stakeholder interviewees (CS1 and CS3) described the provisions as an alternative to the DO designation. CS1 stated that “[I]f they cannot make a DO stick, they use a LTO.” CS1 was particularly critical of the provisions; in fact, CS1 stated that these offenders “are set up not to make it” and described the powers of correctional authorities as being too broad under these provisions, which is seen as detrimental to the offender’s efforts to reform. This interviewee stated that parole

officers often refer to “deteriorating attitude” as a reason for bringing an offender back to prison, and described this decision as being far too arbitrary and subjective. CS1 went so far as to warn LTOs “not to even blow their noses the wrong way” while serving the supervision order so as to avoid being arbitrarily breached. While less critical of the provisions, CS3 stated that the purpose of this alternative is to have an option that is less expensive and time-consuming than the DO designation; this same interviewee described the LTO designation as an attempt to “alleviate concerns around high-risk offenders without locking into the dangerous offender [DO designation].”

With respect to the effectiveness of the provisions in reaching these objectives, both CS1 and CS3 stated that the provisions have been effective in expanding the mechanisms of control from the prison into the community. CS1 equated the LTO provisions with giving a sex offender a life sentence. Again, CS3 was somewhat less critical than CS1 here, stating that the provisions have been partially effective in allowing people to live in the community while maintaining supervision. However, CS3 did warn that the restrictions on movement under the LTO supervision order are greater than when the offender is in prison, and that this “has had deleterious effects” and has amounted to “taking up dead space in halfway houses.” CS3 went on to argue that suspensions are given in a way that is not in “the spirit of the legislation” and that these frequent suspensions result in what CS3 terms an “eternal parole—an eternal supervision” which was not envisioned. In CS3’s view, this effectively extends a “10-year supervision order...into 15 years or more.” What was also not envisioned, according to CS3, is the extreme need for residential beds for these offenders. CS3 equated the situation to nursing care and states that, since LTOs are consistently in halfway houses for longer periods of time than other parolees, the impact that the residential needs of the LTO have had on already limited community bed resources for “regular parolees” has been significant.

CS2 described the objectives of the legislation as being more in tune with the research on recidivism patterns of sex offenders. CS2 stated that the legislation appropriately recognizes that sex offenders do well under supervision and that the legislation “was meant to be proportionate to the offence.” While CS2 stated that perhaps the prevalence of the LTO length of 10 years is not in line with the intent of the

legislation, and that perhaps this is not an effective use of tax dollars, this interviewee stated that this is not necessarily a negative outcome. With regards to effectiveness, CS2 stated that the legislation has been effective in placing offenders under supervision for a longer period of time, but is uncertain of whether recidivism has decreased. Having said that, though, CS2 did note that the “gut feeling” is that the LTO provisions are probably working, and that “presumably, services are being offered during supervision.”

Due to a lack of experience with LTOs to this point, CS4 was unable to speak to the objectives of the legislation and whether the provisions have been effective in meeting these objectives. In fact, the input provided by CS4 was limited throughout the interview due to a lack of experience with LTOs at the time of the interview, and responses provided by CS4 are included here where available.

When asked about what ought to be the goals of the system, two of the interviewees (CS3 and CS4) stated that the first priority ought to be safety or the protection of society. These same two interviewees listed community reintegration as the second most important goal of the system, and resources/support for long-term care and the reduction of risk as the third most important goal of the system. While CS4 listed these three goals as being in more of a clear hierarchy of priority, CS3 described these goals as being more complementary and “more or less at the same level of priority.” CS3 went on to emphasize that these offenders are in dire need of socialization, which is described as an integral component to successful reintegration.

Again, owing to CS4’s lack of experience with LTOs directly, no comment was made here regarding whether the current application of the provisions is in line with these goals. CS4 did state, though, that those LTOs who have received support from CS4’s organization have not reoffended. CS3, on the other hand, stated that the current application is not in line with these identified goals; according to CS3, the system “is too heavily weighted in security and control.”

While CS3 and CS4 listed support as the third goal, CS2 stated that providing support to these offenders ought to be the primary goal of the system when dealing with LTOs. CS2 also stated that holding these offenders accountable is equally important. Establishing the risks posed by the offender and the needs of the offender was listed as

the second goal; according to CS2, “offenders should be the target of LTSOs until those needs are no longer there.” CS2 stated that the current application of the provisions is “more or less” in line with these goals.

CS1’s views with regard to the goals of the system were unique as compared to the other interviewees in this stakeholder category. CS1 went as far as to state that the LTSO should not even exist and that those offenders labelled as LTOs ought to be paroled in the usual manner. Having said that, though, CS1 did state that those offenders who are designated as LTOs do have access to greater services and resources than those offenders who are simply released with no form of supervision following the warrant expiry date, but still more could be done for these offenders. CS1 quoted low recidivism rates among sex offenders and blamed the “anti-sex offender climate” for the relatively poor treatment that these offenders receive as compared to arguably more dangerous non-sex offenders. One can glean from this, then, that CS1 prioritizes institutional treatment and protection of society as the ideal goals of the system, which, according to CS1, are not provided by the LTO provisions.

In describing the advantages and limitations of the LTO provisions, the Community Service stakeholder category interviewees did list more limitations overall. CS1 described the LTO provisions as being limited in numerous ways. Owing to the prevalence of mental health problems, CS1 argued that many of the offenders who are designated as LTOs should never have received this designation in the first place; these offenders were described as having “fallen between the cracks” between the mental health and the criminal justice systems. CS1 also argued that the provisions fail to provide clear guidelines to those officials supervising these offenders while in the community and that the ease with which an offender can be breached essentially results in what CS1 called “mind games” being played on these offenders, who are not well prepared for the harsh reality of serving a LTSO. Again, CS1 highlighted the arbitrary nature of parole decision-making with regard to suspending supervision orders and described the root of the problem as the unjust and vague wording of the legislation.

CS3 also listed the subjectivity of parole decision-making and the high level of scrutiny that these offenders are subjected to as limitations. Both CS2 and CS3 noted



the lack of resources as a limitation and CS2 stated that what has essentially occurred is “net-widening but no resource widening.” These same two interviewees also mentioned the stigmatizing effects of being labelled a LTO. CS2 questioned whether the 10-year supervision period is really needed as often as it is being used.

CS2 and CS3 agreed that the key advantage of the provisions is that it provides for a period of supervision during which offenders can be observed and offenders can be reintegrated more gradually into the community in a way that is not allowed under the DO designation. CS2 went on to list housing resources, treatment, public safety and crime prevention as advantages of the provisions, while CS3 noted that the fact that the LTO provisions provide an alternative to the indefinite sentence under the DO designation is itself an advantage.

Standing apart from the other Community Service stakeholder interviewees, CS1 stated that there are no advantages to the LTO provisions. Upon further reflection, CS1 did offer one advantage: the determinate sentence is shorter in length. This, however, does not appear to be consistent with CS1’s perceptions of what ought to be the goals of the system, namely the previously mentioned need for longer determinate sentences to allow for treatment within the institution.

Finally, with respect to perceived changes in the use of the LTO provisions since the inception of the designation in 1997, one interviewee (CS1) described not being sure of the numbers and did not provide a response here, while the remaining three Community Service stakeholder interviewees stated that they have indeed experienced an increase in the need for services for LTOs specifically. CS3 described LTO applications as having become “routine” and an “addendum to expand control in the community.” CS2 described the increased use of the provisions as the result of people being more educated about recidivism patterns and understanding that offenders are “okay so long as they are supervised.” While not yet having had direct experience with LTOs in the community, CS4 did state anticipating a sharp increase in the near future and that there has already been an increased demand to screen prospective LTOs for participation in programs and services provided by CS4’s organization. CS4 admitted

that it remains to be seen what challenges this may pose for agencies providing support services to LTOs in the community.

*Summary:* Table C1 below provides a snapshot of the findings here of the interviewee responses categorized under Topic B. The goal here is to visually display the prominent and general themes that emerged in the responses by stakeholder category. For the sake of clarity, any differences between sub-categories within the broader stakeholder categories (example between Crown counsel, defence counsel, judges and the legislator within the broader Legal stakeholder category) are reported textually above and are not captured in this table.

**Table C1.**

**Replicated:  
Summary of Topic B:  
Interviewee Perceptions of LTO Provisions by Stakeholder Category**

<b>Question Responses</b>	<b>Legal</b>	<b>Mental Health</b>	<b>Supervision/ Enforcement</b>	<b>Community Service</b>
<i>Objectives</i>				
· To target sex offenders	X			
· To provide a sentencing alternative to the courts	X	X	X	X
· To provide long-term community risk management and supervision		X	X	
<i>Goals</i>				
· Rehabilitation/Treatment	X	X	X	X
· Public Safety/Protection	X	X	X	X
· Manage/Reduce risk	X			X
· Effective supervision		X		
· Providing resources and support/stability	X		X	X
· Punishment/Deterrence	X			
· Protection of offender rights		X		
· Reintegration			X	X
<i>Benefits/ Advantages</i>				
· Provides another alternative	X	X	X	X
· Allows for community supervision and services	X	X	X	X

<b>Question Responses</b>	<b>Legal</b>	<b>Mental Health</b>	<b>Supervision/ Enforcement</b>	<b>Community Service</b>
<i>Limitations/ Challenges</i>				
· Lack of resources for effective supervision and treatment	X	X	X	X
· Overuse of designation	X			X
· Over-reliance on experts	X			
· Wording of the provisions/conditions	X		X	X
· Arbitrary powers of various actors	X			X
· No post-supervision order plans			X	
· Burden of proof in breach cases			X	
· Misunderstanding of roles/responsibilities of various actors in the system			X	
· Lack of incentive for offenders to rehabilitate			X	
· Overuse of 10-year supervision order				X
· Offender stigma				X
<i>Changes in Use</i>				
· Increase	X	X	X	X
· Decrease				
· No change	X		X	
· Unknown		X		X

### **Topic C: Interviewee Perceptions of LTO Characteristics**

The first three questions in Topic C of the interview were designed to ascertain the interviewee's perceptions of the characteristics of those offenders declared LTOs relative to those offenders who are declared dangerous and those offenders who receive neither the DO nor the LTO designation, and are instead given a conventional sentence. Interviewees were probed on a range of characteristics, including demographic characteristics, offence history, and mental health. Other questions in Topic C pertained to the treatability and controllability of the offender, as well as offender characteristics that are believed to influence the length of the LTO.

## **Legal**

While many of the Legal stakeholder category interviewees described the characteristics of DOs and those offenders receiving a conventional sentence as being on a continuum, this is not a view shared by all. The views of the various interviewees in each of the sub-categories in the Legal stakeholder group are expressed below.

LL did not describe the characteristics of these three groups of offenders as being on a continuum. According to this interviewee, these offenders are supposed to be different in theory, but the suspicion is that they are not qualitatively different. Rather, LL suggested that the decision to designate as a DO or a LTO, or rather to impose a conventional sentence, has no scientific basis at all. In LL's words, it is usually dependent on "the flavour of the month." This view was echoed in the responses of LDC1 and LCC4. These interviewees stated that there is an artificial line being drawn; LCC4 went so far as to state that it comes down to the "luck of litigation."

While LJ2 agreed that the subjectivity of the presiding judge and the assessing mental health expert influences the process, this interviewee - along with the remaining Legal stakeholder category interviewees - did position these three groups of offenders on a continuum. Overall, DOs were said to be older, to pose a higher risk, to be more likely to recidivate, to be more likely to deny wrongdoing, to have failed at treatment, to be more psychopathic, to have a low IQ, to be less educated, and to have longer criminal histories. Childhood victimization was emphasized by LJ3 and LDC3 as a common theme in these cases. Low socio-economic status was also a common theme in these cases. LTOs were described as being in the middle of the continuum on these characteristics, and those offenders receiving a conventional sentence were described as being at the other extreme, committing offences that differ in nature and severity. LTOs were described as exhibiting some hope for reform. Sexual offending was described as being prominent amongst both DOs and LTOs, and Aboriginals were said to be disproportionately represented in these groups. There was a clear suggestion, though, that while they may be "different in degree rather than in kind," as LDC3 suggested, the distinction between DOs and LTOs is sometimes blurry.

One Crown counsel (LCC4) admitted that often information obtained from the victim or from a person living with the offender assists in the determination of whether the offender does indeed exhibit psychopathic traits, making them eligible for a DO application. While this interviewee admitted that this is not protocol, in their experience, these individuals are often able to “pin down pretty accurately...the offender’s PCL-R score.”

With regards to those characteristics that are key in persuading the judge that an offender is indeed controllable in the community, and therefore suitable for the LTO designation, some of the interviewees listed characteristics of the offender and others list characteristics of the system. Offender characteristics that suggest controllability that were listed included willingness to participate in treatment, low degree of psychopathy, past success in treatment and/or supervision, demonstrated ability to live lawfully, and treatability. The mental health expert’s assessment of risk was also said to be prominent in this decision. Furthermore, the accused’s presentation was described as playing a role, along with expressions of remorse. In LJ1’s view, professionals report that, without the expression of remorse, there is little hope to treat, manage or control the offender.

LDC3 cautioned against relying on a demonstration of remorse in the evaluation of an offender’s controllability in the community. In this interviewee’s experience, if an offender appears to lack remorse, it is often because they have been required to discuss the incident several times and so they naturally become desensitized. In LDC3’s experience, this lack of emotional reaction is often misinterpreted and exaggerated.

