

IN THE YOUTH JUSTICE COURT OF NOVA SCOTIA

B.P. (Re), 2017 NSPC 47

Date: September 12, 2017

Docket: 2775823

Registry: Halifax

IN THE MATTER OF AN APPLICATION by the Provincial Director to transfer B.P. to a provincial correctional facility for adults pursuant to section 92(1) of the *Youth Criminal Justice Act*

RESTRICTION ON PUBLICATION: section 110 YCJA

DECISION

Judge: The Honourable Judge Anne S. Derrick

Heard: May 1, 2, 3, and 18, August 8, 9, 10, 11, 14 and 15, 2017

Decision: September 12, 2017

Charges: section 235, *Criminal Code*

Counsel: Peter Craig, Q.C., for the Crown

Peter McVey, Q.C., for the Provincial Director

Claire McNeil and Nathaniel Ng-Cornish, senior law student,
for N.B.P.

By the Court:*Introduction*

[1] Two years ago, I sentenced N.B.P. to a seven-year Intensive Rehabilitative Custody and Supervision (IRCS) sentence for the second-degree murder of Daniel Pellerin. (*R. v. B.P.*, 2015 NSPC 38) The sentence is structured under the *Youth Criminal Justice Act* (YCJA) as four years in custody and, subject to section 104(1) - which can mean a continuation in custody - a placement under conditional supervision in the community in accordance with conditions provided for in section 105 of the YCJA.

[2] Mr. B.P.'s IRCS sentence was jointly recommended by Crown and Defence. The option of an IRCS sentence, provided for under section 42(2)(r) of the *Youth Criminal Justice Act* ("YCJA"), was only possible because it had the support of the Provincial Director, a legislated requirement.

[3] Mr. B.P. served his IRCS sentence at the Nova Scotia Youth Facility ("Waterville") until September 4, 2016 when, following his participation in a violent incident in which youth workers were injured, he was transferred to the temporary housing unit for youth ("THU") at the Northeast Nova Scotia Correctional Facility ("Northeast"), an adult correctional facility. He has been at Northeast ever since.

[4] The Provincial Director does not want Mr. B.P. going back to Waterville. He says it is not in the public interest for Mr. B.P. to return there to serve his IRCS sentence. He has brought a "transfer" application pursuant to section 92(1) of the YCJA submitting that Mr. B.P.'s high risk for violence can be more safely managed in one of the province's adult correctional facilities.

[5] An adult correctional facility is a provincial jail where offenders aged 18 and older serve sentences of less than two years. Custodial sentences of two years or more are served at federal penitentiaries. A federal penitentiary placement is not a consideration in Mr. B.P.'s case as he has less than two years left in the custodial portion of his IRCS sentence.

[6] Mr. B.P. opposes the Provincial Director's application. He wants to go back to Waterville and continue his IRCS sentence there.

The Organization of these Reasons

[7] These reasons are lengthy and it will be helpful if I provide a roadmap to them. I am going to provide a brief overview of the statutory test for a section 92(1) transfer application although I will be discussing it in more detail later. After I give a brief history of the twists and turns in these proceedings, I will be identifying the witnesses called by the Crown. It is the procedure in section 92(1) applications for the Crown to call the evidence and the Provincial Director to make final submissions. That is what happened here.

[8] Mr. Craig led a considerable amount of evidence, both from the witness box and in documentary form. I will be spending some time discussing what it revealed about Mr. B.P.'s time at Waterville and the administration of his IRCS sentence there. This will include the violent attack on staff that Mr. B.P. participated in on September 4, 2016. This is followed by a section on Mr. B.P.'s placement at the Northeast Nova Scotia Correctional Facility and its impact on his IRCS sentence. I will then be discussing the current status of the IRCS' Joint Treatment Plan and the psychiatric services aspect of Mr. B.P.'s IRCS sentence. And finally I will be returning to public interest test under section 92(1).

[9] As I have mentioned, section 92(1) of the *YCJA* permits a young person's transfer to an adult correctional centre if the Provincial Director establishes it is in the public interest test to do so. In examining this public interest standard, I will be discussing Mr. B.P.'s IRCS sentence, the Provincial Director's position on the public interest, cases dealt with under section 30(4) of the *YCJA*, and the issue of Mr. B.P.'s rehabilitation and the public interest.

[10] The evidence called by the Crown on this application contextualizes this application. I will be reviewing it in some detail.

Jurisdiction

[11] Before going further, I want to briefly address the issue of my continued jurisdiction over this application. On July 14, 2017, I was appointed to the Nova Scotia Court of Appeal. At that time, I was seized with this case and two ongoing

criminal trials. Section 669.3 of the *Criminal Code* provided me with the jurisdiction to complete those trials, stating: “Where...a provincial court judge is conducting a trial and the...provincial court judge is appointed to another court, he or she continues to have jurisdiction in respect of the trial until its completion.”

[12] Section 140 of the *Youth Criminal Justice Act* enables the application of section 669.3 of the *Criminal Code* to youth matters. It provides that: “Except to the extent that it is inconsistent with or excluded by this Act, the provisions of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of offences alleged to have been committed by young persons.”

[13] The question raised by my appointment in this case was whether the section 92(1) application qualified as “a trial”. As soon as it was possible for me to do so, which was July 18, I raised with Mr. Craig, Mr. McVey and Ms. McNeil the question of whether, pursuant to section 669.3 of the *Criminal Code* and section 140 of the *YCJA*, I had jurisdiction to continue hearing this application, which included a motion for disclosure brought by Mr. B.P.

[14] I want to thank all counsel for endeavouring at very short notice to address this unanticipated issue. I am particularly grateful to Mr. McVey who produced a very carefully-reasoned written submission in support of my having jurisdiction. Mr. McVey’s submissions satisfied me that the word “trial” enjoys a broad and contextualized meaning. It has no single meaning in the *Criminal Code* and its common-law definitions have an ambit that captures this transfer application. I concluded, without reservation, that I retained the jurisdiction to continue to hear this application, an application that falls easily within the term “trial” under section 669.3 of the *Criminal Code*.

The Statutory Test for Transfer Under section 92(1) of the YCJA

[15] Section 92(1) of the *YCJA* permits the transfer of a young person to a provincial correctional facility to serve the remainder of his or her sentence if the youth justice court considers a transfer "to be in the best interests of the young person or in the public interest." The burden of establishing that a transfer should be ordered lies on the Provincial Director on a balance of probabilities standard.

[16] The test under section 92(1) is disjunctive. The disjunctive test - “best interests of the young person or in the public interest” - is also found in section 30(4) of the *YCJA* which deals with the power of the Youth Justice Court to direct a young person who is detained in a youth facility pending trial to be detained in a provincial correctional facility for adults. There is some utility in examining the section 30(4) cases because reported section 92(1) cases are elusive. None were located by the parties to this application. The only reported section 92(1) decision in Nova Scotia is my own from March 2017 – *J.C. (Re), 2017 NSPC 14*.

[17] The section 30(4) cases have decided the public interest issue on the basis of safeguarding the interests of other youth. (*Ontario (Ministry of Children and Youth Services) v. K.K., 2011 ONCJ 592, para. 35*) In *R. v. S.P., 2014 YCJN 1*, the public interest, described as “the safety and rehabilitation of the greater population of residents at the Youth Facility” prevailed. The Court’s finding that the transfer would have a neutral impact on S.P. appeared to be more of an observation than a factor. (*para. 30*)

[18] In *S.D.F. (Re), 2007 ABPC 103*, another pre-trial detention “transfer” case, the Court found that the young person’s “personal issues cannot override the need to consider the interests and safety” of staff and residents at the youth facility (*para. 72*) and ordered the transfer “in the public interest.” (*para. 75*)

[19] A transfer application under section 92(1) does not involve a balancing of the public interest and the best interests of the young person. A section 92(1) transfer can be ordered on either basis. I addressed this point in my decision on the disclosure application brought by Mr. B.P. in July 2017. (*B.P.(N.) (Re), 2017 NSPC 41*) In those reasons I said:

[21] As in section 30(4) cases, the issue I will have to resolve in this section 92(1) application is whether it is in the public interest to transfer N.B.P. to a correctional facility for adults. N.B.P.’s opposition to the Provincial Director’s application indicates he regards a return to Waterville as the option that is in his best interests. But that view does not decide this application. And section 92(1) does not direct me to decide the Provincial Director’s application on the basis of balancing the public

interest and N.B.P.'s best interests. I am directed by the *YCJA* to decide whether the transfer should occur because it is in the public interest.

[20] I went on to hold that Mr. B.P.'s rehabilitation is a factor to be considered in assessing the public interest. I will discuss this further when I return to the issue of the public interest later in these reasons.

A Brief History of the Current Proceedings

[21] It is useful at this juncture to explain the history of these proceedings. Soon after being removed from Waterville, Mr. B.P. indicated he wanted to abandon the IRCS sentence and be voluntarily transferred to a federal penitentiary. He ultimately initiated applications under section 92(1) of the *YCJA* (the transfer application) and section 94(1) (a sentence review) to accomplish this. In late December hearing dates were set for January 2017. The matter did not proceed due to Mr. B.P.'s then lawyer going on an emergency medical leave. New dates in early February turned out to be overly optimistic and mid-February dates were thwarted by winter blizzards that shut down the courthouse. Then, on February 15, Mr. B.P. withdrew his applications. He had decided he wanted to return to Waterville and continue the IRCS sentence.

[22] The Provincial Director had by mid-February joined Mr. B.P.'s transfer application. Mr. B.P.'s abandonment of the application left the Provincial Director as the sole applicant for an order to have Mr. B.P. serve his sentence in an adult correctional facility. Mr. B.P. asked that the application be adjourned while he pursued a *habeas corpus* application in Supreme Court challenging his continued confinement at Northeast. That application was dismissed but very soon thereafter Mr. B.P.'s lawyer was appointed to the Provincial Court. This led to further delays in the transfer application which had not yet commenced to hear evidence.

[23] Ms. McNeil saved these proceedings from being further delayed by taking over as Mr. B.P.'s lawyer at short notice. Dates for the hearing of evidence beginning on May 1 had been set in early April. Ms. McNeil sought an adjournment of the application in order to better prepare. I denied the request solely because I saw the urgent need to have the transfer application proceed as outweighing any other considerations. Mr. B.P. was still housed at Northeast and was not receiving the

intensive therapeutic treatment and intervention that had been identified as essential by the section 34 psychological assessment prepared for his sentencing.

[24] The four dates scheduled in May proved to be insufficient for completing the evidence. Additional dates had to be set for August as nothing earlier was feasible given everyone's other obligations.

[25] While this transfer application was getting airborne Mr. B.P. has been dealing with the legal fallout from his involvement in the September 4, 2016, assaults on staff. He pleaded guilty in the Kentville Youth Justice Court to assaulting four Waterville youth workers and expects to be sentenced in October. (*Exhibit 30, Admissions*)

[26] On March 16, 2017, Mr. B.P. assaulted a correctional worker at Northeast. Mr. B.P., who turned 18 in December 2016, was charged as an adult for the assault. I do not know the status of that charge. Mr. Craig and Ms. McNeil are not involved in either the Waterville or the Northeast assault cases.

Witnesses called by the Crown

[27] Mr. Craig called seven witnesses on the transfer application. Two of them, James Nickerson and Ralph Hayden, work at Waterville. John Landry is Deputy Superintendent at Northeast. The four additional witnesses work for the IWK – Roz MacKinnon, the Manager of Youth Forensic Services at the IWK; Dr. Simeon Hanson, a forensic psychologist; Dr. Jose Mejia, a forensic psychiatrist with a subspeciality in child and adolescent psychiatry; and Heidi Rodgers, the forensic complex case manager.

[28] The Waterville and the IWK witnesses have all had experience with youth serving IRCS sentences. None of them has ever encountered a case as complex as Mr. B.P.'s. James Nickerson noted that although he has been involved with six IRCS sentences, Mr. B.P. is one of the youngest, if not the youngest, young person he has dealt with on an IRCS sentence. He testified that Mr. B.P. was "probably the most high-risk youth we've ever dealt with" at Waterville. He says they knew that before September 4, from the section 34 psychological assessment. (*Exhibit 30*)

[29] The experience of Ralph Hayden, the Deputy Superintendent of Programs at Waterville, with IRCS sentences is considerable. Mr. Hayden has been involved in

90 percent of the IRCS sentences imposed in Nova Scotia since 2005/2006 or perhaps earlier. He had a supervisory responsibility for the administration of Mr. B.P.'s IRCS sentence and is familiar with Mr. B.P. from his involvement in monthly IRCS sentence case conferences. He testified that Mr. B.P.'s was probably the most complex IRCS case he has dealt with. He observed that IRCS sentences are "always challenging" but Mr. B.P.'s was "especially so."

[30] Mr. B.P.'s IRCS sentence was Dr. Hanson's inaugural one. He described it as the "most intensive IRCS supervision the IWK has ever done" under the "most intensive joint Treatment Plan" ever created with Corrections.

[31] Heidi Rodgers, who has the most experience with IRCS sentences of anyone on the IWK Treatment Team, acknowledged that she has never been involved in an IRCS sentence where the young person has been charged with two separate assaults on staff.

Documentation Entered into Evidence

[32] Reports entered as evidence were contributed to or authored by Waterville staff and IWK Treatment Team members, notably Heidi Rodgers.

[33] Reports were prepared for the period from Mr. B.P.'s first sentence review in December 2015 to the end of August 2016: a Waterville Progress Report for Court (IRCS) dated December 11, 2015 (*Exhibit 30*); a report prepared by Heidi Rodgers dated December 22, 2015 (*Exhibit 30*); a 13-page Waterville Progress Report dated June 10, 2016 (*Exhibit 1*); a 7-page Waterville Progress Report dated June 10, 2016 (*Exhibit 8*); and a report by Heidi Rodgers dated July 13, 2016 (*Exhibit 22*). Also in evidence is an email chain dated August 18, 2016. (*Exhibit 26*).

[34] Documentation prepared during the year Mr. B.P. has spent at Northeast was also entered as evidence: an email dated October 19, 2016, from Dr. Hanson (*Exhibit 14*); an email dated October 21, 2016, from Deputy Superintendent Landry (*Exhibit 19*); an email chain dated November 2, 2016, (*Exhibit 23*); an email dated February 23, 2017, from Dr. Hanson (*Exhibit 13*); a Progress Report dated March 31, 2017 (*Exhibit 15*); a report by Heidi Rodgers dated March 31, 2017 (*Exhibit 27*); a letter to the Court dated June 21, 2017, from Heidi Rodgers (*Exhibit 28*); and a report by Heidi Rodgers dated July 14, 2017 (*Exhibit 29*).

