Criminal Law

Dangerous offender designation is about public safety, not denunciation

By Jacob Stilman

A recent decision by Ontario's Ministry of the Attorney General to not proceed with a Dangerous or Long-Term Offender application against a high-profile sex offender will probably come as a surprise to much of the public.

Gordon Stuckless gained notoriety in the late 1990s when he was convicted of multiple historic sexual offences involving 24 victims, many of whom he encountered through his employment at Maple Leaf Gardens. He received a five-year sentence for those offences, was paroled, and has not re-offended since then. According to reports, he has voluntarily undergone and maintained chemical castration since his first conviction.

Another 18 complainants came forward with new accusations nearly three years ago, resulting in more than 100 new charges. Again, all the charges related to events that occurred decades ago.

The sheer tally of victims would surely make Stuckless one of the most prolific pedophilic sex offenders in Canadian history. Nevertheless, he will not have to serve an indeterminate sentence.

The Dangerous Offender provisions, contained in Part XXIV of the Criminal Code, constitute the most devastating sentencing option available in the criminal justice system. Unlike a sentence of life imprisonment, which may result in the offender being paroled after serving seven years, an offender who receives a DO designation is unlikely to ever emerge from prison.

Despite these draconian consequences, the threshold for being designated a DO is surprisingly low.

Most offenders with a history of sexual offences, even if the actual acts that make up his record are relatively non-invasive or minimal in nature, may still qualify.

The legal definitions that are encompassed by the DO provisions are largely categorical, which results in almost a checklist approach to the DO determination by the court: if the subject meets the criteria judges now have little discretion in making the finding of a DO status.

Arguably, the greatest constraint on the determination that an offender is classified as a DO is that the proceedings require considerable effort and expense on the part of the Crown, which must obtain a psychiatric assessment and put together a compendium of the entire court record of the offender.

That is why it is somewhat surprising that the Attorney General has decided against pursuing a DO designation for Stuckless.

Of course, without being privy to the materials that the Crown has at its disposal, and the opinion obtained from the psychiatric evaluation it conducted, much of what I say is speculative. Nevertheless, the sheer volume of offences committed by Stuckless is, in the common experience of most practitioners, usually sufficient to trigger the application. Had this happened, the result would have been almost inevitable.

It is likely that the sheer passage of time has benefited Stuckless. If the record demonstrates that he has not offended in decades and has moreover been compliant with undergoing chemical treatment to eliminate his libidinous inclinations, then he really does not present a threat to the public any longer.

The purpose of the DO provisions is not to mete out retributive or denunciatory punishment, but rather to protect the public from individuals who represent an ongoing threat should they be on the street. Psychiatrists also identify a “burn-out” phase for pedophiles, meaning that by the time they reach their late 50s or 60s they generally have largely diminished urges in any event.

Nevertheless, Stuckless, having reached his mid 60s and not having offended in decades, is still facing a significant jail sentence, despite the passage of time since these events occurred. His offences constitute serious breaches of trust of a serial nature.

While his relatively advanced age will mitigate the sentence he receives, the courts have articulated a strong denunciatory position with respect to sexual offences against children.