While almost all of the Legal stakeholder category interviewees mentioned such individual offender characteristics, the availability of treatment resources was also said to play a role. According to LDC2a and LDC2b, “[I]f you can link availability of treatment to likelihood of success, this leaves no other choice than the LTO designation.”

Finally, LCC3 expressed a more critical perspective on how controllability is decided. In this interviewee’s view, an offender is deemed controllable when the defence counsel and mental health expert are particularly convincing. The offender’s ability to manipulate the assessor and “fake it” was also listed as a factor that plays a role in this evaluation.

When asked about the role of treatability in deciding whether an offender is a LTO or a DO, and why it may be that LTOs deemed to be low on a continuum of treatability are designated as LTOs, 6 of the 13 interviewees in the Legal stakeholder category distinguished treatability from manageability. This distinction was made by Crown counsel, defence counsel, the legislator and two of the judges interviewed. As LL stated, an offender may live in a prosocial way without being “cured of [his] impulses.”

Other factors that were offered to make sense of this finding include the dynamics of the courtroom and the persuasiveness of the defence counsel’s mental health expert. Judicial discretion was also mentioned as a factor, which is related to the extent to which the civil liberties of the offender are considered. According to LDC1, it is the judge’s philosophical approach to the legislation that influences this decision.

When responding to this question, LDC2a and LDC2b voiced great concern about the lack of impartiality on behalf of court-appointed assessors. In their view, these assessors write their reports with the DO designation in mind and in their experience, the requirement of a court-appointed assessor has only complicated the process. LDC3 voiced similar concerns. These defence counsel argued that it is essential to obtain their own mental health expert to provide testimony, but the hours required by these experts often exceeds that which is authorized by the Legal Services Society (hereafter referred to as LSS) . As LDC3 stated, “counsel usually bear the brunt of those extra costs, as counsel must honour their professional and law society obligations to the expert.” Moreover, the funds allotted to defence counsel’s expert testimony and Crown’s expert testimony was reported as unequal, with the former receiving a quarter of the funds from LSS that the latter has access to.

Finally, one judge (LJ3) indicated that simply because an offender is deemed to be low on a continuum of treatability does not mean that they are completely untreatable. In this interviewee’s perspective, the LTO designation by definition requires judges to consider whether some hope exists, and if it does, then this designation is most appropriate.

The last question under this topical category of questions addresses the length of the LTSOs and the prevalence of the 10-year supervision order. The majority of the

Legal stakeholder category interviewees stated that the maximum length allowed is often chosen as these offenders are on the threshold of a DO designation and judges want to err on the side of caution and provide for the longest supervision possible. One judge described the 10-year length as “convenient.” According to LCC4, if the maximum was 15 or 20 years, it is likely that this would be the most prevalent LTSO length imposed. LCC2 suggested that a maximum supervision order period of life would be more appropriate. According to LJ3, if life-long supervision was indeed an option, it is likely that there would be far more LTO designations imposed.

Some interviewees also mentioned the role that the age of the offender plays in this decision. In their view, judges prefer that these offenders are as old as possible upon completion of the supervision order in the hopes that the offender will “burn out” (LJ2).

LL went on to discuss the problems with the reliance on the 10-year supervision order length. In LL’s view, judges lack an understanding of what actually occurs during the supervision order. In this interviewee’s own words, judges have misplaced trust in supervising authorities and in the likelihood that this supervision order length will actually be decreased when and if appropriate.

### ***Mental Health***

Four of the 6 Mental Health stakeholder category interviewees described the characteristics of DOs, LTOs and those offenders receiving a conventional sentence as being on a continuum, with DOs at one extreme, LTOs in the middle, and other offenders at the other extreme. DOs were described as being more psychopathic than LTOs, as committing more serious crimes that cause greater harm to the victims, and as exhibiting a higher degree of risk. In general, these interviewees described LTOs as being more treatable.

These four interviewees also listed other factors that come into play in differentiating between the more serious DO and the less serious LTO. According to MHAP4, willingness to participate in an interview with the assessor plays a major role in this distinction. In MHAP4’s words, “[W]ithout an interview, you are left to the other

characteristics of the offender to bring what you can and cannot say about treatability because there is not a lot of data to go on.” MHAP4 also listed the profile of the crime and the media attention around the incident as a factor that influences the decision, as well as the newly coordinated process of bringing forward an application.

While MHAPP was one of these interviewees who described these offenders as falling on a continuum, this interviewee discussed the role played by psychopathy in the courtroom. MHAPP stated that testimony is complicated when psychopathy is involved and that at times, criminal justice officials have difficulty understanding that “sex offenders can be high risk but low on the PCL-R.” MHAPP went on to state that “an offender can be moderate on the PCL-R but still higher risk because of sexual specialization.”

MHT agreed that those offenders receiving conventional sentences are distinct, but the differences are less clear between LTOs and DOs. MHT highlighted the fact that many LTOs were in fact initially designated as DOs, blurring the distinction even further.

MHAP2’s responses in this regard were markedly different from the other interviewees in this stakeholder category. In MHAP2’s view, the main difference between DOs, LTOs, and those offenders that receive conventional sentences is their lawyers and the judges. This interviewee described cases wherein the offender has committed fewer offences and less serious offences than another offender but the former offender receives the DO designation and the latter is deemed a LTO. In MHAP2’s experience, the non-legal factors that play a role in this decision include race, class, and overall demeanour of the offender. In this interviewee’s experience, Aboriginals are deemed to be more likely to receive the DO designation, and offenders who are “upwardly mobile, with education, white [and] charming” are more likely to receive a conventional sentence.

In determining which characteristics are key in persuading the judge that an offender is indeed controllable in the community and, therefore, suitable for a LTO, some of the interviewees listed characteristics of the offender and others listed characteristics of the system. Offender characteristics that suggest controllability



included expressions of remorse, willingness to participate in treatment, low degree of psychopathy, past success in treatment and/or supervision, and treatability.

While almost all of the Mental Health stakeholder category interviewees mentioned such individual offender characteristics, three interviewees specifically highlighted the relevance of resources in making this decision. In MHAP3's words, "anyone is manageable in the community with all the resources." According to these three interviewees, demonstrating that the necessary structures are in place in the community to allow for the effective supervision of these offenders is particularly influential in the determination of controllability. MHAP4 noted that while assessors cannot speak to the manageability of the offender in the community as they are not involved in the day-to-day management of these offenders in any capacity, the court often perceives the assessor's evaluation of treatability as an indication of controllability.

When asked about the role of treatability in designating an offender as a LTO or a DO, and why it may be that LTOs deemed to be low on a continuum of treatability are designated as LTOs, three of the Mental Health stakeholder interviewees made a distinction between treatability and manageability, suggesting that an offender that is relatively less treatable may still be effectively managed in the community. According to these interviewees, there are other factors that may lead the judge to deem an offender manageable in the community, such as older age and health issues that are seen as decreasing the risk they pose. According to MHAPP, it is possible that the courts are overestimating what is in fact available in the community when designating an offender as a LTO, which is better described as maintenance and not actual treatment.

MHAP2 was much more sceptical in response to this question on treatability. According to this interviewee, it is the impression that the offender makes on the judge and the other actors in the courtroom that is most influential in the decision to designate an offender either as a DO or a LTO, and not the offender's actual treatability. In MHAP2's words, "[A] large Native [impresses the court less] than a freshly scrubbed, nice-looking guy." The decision-making process was described by this interviewee as "impression management" and a "charade." MHAP4 echoed this scepticism, stating that

the finding that the majority of these offenders are low on a continuum of treatability is rather surprising, and that low treatability should have triggered a DO designation.

Finally, when asked about the length of the LTSOs, all Mental Health interviewees agreed that judges tend to choose the 10-year supervision order length to ensure the longest supervision and risk management possible and the greatest public protection possible. Overall, this was described as completely appropriate. In fact, MHAP4 reported that judges have no reason *not* to choose the 10-year supervision order length. According to MHAP2, though, what is particularly concerning is that judges often make the decision of the appropriate LTSO length without accurate or current information about what treatment programs and supervision resources are actually available. In this interviewee's experience, defence counsel often discuss treatment options in the community without having current information about the status of these programs. MHAP2 went on to describe the status of community treatment as a "constantly changing landscape....[a] field with moving posts....[with] most if not all treatment programming cancelled." This interviewee emphasized the fact that, in this environment, it is virtually impossible to predict what the offender will actually have access to today, let alone after the completion of the determinate portion of their sentence.

### ***Supervision/Enforcement***

The policing-oriented interviewees in the Supervision/Enforcement stakeholder category differed in their perceptions of the characteristics of LTOs. On one hand, SEP1 suggested that there is no clear standard in distinguishing between LTOs, DOs, and those offenders that receive a conventional sentence. In this interviewee's opinion, the dynamics of the courtroom and of the decision-making amongst criminal justice officials accounts for these differences. Having said that, this same interviewee later suggested that there is a difference in degree and not in kind.

SEP2a and SEP2b, on the other hand, did suggest there are notable differences between these groups of offenders. In their view, DOs and LTOs differ in terms of their assessments, with the former having a greater number of previous offences and a higher ranking of risk, as per the assessor's evaluations. These interviewees described the

LTO designation as being “the scarlet letter.” Offenders designated as LTOs were described as being considerably more miserable than regular parolees as the latter have a release date to look forward to, while the former have a relatively long period of supervision.

The remaining interviewees in the Supervision/Enforcement stakeholder category, all of whom perform supervisory roles, did differentiate between these three offender groups, although some see the distinction as being much clearer than others. More specifically, SES3, SES4 and SES7 suggested that the distinction between DOs and LTOs is blurry, while the distinction between these two groups of offenders and those who receive a conventional sentence is much clearer. For example, SES3 stated that it is often “too difficult to tell apart DOs and LTOs...they share much of the same characteristics...[and] the difference has much to do with courts and lawyers” while those who receive a conventional sentence are significantly less violent and are more likely to have a history of successful community supervision. Both SES4 and SES7 indicated that, in terms of demographic characteristics, there is a disproportionately high number of Aboriginals who are subject to a DO application and are designated as either a DO or LTO. Indeed, Aboriginals were said to be disproportionately represented in all three offender categories by the majority of interviewees in the Supervision/Enforcement stakeholder category.

The distinction between these three groups of offenders (DOs, LTOs, and those that receive a conventional sentence) is much clearer according to the remaining four supervision-oriented interviewees in this stakeholder category (SES1, SES2, SES5, SES6). Overall, these interviewees described DOs as being more psychopathic and as having lengthier criminal histories. SES2 also noted that DOs are different in how they treat their releases: consistent with previous responses, SES2 maintained that the fact that DOs must earn their releases makes them more respectful of the process. In describing LTOs, the majority of these supervision-oriented interviewees noted that they exhibit unique intellectual and cognitive limitations, and also social disadvantages, such as having a history of childhood abuse. These offenders are also described as having a clear history of sexual offending, and to be relatively more needy as compared to the other two groups of offenders. Interestingly, according to SES1, LTOs are more litigious

than the other offenders: they are aware of the difficulties in enforcing conditions and they test their boundaries at every opportunity.

Those offenders who receive a conventional sentence differ in many respects, according to these same 4 supervision-oriented interviewees (SES1, SES2, SES5, SES6). These offenders were described here as causing less harm to their victims and as being less likely to have significant personality disorders. They were also described as being on average younger than both DOs and LTOs.

When asked which characteristics are believed to be the most influential in determining whether an offender is indeed controllable in the community and, therefore, eligible for a LTO designation, characteristics of the offender and also characteristics of the system were discussed. Offender characteristics included willingness to participate in treatment, remorse, past success on supervision and/or in treatment, the number of offences committed by the offender, the nature of the index offences, institutional adjustment (i.e. how well the offender does in jail), insightfulness of the offender, and pleas of guilt. In SES2's experience, "there is something redeeming about LTOs, not sure what, but something" that leads to the conclusion that they are indeed controllable. Characteristics of the system itself that are said to play a role, according to the minority of these Supervision/Enforcement stakeholder category interviewees, included: the persuasiveness of the assessor who provides testimony on the risk posed by the offender, as well as the persuasiveness of the defence counsel in suggesting that the offender is indeed manageable in the community and that the necessary resources to effectively supervise the offender do actually exist.

When asked about the role of treatability in designating an offender as a LTO or a DO, and why it may be that LTOs deemed to be low on a continuum of treatability are designated as LTOs, several of the interviewees in this stakeholder category were surprised by this finding. One interviewee (SEP1) was unable to provide a plausible explanation for this finding, and another (SES3) stated that if indeed the offender's treatability is low, he or she should be designated as a DO and not a LTO.

Three interviewees in this stakeholder category (SES1, SES6 & SES7) mentioned various dynamics of the courtroom and the hearing as possible factors that

explain this finding. For example, SES6 suggested that offenders who score low on a continuum of treatability and are still designated as LTOs simply have more persuasive defence counsel. Another interviewee (SES1) suggested that how the offender presents in court plays a significant role in this determination.

The remaining five interviewees in this Supervision/Enforcement stakeholder category (SEP2a, SEP2b, SES2, SES4 and SES5) all made a distinction between treatability and manageability. An offender who is a pedophile, or who is low functioning, will inevitably be deemed untreatable, according to these interviewees, but with the proper conditions, they may still be successfully managed in the community.