Education, Programming, and Working with the Treatment Team – The First Sentence Review

[35] James Nickerson has worked at Waterville since it opened in the late 1980's. He is familiar with Mr. B.P. through his roles as a programme worker and also in his capacity as Acting Deputy Superintendent on two occasions when Ralph Hayden was off work.

[36] Mr. Nickerson was involved in the preparation of the Joint Corrections Plan - also known as the Joint Treatment Plan - for Mr. B.P.'s sentencing in June 2015. (*Exhibit 7*) Ms. Rodgers testified that the Plan was to be used to guide "the interventions with [Mr. B.P.] during the course of his sentence." She noted the Plan would have been reviewed with Mr. B.P. prior to sentencing and he would have agreed to everything in it.

[37] Mr. Nickerson testified that at times Mr. B.P. was motivated while at Waterville and at times he was not. At times his behaviour was good and at other times "not so good." Mr. Nickerson did not seem to regard this as remarkable: he observed that youth on long IRCS sentences can find it difficult to stay focused and committed during a demanding sentence. Ms. Rodgers made the same comment in her evidence, that it is not uncommon for youth on IRCS sentences to say they don't want to continue. She testified that she doesn't think she has worked with any IRCS youth who hasn't had that reaction.

[38] The earliest reports relating to Mr. B.P.'s IRCS sentence are from December 2015, prepared for his first sentence review. They indicated that Mr. B.P. was doing well in the classroom, in programming, and at his job. For example, it was noted that Mr. B.P. "takes pride in doing his [school] work to the best of his ability, even if it takes longer to complete...His attitude around education is positive. He respects the rules of the classroom and values learning. He has a goal to achieve his high school diploma. Behaviourally, [Mr. B.P.] sometimes requires direction to get started but has recently become more of a role model to other students. Overall, [Mr. B.P.] poses no issues in the classroom and teachers are happy with his efforts and results." It was also noted that Mr. B.P. "has a great work ethic for his age and takes pride in being meticulous with his efforts." (*Exhibit 30, Progress Report for Court (IRCS) dated December 11, 2015, page 3*)

[39] The Report from December 11, 2015, described Mr. B.P. as actively engaged in his programming and meeting with the members of his Treatment Team. He took part in many recreational programs and was doing “an exceptional job with his clean-up duties on the unit. No direct supervision is required because he thoroughly completes all assigned tasks.” (*Exhibit 30, Progress Report for Court (IRCS) dated December 11, 2015, page 3*)

[40] The December 11, 2015, Waterville report ended with these illuminating comments:

[Mr. B.P.] struggles with the criminal belief around “ratting” and the mistrust of authority figures. [Mr. B.P.] often perceives his living environment as having threats or people who disrespect him. It is important for him to continue developing supportive relationships both within the facility and in his community. He will need to focus on managing his frustrations through effort and strategies provided by NSYF [Waterville] staff and the IWK Treatment Team rather than focus on his desire to resolve conflict and anger with aggression that has been learned over the course of his life...The Cottage 2 NSYF staff will continue to challenge [Mr. B.P.] to re-evaluate his pro-criminal values during daily interactions. The Joint Treatment Plan formulated by IWK and Justice is in the Phase II: Intensive Treatment and there is expectations that [Mr. B.P.] will struggle with being challenged over the next couple of years...(*Exhibit 30, Progress Report for Court (IRCS) dated December 11, 2015, page 8*)

[41] Ms. Rodgers’ first report dated December 22, 2015, indicated that her role was “to ensure that therapeutic services are appropriately identified and coordinated to meet [Mr. B.P.’s] clinical needs.” She described Mr. B.P. as “an engaging young person who has demonstrated a commitment to working with his Treatment Team as part of his IRCS sentence.” She said he “demonstrates a willingness to participate in treatment, education, and programming in an effort to make prosocial adjustments to his life.” (*Exhibit 30, Progress Report dated December 22, 2015, page 5*) Ms. Rodgers testified that in this period, “things were going relatively well.” Mr. B.P. was engaged in the Treatment Plan and meeting with the service providers.

[42] Service providers included two therapists – Dr. Hanson and a clinical social worker because of the complex nature of Mr. B.P.’s issues, Ms. Rodgers and Mr. B.P.’s mentor, Troy Allen. Ms. Rodgers described Mr. Allen’s role as supporting the Treatment Team’s targeting of Mr. B.P.’s “procriminal and antisocial values, attitudes and beliefs.” She reported Mr. Allen’s description of Mr. B.P. as “honest, engaging and forthcoming.” (*Exhibit 30, Progress Report dated December 22, 2015, page 6*)

[43] Mr. B.P. was also participating in weekly substance abuse work on his unit and meeting with an IWK social worker, Erika Wilson, for weekly sessions addressing substance abuse. Mr. B.P. attended these sessions from October 2015 to early December and was described as “fully engaged.” Ms. Rodgers noted that Mr. B.P., citing the level of intervention provided by various members of the Treatment Team and his participation in the substance abuse group work on his unit, asked to delay individual substance abuse work until he began to have reintegration leaves from Waterville. (*Exhibit 30, Progress Report dated December 22, 2015, page 7*)

[44] Ms. Rodgers concluded her December 22, 2015, report by noting the complexity of Mr. B.P.’s treatment needs and indicating that the team expected progress to be “gradual.” (*Exhibit 30, Progress Report dated December 22, 2015, page 7*)

[45] Dr. Hanson recalls his therapeutic involvement with Mr. B.P. beginning in December 2016/January 2017. He used a structured, evidence-based cognitive approach. He testified there was some indication from Mr. B.P. that he wanted a different life, one not characterized by violence and criminality. In Dr. Hanson’s opinion, Mr. B.P.’s institutional behaviour signaled something different. Dr. Hanson noted that Mr. B.P. presented with very entrenched criminalized values and testified that Mr. B.P. recognized he was “very good at getting respect through the use of violence, threats and intimidation”. He saw him transferring to Waterville the bullying, violent and manipulative behaviours he utilized in the community. It was Dr. Hanson’s evidence that Mr. B.P. was “building a reputation at Waterville, climbing up the ranks to be the kingpin.”

[46] Dr. Hanson acknowledged that Mr. B.P. engages “particularly well with therapy.” He attended every session and was “fairly honest about his feelings and

his attitudes toward violence.” It was Dr. Hanson’s view that up to February 2016, Mr. B.P. was making progress in therapy. He says that Mr. B.P. made “a significant therapeutic step” by grasping the link between his violent thoughts and his behaviours. But progress, Dr. Hanson notes, is making a change in behaviour. Despite Mr. B.P.’s greater understanding of the linkage between his violent thoughts and his behaviours, he continued to “actively embrace violence as a way to resolve problems” as evidenced by the Level III discipline sanctions he received.

[47] Dr. Hanson would use CCTV footage of violent incidents perpetrated by Mr. B.P. in therapy with him. He says it was productive to use “visuals” with Mr. B.P. because he has a learning disability.

[48] In the spring of 2016 therapy with Mr. B.P. was still a process of building rapport and trust and exploring the thoughts, values and attitudes that were driving his behaviours.

Education, Programming, and Working with the Treatment Team – The Second Sentence Review

[49] Reports from Waterville and Ms. Rodgers were prepared for the next sentence review held on July 13, 2016. There were three reports: a 13-page Progress Report prepared by Waterville and dated June 10, 2016 (*Exhibit 1*); a 7-page Progress Report for Court (IRCS) dated June 10, 2016 (*Exhibit 8*); and Ms. Rodgers’ report dated July 7, 2016. (*Exhibit 22*)

[50] Mr. Nickerson described the June 10, 2016, report (*Exhibit 8*) as quite current at the time and fairly positive. The fact that Erika Wilson, the addictions counsellor, took another position and was not replaced, which ended Mr. B.P.’s involvement in that service, was outside of his control.

[51] It was Mr. Nickerson’s evidence that Mr. B.P. formed great relationships with the majority of the staff in Cottage 2A where he was living. There were some staff he was combative with and didn’t like as much. He had some relationships with 2B staff but those were limited as he was housed in 2A.

[52] The June 10, 2016, Progress Report noted that Mr. B.P. remained very involved in the recreation programming at Waterville and music therapy. (*Exhibit 8, page 3*) He was actively engaged in Restorative Practices on his unit and as indicated

by the June 10, 2016, Report, used restorative practices to reflect on his behaviour. He took a leadership role, making a valuable contribution to the restorative practices circles and wanting to participate in and achieve group goals. (*Exhibit 8, pages 3 – 4; Exhibit 1, page 6*)

[53] By the time of the July 2016 sentence review, Mr. B.P.'s commitment to his education was falling off. Attendance and motivation had become issues. He indicated at a case conference that he wanted to work "as his own pace" and stated that he had no intention of completing his high school requirements once leaving Waterville if he had not obtained his diploma by then. The authors of the Waterville Progress Report, Mr. B.P.'s youth worker, David McDowell, his Unit Supervisor, Paul Getson, and Ralph Hayden, Deputy Superintendent of Programs, expressed surprise at Mr. B.P.'s position, noting: "This change of thought appears puzzling because up until this point in time, [Mr. B.P.] achieved impressive grades in his courses and was very focused on his education plan." (*Exhibit 1, page 4*)

[54] Mr. Nickerson testified that Mr. B.P. had become overwhelmed by the demands of the IRCS sentence which led to him wanting to work "at his own pace." This is noted in the 13-page Waterville Progress Report of June 10, 2016. The Report observed that in April 2016 Mr. B.P. was "overwhelmed by his educational course load and the excessive meetings with the IRCS Treatment Team." It was indicated that "After things were scaled back with restructuring, [Mr. B.P.] was more at ease and back to being himself." (*Exhibit 1, page 11*)

[55] Up to the July 2016 sentence review, Mr. B.P. had continued to perform very well in a wide range of maintenance and janitorial duties. He was described as completing all assignments "in a thorough manner regardless of who is supervising him." Mr. Nickerson testified that Mr. B.P. had a great relationship with the maintenance supervisor. He had "a great work ethic for his age." Staff described him as "respectful, very focused and always wanting to finish what he has started." He was credited with also doing "an exceptional job with his own unit clean-up duties and seldom requires direct supervision, clearly understanding staff expectations." (*Exhibit 1, page 4*)

[56] Mr. Nickerson testified that Mr. B.P. took pride in the state of his room and when that slipped in the summer of 2016, staff knew things were not going well for

him. Also that summer, as Mr. Nickerson put it, “things started to drift” for Mr. B.P., even in relation to his employment responsibilities.

[57] As far as programming is concerned, Mr. Nickerson testified there are two components – earning a certificate and putting what has been learned into practice. The putting-into-practice is the harder part. Mr. B.P. would articulate the principles he had learned but then he would also relapse. Mr. Nickerson agreed this is common in IRCS’ cases.

[58] Mr. Nickerson agreed that in June 2016 Mr. B.P. was engaged in his sentence, “very much so.” But Mr. Nickerson indicated that it was up and down: Mr. B.P. would show improvement and then his progress would “turn on a dime and you wouldn’t know what was going to happen.”

The Challenges of a Long, Demanding Sentence – Mr. B.P. Loses Traction

[59] Mr. Nickerson testified that around May 2016, he and Mr. B.P. had a conversation because Mr. B.P. seemed to be “struggling” with the IRCS sentence. Mr. Nickerson told Mr. B.P. to let them know if he no longer wanted to be under an IRCS sentence. Dr. Hanson testified that when Mr. B.P. was wanting the number of therapy sessions reduced, he knew “there were problems then.”

[60] In mid-June 2016, Dr. Hanson contacted Mr. Nickerson by email to indicate concerns about Mr. B.P. becoming rigid and entrenched and his escalating risk. Waterville staff had noticed this as well. These concerns precipitated meetings of Corrections and the IWK. At the three meetings, which Mr. Nickerson attended, there were discussions about what changes had been observed and what the participants thought should happen.

[61] In her report for the July 13, 2016, sentence review, Ms. Rodgers was indicating a decline in Mr. B.P.’s motivation “as it relates to his joint treatment plan...” She described this as “evidenced by a decline in participation in education as well as resistance to challenging and modifying criminally entrenched thoughts, attitudes and values.” Gains by Mr. B.P. were seen by the Treatment Team as “modest” and Ms. Rodgers noted that the focus remained on “whether [Mr. B.P.] demonstrates behavioural changes that are reflective of a change in thinking which are guided by prosocial rather than antisocial choices.” (*Exhibit 22, page 4*) She

testified that in the summer of 2016 Mr. B.P. was showing some reluctance about working toward the goals that had been identified by the Team although she says it is not unusual for high-risk youth to have motivation issues around being pro-social rather than pro-criminal.

[62] Ms. Rodgers' July report includes observations from Dr. Hanson that Mr. B.P. was "engaging positively in the therapeutic process and being open and honest with respect to many aspects of his life." Dr. Hanson is reported as noting that Mr. B.P. "continues to struggle in therapy with identifying alternatives to violence and...remains highly entrenched in procriminal values, attitudes and beliefs..." Mr. B.P. was described as "coming to terms with the length of his sentence" and "is considering whether he is committed to a future without crime." (*Exhibit 22, page 5*)

[63] Ms. Rodgers concluded her report with the following comments:

[Mr. B.P.] presents as a high risk youth for reoffending. The complexity of historical and dynamic risk factors continues to pose challenges with respect to amenability to treatment and prognosis. The Treatment Team utilizes evidence based models for intervention which provide the most promising results for reducing recidivism and risk for violence. In addition to treatment interventions, members of [Mr. B.P.'s] Justice team continue to provide a high degree of monitoring, supervision, and programming in an effort to reduce risk for general and violent reoffending while in custody and in consideration for release to the community. Despite recent questions with respect to his motivations, [Mr. B.P.] has indicated a continued commitment to the IRCS sentence and the joint treatment plan. (*Exhibit 22, page 7*)

[64] Ms. Rodgers proposed a return to Court for a six-month review of Mr. B.P.'s progress under his IRCS sentence. She said: "The team will request a section 19 court conference should concerns of a more urgent nature arise as they relate to [Mr. B.P.'s] IRCS sentence and expectations outlined in the joint treatment plan." (*Exhibit 22, page 7*) Ms. Rodgers testified that she thought a further sentence review

in six months could prove to be too far out and a section 19 conference might expedite returning to court sooner.

Mr. B.P.'s Institutional Behaviour and Security Risk in the First Year

[65] Mr. B.P. received a number of Level III's, the highest discipline infraction, throughout his time at Waterville although he went as many as four months with no incidents. Exhibit 6, a report dated December 14, 2016, lists at pages 8 to 15 all of Mr. B.P.'s behavioural incidents, including those that occurred prior to the imposition of the IRCS sentence.

[66] On February 23, 2016, an Institutional Security Assessment Youth ("ISAY") was prepared for Mr. B.P. (*Exhibit 10*) Every young person entering Waterville has an ISAY done. In January/February 2016 it was a new tool. A scoring of 9 or more is indicated to be "high." Mr. B.P. was given a "Security Risk Classification" of "High" with a score of 14.

[67] Mr. B.P. earned a "high" classification based on the seriousness of his current offence (second degree murder), the number of his prior convictions, his young age – 14 – when he received his first custodial sentence, the number of his past custodial committals (more than 2), his institutional behaviour "in the past 3 years", and his breach history "in the past 3 years."

[68] On July 10, 2015, Mr. B.P. assaulted a fellow resident at Waterville because he had robbed Mr. B.P.'s friend in the community. Mr. B.P. explained the assault by saying he had "needed to deal with this issue on his friend's behalf." (Mr. B.P. was charged criminally for this assault and in October 2015 sentenced to a Custody and Supervision Order of 21 days.)

[69] Exhibit 6 contains the following notation about this assault: "[Mr. B.P.] took full responsibility for his action but continually showed a pattern of resorting to violence as a way to deal with conflict...[He] indicated that he wanted to change his aggressive and violent outbursts but this would require a lot of strategies and support to move forward with the process..." (*Exhibit 6, page 9*)

[70] On August 25, 2015, Mr. B.P. assaulted a peer whom he considered to be a friend "by striking him in the head several times." He had been irritated by what he perceived was disrespectful conduct by the friend. It was a misperception; the friend

had just been joking around. Exhibit 6 notes that upon returning to his unit (presumably after serving his disciplinary sanction), [Mr. B.P.] “did an excellent job expressing his thoughts in response to the Five (5) Questions during a Restorative Practices Reintegration Circle. He and his peer seem to be able to put this incident behind them and could be observed interacting in a positive manner.” (*Exhibit 6, page 10*)

[71] Exhibit 6 remarks further:

This youth continues to lack patience by getting easily agitated over little things and failing to learn from past mistakes. Even though this young man expresses the desire to be positive, this is a slow process, as he continued to allow his anger to get the best of him. (*page 10*)

[72] Dr. Hanson testified that an incident in November 2015 was an example of Mr. B.P.’s inclination to import into Waterville the values that operate in an adult jail. Mr. B.P. received a Level III disciplinary sanction on November 14, 2015, for fighting with a peer over a seating arrangement in the dining room. Exhibit 6 describes the incident, stating: “[Mr. B.P.] felt that he must take care of the group dynamics with aggression and violence by striking the peer in the head rather than considering other options.” (*page 11*)

[73] It appears the animosity that drove Mr. B.P.’s violence toward the other youth dissipated. Exhibit 6 indicates:

...[Mr. B.P.] put aside his differences with this same peer and claimed he admired some of the qualities in this individual because he was actually a reflection of himself (standing up for his beliefs)...[He] continued to associate cooperatively with this peer and was even noted on November 19, 2015 giving this peer advice about how to care for his injured hand after returning from surgery...(*page 11*)

[74] On February 17, 2016, there was an incident at Waterville that may have sown the seeds for the violence toward staff on September 4. Mr. Nickerson and Dr. Hanson have suggested there may be a link between the incidents. Mr. B.P. is

described in Exhibit 6 as having become “agitated when a peer was being restrained by IIG [Institution Intervention Group] staff. He overheard his friend claim that he was having difficulty breathing and perceived this as him being in danger. When he was reassured that his peer would be fine, he did settle down. Even though he still was a bit on edge concerning the incident, he was advised to focus on his actions and not be concerned about his peers...” (*Exhibit 6, page 13*)

[75] Mr. B.P.’s friend who was subject to restraint on February 17, 2016, was J.C. J.C. figured prominently in the violent September attack on youth workers and was the subject of a successful section 92(1) transfer application by the Provincial Director. (*J.C.(Re), 2017 NSPC 14*)

[76] Mr. Nickerson testified that Mr. B.P. was “very angry with staff” after the incident involving J.C., requiring staff to spend days helping him “process that incident.”

[77] Mr. B.P. received a Level III sanction on March 10, 2016, for assaulting another resident. It had been four months since his last Level III. He witnessed a 17-year old attempting to have phone contact with a 14-year old girl and expressed his disapproval. The peer’s reaction, a perceived threat, infuriated Mr. B.P. who struck him in the head with his fists. Mr. B.P. was cooperative when IIG staff responded but expressed frustration with himself when he realized he had lost many of his privileges including, temporarily, his maintenance job. He told staff he was disappointed with himself for allowing the other youth “to push his buttons.” He explained that it bothered him when older boys took advantage of his 14-year old sister. Exhibit 6 indicates that Mr. B.P. “chose to put aside his differences with this peer” but was wary as he suspected the youth might seek revenge. (*Exhibit 6, page 13*)

[78] There were two Level III disciplinary sanctions over the summer of 2016 – in June and August. On June 19, 2016, the disciplinary infraction was for fighting. Mr. B.P. instigated a fight with another resident during an outdoor recreation program. His target fought back. The opinion is expressed in Exhibit 6 that the target of Mr. B.P.’s assault had been openly labelled a “rat” which “may have been a contributor to the confrontation.” The report of the incident continues:

...After going through the restorative practices process, both these young men put side their differences and were witnessed by this writer interacting in a friendly manner, sitting at the same table and having a meal together. It appears that everything has been resolved but yet another example of [Mr B.P.] struggling with the concepts of disrespect and recognizing people's differences. (*page 14*)

[79] Exhibit 6 notes there were warning signs in the late summer of 2016. On August 15, Mr. B.P. was given an Level III sanction for being under the influence of hashish and having a "shank." At the Institutional Review Board hearing Mr. B.P. revealed the shank had been intended for use on a youth but the "need" for the weapon had passed. Mr. B.P. ominously said in response to questioning about any other intended purpose for the weapon that "it would be used on a youth or whoever else comes his way." Members of the Institutional Review Board viewed this as a potential intention to use the shank on both youth and staff. (*Exhibit 6, page 15*)

[80] In the last days of August, Mr. B.P. was moody. He told staff he was angry that they were pushing him to complete his education. He was witnessed whispering with another youth on the upper level of his unit. This was reported as "a bit concerning."

The Response to Mr. B.P.'s Regression Over the Summer of 2016

[81] Meetings of the IWK Team and Waterville were held to discuss Mr. B.P. on July 5, 11 and August 31. Their purpose was "to review Mr. B.P.'s file and collaborate on next steps in an attempt to address what appeared to be a regression into rigid, pro-criminal thinking resulting in an increase in [Mr. B.P.'s] risk level." (*Exhibit 6, page 8*)

[82] Ms. Rodgers testified that the meetings included looking at what Mr. B.P.'s education program would look like when the school year resumed in September. There was consideration being given to making some adjustments to that and other components of the Joint Treatment Plan, refining it in consultation with Mr. B.P. by identifying what components were necessary and what components could be expanded or omitted. Dr. Hanson says the Team was trying to "reboot" the IRCS

sentence and was also “gathering evidence” to take back to court for input on where to go with it.

[83] It was Dr. Hanson’s evidence that in the spring and summer of 2016, the Treatment Team was “struggling”. Mr. B.P. had disengaged from certain aspects of the Plan, for example, in relation to his education and seeking to reduce the number of therapy sessions. He was pulling back from the IRCS sentence “stating in therapy that he wanted a pro-criminal lifestyle” and “knew he was good at violence and crime.”

[84] Dr. Hanson testified that Mr. B.P. was saying he would kill again, that he enjoyed it and had no remorse. He told Dr. Hanson he had been sent by God to “clean up the streets.”

[85] Dr. Hanson indicated the Team knew the effectiveness of the IRCS sentence was “a long shot.” He says they knew if it “broke down...he was capable of killing again.”

[86] A draft Memorandum of Understanding was created by the Treatment Team identifying what areas were to be addressed and how. On two occasions Mr. Nickerson took it to discuss with Mr. B.P. Mr. Nickerson’s role was to review the MOU with Mr. B.P. to see what things he could commit to or not commit to.

[87] This process was still a work-in-progress by September 4, 2016.

[88] At the August 31 meeting, there was discussion about Ms. Rodgers and Mr. Nickerson meeting with Wayne Horner in Policy and Planning at the provincial Department of Justice. Mr. Horner is the liaison with Ottawa in relation to IRCS funding for things that are outside the norm. Mr. Nickerson testified that had there been a meeting with Mr. Horner he and Ms. Rodgers would have asked if there was funding for additional staff, should that be needed. The meeting to discuss additional funding had not taken place by September 4, 2016.

[89] One event that is not mentioned in any of the reports about Mr. B.P. is that in the summer of 2016 his grandfather, a significant support in his life, died. There is no discussion anywhere about how that was addressed or what effect that may have had on Mr. B.P.’s ability to cope. Asked about this in cross-examination, Dr. Hanson

testified that he wouldn't say the Team was processing this loss as it was not part of their treatment "remit" for Mr. B.P.

Mr. B.P.'s Transfer from Cottage 2A to Cottage 2B in Late August 2016

[90] On August 31, 2016, Mr. B.P. was transferred with the other residents of his unit, Cottage 2A, to Cottage 2B. The decision to combine the units was an operational decision made because of staffing shortages at that time. Their merging meant a total of five youth were now housed in 2B.

[91] One of the incumbent 2B residents was J.C. who had been transferred there from 2A after the confrontation with staff on February 17. Like Mr. B.P., J.C. was considered high-risk. He viewed staff who had been involved on February 17 with "extreme hostility" and he and those staff did not want to have any continued association.

[92] Mr. Nickerson described the amalgamating of the two cottages as a temporary measure. He wanted the arrangement to be for the shortest time possible, viewing it as not ideal and not the best option for programming. He testified that staff and residents both preferred the status quo in terms of cottage assignment. He said combining youth can always increase risk and ideally, he would "always want to keep the units separate."

[93] Although Mr. Nickerson does not recall anyone from the IWK making a specific comment at the August 31 meeting about the combining of 2A and 2B, he says that when they walked away from the meeting "we talked about it being for as little time as possible."

The September 4, 2016 Attack on Staff at Waterville

[94] On September 4, 2016, Mr. B.P. participated with other Cottage 2B youths in perpetrating a violent assault on Waterville youth workers. It was the precipitating event for what has happened to him since then. It was also Mr. B.P.'s first assault against staff. Mr. Nickerson described it as the most serious violent incident in the history of Waterville.

[95] The best evidence about the assault on staff is found in the institutional CCTV footage (*Exhibits 2 and 4*) and video from a hand-held camera (*Exhibit 5*). Only the video from the hand-held camera has audio.

[96] The admission of the three videos was contested. I admitted them into evidence on the basis that they are relevant to the issue of Mr. B.P.'s risk to staff and residents at Waterville. It was the Provincial Director's submission that the videos support the inference that the assault on the youth workers was premeditated, coordinated, unprovoked and vicious.

[97] I have read the disciplinary report about the incident (*Exhibit 9*). It does not add anything to my analysis of the events as depicted by the video footage. I was readily able to identify Mr. B.P. and J.C. on the video footage. The injuries I will describe come from Mr. Nickerson's testimony. He also identified the youth workers involved and the two other youths seen in the videos.

[98] I heard evidence about the incident from Dr. Mejia who was asked by the then Superintendent at Waterville to view the videos and, having done so, formed an opinion about the nature of the attack on staff. Dr. Mejia testified that in his opinion the assault on staff was "very, very purposeful." He described the attack as "very well executed" and "very well choreographed." He based this on viewing the youths as knowing "where to go, what to do." He said it was "very well structured, not a disorganized riot." As I will be explaining, I do not entirely agree with Dr. Mejia's views.

[99] The videos - the "upper level" CCTV footage (*Exhibit 4*), the "lower level" CCTV footage (*Exhibit 2*) and the hand-held video (*Exhibit 5*) - show different perspectives on the incident. The CCTV "upper level" footage shows three Cottage 2B residents - J.C., Mr. B.P. and a third youth, J.W. - emerging at the same time from their rooms. (*Exhibit 4, 19:32:18*) As Mr. Nickerson explained, they had to have achieved this by coordinating the opening of the locks.

[100] The three young men mill about on the upper level and take turns trying to kick in the door of another resident, D.E. After about a minute the door opens and D.E. comes out. (*Exhibit 4, 19:33:19*) J.C. walks down and then up the few steps that separate the upper level from the lower level where the staff have been working and are now standing watching the youths. (And presumably directing them to go

back to their rooms. Exhibit 9, the disciplinary report of the incident, indicates that Mr. B.P. “refused to return to his cell and began to threaten staff...”)

[101] After J.C. goes back up to the upper level, Mr. B.P., J.W. and D.E. walk down the stairs with J.C. following them. They all head straight for the work station and then the hallway out of the living unit. Mr. B.P. can be seen deliberately targeting youth worker Laura Newcombe with a straight-arm punch to the face. (*Exhibit 2, 19:33:37; Exhibit 4*) He then heads off-screen.

[102] A brawl breaks out in the hallway and spills back into the living unit. Mr. B.P. comes back into view and can be seen kicking the head of a youth worker, Anthony Thompson, who is grappling on the ground with one of the other youths. He then rounds on another worker, Fred Cumby, who seeks to intervene and appears to throw him into a table. After this he dances around in a boxer’s stance while two workers attempt to contain him. (*Exhibit 2, 19:33:53 to 19:34:59*)

[103] At 19:35:00, J.C. reappears on the CCTV “lower level” footage and tears off his shirt. He is the first of the youths to pick up a chair. He throws it down on a youth worker. (*Exhibit 2, 19:35:20*) Mr. B.P. grabs the chair and holds it by his side. (*Exhibit 2, 19:35:27*) Four male youth workers are arranged in a semi-circle around J.C. and Mr. B.P.