Finally, when asked about the prevalence of the 10-year supervision order length, these interviewees were virtually unanimous in stating that the judges are erring on the side of caution and choosing the longest supervision order period possible to maximize public protection. Another equally prominent theme in these interviewee responses was that these offenders are seen as being on the threshold of being designated as a DO, making the most restrictive option under the LTO provisions the most appealing to the courts in these cases. The prevalence of the 10-year supervision length was described as appropriate and warranted due to the extensive criminal histories of these offenders. In fact, SEP1 suggested that the maximum supervision order length ought to be increased, and that there ought to be a mechanism to extend it with ease. Finally, according to SES2, it is not the longer supervision orders that ought to be of concern; rather, it is the shorter determinate sentences that need to be changed in order to allow for much-needed institutional treatment prior to the commencement of the period of community supervision.

### ***Community Service***

While CS4 was not able to comment on the characteristics of these offenders in particular owing to a relative lack of experience, the other three interviewees in this stakeholder category shared similar views on the features that characterize these offenders. They were described as “resourceless” and “needy.” CS3 drew a distinction between those LTOs who are sex offenders and those who are non-sexual yet violent offenders. According to this interviewee, the former resemble adolescents in terms of

their sexuality and emotional health. CS3 went so far as to describe these sex offending LTOs as “walking children” who also differ from their non-sex offending counterparts in terms of their intellectual capacity.

With respect to mental health characteristics, CS1 indicated that many of these offenders have fetal alcohol syndrome along with a range of other mental health deficits. CS1 was cautious in discussing psychopathy and stated that professionals must be relied upon here to make any conclusions about whether the offenders receiving their services are indeed psychopathic. Despite such limitations, both CS1 and CS2 emphasized that these offenders do rather well under supervision. CS1 stated that, ironically, those offenders with high PCL-R scores actually tend to do exceptionally well under supervision in the community.

When asked whether these LTOs are qualitatively different from DOs, both CS2 and CS3 stated that there seems to be more “hope” with LTOs, although they are cautious in relying on this as a distinguishing factor. This hope, according to these two interviewees, is dependent on the availability of resources to effectively work with these offenders in the institution and also in the community.

CS2 relied on differences in psychopathy scores to draw a distinction between these two groups of offenders. According to CS2, those who score high on psychopathy are more likely to be designated as DOs than as LTOs. CS2 also relied on the differences in the nature of the crimes committed by these two subgroups of offenders, stating that the crimes typically committed by DOs are “horrific” and “off the scale” as compared to LTOs. CS2 did warn, though, that LTOs and DOs are different “only if the system is working properly”; according to CS2, this is not always the case.

Like CS2, CS1 relied on the crimes committed by DOs to distinguish them from LTOs, although CS1 relied more on frequency of the crimes rather than the nature of the crimes. Other than that, CS1 suggested that in fact, DOs and LTOs are the same in all other ways and that it is the political climate, and not the inherent characteristics of these offenders, that is more influential in designation decisions.

When asked whether LTOs are qualitatively different from offenders who receive conventional sentences, CS2 and CS3 responded similarly once again, stating that LTOs exhibit greater social inadequacies and are more needy than those offenders receiving conventional sentences. These two interviewees also said that the line is not so clear in all cases and that it is not uncommon to see a sex offender approaching their warrant expiry date who closely resembles another sex offender approaching their warrant expiry date, with the only difference being that one was designated as a LTO and the other was not. According to CS2, it is often “a crap shoot” and those sex offenders who were not designated as LTOs may have simply had a combination of “a great defence lawyer and a lazy or inexperienced Crown.” CS2 also listed the cost and time-consuming nature of these cases as possible reasons for these occurrences.

Unlike CS2 and CS3, CS1 noted that there is little difference between LTOs and those offenders receiving conventional sentences. The only key difference, according to CS1, is the number of offences, with DOs having a greater number of offences, followed by LTOs, and then finally by those offenders receiving conventional sentences.

After asking interviewees to describe LTOs in their own words and to compare them to DOs and those offenders who receive conventional sentences, interviewees were asked to identify which characteristics they believe are relied upon most to determine controllability in the community. While CS3 noted that this is really a sentencing question, the “potentiality” of the offender is noted as the key characteristic that speaks to the possibility of successfully controlling the offender in the community. In describing potentiality, CS3 stated that the severity of the crime and the level of denial of the offender must be taken into consideration.

CS2 also noted that the severity of the crime speaks to the offender’s potential for being controlled in the community, as well as any increases in this severity in the offender’s pattern of offending. CS2 also listed risk-assessment scores, past supervision experiences, and the characteristics of the victim as key factors in determining the offender’s controllability, with offenders who commit crimes against children generally being deemed lower on a scale of controllability.

CS1, on the other hand, stated that the decision to pursue a LTO designation has less to do with some observable characteristic in the offender and more to do with whether the more punitive DO designation is achievable. CS1 described feeling afraid for LTOs, often warning them that they must “be clean and also appear clean” in order to escape a DO designation in the future.

Next, interviewees were asked about the issue of treatability. They were informed that through the file review data analysis, it was revealed that the majority of those offenders in B.C. who have received the LTO designation were in fact deemed to be low on a continuum of treatability by the assessing mental health expert. When asked why they thought that offenders deemed to be low on a continuum of treatability still receive a LTO designation, CS3 emphasized that treatability and manageability in the community are two different issues. CS2 and CS3 both pointed to possible cognitive deficits in these offenders that may lead to the conclusion that the offender is low on a scale of treatability, and that this simply means that there may be other more innovative forms of treatment that would be more suitable for the offender. CS2 went on to state that the offender’s past supervision experiences may lead to the conclusion that the offender is controllable in the community, despite the assessor’s concerns regarding the offender’s perceived treatability. According to CS2, parole officers are concerned about the offender’s controllability after the end of the LTSO, which highlights the need for the continued supportive services offered by CS2’s organization. To support this claim, CS2 quoted considerable decreases in recidivism amongst sex offenders and violent offenders that participate in these programs as compared to those offenders that do not.

In response to the treatability issue, CS1 maintained the position that the decision to pursue a LTO designation has less to do with some observable characteristic in the offender and more to do with whether the more punitive DO designation is attainable. CS1 went on to argue that the courts are less concerned about the best treatment for the offender, and are more concerned with exerting the most control possible over the offender and, according to CS1, the LTO designation does allow for the most control. While CS4 did not respond to questions organized under Topic C, the finding of low treatability for the majority of offenders receiving the LTO designation was described by CS4 as “very surprising.”



Finally, interviewees were asked about the length of supervision orders. They were informed that the majority of LTOs in B.C. have received a LTSO that is 10 years in length, which is the longest supervision period allowed under the legislation. When asked why they thought that this was the most prevalent LTSO length, both CS2 and CS3 stated that the courts are simply erring on the side of caution; CS3 described this as “covering [its] rear, both publicly and politically.” CS3 went so far as to say that perhaps this is the most commonly chosen supervision order length because “the criminal justice industry has become self-serving.” When probed further on this point, CS3 described the criminal justice system as a business, and that it is in its best interests to extend control for as long as possible to ensure its own survival.

CS1 also pointed to the increased control that is allowed for with a longer supervision order. CS1 warned that there is far too much power given to parole officers under the LTO provisions, and that the ability to suspend or breach an offender under these provisions is far easier than it is for regular parolees. CS1 described this imbalance of power as being detrimental to the offender’s reintegration.

CS2 was less sceptical in this regard. According to CS2, it is possible that the courts feel that the 10-year supervision period is needed to truly allow the offender to “get back on [his] feet.” CS2 also quoted the literature and stated that sex offenders who reoffend will do so within 3 to 10 years and that this is why the 10-year supervision order length is most frequently chosen. In closing, CS2 suggested that the data in Quebec be examined due to their relatively lower recidivism rates and the attention paid to empirical research by criminal justice officials in this province.

*Summary:* Table C2 below provides a summary of the themes that emerge in the responses provided under Topic C. As mentioned at the outset of this chapter, these summary tables are intended to provide a brief visual summary of the findings.

**Table C2.**

**Replicated:  
Summary of Topic C:  
Interviewee Perceptions of LTO Characteristics**

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**Question**

**Responses**

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*LTOs (relative to DOs and Offenders receiving conventional sentences)*

- In the middle of the continuum
- Younger than DOs
- Overrepresentation of Aboriginals
- Lower levels of education and intelligence than conventional offenders
- Poor demeanour as compared to conventional offenders
- Less previous offences than DOs/more than conventional offenders
- Less severe offences than DOs/more than conventional offenders
- Less victim harm than DOs/more than conventional offenders
- Less persistent offending than DOs/more than conventional offenders
- Sexual offending is prevalent among long-term as well as DOs, as compared to conventional offenders
- Less psychopathic than DOs/more psychopathic than conventional offenders
- Less risk posed than DOs/more risk posed than conventional offenders
- Less likely to reoffend than DOs/more likely to reoffend than conventional offenders
- Fewer mental health deficits/challenges than DOs/more than conventional offenders
- More treatable than DOs
- More willing to participate in interviews than DOs
- More “needy” and resourceless than conventional offenders
- Some indication of a higher prevalence of Fetal Alcohol Syndrome among LTOs
- More litigious than DOs
- More miserable than regular parolees
- Less motivated to participate in institutional treatment than Dos

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*LTO characteristics leading to finding of controllability*

- Willingness to participate in treatment/treatability
  - Past success in treatment and on conditional release
  - Low degree of psychopathy
  - Low assessment of risk
  - Expressions of remorse
  - Overall good presentation/demeanour
  - Fewer previous offences
  - Relatively less serious index offence
  - Good institutional adjustment
  - Insightfulness and “potentiality”
  - Low degree of denial
  - Victim of index offence not a child
  - Availability of resources for treatment/supervision
-

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**Question****Responses**

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*Role of treatability: Why offenders deemed low on treatability still designated as LTO?*

- Not treatable/low on treatability does not mean not manageable
- Dynamics of courtroom
- Persuasiveness of defence counsel
- Lack of understanding of judges regarding resources while on supervision
- Increased age of offender
- Health problems of offender
- Offender's demeanour
- Pass success on supervision
- Cognitive deficits may explain low treatability overall, but does not mean untreatable

*Reason for Prevalence for 10-year supervision period*

- Judges erring on the side of caution
  - To provide as much public safety as possible
  - Some view this as appropriate
  - Others say it is overused/self-serving
- 

**Topic D: Interviewee Experiences and Perceptions of LTOs in the System**

In Topic D, the questions pertained to the interviewees' views on the impacts that LTOs have had on the criminal justice system, and also how the task of supervising LTOs is actually carried out.

**Legal**

The impact that LTO cases have had on interviewee workload depends on the interviewee's role in the process. Since the provisions have been more problematic than expected, LL reported that the workload impact has been much greater than anticipated. The expectation was that the role following the implementation of the legislation would be limited to monitoring and evaluation, but the reality has been much different. In LL's words, "it added new pressure to follow case law, see if there are opportunities for re-doing the legislation, and engaging in new debates about maybe making amendments."

The judges reported that these cases have had little or no impact on their workload. While LJ2 admitted not having presided in a single LTO case, the one judge from the provincial court noted that there have been 3 or 4 such cases in the last three years and, as such, these cases account for a very small proportion of cases heard at

the provincial appellate court level. This same provincial court judge went on to state that little is known about the nature of supervision for these offenders and that such knowledge would be of interest. LJ4 expressed similar interest in learning more about what happens at the latter stages of the system. LJ4 also noted that the sentencing hearing for these cases are significantly longer than the sentencing hearing in other cases, averaging 10 days in length rather than 1 to 2 days.

The four Crown counsel interviewees reported that, while the actual number of LTO cases is relatively small, when these cases do come along, they are very time-consuming and intensive. In LCC2's experience, owing to a lack of resources, there are not many junior Crown counsel available to assist with these cases, leaving a heavy workload for the prosecuting counsel. This same interviewee noted that there are variations in the number of these cases that each Crown office deals with, with far fewer cases in the Valley and considerably more in the downtown Vancouver offices. LCC3 reported that the work generated by one case often continues after the case has been adjudicated, particularly when the case exhibits rare and unique features; in this interviewee's words, the work "doesn't end when the case ends."

The sentiment that these cases are less frequent - but more intensive - than the usual run of cases also emerged in the responses of defence counsel interviewees. In LDC1's experience, even if there is only one DO application per year and there are 30 to 40 other cases on the lawyer's caseload that year, this one case becomes the dominant case. These interviewees also discussed the features of the client that add to the intensive nature of these cases. Offenders that are subject to a DO or LTO application were described as more high maintenance and needy; the cases were also described as "depressing and traumatizing."

Furthermore, these defence counsel interviewees reported being frustrated with the inability to obtain the CSC records on their own clients in a timely manner, making it difficult to appropriately defend their clients. LDC2a and LDC2b were particularly critical of Crown counsel who launch these DO applications, claiming that they often do so without first knowing whether the necessary criteria have been satisfied, and they simply "figure it out as they go along."

Finally, all four defence counsel emphasized the challenges of dealing with LSS, noting that these cases are under-funded. LDC2a and LDC2b reported being in constant conflict with LSS. In their experience, the funding that is provided for expert input amounts to only 12 seconds per page, which was described as clearly inadequate. Two defence counsel even reported paying for that portion of the mental health expert's bill that is not paid by LSS "out of their own pockets."