[104] The hand-held video captures the amplified state of J.C.’s agitation. He is screaming at the youth workers and advancing on them. He is extremely worked up, angry and emotional. It is not possible to hear what he is saying but the youth workers call out his name, trying to re-focus him and calm him down. J.C. picks up a table and then a chair, throwing them at the workers. (*Exhibit 2, 19:36:06*) Mr. B.P. watches this until a worker, Paul Roberts, charges J.C. at which point, Mr. B.P. attacks with the chair he has been holding. It is clear he is going to the defence of J.C. All of this is captured in the first minute and a half of the hand-held video footage. (*Exhibit 5*)

[105] J.C.’s behaviour, captured by the CCTV and hand-held camera footage, shows him lashing out at the youth workers. It is reasonable to infer, given his emotionally-charged state, that he was acting out a grievance although I was unable to make out what he was yelling at the workers.

[106] Mr. B.P. was J.C.'s right-hand man in the turbulent, violent minutes before the melee was subdued by the youth workers. His loyalty for J.C. is evidenced in his actions and one very clear statement he can be heard yelling once he restrained on the floor: "[J.C.], I love you bro." (*Exhibit 5, 5:59 seconds*)

[107] Five minutes after leaving his room, Mr. B.P. had been wrestled to the floor by youth workers and the police were on their way.

[108] The confrontation with staff does appear to have emerged from a plan. The simultaneous activation of their doors by J.C., Mr. B.P. and J.W. indicates this. Dr. Hanson testified there was trouble in the air the week before. He says Mr. B.P. was asking other youth, "Are we in?" He says it is not a coincidence that the female youth worker Mr. B.P. attacked, that is, Ms. Newcombe, was the worker he felt had disrespected him on a previous occasion.

[109] But I disagree with Dr. Mejia's characterization of the attack on staff as "very well-choreographed" and "very well structured." The confrontation may have been planned but the altercation itself was chaotic. And although Mr. B.P. made a targeted assault on Ms. Newcombe, his assaults on the three male youth workers were in the nature of violent interventions. They were reactive and plainly propelled by Mr. B.P.'s alignment with J.C. and his grievances.

[110] Dr. Mejia concluded from his viewing of the CCTV footage that Mr. B.P. was the leader of the attack on staff. I disagree. I did not see evidence that Mr. B.P. occupied this role. It was clear to me that J.C. was the instigator and kept the temperature of the situation boiling.

[111] And while this does not change the fact that on September 4, 2016, Mr. B.P. participated in a violent assault on staff, injuring them, I find Mr. B.P.'s use of violence was consistent with Dr. Hanson's section 34 psychological assessment that Mr. B.P. had been "raised in an environment that normalised violence as a first means of dealing with difficult situations...He has entrenched pro-criminal beliefs, values and attitudes that promote and perpetuate violence and criminality..."(*Exhibit 30, section 34 assessment, page 44*)

[112] Comments in the section 34 assessment by the probation officer who worked with Mr. B.P. from 2012 resonated with me when I watched the video footage of the

September 4 incident. She described Mr. B.P. as “very loyal” to his “buddies” and noted that “he’s been in a protective mode.” (*Exhibit 30, section 34 assessment, page 29*) It is also useful to recall what a school teacher said about Mr. B.P. in 2012, that he was “susceptible to the negative influence of peers with an over-developed sense of loyalty to those around him whom he considered friends.” (*Exhibit 30, section 34 assessment, page 22*) Mr. B.P. described himself in the section 34 assessment as “not the guy that backs down from things.” (*Exhibit 30, section 34 assessment, page 29*)

[113] During these proceedings in August, Mr. B.P. admitted in a signed “Admissions and Agreement of the Parties” document (*Exhibit 30*) that he has pleaded guilty to three counts under section 270.01(1)(a) of the *Criminal Code* of assault causing bodily harm to three youth workers identified as “peace officers” in the charges, and one count under section 270.01(1)(b) of assault of a youth worker, identified as a “peace officer”, using a weapon, that being a chair. The injuries inflicted on the workers were serious: Ms. Newcombe’s nose was broken and she suffered a concussion. Mr. Thompson required surgery to his mouth using bone from his hip to re-anchor teeth. Mr. Cumby sustained facial injuries and a concussion.

[114] Mr. B.P. is scheduled to be sentenced on October 19, 2017. I know that the Crown in the Kentville Youth Justice Court was seeking to have Mr. B.P. sentenced as an adult. I was not told whether that application is proceeding.

[115] Mr. Hayden confirmed on cross-examination that of the four youths involved in the September 4 incident, one was never removed from Waterville, one was brought back to Waterville, and the only eighteen-year-old, that being J.C., remained at the adult correctional facility to which he had been transferred after the incident. As we know, Mr. B.P. was transferred to the Northeast Nova Scotia Correctional Facility.

The Transitional Holding Unit at Northeast

[116] Deputy Superintendent Landry is deputy superintendent of operations at Northeast. He has held this position since February 2017.

[117] Since September 5, 2016, Mr. B.P. has been housed in the Transitional Holding Unit (“THU”) at Northeast. The THU is a designated youth facility. The rest of Northeast is adult male prisoners.

[118] Mr. Landry testified that the transitional unit is called “transitional” because the people it houses are “in transition.” (In the *Designations of Correctional Facilities* Regulations under the provincial *Correctional Services Act*, S.N.S. 2005, c.37, the unit is designated “for temporarily housing youth offenders.”) Mr. Landry testified that the THU is intended only for short-term stays by youth from Waterville who, for example, may be attending court in the area. He said that prior to Mr. B.P., three days was likely the longest stay by a youth in the unit.

[119] Mr. Landry testified on cross-examination that it was Northeast’s intention to house Mr. B.P. “temporarily.”

[120] Mr. B.P. is the only person in the THU which can house a total of four youth. He has a 6.5 foot x 14 foot cell and a 14 foot x 25 foot common area. He has access to a tv, shower, Wii games, cards and books, “everything a regular living unit might have, only smaller.”

[121] None of the correctional staff at Northeast have training to work with youth. Mr. Landry testified that there may be a few officers at the facility who previously worked in youth facilities.

[122] Northeast has no programming designed for youth. Neither Mr. Landry nor any staff he knows of have any experience dealing with a youth serving an IRCS sentence.

[123] Mr. Landry confirmed that Mr. B.P. is separated from other adults and has had no contact with the other prisoners. He agreed that Mr. B.P. has been in conditions of social isolation throughout his stay at Northeast.

Formal Risk Assessments of Mr. B.P. at Northeast

[124] Two risk assessments were done for Mr. B.P. at Northeast. The first was done on September 5, 2016, when Mr. B.P. was admitted, by Derek Fulton, Northeast’s Orientation and Assessment Officer. (*Exhibit 18*)

[125] Mr. Fulton classified Mr. B.P.’s risk as a “10”, the top end of medium with a note that the assault at Waterville bumped him to a “high”. Mr. Landry testified that this would have been Mr. Fulton’s call to make, that because of the serious assault at Waterville he decided to bump him from the high end of medium to a high.

[126] This security classification requires that two correctional officers accompany Mr. B.P. when he is moving in the institution.

[127] A subsequent risk assessment, a YLS/CMI Report (Youth Level of Service/Case Management Inventory), was done on December 7, 2016. (*Exhibit 16*) Mr. Landry said he believed it was a Waterville form and would have been completed by the case management team at Northeast. There is no question that the information recorded on the form came from Waterville reports on Mr. B.P.

[128] The YLS/CMI Report listed Mr. B.P.'s risk level as both "high" and "very high." His "state of change" was indicated to be: "Precontemplation – unaware, resistant."

The Conditions of Mr. B.P.'s Confinement at Northeast

[129] When Deputy Superintendent Landry testified on May 3, 2017, he was seeing Mr. B.P. twice a week, on Mondays and Fridays when he did inspections to ensure everyone is safe and the facility is running properly. It was his assumption that Mr. B.P. had contact with correctional officers every day when they go to check on him. Mr. Landry described Mr. B.P. as good-natured, "happy and content" and said that Mr. B.P. "seems to enjoy being in our facility." He had not been expressing to Mr. Landry a desire to go back to Waterville since saying in February 2017 he wanted to return.

[130] Once Mr. B.P.'s time at Northeast started to stretch out, Mr. Landry expressed concerns to the Superintendent of Northeast, Paul Young, about him being housed in the THU. Mr. Landry identified Mr. B.P.'s confinement as amounting to segregation with Mr. B.P. having no interaction "with other peers."

[131] Mr. Landry's memo to Mr. Young was dated October 21, 2016, and in it he made the following comments:

...With the current scrutiny on Segregation (state of mind not location), I will submit this young person has been in Segregation for his entire stay at our facility. The Facility has been directed to hold this young person (only one area designated for youths) during his time on sanctions for his actions, however that time has passed some time ago. We have been told every couple of

days that this young person will be considered for transfer and we are temporarily holding him. This young person is not getting treated as the other young persons are that were involved in this incident. We have a responsibility to treat this young person as all the others in custody and not hold him in an area considered Segregation...(Exhibit 19)

[132] Mr. Landry testified it is likely the Options for Anger program was provided to Mr. B.P. after his memo to Mr. Young. Mr. Landry also tried to get Mr. B.P. Wii, cards, more games. He is not involved with Mr. B.P.'s IRCS sentence other than arranging visits. There have been no funding requests that he is aware of. He thinks he would be aware of any such requests had they been made.

[133] Mr. Landry remains concerned about Mr. B.P.'s isolation. He testified that Mr. B.P. has not had contact with peers and prisoners "unless he is yelling through a wall."

[134] Mr. Landry testified that he is aware that social isolation has mental health implications. He has read articles about this but has no training in the issue.

[135] Mr. Landry confirmed he had heard that an adult offender serving an intermittent sentence had been communicating with Mr. B.P. "through the walls" and encouraging him to be uncooperative with and mistrustful of staff. It was felt that the offender was being a bad influence on Mr. B.P.

[136] Ms. Rodgers testified to her observations of Mr. B.P. at Northeast. She agreed with the description of him having been placed in "quite significant" social isolation. She noted that at Northeast Mr. B.P. had monthly no-contact visits with his father, and otherwise, visits only from the Treatment Team. She had never seen anything like the conditions Mr. B.P. is in.

[137] Ms. Rodgers and other members of the Treatment Team visiting Mr. B.P. noted a host of symptoms that indicate Mr. B.P. was having problems. He was experiencing difficulties with sleeping, a loss of appetite, sensitivity to light and sound, mood fluctuations – sometimes agitated, sometimes depressed, increased hostility, and an increase in paranoia and anxiety. Uncharacteristically, Mr. B.P. would at times appear particularly unkempt.

[138] On occasion Mr. B.P. would take a while to adjust to visits from Team members. Ms. Rodgers noted that he would have to acclimatize to speaking with them, was not making eye contact and displayed “frigidity” and hostility. He would vacillate, wanting to meet and then wanting to go back to his cell. Ms. Rodgers said that usually Mr. B.P. would “come around.”

[139] Ms. Rodgers testified that she and other members of the Treatment Team noticed a significant change in Mr. B.P.’s presentation from before his transfer to Northeast. She characterized the change as “concerning.” What Mr. B.P. said would depend on his mood. He would express anxiousness and uncertainty and feelings of hopelessness and helplessness. Ms. Rodgers says that at times Mr. B.P. was “fatigued” by his sentence and wanted to move on. At other times he was looking for a way out of his situation at Northeast.

[140] It was Ms. Rodgers’ evidence that typically Mr. B.P. found his conditions at Northeast difficult. At other times, he would “shrug it off.” She testified that her last few visits with Mr. B.P. at Northeast caused her to be “increasingly concerned” about his physical and clinical presentation.

Mr. B.P.’s Behaviour at Northeast

[141] Mr. Landry testified that Mr. B.P. had for the most part been well-behaved although there were instances of quick emotional outbursts if he felt disrespected. He noted that while Mr. B.P. was respectful, polite, cooperative and cordial in the Options to Anger program, facilitating staff still had some concerns about his ability to manage his anger. Mr. Landry agreed that Mr. B.P. needed more programming but more programming was not available.

[142] On May 17, Mr. B.P. received a Level III for possession of contraband. It is noted that he was cooperative during the search, admitted the substance was hashish but would not provide any information about how he obtained it. (*Exhibit 30, Report of Vanessa Ellis, Case Management Officer, Northeast Nova Scotia Correctional Facility*)

The March 16, 2017 Assault

[143] Mr. Landry viewed the CCTV footage of Mr. B.P.’s March 16, 2017, assault on a correctional officer. He testified that Mr. B.P. was in the large airing court,

considered a privilege. There were two correctional officers in the indoor recreational area, one of whom was Dan Legere. Mr. B.P. returned inside from the airing court, put his jacket down, took four steps and threw a right hand to Mr. Legere's face and then delivered 3 to 4 additional punches. Just before that he and the officers had been relaxed with each other and joking and laughing.

[144] Mr. Landry believes the incident was motivated by an interaction three weeks earlier between Mr. Legere and Mr. B.P. Mr. Legere had told Mr. B.P. to turn down his television in the THU and called in other officers when he refused. He filed a report expressing concerns that Mr. B.P. was becoming "too comfortable" in the THU. Mr. Landry is aware of that characterization and does not agree with it.

[145] I admitted the video footage of the incident as relevant evidence. The scene is viewed from two camera angles. They depict what was described by Mr. Landry in his evidence. Mr. B.P. strolled in from the airing court, was careful to close the door, put his jacket down and after taking a few steps in the direction of the two correctional workers, suddenly lunged at one of them, letting fly with a flurry of punches. He was quickly overpowered and subdued. In very short order more correctional officers rushed into the room and Mr. B.P. was placed in restraints and walked out.

[146] It does appear that Mr. B.P. deliberated on the assault and targeted the officer.

[147] Mr. B.P. lost privileges after the March 16 incident. He temporarily but indefinitely lost the privilege of using the large airing court. He was confined to his cell for a total of 10 days. He was given 7 days and then 3 additional days were requested from head office and permitted. He also lost phone, visit and canteen privileges.

The Delivery of Services to Mr. B.P. at Northeast Before March 16, 2017

[148] When Mr. B.P. was transferred to Northeast in September 2016 he was in the 15th month of his IRCS sentence. The Joint Treatment Plan had contemplated 1-3 months in Phase I, the Stabilization Phase. Phase II, the Intensive Treatment Phase was scheduled for 2.5 – 3 years. (*Exhibit 7, page 6*) The details of the intensive treatment take up five pages of the Plan.

[149] Ralph Hayden confirmed that between October 2016 and February 2017 Waterville did not look at any other housing options for Mr. B.P. other than Northeast. The focus was on trying to continue his services while he was in the THU there.

[150] Mr. Hayden is aware that Mr. B.P. has been placed by himself with no other young people and no contact with other prisoners. Mr. Hayden acknowledged he was living in these conditions when he said he wanted to go to an adult facility.

[151] Once Mr. B.P. was transferred to Northeast, Mr. Hayden kept his finger on the pulse of the IRCS sentence and passed on information and requests to Northeast concerning it. He had the power to make recommendations but no authority at Northeast to implement any services. He viewed Mr. B.P. as still requiring services. He said that Corrections felt responsible for the IRCS plan “we had participated in creating.” He did not provide a copy of the Joint Corrections Plan to officials at Northeast. It was hoped the IWK clinicians could provide the necessary services.

[152] Mr. Landry testified that when Mr. B.P. arrived at Northeast he was “very interested” in continuing with his IRCS sentence. Members of the clinical team went to Northeast to meet with Mr. B.P. in the THU. This included Troy Allen, Heidi Rodgers, Sarah Rafuse, Mr. B.P.’s clinical social worker, and Dr. Hanson. Mr. Hayden relied on the IWK to report back to the Corrections side on how things were going. Wayne Horner approved funding for the team to travel to see Mr. B.P.

[153] Ms. Rodgers testified that once Mr. B.P. was transferred to Northeast, the treatment goals changed. There were adjustments to the treatment targets and goals for all the treatment service providers. The Team focused more on supportive services for Mr. B.P. rather than his forensic needs.

[154] Dr. Hanson’s focus with Mr. B.P. at Northeast was less on intensive treatment. The emphasis was no longer on risk and risk reduction as it had been at Waterville. Dr. Hanson says he began functioning as a clinical therapist “trying to ensure the transition to [Northeast] was as smooth as possible.” He noted that Mr. B.P. “likes routine and structure” and that the transition from Waterville to Northeast was “a difficult time.”

[155] Around April 21, 2017, Roz MacKinnon prepared Exhibit 20, the summary of services being provided to Mr. B.P. Referred to Exhibit 20 on cross-examination, Ms. MacKinnon agreed that Dr. Hanson's services went from 2 – 3 times per week at Waterville to every 2 weeks at Northeast, Sarah Rafuse from twice per week to once every two weeks and Troy Allen from weekly visits to once every two weeks.

[156] Ms. Rodgers testified that she was concerned about Mr. B.P.'s placement at Northeast and the Treatment Team's ability to administer the IRCS sentence. She testified the Team found it hard to follow the Joint Treatment Plan after Mr. B.P. was transferred. The Plan had become "dated" because it was developed with Mr. B.P.'s placement at Waterville in mind and he is no longer there.

[157] In Ms. Rodgers' March 31, 2017, Report for the Court she was explicit about the impact of the changes to service delivery to Mr. B.P.: "...given [Mr. B.P.'s] placement change and limitations in the provision of treatment services, the team's current treatment efforts are likely insufficient in effectively meeting the treatment needs identified in the joint treatment plan and are, rather, more supportive in nature." (*Exhibit 15, page 3*) Her July 14, 2017, Report to the Court was explicit about what the substantial reduction in, and refocusing of, clinical services meant for Mr. B.P.'s IRCS sentence: "As a result, [Mr. B.P.] has not been receiving the level of treatment that was recommended in the section 34 assessment and joint treatment plan." (*Exhibit 29, page 5*)

[158] The transfer of Mr. B.P. to Northeast for the past twelve months has meant that he has not been receiving the intensive therapeutic intervention that Dr. Hanson's section 34 assessment identified as essential and that was an embedded feature of Mr. B.P.'s IRCS sentence.

The Delivery of Services to Mr. B.P. at Northeast After March 16, 2017

[159] After the March 16 assault, contact visits by the Treatment Team with Mr. B.P. in the THU were discontinued. The evidence appears to establish that ultimately it was Northeast's decision to have the Treatment Team's visits conducted through glass using a telephone. Mr. Landry testified that Northeast had concerns about the safety of the Treatment Team and that the Superintendent, Paul Young, had said face-to-face meetings with Mr. B.P. were "not advisable." And although Mr. Landry

said the determination about how the Team should conduct their visits was left up to them, I find that Northeast had the final say.

[160] In late March or early April 2017, Ms. MacKinnon and Mr. Hayden visited Northeast and provided Mr. B.P. with a copy of the Progress Report for the Court dated March 31, 2017. (*Exhibit 15*) Mr. Hayden testified that the purpose of the meeting was to indicate to Mr. B.P. they wanted the IRCS services to continue but due to safety concerns, changes would have to be implemented to their delivery. They felt it was best to leave the issues of what those changes should be up to Northeast.

[161] The March 31 Progress Report authored by Mr. Hayden states that a new plan to continue clinical services “will need to be implemented to allow appropriate security measures to be put in place to reduce risks, while providing ongoing services.” (*Exhibit 15*)

[162] Mr. Hayden acknowledged on cross-examination that at first the Treatment Team’s contact with Mr. B.P. was going to be suspended and then there was a negotiation undertaken for them to see Mr. B.P. in accordance with the security protocols of Northeast. Roz MacKinnon testified that, “We problem-solved with the institution about how to continue therapeutic support” as the therapeutic support was important for Mr. B.P. and his rehabilitation. Ms. MacKinnon said: “It’s the role of Correctional Services to keep staff and visitors safe and on that we defer.”

[163] Mr. Hayden testified that the glass partition/telephone arrangement for meetings with Mr. B.P. was not viewed by the IWK as the ideal set-up for delivering services. It was Ms. Rodgers’ evidence that from a therapeutic perspective it is helpful to meet face-to-face.

Mr. B.P.’s Engagement with his Treatment Plan at Northeast

[164] Vanessa Ellis, a Case Management Officer at Northeast, noted that Mr. B.P. had been “originally receptive” to his case plan at Northeast “and was following it without concern.” In December 2016, he completed an Options to Anger program one on one with Northeast program officers. He also did a creative journaling program with the facility social worker and a program officer. However, since June 2017, Mr. B.P. “has been pulling back from staff and his case plan.” He refused

offers to take the adult Substance Abuse Management program or First Aid program or the community library program. “The only thing he was open to was the possibility of a guitar program and puzzles to keep him busy.” He advised he just wanted to “chill” for a bit. Ms. Ellis noted that Mr. B.P. was “polite and respectful in his interactions with staff, however he was not too interested in partaking in any new interventions in his case plan.” (*Exhibit 30, Vanessa Ellis, Case Management Officer, Northeast Nova Scotia Correctional Facility*)

[165] Mr. B.P.’s lack of interest has included his education. He did a negligible amount of the school work forwarded from Waterville and turned down the offer of the GED test preparation book. He has advised that he isn’t interested in completing any school work “at the moment.” (*Exhibit 30, Andrea MacGregor, Teacher, Northeast Nova Scotia Correctional Facility*)

[166] Mr. B.P.’s entrenched attitudes and values were noted to have been very much in evidence during the Options to Anger program. It was reported that he still has “major issues with being disrespected, or feeling he’s disrespected, that he states will most likely turn violent, and he has no plans of changing that about himself. His reputation is important to him, one that shows he doesn’t take “shit” from anyone...” Program officers noted that Mr. B.P. was polite and respectful with them and with the facility social worker whom he had been meeting on a weekly basis for casual conversations and to discuss his daily activities and moods. (*Exhibit 30, K. Gould and A. Ouellette, Program Officers, Northeast Nova Scotia Correctional Facility*)

[167] A Report from Northeast notes that on June 6, 2017, Mr. B.P. submitted a request to cancel all contact with the IWK Treatment Team as he “did not feel that it was a good idea for his court proceedings.” (*Exhibit 30, Vanessa Ellis, Case Management Officer, Northeast Nova Scotia Correctional Facility*) The IWK acted in accordance with Mr. B.P.’s instructions and contacted Northeast to cancel the scheduled June appointments. (*Exhibit 28, letter dated June 21, 2017 from Heidi Rodgers to the Court*)

The Current Status of the Joint Treatment Plan

[168] Mr. B.P. contacted Heidi Rodgers on June 30, 2017, requesting a meeting “to discuss his treatment plan moving forward.” She met with him on July 13 and reports that they,

...discussed the status of his involvement with the Treatment Team and ongoing challenges related to administering an IRCS sentence as outlined in the original section 34 assessment and joint treatment plan. [Mr. B.P.] requested that visits with treatment providers be placed on hold until all court matters are dealt with. Mr. B.P. agreed to revisit the treatment plan once sentencing and placement were resolved. (*Exhibit 29, Heidi Rodgers' July 14, 2017 Report to the Court, page 6*)

[169] In any event, it was Ms. MacKinnon's evidence that the Joint Treatment Plan is no longer relevant given where Mr. B.P. is now housed, the resources the IWK has available, and the intervening events. "We are not able to provide the services as we could in the youth facility."

[170] Most importantly, Ms. MacKinnon says, there needs to be a new risk assessment. She noted that the violent incidents are "very significant."

[171] Ms. MacKinnon testified that usually a risk reassessment is done at one year on an intensive sentence to see if the Treatment Team is "hitting the treatment targets – are there things that need to be changed or tweaked?" The circumstances in this case "make it even more urgent...because we need a new treatment plan if we are going to continue." There is "no viable treatment plan without getting a risk reassessment done." She said there also may need to be new people added to the team.

[172] A new risk review would involve re-doing some of the risk tools, gathering collateral information to put into the mix, and looking at the recommendations which might need to be changed and/or augmented, possibly with new recommendations.

[173] Ms. Rodgers testified it was "fair to say" that, in order to maintain objectivity, the Team wanted someone to do the assessment who had not had dealings with the young person. This approach would have been taken in any case involving a youth on an IRCS sentence.

[174] Ms. Rodgers had discussed the preparation of a new risk assessment with Mr. B.P. in the summer of 2016 and initially made the request to the internal team. Dr. Hanson testified that he supported a new risk assessment being done. He was of the

view that it “probably would have been very imprudent” for him to have done the new assessment.

[175] Subsequent to September 4, Ms. Rodgers made the request for the risk assessment to be done externally. She testified that her request for funding for the assessment went to Wayne Horner at the provincial level for forwarding to the Federal Government. The funding was approved by the Federal Government but placed on hold. Ms. Rodgers says no one knew the status of Mr. B.P.’s case, where he was going to be housed, and whether he would be continuing the IRCS sentence or not.

[176] Ms. Rodgers’ July 14, 2017, Report to the Court indicated that the Treatment Team recommended an updated risk assessment,

...to assist the team and [Mr. B.P.] in better understanding his level of risk and treatment needs as well as further exploring his motivation and desire to continue with an intensive treatment sentence...this assessment would be most useful when [Mr. B.P.’s] institutional placement is resolved as [Mr. B.P.’s] needs and motivation, as well as the Treatment Team’s ability to provide service will, in part, be dependent on the circumstances of his placement. (*Exhibit 29, page 7*)

The Psychiatric Services Aspect of Mr. B.P.’s IRCS Sentence

[177] A central feature of an IRCS sentence is the young person’s mental health needs, identified in Mr. B.P.’s case by Dr. Hanson in the section 34 psychological assessment. A young person is only eligible for an IRCS sentence if they are diagnosed with “a mental illness or disorder, a psychological disorder or an emotional disturbance.” (*section 42(7)(b), YCJA*) Dr. Hanson diagnosed Mr. B.P. with Conduct Disorder, childhood-onset type of a severe nature, Post-Traumatic Stress Disorder and Borderline Intellectual Functioning.

[178] Psychiatric services to be provided to Mr. B.P. under his IRCS sentence was to be the responsibility of Dr. Mejia, the only forensic psychiatrist at the IWK. Unlike Dr. Hanson, Heidi Rodgers, and Sarah Rafuse, Dr. Mejia is not under the supervision of the Manager of Youth Forensic Services, Roz MacKinnon.

[179] Dr. Mejia's involvement with Mr. B.P. started in December 2014 and ended in the spring of 2016. He recalls last meeting in-person with Mr. B.P. on February 25, 2016, although he continued to prescribe medication for Mr. B.P. and even increased Mr. B.P.'s Seroquel dosage without talking to him. Dr. Mejia testified that Mr. B.P. experienced this as disrespectful. He says he had no choice but to do so because the relationship with Mr. B.P. was "not very good."

[180] Ms. Rodgers confirmed that Mr. B.P. continued to receive medications through the nursing station at Waterville prescribed by Dr. Mejia. She testified that "it would have been helpful for [Mr. B.P.] to be able to discuss symptoms and side effects."

[181] Dr. Mejia was asked about Seroquel on cross-examination. He agreed it is used to treat schizophrenia and was originally marketed as an anti-psychotic. He says that "off-market" it is used to treat sleep-disorders, anxiety and depression. Dr. Mejia says he prescribed it for Mr. B.P. to "mood stabilize him."

[182] The evidence indicates that Mr. B.P. and Dr. Mejia never had a particularly positive relationship. Dr. Mejia testified that Mr. B.P. was "reluctant to discuss my questions." He says that Mr. B.P. complained there were "too many questions" and says Mr. B.P. felt Dr. Mejia was putting him down and using words he didn't understand. Dr. Mejia says Mr. B.P. had difficulty with his accent which I took to mean that Mr. B.P. was having trouble understanding him.

[183] It was Dr. Mejia's evidence that he was unable to address Mr. B.P.'s risk. Mr. B.P. resisted the discussions and was angry and evasive when confronted. Dr. Mejia noted that Mr. B.P. "pushes people away when he is challenged."

[184] Ms. Rodgers recalls problems between Mr. B.P. and Dr. Mejia starting to emerge in December 2015. Mr. B.P. told her he felt his complaints to Dr. Mejia about the side-effects of medication were not being addressed. Ms. Rodgers was aware that Mr. B.P.'s frustrations with Dr. Mejia were causing him to have "violent thoughts" toward him although he was not planning to act on them. He felt he was not being heard, was being disrespected and that Dr. Mejia was "trying to catch him in a lie."