In describing the relationship that these Legal stakeholders have with the other agencies involved in the application of the LTO provisions, LL reported having a close and positive relationship with the CSC, the NPB, the Department of Justice and also with Provincial Crown counsel. This interviewee did report having no relationship or contact with judges. In fact, as per the judges' responses and also the responses of Crown counsel, the judiciary has no contact with the other agencies involved in the application of the LTO provisions. The only contact that occurs between the judiciary and the other agencies comes in the form of testimony provided in court.

All four Crown counsel describe the relationship with Corrections in positive terms; LCC3 in fact described the relationship with Corrections as the most important as most of the information needed in prosecuting these cases comes from the CSC. LCC3 went on to note that while this relationship may be the most important, the most challenging aspect of this relationship is that parole officers are not "*Charter* rights sensitive." More specifically, LTOs often make admissions to the parole officer which are often inadmissible in court due to the nature of the admission and the parole officer's lack of familiarity with *Charter* concerns and how that relates to what may be discussed in court.

On this same point of information sharing, LCC4 noted that the relationship with the CSC can be challenging in those instances when they are reluctant to release information deemed to be private in nature. This interviewee went on to describe in detail a case wherein the parole officer withheld information on the offender's institutional behaviour which this Crown counsel argued was essential in understanding the offending cycle. LCC4 went on to state that "[T]his parole officer saw his job as

being an advocate of the prisoner rather than as a public safety officer,” which, in LCC4’s view, was inappropriate.

Three of the 4 Crown counsel interviewees mentioned B.C. Corrections as one of the agencies dealt with in these cases. While LCC3 noted that correspondence with B.C. Corrections is rare, both LCC2 and LCC4 did report corresponding with B.C. Corrections more regularly, and this relationship was described in positive terms.

With regard to the relationship between Crown and the FPSC, LCC3 again described the correspondence with this agency as limited, while LCC1 and LCC4 did provide more information on the nature of this relationship. In LCC1’s experience, mental health experts were called upon to determine what services are available in the community for these offenders during the supervision period; this was described as useful input. LCC4, on the other hand, noted that the relationship between Crown and the mental health experts who provide assessments in court has become “tense” over the years and that the amendment that requires a court-appointed assessment has in fact complicated the process. According to this interviewee, the problem is that the FPSC views the role of Crown counsel negatively. In LCC4’s own words, “the view [is that] Crown may be tainting the assessor’s work.”

LCC2 is the only Crown counsel who spoke to the relationship with police. In this interviewee’s experience, this relationship is positive, and police were described as “fabulous in trial.” In this response, LCC2 acknowledged that police officers who work on these cases must also balance heavy workloads.

Overall, while the general theme in Crown counsel responses here was that the various agencies are for the most part accommodating, there was some indication here that there is a disconnect and lack of understanding among the agencies with regard to each one’s role, responsibilities, and privileges. According to LCC3, “nobody knows what anyone is talking about.” As LCC4 reminded us, “this is a human system so it will have its flaws.”

Finally, the four defence counsel interviewees offered varying responses regarding their relationship with the other agencies involved in the application of the LTO

provisions. With respect to Crown, each of the four defence counsel described the relationship as positive. In fact, in the experience of LDC2a and LDC2b, “[T]here are more reasonable Crown than unreasonable Crown.”

With regard to the relationship with the judiciary, LDC1’s response was unique as compared to the other Legal category interviewees. LDC1 did note that there is a relationship, and this interviewee described this relationship in positive terms. LDC1 and LDC3 also described the relationship with the FPSC in positive terms.

It is the relationship with Corrections that was described in more negative terms by the defence counsel interviewees. LDC2a, LDC2b and LDC3 voiced their frustration in not having access to their own clients’ records. In their view, this lack of access is a direct result of the privacy legislation and this legislation must be changed to allow defence counsel to properly defend these offenders. They go on to note that they should not have to subpoena the records of their own clients and that it is unjust that Crown counsel enjoy free access to these records.

With regard to how supervision is actually carried out in the community, LL voiced great concern about the lack of resources available to the CSC parole officers to effectively carry out the supervision of these offenders while in the community. This concern about a lack of resources for supervising authorities was also raised by Crown and defence counsel interviewees as well. In addition, concern about judges’ understanding of how supervision is actually carried out was raised by Crown and defence counsel. This is consistent with the judges’ own responses on this question on supervision; while admitting that they know little about the details of how supervision of LTOs is actually carried out, LJ2 did note that there is a need for continuity during the supervision period.

Overall, there appeared to be varying degrees of knowledge among the Legal stakeholder category interviewees with regard to the details of how supervision is carried out, the obstacles faced by these supervisory officials, and the training received by them to carry out this duty. While some stated that they are not familiar with the work of supervisory officials, others identified these supervision officials by name and discussed in great detail the role of volunteers in halfway houses, for example. In general though,

according to LJ3, LJ4 and LDC1, the mechanics of supervision were revealed to Legal stakeholder category interviewees only when a supervision official is asked to provide testimony in court.

When asked about the nature of treatment services provided for LTOs during the supervision order, LL admitted to having no knowledge of the specific treatment provided. According to LL, what occurs during this period amounts to supervision and monitoring rather than actual treatment. Again, LL noted that when imposing the LTO designation, judges are doing so with little or no knowledge of what occurs during the supervision order, and that they rely on Crown and defence counsel for this information who also, in LL's view, often lack knowledge in this regard.

LJI confirmed that information about the nature of treatment programs and the availability of such programs is provided by defence counsel and also Crown counsel. LJ3 and LJ4 also indicated that testimony from correctional officials, psychologists and psychiatrists is relied upon to learn about the treatment programs available for these offenders. The majority of these judges did indicate that availability and accessibility of treatment programs, along with the offender's willingness to participate in such programs, do indeed impact their decision to impose a LTO designation. This information was also said to impact their view of the appropriate length of the supervision order. LJ3 went on to state that the likelihood of a program being available at the end of the offender's determinate sentence is not of immediate concern. In this interviewee's own words, "[I]t has never been suggested that if there is a program that the funding won't be there for that anyway."

There was general agreement among Crown counsel interviewees that there is a lack of treatment in the community for LTOs. What is provided was described as maintenance rather than actual treatment and these maintenance programs are premised on the assumption that institutional treatment is being provided and that offenders are actually taking part in these treatment programs. As LCC2 warned, though, the problem is that if offenders do not partake in these institutional treatment programs, they are able to simply wait until the sentence ends to be released into the community on the LTSO. In some instances, the length of the sentence does not even



allow for an offender who is willing to partake in treatment to actually do so. Furthermore, as LCC1 noted, if the offender is in fact given a provincial sentence, then institutional treatment is not even an option. Each of the Crown counsel interviewees mentioned that information pertaining to the accessibility of these programs does indeed impact the judge's decisions to impose the LTO designation and the judge's choice of supervision order length. In LCC4's view, what judges are in effect doing is equating the availability of treatment to proof that the offender can actually be managed.

Overall, the defence counsel interviewees also reported that there is a lack of treatment services available in the community for LTOs. In LDC3's view, the programs are no different than those for other parolees and LTOs are at the bottom of priority for treatment as they are supervised by the CSC for a much longer period. LDC2a, LDC2b and LDC3 all agreed that the perception of the accessibility of these programs impacts the decision to impose the LTO designation and also to choose the length of the supervision order. While LDC1 did agree that the perceived accessibility of programs impacts decisions around supervision order length, this interviewee did not agree that this impacts the decision to impose the DO or the LTO designation.

When asked about the types of conditions imposed on LTOs and the appropriateness of these conditions, the Legal stakeholder category interviewees expressed different degrees of familiarity. LL stated that these conditions are likely similar to regular parole conditions, but cannot recall, while the judges offered little information on the nature of these conditions. Interestingly, though, LJ4 did note that the opportunity does exist to make recommendations to the relevant correctional authorities regarding appropriate conditions for the offender. This same interviewee expressed confidence in the ability of these authorities to decide which conditions are appropriate and to consider what changes may occur in the system that will impact the task of supervising these offenders, once the supervision order commences. LJ4 did not describe this changing landscape of community supervision as problematic; in fact, this interviewee specifically stated that changing the provisions to allow for the designation decision to occur after the completion of the determinate sentence would not be an appropriate amendment.

The Crown counsel interviewees listed some common conditions, including treatment conditions, no-go conditions, and reporting requirements. LCC3 described the conditions as appropriate and stated that they “must be” effective, given the low re-offence rate of LTOs during the supervision order. LCC4, though, emphasized the problematic nature of the wording of conditions. In this interviewee’s view, the conditions are overall quite vague, and the Parole Board “drafts wishy-washy conditions” which are not worded in a way that can stand up in a court of law, a problem that is unique to LTO cases. According to LCC4, “[C]onditions need to be read in the eye of a psychopath who can find an interpretation that suits them.”

Defence counsel interviewees described the conditions imposed on LTOs as generally strict and crafted to the offender’s needs. The general consensus was that these conditions are appropriate, yet there is concern revolving around whether the resources actually exist to properly supervise these offenders. Whether or not some of the conditions are realistic was also raised; for example, LDC1 noted that while the condition to not have access to a computer may make sense in theory, in practice this is virtually impossible to enforce.

With regards to breaches, only Crown counsel and defence counsel offered a response. Overall, the Crown counsel interviewees noted that LTSO breaches are relatively infrequent but when they do occur, the sanctions are severe yet still appropriate. LCC2 highlighted the challenges posed by the way in which breaches are handled in LTO cases. In this interviewee’s experience, the requirement that breaches must go through the courts, unlike regular parole breaches, complicates the matter. LCC3 elaborated on this point, stating that the biggest challenge for Crown in the case of a LTO supervision order breach is convincing the judge that a breach has occurred. This interviewee went on to state that, because these offenders are monitored so closely, it is “difficult to get them to commit an offence which would lead to a DO [designation].” LCC3 admitted that this is a cynical view, but noted that this view comes from a sense of frustration with this scheme. This interviewee equated the LTSO to prison, stating that it is simply unrealistic to expect that these offenders can be managed for such long periods and with such stringent restrictions.

LDC1 was the only defence counsel who offered a response on the nature of sanctions imposed when the LTSO is breached; the other three defence counsel interviewees reported having no experience with breaches. Like the Crown counsel interviewees, these defence counsel stated that sanctions imposed upon LTOs when they breach the supervision order are severe. However, in LDC1's view, in the case of breaches, "the punishment does not fit the crime." In this interviewee's experience, the suspensions that occur when a breach sanction is imposed effectively extend the length of the supervision order from "10 years to potentially 25 years." This was described as unrealistic and excessive.

While the judges interviewed did not indicate having had any experience with breach cases, LJ4 did express an appreciation for the discretion held by parole officers to breach LTOs. This degree of flexibility and discretion was described by LJ4 as essential for effective supervision.

Finally, when asked about the role of community reintegration when dealing with LTOs, all-but-one Legal stakeholder category interviewee discussed the importance of community reintegration, although to varying degrees. For example, LL described community reintegration as the "essential foundation of the LTO objective" and warned against an alternative focus which would lead to these offenders "doing life on the instalment plan." Consistent with this view, defence counsel described community reintegration as crucial and the most important focus. Crown counsel also agreed that community reintegration is important, yet there was a suggestion made in the responses of interviewees in this Legal stakeholder sub-category and also in the responses of judges that it must go hand in hand with other goals, such as treatment, risk management, supervision and public protection. Interestingly, there was some agreement between Crown and defence counsel on the impact of public notification. According to both LDC1 and LCC3, public notification is counterproductive in efforts to effectively reintegrate LTOs into the community. This was said to lead to further ostracizing the offender, only increasing the offender's risk to re-offend.

LJ2 was the only Legal stakeholder interviewee who does not support the idea of community reintegration. In this interviewee's view, community reintegration is "too risky" and "should be the last thing to consider."

### ***Mental Health***

The impact that LTO cases have had on interviewee workload depends on their role in the process. For MHT, the workload has increased significantly, and the anticipation is that this increase will continue. MHAP2 also reported an increase. For the other interviewees in the Mental Health stakeholder category, though, all of whom are involved in the assessment of these offenders, the number of cases per year was described as relatively low, amounting to approximately 1 to 2 cases per year. MHAP1 described these assessments as amounting to 5% to 10% of the workload, a proportion that varies annually. While the absolute number of offenders assessed was reported as being low by the majority of assessors, and while the cases are taken on a voluntary basis by the assessor, depending on their availability at the time, the cases were described as being very intensive and time-consuming. MHAPP noted that, while assessors are given 100 hours per contract for a court-ordered assessment, the report provided to the court alone takes 50 to 60 hours to produce, plus all of the work and time that is taken by court appearances. MHAP4 went on to describe the preparation for a court appearance as being rather important due to "the rigorous nature of the cross-examination... [and] given the stakes in these cases."

In describing the relationship that these Mental Health stakeholder interviewees have with other agencies involved in the application of the LTO provisions, MHT noted that the relationship with policing and correctional authorities is quite positive. The remaining Mental Health stakeholder category interviewees, all of whom are assessors, reported having little or no contact with other agencies, when they have been appointed by the court to conduct an "objective assessment." It was noted that the CSC is perhaps the only agency with which assessors come into contact when working as a court-ordered assessor in order to arrange for access to the offender's file and to arrange for an interview with the offender.