[185] Dr. Mejia testified that notwithstanding the “slowly deteriorating” relationship, he continued to offer services to Mr. B.P. “but it became impossible.” It got to the point of Mr. B.P. not wanting to see him anymore.

[186] After their relationship broke down, Dr. Mejia says he twice invited Mr. B.P. to come and meet with him but Mr. B.P. refused. Dr. Mejia testified that he stopped reiterating his offers to meet but says, “I did not refuse to see him.”

[187] I do not view Dr. Mejia’s memory as reliable on this point. Both Heidi Rodgers and Roz MacKinnon testified that after the relationship ran aground Dr. Mejia was asked to see Mr. B.P. and he declined to do so. The evidence from Ms. Rodgers and Ms. MacKinnon is hearsay but it is not the only hearsay introduced in these proceedings and the circumstances indicate to me that it is reliable. I will take a short detour to discuss it.

[188] Ms. Rodgers recalls there were two instances, subsequent to Mr. B.P. indicating he was having “violent thoughts” of harming Dr. Mejia, of Dr. Mejia being asked to meet with Mr. B.P. and refusing. Ms. Rodgers understood that Sarah Rafuse had made the request of Dr. Mejia during rounds at Waterville and that Dr. Mejia had said no, he wouldn’t be seeing Mr. B.P.

[189] Ms. Rodgers’ testimony is supported by an email she wrote on August 18, 2016, (*Exhibit 26*) in which she asked if there was “any way to have another psychiatric consult?” Her email was addressed to Dr. Mejia, Ms. MacKinnon, Professor Mary Ann Campbell, an external consultant, and Dr. Hanson. Ms. Rodgers testified that where she said in the email, “I am concerned about [Mr. B.P.’s] threats to Dr. Mejia and his indicating his refusal to meet with him” she was referring to Dr. Mejia’s refusal in the face of Ms. Rafuse’s requests, to meet with Mr. B.P.

[190] Dr. Mejia’s response to Ms. Rodgers’ August 18 email supports the evidence that he had decided he would not provide further psychiatric services to Mr. B.P. I will discuss that response shortly.

[191] The breakdown in the relationship between Dr. Mejia and Mr. B.P. was a concern to the Treatment Team. Ms. Rodgers says the Team felt it was important for Mr. B.P. to continue to receive psychiatric treatment as part of his IRCS sentence. She considered that receiving psychiatric services was “a significant part of the

treatment.” Her view that there was “a significant gap in service” was shared by other Team members. She says the Treatment Team had had concerns about Mr. B.P.’s need for psychiatric services for “a lengthy period of time.” Ms. Rodgers testified that she does not recall Dr. Mejia attending any case conferences concerning Mr. B.P. in the last year.

[192] Ms. Rodgers says she had concerns in the late summer of 2016 that Mr. B.P. required psychiatric help and wasn’t getting it. She described this as concerns for “her client and the safety of others”. It led to her sending Exhibit 26, the August 18 email I just referred to.

[193] Dr. Mejia’s response to Ms. Rodgers’ email did not move the psychiatric services ball down the field. It was negative in its tone and approach.

[194] Dr. Mejia testified on cross-examination that he supported the idea of having another psychiatrist see Mr. B.P. when the issue was being discussed in the late summer of 2016 and talked to Dr. Brunet at the East Coast Forensic Hospital “myself.”

[195] But Dr. Mejia’s claim of having a supportive stance is not borne out by his email of August 18, 2016, part of the email chain entered into evidence as Exhibit 26. In a reply to Ms. Rodgers’ email, Dr. Mejia emailed Ms. Rodgers, Ms. MacKinnon, Professor Campbell, Dr. Hanson and Dr. Alexa Bagnell, Chief of Psychiatry at the IWK, that same day, as follows:

Hi Everybody

I find [Mr. B.P.] very manipulative and I think allowing this to go his way will continue feeding into his usual ways. Several times in the past he has been enabled and I don’t think that is either ethical or correct. He has been caught with shanks three times. This is also the fourth time he has been intoxicated with substances that he has fabricated or have been introduced to the centre [meaning Waterville]. I think that involving any colleague of mine is inappropriate and will further encourage [Mr. B.P.] to continue his poor progress. I also think we should discuss this before any other decisions are made. (*Exhibit 26*)

[196] Dr. Mejia testified that in this email he was referring to his child and adolescent psychiatrist colleagues at the IWK, none of whom are forensic psychiatrists. He says he was referring to “any one of my child and adolescent psychiatrist colleagues who will have been deputized by Dr. Bagnell to do this. That’s what I am saying; I don’t think they should be exposed to this.”

[197] Dr. Mejia did not explain why he opposed this “exposure” but I infer it was because his IWK child and adolescent colleagues are not forensic psychiatrists and as he said later in his evidence, “they are not up to speed with the law.” As I will explain, this did not leave much in the way of options for Mr. B.P. as Dr. Mejia is the only forensic psychiatrist at the IWK.

[198] Dr. Mejia was asked in re-examination about his email. He testified that at the time “...one of the biggest problems that our Team had as this has progressed is a tremendous split in opinions.” He says he was “calling the Team to regroup.” It seems to me Dr. Mejia was conflating his August 18 email with what was being discussed after Mr. B.P. was transferred to Northeast. I say this because in his response under re-direct examination, he said: “I had an objective opinion from a doctor. On the other hand I have Dr. Hanson and non-medical colleagues saying he needs to be seen.” As I will be discussing shortly, this refers to what happened in relation to the issue of psychiatric services for Mr. B.P. once he went to Northeast, some time after Dr. Mejia’s August 18 email. On August 18 what Dr. Mejia had was Ms. Rodgers’ email and the Team’s concerns about “a significant gap in service” to Mr. B.P.

[199] Dr. Mejia testified that he was indicating in the August 18 email (*Exhibit 26*) that he “wanted to have a meeting with everybody” including Dr. Bagnell, with a full exchange of opinions and “come to a conclusion...in the context of planning other consultations.”

[200] Instead, nothing happened and Mr. B.P.’s psychiatric needs remained unaddressed.

[201] Ms. Rodgers replied on August 18 to Dr. Mejia’s response. She suggested that he and Ms. MacKinnon discuss the issue of another psychiatric consult. She testified that she felt it was appropriate for Dr. Mejia and Ms. MacKinnon to discuss the issue “knowing what the Team request was.” Ms. Rodgers noted that when it comes to

assigning psychiatric care for Mr. B.P., she can identify his psychiatric needs “but the decision is made at a management level.” Ms. Rodgers could not independently contract for those services. Her hands were tied. Dr. Mejia, who had not seen Mr. B.P. since late February and had not been attending case conferences concerning him, appears to have held what was effectively a veto power.

[202] Mr. B.P.’s need for psychiatric services only became more acute once he was transferred to Northeast. That is what I will be discussing next. In doing so I will be explaining the concerns identified by Ms. Rodgers and Dr. Hanson and the events that led to a rupture in Dr. Hanson’s relationship with Mr. B.P. I will also be reviewing what Dr. Mejia has said about the issue of psychiatric care for Mr. B.P.

[203] In these reasons I have already described at paragraphs 137 to 139 Ms. Rodgers’ observations of Mr. B.P. at Northeast in the THU. I note that Ms. Rodgers was asked in direct examination whether she was qualified to “gauge [Mr. B.P.’s] forensic needs”. There is no special professional designation of “forensic social worker.” However Ms. Rodgers pointed out that she is a clinical social worker with considerable forensic experience and education. She has worked for nine years at the IWK as part of a forensic team. I am amply satisfied that Ms. Rodgers was well qualified throughout her involvement with Mr. B.P. to assess whether he needed to be receiving psychiatric care.

[204] Dr. Hanson had similar concerns to Ms. Rodgers about Mr. B.P.’s mental health at Northeast. He and Sarah Rafuse also experienced Mr. B.P. expressing angry, hostile feelings, directed at a variety of targets, including themselves.

[205] Dr. Hanson and Sarah Rafuse met with Mr. B.P. on October 18, 2016. In an email Dr. Hanson sent on October 19 to Roz MacKinnon and copied to Heidi Rodgers, he advised that Mr. B.P. had instructed his lawyer to collapse his IRCS sentence and was seeking to be transferred to an adult facility. Mr. B.P. told Dr. Hanson there would be dire consequences for Waterville should he be returned there. According to Dr. Hanson’s email “he would be prepared to assault youth workers, cause disruption and encourage other youth to assault staff.” Dr. Hanson wrote: “[Mr. B.P.] stated that he would be prepared to kill staff in order to facilitate a hasty move up to the adult system.” (*Exhibit 14, Dr. Hanson’s Email of October 19, 2016*)

[206] Dr. Hanson advised in his email that although Mr. B.P.'s threats against Waterville staff were generic, he felt obliged due to their "clear and direct" nature to pass the information on under a "duty to warn" and "breach confidentiality."

[207] Dr. Hanson and Sarah Rafuse met again with Mr. B.P. on November 1, 2016. Dr. Hanson's email to Heidi Rodgers of November 2, 2016, indicates his concerns with Mr. B.P.'s mental health had not diminished. Like John Landry, Dr. Hanson identified social isolation as detrimental to Mr. B.P. In the November 2 email to Ms. Rodgers he said:

As you will see for [he likely meant "from"] the clinical note both myself and Sarah have serious concerns regarding the emotional well-being and mental health of [Mr. B.P.] He has (as you know) been in de facto solitary confinement and this is having a deleterious effect upon his presentation. Whilst [Mr. B.P.] stated he was happy to be placed at North Nova [Northeast] and threatened violence should he be forced to return to Waterville he currently has no access to programming and little structure throughout his day. His sleeping and appetite are currently disrupted and there are some indications of an increase in paranoid thoughts and unusual cognitions...A brief review of his presentation using Beck Youth Inventories...highlighted extremely elevated levels of anger, agitation and disruptive behaviour...(Exhibit 23)

[208] Dr. Hanson went on to explain that Mr. B.P. was intending to remain at Northeast until the new year and then withdraw from his IRCS sentence and "request an adult placement." Dr. Hanson expressed grave concerns about the effect on Mr. B.P. of an additional three months in what he had called "de facto solitary confinement",

...should his current management/treatment regime remain there remains a significant risk of his presentation continuing to deteriorate and perhaps a more serious mental health condition to emerge...(Exhibit 23)

[209] It was Dr. Hanson's opinion that Mr. B.P. "will be at an exceptionally high risk of violence after several months of confinement when and if he does transition to an adult general population." (*Exhibit 23*)

[210] Dr. Hanson added specific recommendations for addressing Mr. B.P.'s needs and issues through increased services, therapeutic supports and structure. He advised that "A psychiatric assessment be undertaken as soon as possible and be followed up to monitor [Mr. B.P.'s] presentation over the next few months." He also wondered "whether senior justice managers also need to be involved in this discussion as to how they can facilitate treatment" given the likelihood that Mr. B.P. would be remaining at Northeast "and his current provision needs to be re-examined." (*Exhibit 23*)

[211] It was Dr. Hanson's evidence that on November 2, 2016, he was concerned about Mr. B.P.'s mental state after his transfer from a facility where he had intensive contact with staff to an environment where there was no therapy, no education, and no psychological or psychiatric services. This, he says, was "a huge transition" for Mr. B.P. He was "not happy" with Mr. B.P.'s presentation. He felt Mr. B.P.'s therapy needed to be "kick-started" as soon as possible. Dr. Hanson was concerned that the Treatment Team was no longer seeing Mr. B.P. as intensively as he needed. He testified: "We had an IRCS sentence to administer."

[212] Ms. Rodgers wasted no time emailing Dr. Bagnell. Her email of November 2 included Dr. Hanson's email and added the concerns that she and Troy Allen, Mr. B.P.'s mentor, had about Mr. B.P.'s "presentation" as noted by them the previous week. Ms. Rodgers indicated that those concerns had "prompted further discussion at the clinical case conference on Friday [which was October 28] and a request for psychiatric consultation/assessment." Ms. Rodgers advised Dr. Bagnell that Northeast "is recognizing concerns around [Mr. B.P.] being isolated..." and while they – Northeast - wanted to develop programming options, they "also recognize they are limited in what they can provide, given that he is a youth, and their programming typically involves group work." (*Exhibit 23*)

[213] Dr. Bagnell emailed Ms. Rodgers back within the hour advising that she had written Dr. Brunet (at the East Coast Forensic Hospital) "last week for an update" and would let the Treatment Team know when she heard from her. (*Exhibit 23*)

[214] I pause here for a moment to consider Dr. Hanson's November 2 concern for Mr. B.P.'s "de facto solitary confinement" and his testimony about what he now says he meant. Dr. Hanson testified that his "de facto solitary confinement" reference was in relation to the Treatment Team contact with Mr. B.P. and his removal from Waterville to Northeast, that they were "building up a relationship and we lost him." He says that is "the crux" of what he meant. Dr. Hanson says he was "very concerned [Mr. B.P.] needed interventions, structure, and treatment to smooth the transition to [Northeast.]" When asked on cross-examination if he was concerned about Mr. B.P.'s social isolation, he responded by saying, "My concern was the lack of Treatment Team contact." He went on to say he had "no specialist training" on the effects of social isolation on prisoners.

[215] Dr. Hanson further said that he is not sure he could say that social isolation was negatively affecting Mr. B.P. at Northeast. He noted that Mr. B.P. had contact with the Northeast correctional officers although he did not know to what extent.

[216] Dr. Hanson's testimony does not square with his email of November 2. I do not accept that his concern in November 2016 was isolated to the loss of contact with the Treatment Team. It is clear what Dr. Hanson was saying in his email. He saw Mr. B.P. confined in conditions that qualified as solitary confinement and noted it was having "a deleterious effect upon his presentation." I do not understand why he is now rowing back from that opinion. Nor do I understand why, as a forensic psychologist, he would profess to have nothing to offer about the effects of social isolation in a custodial facility.

[217] I also find it remarkable that Dr. Hanson expressed this opinion: "I wouldn't say conditions at Northeast undermined the IRCS sentence." Conditions at Northeast have unquestionably undermined the IRCS sentence. I cannot see how that proposition can reasonably be disputed or denied. And furthermore, Dr. Hanson's emails indicate his explicit concerns about the disruption to the therapeutic interventions for Mr. B.P. caused by his transfer to Northeast.