MHAPP described being disappointed that there is no contact with Crown and defence counsel when working as the court-appointed assessor as such contact prior to appearing in court would be rather productive. Part of the problem here, according to MHAPP, is that even when hired as a court-appointed assessor, defence counsel often see the assessor as working for the Crown. MHAP2 also discussed a flaw with the court-appointed assessment model. In this interviewee's opinion, the addition of a court-appointed assessor has not eliminated the adversarial nature of the process, and Crown and defence counsel continue to obtain the services of additional mental health experts to present polar viewpoints to the court, simply complicating the process.

When hired by either Crown or defence counsel, though, the role of the assessor is quite different; in this circumstance, the assessor works exclusively for one side or the other. This role was described as being less neutral. What would be particularly helpful to the process, according to MHAP2, is the implementation of a standardized presentation to the court by those mental health experts providing testimony and assessments. While this is seen as ideal, MHAP2 admitted that this is not realistic, partly because of the "narcissism of assessing psy-experts", and partly because even the experts themselves cannot agree on the interpretation of the literature.

With regard to how supervision is actually carried out in the community, three of the Mental Health stakeholder category interviewees described the nature of supervision. MHT is one of these interviewees, who described the parole officers that work with LTOs as having received specialized training in this regard. MHT described the availability of maintenance programs for these offenders during the supervision period; MHT also described the relevant policing units as being quite cooperative and helpful in the supervision of these offenders.

MHAPP also described the availability of maintenance programs for these offenders during the supervision period. According to MHAPP, the supervision of these offenders closely resembles the supervision of other federal parolees. This interviewee suggested that it would be much more appropriate to have LTOs "cascade down to minimum security" during the determinate portion of their sentence, which would require longer determinate sentences. According to MHAPP, this is needed in order to ensure

that these offenders are indeed able to take part in institutional treatment prior to being released into a maintenance program in the community. MHAPP stated that without the pre-requisite of institutional treatment, efforts to maintain the offender in the community are futile.

MHAP2 also reported being somewhat familiar with the manner in which the supervision of these offenders is carried out and reports that there is a lack of resources to do this effectively. MHAP2 specifically mentioned the problems that revolve around adequate residency resources for these offenders. The remaining three interviewees (MHAP1, MHAP3 & MHAP4) noted that they are not familiar with what occurs during the supervision period.

With regards to what treatment is available for LTOs in the community, MHT again mentioned the availability of maintenance programs, and not treatment, *per se*. In MHT's experience, participation in such programs is typically a condition of release. Both MHAP1 and MHAP4 agreed that there are treatment services of some kind provided for these offenders during the supervision order, but both of these interviewees described the resources for this treatment as being rather limited.

In MHAP3's and MHAPP's experience, testimony from a CSC witness is often relied upon to provide the court with information on current community-treatment resources. While in both their and MHAP4's view, the assessor is often not in the courtroom at the point of the hearing when this is discussed, according to MHAPP, the assessor sometimes does have the opportunity to speak to community-treatment resource providers. MHAPP and MHAP2 described being hopeful that this input influences the judge's decision to appropriately tailor the sentence type and length.

When asked about the types of conditions imposed on LTOs and the appropriateness of these conditions, the detail in the Mental Health stakeholder interviewee responses was limited. Two of these interviewees (MHT and MHAPP) described the conditions as being rather generic, including "no-go" restrictions, for example. MHAP2 also described the conditions as generic, and goes further by stating that these conditions are generally ineffective in reducing recidivism. In MHAP2's view, these conditions "[j]ust give [an] excuse to arrest for breaches." The remaining three

interviewees in this stakeholder category reported not being familiar with the type of conditions imposed on these offenders. With respect to breaches, all interviewees reported not having experience in this regard.

Finally, when asked about the role of community reintegration when dealing with LTOs, four of the interviewees (MHT, MHAPP, MHAP1 and MHAP4) described it as essential. MHAP2 and MHAP3 were more cautious in their responses here; in their view, the appropriateness of focusing on community reintegration when dealing with LTOs depends on other factors, including the individual offender's characteristics and their ability to reform. The appropriateness also depends on whether the community reintegration efforts are "realistic" and include teaching vocational, educational and recreational skills. According to MHAP2, community service groups that provide reintegration programs are too short-term; this interviewee described these programs as "jolly and warm," but that the research supporting their effectiveness is lacking. In MHAP2's view, when the funding for such programs is depleted, these "well-intentioned but poorly thought-out programs" will disappear and the offender will be left with nothing.

### ***Supervision/Enforcement***

While the three policing-oriented Supervision/Enforcement interviewees agreed that LTOs make up a proportion of the sex offenders supervised by their respective police agency units, they did note that the supervision of LTOs is particularly intensive, primarily as a consequence of the relatively long period during which the LTO is supervised. The intensity of the workload increases in the case of a breach. These policing-oriented also noted that the requirement to renew residency conditions every 6 months is unduly laborious.

The supervision-oriented interviewees agreed that, while the LTOs make up only a proportion of offenders supervised, these cases were described as significantly more intensive than the cases of regular parolees. As noted by SES4, the cases of LTOs involve the additional task of liaising with Crown counsel and police and require parole officers to attend court. In effect, in SES4's view, the task of supervising LTOs has fundamentally transformed the nature of their work. The consensus amongst these supervision-oriented interviewees was that this workload will increase in coming years.

The supervision-oriented stakeholders and the policing-oriented stakeholders agreed that the workload increases in the case of a breach. SES5 also described the difficulty in monitoring LTOs who are placed in a provincial institution as the result of a breach, since parole officers are federal employees and do not have access to the provincial electronic systems that house the information necessary to track these offenders when they are released from provincial custody. As a result, LTOs released from provincial institutions are often released with no direction and it is up to the federal supervisory authorities to keep track of these offenders. Suggestions for reform on this issue of provincial custody were made under Topic E.

All three policing-oriented interviewees in this stakeholder category described the relationship between their respective high-risk offender policing units and the other agencies involved in the application of the LTO provisions in positive terms. As SEP2a and SEP2b noted, all of the relevant players who make up the community management team work co-operatively to effectively manage these offenders. SEP1 also described a positive relationship with Canada Border Services (CBS); this interviewee emphasized the need to think of sex offenders in an international context, and a positive working relationship with CBS is deemed essential in this regard. Recommendations to improve agency coordination were discussed further under Topic E.

The supervision-oriented interviewees in this stakeholder category focused mostly on their relationships with Crown counsel and police agencies and they generally reported positive relationships, particularly with Crown counsel. Two of the interviewees here (SES4 & SES5), however, did describe the relationship with Crown counsel in less positive terms. For example, SES5 reported a real “disconnect” with Crown, and SES4 suggested that Crown counsel are unfamiliar with the provisions. SES4 did suggest, though, that this may be a result - in large part - of the existence of fewer resources in smaller communities and, therefore, the availability of fewer specialized teams to deal with this high-risk group of offenders. Variation in training was also discussed by SES1.

Four of these supervision-oriented interviewees also described the relationship with police in less positive terms. According to SES5, police are often not aware of their role and the roles of other agencies involved in the supervision of LTOs. SES6 also



described this lack of familiarity with the police role, although this interviewee notes that the situation is improving in this regard. Again, SES4 listed a lack of resources as a problem for policing agencies in smaller communities, along with the reality that the majority of police officers in smaller, rural communities have been on the force for less than 3 years and do not have the experience or resources to have a specialized unit to specifically deal with these offenders.

With regard to how the supervision is actually carried out in B.C., the availability of training, and the existence of obstacles to effectively supervise these LTOs, the police-oriented interviewees in this stakeholder category differ in their responses. On the one hand, SEP1 claimed that the training is on-going for police officers in this interviewee's specialized unit. The training is said to include regular police training plus mental health seminars, sex-crime courses, and in-house training sessions led by criminal profilers and psychologists. While this interviewee described the training as being relatively well-rounded, SEP1 did state that more could certainly be offered; in this interviewee's words, "[I]t is never really enough."

SEP2a and SEP2b, on the other hand, suggested that, while officers in their specialized high-risk offender unit are part of a community management team, which includes police, psychologists, correctional officials, etc., the officers in these specialized units themselves have received no special training for LTO cases. The information they have received has come in the form of information bulletins and occasional seminars. In SEP2a's words, "[W]e learn as we go."

These interviewees described the conditions placed on LTOs as the biggest obstacle they face in effectively supervising these offenders. The nature and wording of conditions and the number of conditions imposed on these offenders were described as problematic. Other than that, though, these two police-oriented interviewees stated that the members of the community management team do cooperate and this cooperation facilitates the supervision of this subset of offenders.

The majority of supervision-oriented interviewees in this stakeholder category described the task of supervising LTOs as challenging, with the main obstacle being the nature and wording of the conditions imposed on these offenders. Not only are there

more conditions imposed on these offenders than on regular parolees, but conditions were described as being very difficult to enforce. SES2 again stated that the most problematic issue is that these offenders do not earn their release from the determinate portion of their sentence, which leads to resistant offenders who have often taken little - or no - institutional treatment. In SES6's experience, meeting the residency needs of these offenders when the residency condition is lifted is extremely problematic; in this situation, the individual charged with the task of supervising the LTO is left to "scramble to find somewhere to put [the offender]." There was concern expressed that the already-limited resources will decrease with the anticipated increase of LTOs soon to begin their supervision orders.

SES6 and SES7 highlighted the length of the supervision orders as a major obstacle. As SES6 noted, over the 10-year period, the team supervising the offender often changes, or retires, leading to a lack of continuity in their supervision. This is further exacerbated by the fact that LTSOs are often much longer than ten years in cases where the offender is repeatedly suspended as the supervision order is paused during the suspension, as highlighted by SES7. In theory, according to SES7, a 10-year supervision order may turn into a 20-year period of supervision.

With regard to training, the majority of these supervision-oriented stakeholder interviewees described the training as lacking. The training that was provided to these interviewees came in the form of on-line training, which was described as limited and confusing. As with SEP2a and SEP2b, the majority of these supervision-oriented stakeholder interviewees noted that the majority of the learning is "done on the job," as described by SES3: more experienced colleagues and supervisors act as a point of contact for guidance and advice in difficult cases. With regard to the timing of the training opportunities, both SES4 and SES5 noted that there was a lag in training resources, and that at the outset, there was little or no training provided. SES5 went on to state that efforts to provide training at the national level are fruitless as there are provincial variations that make each unit's work with these LTOs somewhat unique.

The one supervision-oriented stakeholder who described the training opportunities in more positive terms is not currently working as a front-line worker. In

this interviewee's view, the specialized training for correctional officials supervising LTOs includes motivation-based intervention strategy training (for difficult offenders) as well as conferences. In this interviewee's experience, those in charge of supervising these offenders also have the opportunity to meet regularly to discuss cases and explore alternatives to offender management. Other than that, no specialized training was mentioned. This interviewee went on to describe the process of selecting those who work as the front-line supervisors of LTOs: essentially, joining a specialized supervision unit is done through volunteering and the supervisor chooses the most experienced and best-suited individuals from the pool of officials who put their names forward for consideration.

When asked about the treatment services provided to LTOs during the supervision period, SEP1 admitted to not being aware of what treatment these offenders are receiving, while SEP2a and SEP2b did note that these offenders partake in group counselling, particularly when participation in treatment is listed as a condition. They were, however, both sceptical about the gains made in treatment. These policing-oriented interviewees made no mention of their perceptions of the impact of program availability on judicial decision-making.

Five of the 7 supervision-oriented stakeholder interviewees described the treatment services available to LTOs as being quite similar to the services available for regular parolees. Three of the supervision-oriented stakeholder interviewees noted that the treatment amounts more to maintenance than actual treatment, *per se*. As SES2 stated, this maintenance is premised on the assumption that LTOs are receiving institutional treatment prior to their release on the LTSO. SES6 did mention the availability of substance-abuse programs for those offenders who are in need of such assistance; these programs are offered by a range of different organizations. Interviewees in this category did make mention of the voluntary nature of some of the programs made available to these offenders in the community, with the exception of when the supervision order conditions require program participation.

Finally, as indicated by SES4, SES5 and SES7, the resources for treatment for these offenders vary by community, with smaller, rural communities having less

correctional resources for such services. The Lower Mainland, and specifically the Vancouver area, was described as the jurisdiction with the resources needed to deal with the particularly high-risk LTOs. SES4 went on to discuss one case, wherein the LTO was offered a position as a skilled labourer in Alberta and efforts were made to transfer this offender to allow for this employment opportunity. However, the resources available in the community where this opportunity existed were limited. This interviewee expressed great frustration with this set of circumstances, emphasizing the role of meaningful employment for successful offender reintegration.

With regard to the impact of program availability on the judge's decision to designate an offender as a LTO, three of the 7 supervision-oriented interviewees stated that they are unsure of the impact, while three of these interviewees do suspect that treatment availability does impact the decision. In SES5's and SES7's experience, the court does inquire about the availability of community programs and the benefits of such programs and they also look to the types of institutional treatment programming. However, according to SES5, it should be the treatment upon release that ought to be the exclusive concern of the court in deciding whether a LTO is appropriate for an offender.

When asked about the nature and appropriateness of conditions imposed on LTOs, the policing-oriented stakeholder interviewees all agreed that the wording of conditions is often problematic. In SEP1's view, conditions should not be included in the supervision order unless they are enforceable and observable so as not to waste valuable and limited time and resources. SEP2a and SEP2b, though, did describe the conditions as generally appropriate for the respective offenders' needs and risks.

With regards to breaches, the policing-oriented stakeholders agreed that the types of behaviours leading to a breach include breaching no-contact conditions or abstaining from intoxicants. SEP2a and SEP2b mentioned that the one condition that will likely present as an increasing problem is the access to electronic devices; defence counsel have become increasingly convincing in their argument that living without the Internet has become virtually impossible. Each of the policing-oriented stakeholders did note, though, that the likelihood of a breach resulting in a conviction is quite low.

All but one supervision-oriented stakeholder interviewee described the conditions imposed on LTOs as generally appropriate. The types of conditions that were listed as commonly imposed included: residency conditions, treatment participation, abstaining from intoxicants and restrictions on association with certain individuals or on travel to certain problem areas (i.e. 'no-go' conditions). The wording of some conditions was described by 6 of the 7 supervision-oriented stakeholder interviewees as the main problem. The wording was described as often too specific, or too general, making the enforcement of them very difficult. In SES6's experience, "the wording [of these conditions] is not standing up in court." Those conditions that were described as virtually impossible to enforce include computer-access conditions or conditions prohibiting the possession of matches, for example. With respect to the former, SES2 stated that, if the supervising official is not well trained on computer technology, it is difficult to track the offender's computer usage.

SES5 did not describe the conditions as being generally appropriate in nature, emphasizing the difficulty of supervising offenders with residency conditions. Residency conditions must be reviewed every 6 months, which was described as redundant. In this interviewee's view, an application for consideration by the Parole Board should occur only when the supervising official wants to lift the residency conditions, and not if the official simply seeks to have the condition maintained.

While some of the supervision-oriented stakeholder interviewees did report having some experience with breaches, the consensus was that there are relatively few breach cases, and rarely do these cases result in a charge or a conviction. According to SES2, it is not to the supervising official's advantage to proceed with a breach if it is believed to be unlikely that the breach will result in a charge or a conviction; in this interviewee's experience, doing so simply aggravates the LTO, who is described here as being very litigious. Moreover, in the case that a LTO is convicted, the sentence imposed is often time served, which was described as problematic.

The supervision-oriented stakeholder interviewees differed in their evaluation of the appropriateness of the sanctions imposed in the case of a breach of a LTSO. SES5 was particularly critical of the fact that sentences for breaches often result in time

served. This was described as being completely ineffective in protecting the community and reintegrating the offender.

SES6 described an interesting set of circumstances in response to the question addressing sanctions for breaches. In this interviewee's experience, non-custodial sanctions (such as provincial probation) are often relied upon by the courts in the case of a LTO breach and such sanctions are served concurrently to the LTO, unlike custodial sentences, which suspend the *federal* LTO during the period of *provincial* incarceration. This leads to a lack of continuity between provincial and federal jurisdictions. This interviewee indicated that this likely was not intended by the legislators.

Finally, each of the interviewees in the Supervision/Enforcement stakeholder category agreed that community reintegration plays a prominent role when dealing with LTOs. As stated by SEP1, the vast majority of these offenders do deserve a second chance. Two policing-oriented stakeholder interviewees, however, were more cautious in this regard. In their view, while community reintegration is important, it not always desirable. In SEP2a's own words, "[j]ust because programs are done, LTO is done, does that mean reintegration?" These interviewees emphasized their concern for those offenders whose residency conditions are lifted, claiming that these offenders often do not have the resources or capacity to effectively self-manage. In SEP2b's experience, a LTO whose residency condition is lifted experiences a tremendous amount of stress due to the resulting instability. This was described as very damaging for the reintegration process.

SEP2b went on to describe one particularly difficult LTO for whom all reintegration efforts had failed. The problem, according to SEP2b, was not that no efforts were made to reintegrate this offender. Rather, the problem was that there is no mechanism in place to change the designation from LTO to DO in cases where the former is clearly not working, unless the offender reoffends and the new offence is serious enough to lead to a charge and a conviction. Only then can a new DO application be filed by Crown counsel.

### **Community Service**

With regards to the impact that LTO cases have on their workload, Community Service interviewees responded differently, depending largely on the extent of the contact each interviewee has with this subset of offenders. Overall, though, the consensus among these Community Service stakeholder interviewees was that the impact is best measured not in the absolute number of LTOs serviced; rather, the fact that these offenders are very needy as compared to other offenders serviced is what needs to be considered most when measuring impact on workload. CS3 noted that these LTOs “reach out for help more than ‘solid cons’... who are more self-reliant than LTOs.” According to CS3, some of these LTOs “ask to see their parole officer 4 to 5 times per day.” The consensus also was that this demand is increasing. CS2 mentioned that the nature of the communication between community service providers and volunteers and parole officers often has a great impact on the former’s workload as well. When the two work well together, this can often alleviate the strain on CS2’s organization; however, when there is conflict, the work becomes increasingly stressful and time-consuming for all involved.

While CS4 has no direct experience with LTOs, CS4 does have experience working with sex offenders in the community and describes the work as being a big commitment in the volunteer capacity, but that it can also have a therapeutic impact on volunteers. CS4 in fact described the experience as “one of the most rewarding experiences” and says that in these support groups, there is “more humanity happening.”

In describing their respective organization’s relationships with other agencies involved in the application of the LTO provisions, both CS1 and CS3 noted that the only agency that they have direct contact with is parole and other community service agencies and that, generally speaking, this relationship is positive. CS4, again with no direct experience with LTOs, admitted that relationship building and information sharing best describes the current state of the situation. CS4 described being hopeful that this will be a positive experience, and noted that positive relationships among the various

agencies is key to successfully assisting these offenders to reintegrate into the community.

CS2 went into greater detail on this point, stating that building positive relationships with other agencies within the system is always important and that extra time must be spent to ensure that these relationships are healthy. CS2 described the relationship with correctional officials as being the most challenging: “[it] goes astray when correctional officials see themselves as the professionals and cannot always work with volunteers ... [and when they] see themselves as better.” CS2 stated that it is not uncommon to be in a position to have to defend the role of community agencies in providing useful services to offenders, including LTOs. Overall, though, CS2 described the relationship between agencies and organizations as healthy. CS2 also highlighted the time-sensitive nature of the current research by noting that key community service programs are under a state of review nationally; CS2 stated that there is political resistance to conducting such an evaluation at this time and that the future of these programs has yet to be determined.

With regards to the way in which supervision is carried out in B.C. and the obstacles that exist here, as well as the training provided to those who are responsible for the supervision of LTOs, the responses of interviewees varied greatly in length and detail. CS1 described the supervision of LTOs as resembling the supervision of other parolees, and that parole and police are the key agencies carrying out the supervision duties. In CS1’s experience, LTOs are more often residents in halfway houses.

Like CS1, CS2 described the supervision of LTOs as resembling the supervision of other parolees. CS2 went into greater detail about the obstacles with this supervisory task, however. According to CS2, the difficulty with LTO cases is that cases must be brought to court when a breach occurs, while for “ordinary parolees,” a case can simply be sent back to the NPB and dealt with internally. In essence, according to CS2, a “federal LTO looks more like a provincial probationer...[and] the difference is that probation is a maximum of 3 years while the LTSO is a maximum of 10 years.”

With regard to training, CS3 questioned whether parole officers in fact receive any specific training to assist in supervising LTOs specifically, and stated that it would



“be helpful to have parole officers who are specially trained” for these cases. CS2 noted that “some” training occurs, and that breaching LTOs and bringing them to court certainly requires a new set of skills for parole officers, on top of an already heavy caseload. CS2 described this adjustment as easier for younger parole officers.

When asked about the treatment services provided for LTOs while serving the LTSO, CS1 noted that, while there are “some treatment services for LTOs in the community, ... the last few years in prison have better treatment services.” According to CS1, institutional treatment is offered in priority order, meaning LTOs, like other offenders, are at the bottom of the list to receive treatment at the beginning of their sentences, and are higher on the list of priority toward the end of their sentence.

According to CS2, LTOs partake in treatment services, if encouraged by their parole officer. In CS2’s experience, as compared to warrant-expiry offenders, LTOs do have access to treatment services and to the limited bed space that is available in community correctional facilities and these services are most often available in the Lower Mainland. Finally, in CS3’s experience, LTOs are provided with the necessary medical and/or psychiatric treatment, yet many do not participate in cognitive treatment programs due to their cognitive deficits.

When asked whether interviewees perceive the availability of treatment services as impacting sentence type or length, CS3 stated that this is a sentencing question and declined to offer a response here. CS2 was the only interviewee of the Community Service stakeholder category to offer a response here. In CS2’s experience, treatment accessibility does not impact a judge’s decision to impose the LTO designation.

With regard to the conditions imposed on LTOs while serving the supervision order, CS1, CS2 and CS3 all agreed that the conditions imposed are linked to the offence and the offender. All three of these interviewees agreed that generally, the conditions imposed are appropriate and do address the individual offender’s needs. However, each of these interviewees also expressed concern with the impact that some of these conditions have on the offender. For example, CS1 stated that it is not the conditions themselves, but rather *how* the conditions are imposed that is of considerable concern. According to CS1, “sometimes parole officers breach for nothing, like a

deteriorating attitude.” This discretionary power of parole officers is described as quite problematic. CS2 also described the conditions as “sometimes overboard” and that unnecessary conditions are often imposed on the offender, addressing problems that the offender does not him or herself exhibit.

CS3 was quite specific in discussing one condition that is deemed to be particularly troublesome, and that is the condition that prohibits offenders from associating with other offenders. CS3 argued that this condition makes “little sense as they are the only people they know” and because sex offenders do not offend in groups.

When offenders breach the conditions of the LTSO, the sanctions imposed include prison time and the imposition of additional conditions. The prevalence of actual breaches, though, according to CS1, CS2 and CS3, is quite low. According to CS1, a LTO is often held for a 30-day period based solely on the parole officer’s perception that the offender is exhibiting a “deteriorating attitude” and that at the end of the 30-day period, the offender is released as there is no basis to proceed with an actual breach. In CS3’s view, the courts are often quite punitive when a LTO breaches the conditions of a LTSO. According to CS3, judges perceive the LTO designation as a “break in the first place” and therefore they are less compassionate when imposing sanctions when breaches occur.

Each of the four Community Service stakeholder category interviewees agreed that community reintegration is essential when dealing with LTOs. In CS2’s words, “the idea of a LTSO is to provide supports, balances and counterbalances that should increase the ability to reintegrate...[i]t is a reintegration tool.” CS1 emphasized the importance of community service providers to assist these offenders to reintegrate, and highlighted the need for these services in the communities that these offenders live in to facilitate this reintegration. CS1 emphasized that these offenders often lack pro-social relationships, and that support groups and services provide a place for these offenders to vent and to feel included.

*Summary:* Table C3 provides a brief summary of the responses provided under Topic D. For the sake of simplicity, these responses are not organized by stakeholder category. These details are provided in the textual review of findings above.

**Table C3.**

**Replicated:  
Summary of Topic D:  
Interviewee Experiences and Perceptions of LTOs in the System**

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**Question**

**Responses**

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*Workload*

- Consensus is that LTO cases do not make up majority of cases, but they are relatively more intensive and time-consuming
- Breaches intensify workload
- Impact of LTO cases was not anticipated
- Judges' workload least affected by LTO designation

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*Relationship with other agencies*

- No agency reports relationship with judiciary
- Overall disconnect reported between various agencies, namely between Crown counsel and other agencies
- Relationship with Corrections described by many as the most challenging
- Lack of collaboration described as frustrating and unfortunate across stakeholder categories
- Relationship between various agencies Mixed - described by some in positive terms and by others in negative terms

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*How supervision is carried out in B.C.*

- Varying degrees of familiarity with how supervision is carried out in B.C.
  - Limited knowledge of how supervision is carried out among the Legal stakeholder interviewees
  - Parole officers and police identified as the key agencies involved in the task of supervision
  - Consensus that there is a lack of resources to effectively supervise LTOs
  - Belief expressed that the supervision of LTOs in fact closely resembles the supervision of other parolees
  - Treatment provided for LTOs during the supervision order more accurately described as maintenance according to interviewees across stakeholder categories
  - Mixed responses/misconceptions regarding the type of training that parole officers are believed to receive
  - Those conducting supervision (parole officers and police) describe training as limited and not specific to LTOs
  - Nature and wording of conditions in supervision orders described as the most challenging obstacle in supervising LTOs—described as very difficult to enforce
  - Actual length of supervision orders makes it difficult to ensure continuity in supervision
  - Meeting residency needs is very challenging
-

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### *Treatment during supervision*

- Varying degrees of knowledge regarding the nature and availability of treatment programs for LTOs during the supervision order
  - Lack of treatment resources
  - Treatment described as maintenance
  - Treatment believed to closely resemble treatment available for regular parolees
  - Legal stakeholder category interviewees, including judges, indicate that accessibility of treatment programs and willingness of offender to participate in treatment does influence designation decision
  - Legal stakeholder interviewees, including judges, report having limited knowledge of the actual treatment provided and admit relying on Crown and/or defence for this information
  - Testimony from correctional officials also relied upon to inform the court on current community treatment resources
  - Failure to partake in institutional treatment is described as a major obstacle to success in maintenance programs in the community which are premised on institutional treatment
  - Voluntary nature of program participation is described as problematic
- 

### *Conditions and Breaches*

- Varying degrees of knowledge regarding the types of conditions imposed in supervision orders
  - Interviewees in Legal stakeholder category are the least knowledgeable of the types of conditions imposed on these offenders
  - Conditions described as primarily generic and appropriate
  - Main concern with conditions is the wording
  - Conditions described as unrealistic, unenforceable
  - Evaluation of the effectiveness of the conditions is mixed—some quote low recidivism rates as an indication that the conditions are effective
  - Process of maintaining residency conditions described as overly laborious
  - Breaches described as infrequent
  - Process of breaching described as overly laborious and problematic
  - Supervision/Enforcement interviewees list problems with breaches, including the common sentence of time served, the negative impacts on the offender, lack of continuity when a provincial sanction is imposed
  - Sanctions for breaches described for the most part as severe yet appropriate; defence counsel and Community Service interviewees are critical of the severity of sanctions here
  - Discretionary power of parole officers described as problematic
- 

### *Community Reintegration*

- Described as essential across stakeholder categories
  - Deemed by many to complement other goals of sentencing, such as treatment and public protection
  - Offender characteristics and offender ability to reform also listed as factors to consider when deciding appropriateness of community reintegration
  - Lifting residency conditions described as damaging for the community reintegration process
-

## **Topic E: The Future of Dealing with LTOs**

At the end of the interview, interviewees were given the opportunity to offer suggestions for reform, for best practices, and/or also to provide any additional comments or suggestions that were not captured in the previous interview questions. The responses given are categorized below by stakeholder category.