[218] Dr. Hanson continued to have concerns about Mr. B.P.'s mental health in the new year. An email from him on February 23, 2017, to Roz MacKinnon, Heidi Rodgers and Sarah Rafuse indicates that Mr. B.P. was not doing well. He was "agitated and extremely angry" and "displaying evidence of a mood disorder." He

showed “an increase in paranoid thinking” and “lacked insight into his current mood and thought disturbances.” (*Exhibit 13*) Dr. Hanson testified that Mr. B.P.’s paranoia extended to his thinking that the Treatment Team was part of a conspiracy to have him transferred into the federal penitentiary system.

[219] Mr. B.P. was now making threatening comments that “blood will flow” if he was returned to a different unit at Waterville than his home unit. (*Exhibit 13*) It was Dr. Hanson’s evidence that Mr. B.P. wanted to be returned to his cottage at Waterville to “get his boys in shape as they had been letting the youth workers discipline them too much.”

[220] In his email Dr. Hanson stated his view that “Given [Mr. B.P.’s] history, previous threats and his current state of mind” there was “a duty to pass this information on to justice.” He concluded by saying: “As we discussed I am extremely concerned that he will require a psychiatric assessment and when/if he returns it would be prudent for a psychiatrist to see him as soon as possible.” (*Exhibit 13*)

[221] After Dr. Hanson reported Mr. B.P.’s menacing statements in February 2017, Mr. B.P. was very angry and there was a rupture in their relationship. They met again in the spring of 2017 and Mr. B.P. was able to express his anger about Dr. Hanson’s disclosures. Dr. Hanson testified that it had been explained to Mr. B.P. at the onset of treatment that there were limits to therapeutic confidentiality.

[222] The breakdown in the relationship with Dr. Hanson appears to have had to do with trust, an issue that the section 34 assessment flagged as significant for Mr. B.P. And while I understand that the limits of confidentiality were discussed with Mr. B.P. explicitly and early on, his entrenched and rigid thinking patterns and the fact that he “is particularly challenged in the areas of language, comprehension and working memory” (*Exhibit 30, section 34 assessment, page 43*) and has “global cognitive difficulties” (*Exhibit 30, section 34 assessment, page 23*) may have compromised his ability to appreciate the legitimacy of Dr. Hanson’s actions.

[223] Dr. Hanson testified that connecting Mr. B.P. to psychiatric services was something that he saw as “a fairly urgent need.” He thought a psychiatrist ought to investigate what he had described in his February 23 email as a “mood disorder.” It was Dr. Hanson’s thinking that a psychiatrist would see Mr. B.P. and make a

diagnosis and have the difficult discussion with Mr. B.P. about medication. Mr. B.P. did not want to go on medication.

[224] But despite the laudable efforts of Dr. Hanson and Ms. Rodgers, psychiatric services were not engaged to address Mr. B.P.'s deteriorated mental health. Two factors appear to have been pivotal: Mr. B.P.'s unprecedented situation – under a youth sentence but housed in an adult institution - and Dr. Mejia.

[225] It was Dr. Mejia's evidence that, "We tried to arrange another forensic psychiatrist to see him." Contact was made by the IWK with the East Coast Forensic Hospital and Dr. Mejia talked to the general practitioner who served the prisoner population at Northeast.

[226] Dr. Mejia testified that the physician for Northeast said it was not necessary for Mr. B.P. to see a psychiatrist. In the event it was deemed necessary, Dr. Mejia says he understood it would have been Dr. Risk Kronfli, the forensic psychiatrist from the East Coast Forensic Hospital with responsibility for Northeast, who would have been asked to see him. Dr. Mejia says there was a concern that Dr. Kronfli was not a child and adolescent psychiatrist.

[227] Dr. Mejia testified that after the physician told him Mr. B.P. did not need to see a psychiatrist, she said she was going to see him the following week to make sure she had not missed something. She reported back that she did so and saw no reason for Mr. B.P. to see a psychiatrist or a forensic psychiatrist. Dr. Mejia says she advised him that Mr. B.P. was fine right now.

[228] Dr. Mejia was quite willing to defer to Northeast's institutional doctor, not a forensic psychiatrist, let alone a psychiatrist at all, or even a medical professional with any known expertise in dealing with young persons serving an IRCS sentence. Dr. Mejia testified that the issue of Mr. B.P. seeing a psychiatrist while housed at Northeast had to be transacted through the institutional physician. He says, "You can't just step over [her] and go and see the patient." He fielded the question in cross-examination about the concerns that were being expressed about Mr. B.P.'s mental health at Northeast by saying:

I hear what you're saying that my colleagues, social workers and Dr. Hanson, were saying he's not doing that well, that they were

concerned about him. But the institution has its process. We'd be telling the doctor, you don't know what you are talking about and we are going to come and do it. We can't do that.

[229] I simply do not understand why "can't" was the stance taken by Dr. Mejia in the face of an experienced youth forensic team saying that Mr. B.P., a high risk, already troubled and damaged young person, was experiencing a deterioration in his mental health.

[230] The search for a replacement psychiatrist for Mr. B.P. was also conducted by the IWK. Dr. Mejia understood that Dr. Bagnell had spoken to Dr. Brunet and Dr. Theriault, both of whom are forensic psychiatrists at the East Coast Forensic Hospital. Dr. Mejia testified there was "a lot of pressure coming from Ms. Rodgers", suggesting "some urgency." Dr. Mejia also appears to have been referring in his evidence to the parallel concern to have a fresh risk assessment prepared, noting that Ms. Rodgers wanted to "hire somebody externally." Dr. Mejia says he asked, "why hire a psychologist when we have two perfectly capable psychiatrists, Dr. Theriault and Dr. Brunet who can do it, and also Dr. Kronfli."

[231] For some reason, at the time of these discussions, Dr. Mejia said that the East Coast Forensic Hospital forensic psychiatrists might be responding "imminently" to the inquiries that had been made by the IWK about Mr. B.P.'s needs. I have difficulty understanding why he would have expected this as he indicated a little later in his evidence that these psychiatrists were "very busy" with significant institutional and clinical responsibilities.

[232] Ms. Rodgers testified she understood from her requests for psychiatric care for Mr. B.P. at Northeast that acute psychiatric care could only be provided through the East Coast Forensic Hospital ("ECFH") or the Central Nova Scotia Correctional Facility ("CNSCF") at Burnside. (These institutions are co-located.) It was her evidence that Dr. Kronfli, who serviced Northeast, was only available to provide psychiatric care to the adults at the institution. Mr. B.P. could not be transferred for psychiatric care to the ECFH or the CNSCF because they have no designated youth facility within their institutions.

[233] Dr. Mejia acknowledged that Mr. B.P.'s psychiatric assessment didn't happen. The forensic psychiatrists he favoured getting involved "took a long time"

to respond because, Dr. Mejia notes, “they were very busy.” He says that after that “circumstances delayed” progress on the matter “and then the earliest opportunity would have been a tele-psychiatry in May.” Dr. Mejia was referring to a video-link he agreed to have with Mr. B.P. on May 25, 2017.

[234] The video-link was set up with Mr. B.P. agreeing to participate. Dr. Mejia says he understood Mr. B.P.’s mental health was deteriorating. (Which, I note, the evidence establishes it had been for months.) Dr. Bagnell agreed to be present.

[235] The call never occurred although, at the end of the evidence, why it was cancelled or by whom remained a mystery. Ms. Rodger’s July 14, 2017, report to the Court indicated that the tele-conference was “cancelled as per a written request” from Mr. B.P.’s lawyer. (*Exhibit 29, page 6*) However this information is plainly not accurate and Ms. Rodgers had to have been misinformed.

[236] A letter dated May 23, 2017, from Ms. McNeil on Mr. B.P.’s behalf to Dr. Bagnell was admitted into evidence to show that it contained no direction to cancel the May 25 tele-psychiatry consult with Dr. Mejia. Ms. McNeil’s letter simply acknowledges that she “recently learned” about the appointment for May 25 and says nothing further about it. (*Exhibit 25*)

[237] Dr. Mejia testified that five days before the call was to occur, a letter was received from Mr. B.P.’s lawyer asking that the call not proceed. When he was shown Exhibit 25, the May 23, 2017, letter from Ms. McNeil to Dr. Bagnell, Dr. Mejia said he recalled a single-page letter received by Dr. Bagnell asking that there be no further contact with Mr. B.P. That cannot have been Ms. McNeil’s letter. The only communication that accords with Dr. Mejia’s recollection is Mr. B.P.’s request of June 6 for no further contact until after his legal matters were concluded. When asked on cross-examination if it was a June letter he saw, Dr. Mejia said June “sounds about right.”

[238] I am amply satisfied that the May 25 tele-psychiatry consult was not cancelled by Mr. B.P. Ms. Rodger’s evidence is helpful in disposing of any notion that Mr. B.P. played a role: she testified that Mr. B.P. did not know why the video-link didn’t happen and asked her “why no one had showed up.”

[239] In all the jigs and reels around Mr. B.P.'s psychiatric needs at Northeast, the possibility of an out-of-province forensic psychiatrist was never explored. Mr. B.P. is serving an IRCS sentence and everyone involved is well aware there are funds for services that fall outside what can be provided by the IWK or Justice. But Dr. Mejia testified explicitly that in his view engaging an out-of-province forensic psychiatrist would have been "irresponsible." This was his evidence on the point:

Think about the expense to bring a child and adolescent psychiatrist from another province when at least in principle there was the institutional doctor saying [Mr. B.P.] was fine and Dr. Kronfli goes to that institution all the time and then we have Dr. Theriault available.

[240] Dr. Mejia testified that he saw "no reason" to use funds to bring anybody else and went on to say, "The big difference here is that the people in the IRCS team are devoted exclusively to their patients..." and then made the point that he sees in a month the same number of patients in the community as Waterville's total number of residents. He noted that "Unfortunately, the resources are limited" and expressed his concerns about the expenditure of public funds:

So then you say why not use the monies to bring someone else?
Well, as a taxpayer I'd have a pretty hard time explaining to you as a taxpayer the cost of bringing this professional because we haven't been able to arrange this. Once again, knowing Mr. B.P. is not in any stress.

[241] Dr. Mejia says there was no ill intent in not providing psychiatric care to Mr. B.P. at Northeast. It was "just a matter of the circumstances." He testified that he had told the institutional doctor, "you tell us when you need a psychiatrist", and had given her all his contact numbers. He also said he wouldn't have had "any qualms" about driving to Northeast to see Mr. B.P. if it was an emergency, like a psychosis.

[242] I will conclude this dismal chapter about Mr. B.P.'s unmet psychiatric needs by saying that Dr. Mejia's testimony raising taxpayer concerns reveals a significant lack of objectivity and a serious misapprehension by him of his role. Dr. Mejia's responsibilities as the IWK's only forensic psychiatrist do not include aligning himself with the speculative concerns of the hypothetical taxpayer. IRCS sentences

are rarely available because of the strict criteria under the *YCJA* that govern when they can be imposed. Those that are ordered are entitled, as required, to the robust funding that is available. And this is overlaid by the purpose of an IRCS sentence which is to rehabilitate, using intensive therapies, the highest-risk, most challenging young persons who have been convicted of serious violence. In Mr. B.P.'s case, none of this seems to have been on Dr. Mejia's radar.

[243] As the IWK's only forensic psychiatrist, Dr. Mejia could have played a significant role advocating for, and helping secure, psychiatric care for Mr. B.P., at Northeast. But he didn't.

The Content of the IWK Reports

[244] Before I move on, I want to briefly address an issue that was raised by the Crown in the examination of Ms. Rodgers – the absence in the reports to the Court of threats directed by Mr. B.P. at various times to service providers.

[245] Ms. Rodgers was asked about the threatening statements by Mr. B.P. to Dr. Hanson as reflected in his emails of November 2, 2016, and February 23, 2017, (*Exhibits 23 and 13*) not being included in any of the reports prepared for the Court. She testified that it was an issue of clinical judgment and noted that “a bit of balancing goes into how much we disclose to the Court.” The balancing takes into account that revealing too much could be detrimental to the therapeutic relationship. All the information relating to clinical matters is not provided to the Court so as to maintain the client's confidence, a judgment made in consultation with the Treatment Team. She acknowledged that the Team clearly recognizes threatening statements as a risk issue and said, “perhaps we could do better in that respect.”

[246] Threatening comments made by Mr. B.P. toward his clinical social worker, Sarah Rafuse, were also not included in reports prepared for the Court. Ms. Rodgers was asked about an incident in June 2017 when a discussion by Ms. Rafuse with Mr. B.P. of a “sensitive nature from a therapeutic perspective” had made Mr. B.P. very agitated. He made some threats about locating her after her release and, as Dr. Hanson recalled the utterance, leaving a body on her lawn.

[247] Dr. Hanson noted in his evidence that Ms. Rafuse and Mr. B.P. had a very positive, close relationship. He says Mr. B.P. probably trusted Ms. Rafuse more than

anyone else on the Team. He recalls that Ms. Rafuse was very upset in the immediate aftermath of Mr. B.P.'s threats.

[248] Ms. Rodgers recalls that Ms. Rafuse talked with Mr. B.P. about what he had said to her and he apologized, saying he had not meant it.

[249] This is hearsay of course but, again, it is not the only hearsay that has formed part of the evidence before me. I have mentioned my consideration of a previous instance of hearsay evidence and wish to note that I am in agreement with McLellan, P.C.J. in *S.D.F. (Re)* who held: "The court should not be denied an opportunity to review relevant information before it, including hearsay because of the application of strict rules of evidence." (*para. 66*)

[250] I find Ms. Rodgers' hearsay evidence about how the threat to Sarah Rafuse was addressed between her and Mr. B.P. to be reliable. Mr. B.P.'s threats to Ms. Rafuse were discussed by Ms. Rodgers with the Treatment Team when she was preparing Exhibit 29, the Report for the Court dated July 14, 2017. Dr. Hanson queried whether the Rafuse threats should be included. Ms. Rodgers reviewed the Report she prepared with Ms. MacKinnon, Dr. Bagnell and the clinical consultant, Professor Mary Ann Campbell. She asked Ms. Rafuse if she wanted Mr. B.P.'s threats included. Ms. Rafuse said no. All of this evidence was elicited from Ms. Rodgers by the Crown in direct examination.