### ***Legal***

In LL's view, there is a need for the courts to be more sparing in the use of the LTO designation, and to be more individualized in their approaches in dealing with these offenders. In this interviewee's own words, "[T]his is a system that is working like a sausage factory, with no time or resources for an individualized approach in sentencing." LTSOs ought to be shorter, in LL's opinion. This interviewee also recommended speaking to LTOs themselves to ascertain their perceptions as to how well the provisions are working.

While the judges included in this research were reluctant to comment on how the system ought to be reformed, some suggestions were offered. For example, in LJ2's view, perhaps restorative justice options ought to be further explored for LTOs. This interviewee also urged that there be greater continuity in treatment services for these offenders, particularly for drug problems. LJ2 went on to state that it is likely that most LTOs are psychopaths, therefore leaving this interviewee doubtful of whether rehabilitation efforts would even succeed with these offenders.

LJ3 noted that perhaps the *Criminal Code* provisions dealing with LTOs ought to be more logical. In this judge's view, the requirement to establish dangerousness first, then to consider the less punitive LTO designation, is not a logical sequence of events.

While LJ4 indicated a strong reluctance to provide suggestions for legislative reform, this interviewee did make a suggestion for the purposes of 'Best Practices.' In this interviewee's experience, a DO or LTO hearing is most successful when the parole officer providing testimony and the Crown and defence counsel are experienced in these cases. In this interviewee's own words "[s]pecialization is ideal in these cases ....where the ramifications are so great." LJ4 also stated that it would be quite helpful if judges

were informed of the outcome of LTO cases, either individual cases or generally, to have a better sense of how these offenders are being dealt with following sentencing. While this interviewee claimed to follow cases, it was also stated that it is difficult to stay “on top of all the issues” and being provided with data on the long-term outcomes of these decisions, in LJ4’s view, would be of great assistance to the court.

Crown counsel offered various suggestions for the reform of the LTO provisions and how these cases are currently dealt with in the system. A need for greater resources was noted by two of these Crown counsel. LCC2 specifically mentioned the need for the assistance of junior counsel as these cases are intensive. This interviewee also suggested that corrections files be re-organized to avoid the duplication of forms, which just contributes to the difficulty in sifting through the vast amount of information in LTO files. LCC4 and LCC2 went on to suggest that the 10-year maximum supervision order length be extended; LCC2 suggested that this be extended to life supervision, while still acknowledging that the resources need to be there to make this a realistic option.

Also linked to resources, LCC2 and LCC3 emphasized the need to continually educate parole officers in dealing with LTOs. LCC3 specifically mentioned the need for a greater understanding among parole officers of *Charter* rights and of what is admissible in court. This last point is related to a suggestion for reform made by LCC4 around the wording of conditions; this interviewee urged that the wording of conditions be re-vamped so that they can in fact be upheld in court.

Both LCC3 and LCC4 urged that the process to convert the LTO designation into the DO designation be streamlined. In LCC3 view, if an offender breaches repeatedly, the option should exist that the LTO be cancelled and the DO designation be imposed. LCC3 called this a “three strikes, you’re out” option. LCC4 offered a different suggestion; in this interviewee’s view, if DO designations were reviewed every 3 years rather than every 7 years, there would be more DO designations imposed, and there would be fewer LTO cases which, in this interviewee’s view, ought to have been DO cases in the first place.

In line with LCC4's suggestion to allow for more DO designations, this interviewee suggested that the courts ought not seek to identify the offenders that are the "worst of the worst" and therefore eligible for the DO designation. In this interviewee's view, the "worst of the worst" approach is a relativistic approach which leads to an over-reliance on the less punitive and less restrictive LTO designation due to what this interviewee describes as "false hope." Instead, the decision ought to be based purely on the facts pertaining to the offender's ability to be successfully managed in the community.

LCC2 offered some suggestions regarding the nature of judicial reasoning in these cases. In this interviewee's view, there ought to be a clearer formula for judges to follow in these cases, as well as a standardized format for their reasoning. Such a formula would presumably facilitate the work of judges in making these very important and difficult designation decisions.

Finally, LCC1 raised the question of what can be used to deal with these offenders upon the completion of the LTSO. This interviewee described being hopeful that reliance on section 810 peace bonds will not be necessary, but stated that they will be relied upon, if necessary.

There were numerous suggestions for reform offered by the defence counsel interviewees as well. The need for clarity in the definitions and wording of the legislation is mentioned by LDC2a, LDC2b and LDC3. Terms that are said to need clarification include: the notion of psychological harm; what is to qualify as a sexual offence; what constitutes substantial risk; and what qualifies as reasonable possibility of eventual control of risk.

LDC3 went on to discuss problems with the onus and standard of proof. In this interviewee's view, the filing of documents by Crown to prove aggravating factors at a DO hearing is "outrageous" and Crown ought to be required to provide a witness to prove these aggravating factors beyond a reasonable doubt. LDC3 described the current practice in DO hearings as inquisitorial rather than adversarial in nature and as such, in this interviewee's view, "the rules of evidence are bastardized."

LDC2a, LDC2b and LDC3 also urged that changes be made to the funding allowance by LSS. In their experience, the funding for these cases is not sufficient to hire the necessary mental health experts and other assistance needed to provide these offenders with full answer and defence. The process of applying for and obtaining funding was itself described as tedious, and unduly time-consuming, adding further to the strain placed on defence counsel in these cases.

The need to allow open access to correctional materials without delays was also emphasized by defence counsel. It was argued that these records ought to be provided to defence counsel in a timely manner without first being vetted, much in the same way that Crown counsel receive these same documents.

LDC1 went on to suggest that the decision whether to designate an offender as either a DO or a LTO, or neither, come after the completion of the determinate portion of the sentence. In this interviewee's view, the current state of treatment opportunities and the current risk posed by the offender would be available at this time and would more appropriately inform this important designation decision. In the end, according to LDC1, this final designation ought to rest more on the goal of treating these offenders rather than on isolating and punishing them.

### ***Mental Health***

Three of the Mental Health stakeholder category interviewees (MHAPP, MHAP3 & MHAP4), all of whom are involved in the assessment of these offenders, indicated the utility of regular meetings with the FPSC to provide ongoing education on assessments and treatment. MHAPP noted that the involvement of Crown counsel, judges, and other actors in the criminal justice system in these meetings would be beneficial; learning how helpful the assessment reports are, knowing the outcome of cases, and also being updated on the constantly changing research in this area would enhance the practice of assessors, in MHAPP's view. MHAPP also noted that ongoing education for assessors from the CSC on treatment resources that are actually available in the community, as well as information on how supervision is actually carried out, would really assist assessors in accurately informing the court on these points. In MHAPP's experience,



assessors are often asked these questions in court, but may not be well-equipped to answer them.

Two of the Mental Health stakeholder category interviewees (MHAP1 and MHAP4) suggested that the maximum supervision order period of 10 years should in fact be extended to life-long supervision. While both of these interviewees acknowledged that this would require significantly more resources, they both described it as necessary due to their concerns about these offenders being left with no supervision at the end of their 10-year supervision orders. MHAP4 described envisioning such a life-long supervision order as including periodic reviews, as in the case of DOs, at which time conditions can be modified to suit the risks and needs of the respective LTO.

MHAP2 and MHAP4 both maintained that it would be much more appropriate to move the decision to designate the offender as a DO or LTO to the end of the determinate sentence rather than before. In their view, this would provide a more accurate picture of what resources are actually available at the time of release and it would also provide a more accurate assessment of the offender's risk level. Both of these interviewees admitted that this is likely an option that would be deemed unconstitutional by the courts; to address this, MHAP2 suggested perhaps giving the offender notice at the time of sentencing that a DO/LTO assessment may occur at some point during their incarceration period.

As MHT's role is to provide treatment to these offenders during the supervision order, this interviewee's suggestions for reform were treatment-oriented. In MHT's view, the LTO provisions ought to be amended to require a sentence long enough to allow the offender to partake in meaningful institutional treatment. MHT reminded us that the treatment in the community is in fact maintenance, and is based on the premise that the offender has already undergone institutional treatment.

MHT also suggested that community resources be enhanced to address the needs of offenders who are sexually deviant because, in MHT's experience, sexual offenders exhibiting sexual deviance are more likely to reoffend. MHT emphasized the need to ensure that parole officers who are charged with the task of supervising these offenders are well trained in supervision strategies that facilitate change. Finally, this

interviewee suggested talking to LTOs themselves to gauge whether the supervision strategies currently being used are in fact working.

MHAP1 and MHAP2 echoed MHT's emphasis on adequate resources for effective supervision. MHAP2 went on to argue that LTSO conditions need to be more evidence-based and flexible. MHAP2 also suggested that the development of these conditions ought to involve the input of those officials who are actually carrying out the supervision. In MHAP2's view, the residence conditions and the requirement for parole officers to continuously approach the NPB to justify maintaining an offender's residence condition hampers the offender's ability to connect with the community and it leaves the offender with no sense of security or stability. This requirement was described as time-consuming and counterproductive.

MHAP2 also called for a standardized assessment format that would require assessors to consider an agreed-upon set of risk factors. In MHAP2's opinion, this standardization would eliminate the wide variation in reporting and assessment that currently exists, which this interviewee described as "quite frankly a joke." MHAP3 also mentioned the problematic differences in assessment and reporting, and noted that these differences are the result of inherent differences in the disciplines of psychiatry and psychology. These paradigmatic differences are inevitable in MHAP3's view.

In this section of the interview, interviewees also made mention of certain features of the current practice that are described in positive terms. For example, MHAPP noted that the offender files and databases that are referred to for the purposes of conducting the assessment are very complete. MHAP1 noted that the amendment to the *Criminal Code* that requires a court-appointed assessment is an improvement to the previous state of affairs; according to this interviewee, the court-appointed assessment "makes it easier for the court to find a middle ground rather than diametric opposed opinions."

### ***Supervision/Enforcement***

The policing-oriented interviewees in the Supervision/Enforcement stakeholder category offered several recommendations for reform. A common theme in these

responses was the need to rework the nature and wording of conditions. More specifically, SEP1 emphasized the need for more practical and enforceable conditions. SEP2a and SEP2b suggested incorporating input from Crown counsel and police in the writing of these conditions to ensure that they are indeed enforceable. SEP1 also suggested providing investigative training to supervision officials to ensure that they are familiar with the rules of the court. Lack of familiarity in this regard was noted as a primary reason that many of these breach cases do not proceed to a charge or conviction.

With regard to the maximum 10-year length of LTSOs, SEP2a and SEP2b described this as appropriate, so long as most, if not all, LTOs are actually given a 10-year supervision order. However, they did still express great concern about what will occur at the end of the supervision period. SEP1 also expressed similar concern about what will occur upon completion of the LTO. According to this interviewee, there needs to be a “back-up plan” for these offenders upon the end of the supervision order. It was suggested that judges have the ability to extend the supervision order in cases where doing so is warranted. In fact, in SEP1’s view, there ought to be no maximum length to the supervision order.

SEP2a and SEP2b feel stated the designation decision ought to continue to be made after the conviction but before serving the determinate sentence. In their view, the judge is in the best position to review the circumstances of the case and the nature of the offender’s criminal history, and to make this decision. However, SEP2a and SEP2b stated that the common Crown counsel practice of applying for a DO designation when in fact a LTO designation is sought is completely inappropriate. As SEP2b noted, “[I]f you are charged with theft, that is what you did, not robbery.”

SEP1 went on to suggest that efforts be made to encourage and facilitate communication between the various agencies that assist in supervising LTOs. Working with the Canadian Border Services (hereafter referred to as CBS) to deal with international sex offenders was described as a priority here, with a possibility to engage in cross-training initiatives between police agencies and CBS. Police-agency-to-police-agency communication was also emphasized; in SEP1’s experience, there is often a

lack of knowledge amongst police officers about the role of the specialized policing units that exist to deal with high-risk offenders, even when the unit is within the respective officer's own police department. Moreover, it was suggested that more police departments create specialized units to assist in the monitoring and supervision of LTOs while in the community.

The majority of the supervision-oriented stakeholder interviewees offered suggestions to improve upon the conditions imposed on LTOs. The wording was again described as problematic; many of these interviewees suggested creating a standard set of conditions that have been tested in the courts. One interviewee suggested that the court be involved in writing the conditions for LTOs to ensure that they are enforceable. Alternatively, SES2 suggested changing the way in which LTOs are dealt with if they breach their conditions. In this interviewee's view, dealing with them in the same way as other federal parolees would allow for a more efficient and effective process. Training supervision officials on the rules of the court was also suggested by several of these supervision-oriented stakeholder interviewees. Collaborating with police and Crown in these training efforts was also recommended so that there is a clarification of roles of all agencies involved in the supervision and monitoring of these offenders, and in breaching them when necessary.

The need to make changes to residence conditions was also a common theme in the supervision-oriented interviewee suggestions for reform. The requirement to constantly re-apply for the residence condition was described as redundant and problematic in those cases where the residency condition is lifted and the supervising official is left to struggle with the aftermath of this decision. Also, according to SES6, all LTOs should have a residence condition imposed upon them - at least, at the beginning of the supervision order. Presumably, this would be effective in monitoring and supervising these offenders, and in identifying those offenders who can be managed in the community without being placed in a community residency facility.

SES4 offered an interesting suggestion to address the concerns revolving around residence. In this interviewee's view, the transition from a residence placement to being out in the community without any such conditions is an abrupt one. The suggestion was

made to create a second stage of housing for offenders, such as a semi-independent living environment. According to SES4, this would be more cost-effective than keeping these offenders in the more intensive residence facilities that currently exist, and it would also allow for “cascading reintegration.” As SES2 highlighted, the need to consider resources in these residence conditions is crucial; in this interviewee’s experiences, the general lack of resources for LTOs is very evident when considering the number of beds available to house them, which in turn takes away from parolees granted day parole, who are also in need of a residency placement. As more and more LTOs have residence conditions imposed on them, it is believed that the strain on resources will only increase in the coming years. SES2 suggested requiring LTOs to earn their release from the determinate sentence in order to decrease the pace at which they are being released into the community to a manageable level.

The need for greater resources was echoed in the responses of many of the supervision-oriented stakeholder interviewees. Included here was the suggestion for the creation of more specialized units for dealing with high-risk offenders, both in correctional agencies and police agencies. The consensus here was that having specialized officials to deal with LTOs will facilitate and streamline the process, and contribute to a higher level of efficiency and effectiveness. According to SES6, greater police involvement in the monitoring of these offenders is also warranted.

A lack of continuity between provincial and federal authorities was also described as problematic. As SES2 and SES7 noted, in the case that an offender is given credit for time served, thus serving the determinate portion of the sentence in a provincial service, that offender does not get access to federal treatment programs. This was simply not the legislative intent. Furthermore, in the case that an offender receives a provincial sanction for a breach of a LTSO, the federal supervising official loses the ability to electronically monitor that offender throughout the duration of the provincial sentence due to a lack of access to the provincial monitoring systems. This lack of continuity was described as creating an opportunity for high-risk LTOs to fall between the cracks.

SES5 and SES7 expressed different views on the type of offender that ought to be captured by the LTO provisions. On the one hand, SES7 suggested that only sex offenders should be eligible for the LTO designation, and more specifically, only the predatory sex offender. SES5, on the other hand, suggested eliminating the 2-year determinate sentence requirement outlined in the provisions. In this interviewee's view, there are many offenders who may not require a federal sentence but would still benefit from the type of supervision offered under the LTSO.

Finally, with regard to a best practices manual, SES7 noted that they already have manuals on how to manage an offender. Rather, more basic information on what is happening across the country should be offered to supervising officials. Technical tips on testifying in court and dealing with other agencies, and also information on investigations and breaches, would be useful for supervising officials, in SES7's view.

### ***Community Service***

Three of the Community Service stakeholder interviewees emphasized the need for greater community-based resources to assist in the successful reintegration of LTOs. CS4 emphasized the need for greater collaboration between the various agencies that provide support to these offenders while in the community. CS4 also noted that release back into the community is a very stressful time for offenders, making the need for coordinated services that much more important.

CS2 described the prevalence of the 10-year supervision order length as very problematic. According to CS2, the frequency with which this supervision order length is imposed indicates that "considerations of relative risk are not being considered...[and] given that these are expensive, difficult proceedings with a significant impact on people's lives, due consideration ought to be paid to relative risk." CS2 also identified credit for time served as uniquely problematic when dealing with LTOs. When an offender has served the determinate portion of their sentence in a provincial institution, and is then later switched to a federal jurisdiction during LTSO, the supervising official knows little about the offender, making it a very difficult transition. To resolve this problem, CS2 suggested that a "2 year plus rule" be added as a condition necessary to impose a LTSO. In other words, "[T]he solution would be not to impose a [LTSO] unless the

individual is headed to a federal institution with a federal sentence of 2 years or more.” This would require Crown counsel to notify the judge that he or she intends to seek a LTSO before a sentence is imposed. While CS2 acknowledged that not granting sex offenders credit for time served is another option, this was described as a less desirable option.

CS1 once again discussed the problems posed by the degree of power held by parole officers when dealing with LTOs. According to CS1, there is “[t]oo much opportunity for individual personality conflicts.” Overall, CS1 described not being in support of the LTO designation, and suggested that it be eliminated. In CS1’s view, this designation is relied upon whenever a DO designation “cannot stick” and this is not deemed to be just. CS1 echoed CS4’s mention of release into the community as being very stressful, and noted that “[M]any of these offenders have to learn to fend for themselves.”

Finally, CS3 offered some suggestions for reform as well. First, with regards to residence, CS3 suggested that perhaps LTOs ought to be separated from other parolees in halfway houses to allow them to become more mutually supportive. This, of course, would require special funding, but it would provide a residence environment that would “build a community for these guys.” CS3 also suggested that the 24-hour escorts that currently exist in halfway houses ought to be eliminated and that there ought to be specialized parole officers to deal specifically with LTOs. Overall, according to CS3, the LTO designation was created too quickly in an effort to appease the public, and it was not devised with enough caution or forethought.

### **Summary**

Table C4 provides an overview of the recommendations for reform made by interviewees under Topic E, with reference made to the stakeholder category/ies from which these recommendations emerged. While some of these recommendations were listed by interviewees within one stakeholder category, many recommendations were made by interviewees across stakeholder categories. While it may be the case that all recommendations are important, those that are listed by more than one stakeholder category are deemed to be particularly significant and in need of immediate attention.

**Table C4.**

**Replicated:  
Summary of Topic E:  
Recommendations for Reform, by Stakeholder Category**

Recommendation Category Recommendation	Legal	Mental Health	Supervision/ Enforcement	Community Service
<i>Provisions</i>				
· Change legislative target to solely sexual predator			X	
· Extend maximum supervision order length/eliminate maximum outlined in legislation	X	X	X	
· Judges to have legislative power to extend LTO			X	
· Streamline conversion of LTO to DO	X			
· Reduce review period for DO to allow for more DO designations	X			
· More clarity/logic in definitions and wording of legislation	X			
· Changes in onus and standard of proof/more stringent criteria in legislation for the initiation of DO/LTO applications	X			
· Extend length of actual determinate sentence requirement in legislation to allow for institutional treatment		X		
· Eliminate 2-yr determinate sentence minimum to allow for more offenders to be captured by legislation			X	
· Legislative guidance/formula for judges to follow	X		X	
· Require all LTO sentences be no less than 2 years in practice to ensure they are all served in a federal institution				X
· Eliminate LTO designation				X
<i>Court Hearing and Court-ordered Assessment</i>				
· Reduce number of LTO designations imposed	X			
· Decrease length of LTOs imposed/prevalence of 10-year LTO	X			X
· Increase reliance on restorative justice options	X			
· Funding for additional counsel assistance in these cases	X			
· Increase organization of correctional files for counsel	X			
· Equal and more open access to correctional files for counsel	X			
· Crown to stop initiation of LTO process with DO applications/Stop using LTO as default when DO application fails	X		X	
· More information for judges on outcome of cases/what occurs during supervision and treatment	X			



· More emphasis on treatment/continuity in treatment in community when making sentencing decisions	x			
· More information for assessors on outcome of cases/on what occurs during supervision and on what community-treatment resources exist		x		
· More accessible funding for LSS	x			
· Move designation to the end of the determinate sentence	x	x		
· More individual rather than relativistic approach in assessment and designations	x			
· More attention paid to relative risk in assessments				x
· Standardization of assessments and expert testimony		x		
· Standardization of RFJ	x			
· Specialization of counsel and parole officers who provide testimony	x			
<i>Determinate Sentence</i>				
· Increase length of determinate sentences to allow for mandatory institutional treatment and gradual decrease in institutional security (maximum to minimum security)		x		
· Require LTOs to earn release from determinate sentence				x
<i>Supervision</i>				
· Improve wording of conditions	x	x	x	
· Input from judges in wording of conditions				x
· Input from Crown counsel/police and/or parole officers in wording of conditions		x	x	
· Creation of standard set of conditions to draw from				x
· Change renewal requirement for residence/plan when residency lifted		x	x	
· Eliminate 24-hour escort requirement while in residence				x
· Require residence conditions for all LTOs at beginning of LTSO				x
· Separate LTOs from other offenders while in residence				x
· Greater residence resources				x
· Specialized training and resources for parole officers in dealing with LTO cases/province-specific training	x	x	x	x
· More specialized police units to deal with LTOs/more police involvement in monitoring of LTOs				x
· Improve the way breaches are dealt with and resulting extended LTSO length				x
· Decrease discretionary power of parole officers				x
· Allow federal parole officers to access provincial systems/ensure continuity when breach results in provincial sentence				x

· Guidance/clarity for post-supervision order plan/more gradual move from residency to community	x			x
· Ask LTOs for their views on how the supervision conditions are working	x	x		
· More resources/ coordination of services to allow for successful reintegration, including obtaining gainful employment				x
<i>Overall</i>				
· Increased funding for treatment and supervision of LTOs	x	x	x	x
· Increased collaboration between agencies and continuity in services/clarification of roles	x	x	x	x

## Appendix D.

### The Interview Instrument

#### Interview Instrument<sup>14</sup>

##### A) Interviewee role in the process of LTO provisions

1. What has been your role with respect to LTOs?
2. How long have you occupied this role?

##### B) Interviewee perceptions of LTO provisions

3. In your opinion, what has been the objective(s) of the LTO provisions of the *Criminal Code*? (think latent vs manifest)
  - a. Do you think the provisions have been effective in achieving these objectives? If so, how? If not, why not?
4. What ought to be the goals of the system in dealing with LTOs?
  - a. In priority?
5. Do you believe that the current application of the LTO provisions is in line with these goals?
6. In your opinion, have there been advantages to the LTO provisions? Limitations?
7. In your experience, has the use of the LTO provisions increased/decreased/changed in any way since their enactment in 1997? If so, how and why?

##### C) Interviewee perceptions of LTO characteristics

8. In your experience, what are the characteristics of offenders who have been designated as LTOs?
  - a. Probe: demographic, offence history, likelihood to recidivate, mental health, etc.
  - b. Mental health interviewees: what role does psychopathy play in the designation?
9. From your perspective, are those offenders designated as LTOs qualitatively different from those offenders designated as DOs? If so, in what way(s)?
10. From your perspective, are those offenders designated as LTOs qualitatively different from those offenders subject to conventional sentencing? Now? Prior to the 1997 amendments?
11. In your opinion/experience, which characteristics are relied on to decide if the LTO is controllable in the community?
12. The treatability of the LTOs in B.C. was deemed to be low in the majority of the assessments included in the LTOs files. In your opinion, why might an offender deemed to be low on a continuum of treatability be designated as an LTO?

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<sup>14</sup> Note that these questions may be modified slightly to suit the individual interviewee.

13. The majority (84%) of LTOs in B.C. receive an LTSO of 10 years in length. In your opinion/experience, why is this the most prevalent LTSO length?

D) Interviewee experiences and perceptions of LTOs in the system

14. What has been the impact of the LTO provisions on your workload?
15. Describe the relationship you/your agency has with the other agencies involved in the application of the LTO provisions. eg. Crown Counsel, the Judiciary, Correctional Service of Canada, BC Corrections, and the Forensic Psychiatric Services Commission?
16. How is the supervision of LTOs carried out in B.C.?
- a. Who is responsible for this supervision and how is this task accomplished?
  - b. Do obstacles exist here?
  - c. Has training been provided to those responsible for the supervision of these offenders?
  - d. What does this training entail?
17. In your experience, are treatment services provided for offenders on long-term supervision orders? Describe the accessibility of these programs and the impact of accessibility on sentence type/length, in your experience.
18. In your experience, what types of conditions have been imposed in long-term supervision orders? Do you think that the more routinely imposed conditions are appropriate? Why, why not?
19. In your opinion, what place does community reintegration have when dealing with LTOs?
20. In your experience, what sanctions have been imposed upon the breach of these conditions? Are these sanctions appropriate?

E) The future of dealing with LTOs

21. According to you, how might the LTO provisions be modified to address any challenges that may appear in their current application? If you were to participate in the development of a 'Best Practices' manual for criminal justice and mental health professionals dealing with LTOs, what might you include?
22. Any additional comments/suggestions