[251] Ms. Rodgers testified that the threats were documented in the clinical notations for the IWK file and not included in the Report for the Court. She says it was the Team's understanding that clinical services would likely continue to be provided to Mr. B.P. "and there are clinical judgments made about what is shared."

[252] I note that Mr. McVey on behalf of the Provincial Director was very attuned to the tensions between full disclosure and the therapeutic relationship with Mr. B.P., observing at a pre-hearing conference on February 6, 2017, that candid testimony from Treatment Team witnesses could affect the ability of these service providers to continue working with Mr. B.P. He commented with insight that such evidence has the potential to alter the relationships.

The section 92(1) Application – The Exceptional Power to Transfer

[253] It is a foundational principle of the *YCJA* that the “criminal justice system for young persons must be separate from that of adults...” (*section 3(1)(b)*) This led Cole, J. in (*Ontario (Ministry of Childhood and Youth Services) v. K.K.*) to conclude that, in the context of more temporary “remand transfers” under section 30(4), Parliament plainly considers the power to transfer as “highly exceptional”. (*para. 12*)

[254] And if it is a power that should be used sparingly in that context (*R. v. S.P., 2014 YJCN 1, para. 8*), it must surely be exercised with considerable restraint on a section 92(1) application.

[255] Notwithstanding the fact that, “Facilities for youth in conflict with the law are expected to deal with and manage angry, troubled, violence-prone young persons and rehabilitate them” (*J.C.(Re), para. 106*), there are exceptional cases that justify transfer where the evidence establishes it is in the public interest. I am now going to discuss what constitutes the public interest in this application. It is appropriate to start with what was identified two years ago as being in the public interest, that is, the imposition on Mr. B.P. of an IRCS sentence.

Mr. B.P.’s IRCS Sentence

[256] As I noted when I sentenced Mr. B.P., an IRCS sentence can only be ordered if the statutory requirements in section 42(7) of the *YCJA* are satisfied. One of the criteria is that there must be “reasonable grounds to believe” that the IRCS plan “might reduce the risk of the young person repeating the offence or committing a serious violent offence.” (*section 42(7)(c), YCJA*) The ultimate objective of an IRCS sentence is to promote the long-term protection of the public by addressing the circumstances underlying the offence. (*R. v. B.P., para. 14*)

[257] The Crown’s submissions at Mr. B.P.’s sentencing described him as having grown up in a chaotic, violent environment exposed to substance and emotional abuse, an environment that, in the Crown’s words, no child should ever experience. (*R. v. B.P., para. 17*) The following is an extract from my decision that references the evidence before me at sentencing about Mr. B.P.’s developmental influences:

18 Dr. Hanson refers to BP having "a chronic history of early childhood trauma." He includes in the assessment the description of BP's childhood supplied by his mother: "There was always violence and lots of it." Dr. Hanson indicates that BP "may have been vulnerable to developing issues and problems as a result of members of his family being involved in crime, substance misuse and gang membership" within the context of the impoverished community where he grew up. It is Dr. Hanson's opinion that the domestic abuse BP witnessed and experienced "would have had significant negative consequences" on his "self-confidence and view of himself in the world." Dr. Hanson also observes:

[BP] may have developed dysfunctional beliefs and attitudes toward affiliations to family that generalised in later life to gangs. [BP's] early life of violence would have made him hyper-vigilant to attack and sensitive to threat at any time, issues that he continues to present with to this day.

[258] Mr. B.P. received his first conviction at age 12. As I observed in my reasons at sentencing:

20 ...His father insisted that at age 12 he not be reliant on his mother and should be making his own money. Theft evolved into drug-dealing, an activity that was modeled by other family members. As Dr. Hanson notes: "[BP] continued to refine his street reputation by being involved in drug deals and fighting those who challenged him." He armed himself and "demonstrated criminal leadership skills and abilities..." He used the proceeds from the drug trade to help his family purchase food and clothing.

21 ...[B.P.] became deeply invested in a role as a protector of his mother and siblings, acquiring a very strong sense of loyalty and feelings of responsibility. He has perceived himself "as a "father figure" and "provider" for his family and associates." Dr. Hanson described BP as:

...invested in crime and understands life on the street as a "war to feed his family. As a result he shows little concern for others outside his immediate gang and is defiant of authority...

22 Unsurprisingly, given the engrained nature of his criminality, BP imported features of his street life into the Nova Scotia Youth Facility. Earlier this year [i.e., 2015] he received disciplinary sanctions for smuggling marijuana into the Facility, drugs that were supplied by his mother. And on February 28, 2015 he was sanctioned for creating and concealing a shank, a homemade knife crafted from a sharpened toothbrush.

23 Dr. Hanson has assessed BP as "at high risk of reoffending." He describes him as "highly anti-social, highly pro-criminal" and as having been "raised in an environment that normalised violence as a first means of dealing with difficult situations." Dr. Hanson characterizes BP's role in Mr. Pellerin's murder as "a culmination of years of increasing violence and criminality as opposed to an unfortunate idiosyncratic event." His Post-Traumatic Stress Disorder is thought to be responsible for "a significant portion of his hyper-vigilance to attack, reckless and self-destructive behaviour and explosive temper..." BP is described in the section 34 assessment as being highly vulnerable to stress with low resilience and coping skills.

[259] Mr. B.P. was also identified as having learning difficulties, even prior to Grade Primary. He "struggled in school, had high levels of non-attendance, and behavioural problems. He was found to have a clinical presentation consistent with Borderline Intellectual Functioning." (*R. v. B.P.*, para. 19)

[260] Everyone knew when Mr. B.P. was sentenced to a seven-year IRCS sentence that he presented with very significant challenges. His rehabilitation was expected to demand considerable resources and intensive treatment. Dr. Hanson was explicit:

28 In Dr. Hanson's opinion, while BP's complex issues and high risk potential, "chronic and longstanding emotional and

behavioural issues" present formidable challenges to successfully rehabilitating him, given his amenability to treatment, "well-tested forensic research does indicate that offenders who pose a higher risk of re-offense should receive the most intensive services in order to maximize their chance of rehabilitation and reduce risk." Dr. Hanson's opinion continues as follows:

...intensive therapeutic treatment presents the only viable way that [BP's] risk to society may be potentially reduced within the context of a youth sentence. Without an intensive therapeutic treatment of the longest possible time period it is unlikely that his risk of violence and reoffending would be meaningfully reduced and he would continue to present as a clear and present danger to himself and society at large...

29 BP is described by Dr. Hanson as "a young man with a complex trauma...at high risk for violence and criminality." He goes on to say that supporting BP will require "an intensive program of treatments over a prolonged period of time." Dr. Hanson states that BP's "entrenched pro-criminal attitudes and tendencies" and values will require "considerable, consistent and continued" remedial work. BP's proven ability to connect with therapeutic supports will be essential to that work.

[261] It was Dr. Hanson's recommendation in the section 34 assessment that approval for an IRCS sentence be sought. This led to the preparation of the IWK/Corrections Joint Treatment Plan that I have discussed already. (*Exhibit 7*)

[262] I had the following to say in my sentencing decision about the Joint Treatment Plan:

33 The Joint Treatment Plan for BP is structured over four phases -- Stabilization, Intensive Treatment, Transition, and Reintegration. Its objectives, listed in order of priority, are to:

reduce the risk to reoffend; reduce the risk of violence; reduce pro-criminal attitudes/values and beliefs; reduce the risk for substance abuse; reduce the psychological effects of trauma; establish pro-social goals; and establish a successful transition to community life. Some of the components of the Plan include: intensive assessments, development by BP of a risk management plan while in custody; assisting BP understand pro-social life goals; targeted and intensive therapy; reducing the psychological effects of trauma associated with developmental modelling and experience and its link to criminality; acquisition of a high school diploma; eventual transition to supervision in the community that will include electronic monitoring and police checks; and a reintegration process to be effected during the community portion of BP's sentence with the implementation of appropriate supervisory conditions.

[263] The Provincial Director reviewed the Plan and, as I noted in my sentencing decision, advised as follows in a letter dated June 18, 2015: "I have reviewed the proposed IRCS plan, in accordance with section 42(7) YCJA. I find that it is comprehensive and responsive to the specific needs of this young person and that his participation in this program is appropriate." (*R. v. B.P.*, para. 32)

[264] In my sentencing decision, I concluded that:

41 Based on BP's section 34 psychological assessment, I am satisfied that he will require, as Dr. Hanson has said, "a substantial period of time in custody and...will require intensive work and treatment" to address his level of dangerousness and the complex web of issues that led him to commit murder. What is necessary here is a sentence that, to repeat Dr. Hanson's words, provides "...intensive therapeutic treatment of the longest possible time period..."

[265] I will have more to say about the section 34 assessment shortly.

The Best Interests of Mr. B.P.

[266] A young person's best interests can be the basis for a section 92(1) transfer to an adult correctional facility. Here that question does not require much discussion. Mr. B.P. obviously does not think it is in his best interests to be transferred or he would not have vigorously opposed the Provincial Director's application. And although after his transfer to Northeast from Waterville Mr. B.P. began indicating he wanted to withdraw from the IRCS sentence and go to a federal penitentiary, that stance was relatively short-lived. Since February Mr. B.P. has been focused on returning to the Youth Centre.

[267] To be clear, Mr. B.P.'s position on this application aside, I have heard no evidence that indicates to me a transfer to an adult correctional facility would be in his best interests.

[268] The issue to be decided on this application is therefore whether it is in the public interest that Mr. B.P. be transferred out of the youth correctional system to an adult jail to serve his IRCS sentence.

The Provincial Director on the Question of the Public Interest

[269] The Provincial Director points to the evidence of witnesses from Waterville and that of Dr. Hanson and Dr. Mejia to support his position that it is in the public interest to permanently transfer Mr. B.P. into an adult correctional institution.

[270] Dr. Hanson has said that under no circumstances should Mr. B.P. return to Waterville. He views Mr. B.P. as a hardened and criminally entrenched young man. He says Mr. B.P. "should be characterized as an adult forensic offender."

[271] Dr. Hanson expressed his opinion that the culture at Waterville will be negatively affected if Mr. B.P. is returned there. He spoke about the very positive environment that exists between staff and youth at the institution. He says Mr. B.P. wants to change the culture at Waterville so that it more closely resembles the environment found in an adult jail.

[272] James Nickerson testified on cross-examination that Corrections no longer feel they can meet their obligations under the IRCS sentence. He testified that Corrections can no longer provide the Treatment Plan at Waterville.

[273] Ralph Hayden held similar views, saying he did not see how Mr. B.P.'s IRCS sentence can be effectively administered at Waterville. On the issue of the capacity of Waterville to manage Mr. B.P.'s IRCS sentence and the risk issues, he said: "Not given where we're at right now, no I don't." He has concerns about the IWK team and the safety of Waterville staff if Mr. B.P. was returned to Waterville.

[274] In the same vein as Dr. Hanson, Mr. Hayden testified that "every attempt has been made to try and work with [Mr. B.P.]. We've had a lot of good people involved...Throughout his history there continues to be this violence...and this disrespect thing seems to come up a lot. And I am concerned about that." He testified that maybe a new Joint Corrections Plan would need to be prepared with new stakeholders.

[275] A re-configured team to work with Mr. B.P. would likely not include his former youth worker, David MacDowell. Mr. Hayden noted that Mr. B.P. had had a very positive rapport with Mr. MacDowell but the September 4 incident damaged that relationship. When Mr. Hayden testified in May he said that Mr. MacDowell did not want to be involved in Mr. B.P.'s case anymore.

[276] I will note that Dr. Hanson testified he would be happy to continue to work with Mr. B.P. if Mr. B.P. wanted that despite what he has had heard Dr. Hanson say in his testimony.

[277] The Crown led evidence that in February 2017 a draft reintegration plan (*Exhibit 12*) was developed by Waterville staff in anticipation that Mr. B.P. might be returning. It contemplated Mr. B.P. being placed back in Cottage 1B and behind "a secure wall." Mr. Hayden testified that Waterville had some concerns around the issues of safely re-housing Mr. B.P. at Waterville and identifying staff willing to work with him. He said, "it would take a lot to figure out who would work with Mr. B.P. if he ever came back to us."

[278] Mr. Hayden anticipated not only having to confront the challenge of finding a new youth worker for Mr. B.P. but the possibility that staff would assert, pursuant to the *Occupational Health and Safety Act*, their right to refuse unsafe work.

[279] The Provincial Director has submitted that adult correctional facilities have the capabilities to handle someone like Mr. B.P., with a history of violence. I

heard evidence about Northeast, which I presume can be extrapolated to the province's other jails, that there are security protocols in place to deal with critical incidents. Correctional officers are equipped with gloves, capsicum spray, a radio, handcuffs and a flashlight. They are trained in use of force. There is also team intervention training.

[280] Youth workers at Waterville do not carry capsicum spray but I did see from the CCTV footage of the September 4 incident that staff were using radios and had access to handcuffs. It is reasonable to infer from how youth workers dealt with the attack on September 4 that they receive use of force training. The evidence also indicated that Waterville has an Institution Intervention Group (IIG). They were deployed to quell the violence on September 4. I presume they have been trained in use of force.

[281] In submissions about the relevance of the video footage from Northeast of Mr. B.P.'s March 16 assault on the correctional officer, Mr. McVey argued that I should have the benefit of being able to compare how Northeast responded to violence by Mr. B.P. with how Waterville responded on September 4. But now that I have viewed both incidents I can see they are dissimilar. The Waterville altercation was in a different class from the flurry of punches that Mr. B.P. threw in the few seconds of his assault on the correctional officer in Northeast. In both cases I observed staff reacting quickly and assertively to contain Mr. B.P. Obviously, the September 4 incident, with its heightened levels of violence and multiple perpetrators, was more challenging,

The Section 30(4) Cases and the Public Interest

[282] The "public interest" is not defined by the *Youth Criminal Justice Act*. As I indicated at the start of these reasons, the section 30(4) transfer cases defined the public interest in terms of the interests of youth workers and youth at the institution. Young persons were transferred because their continued presence in the youth facility was found to be incompatible with safety and rehabilitative priorities.

[283] S.D.F. (*S.D.F. (Re)*, 2007 ABPC 103) was 18 years old. He had been incarcerated at the youth centre on 19 occasions, was "unresponsive to all intervention" during the previous two years, was "currently declining services", was viewed by the youth centre psychologist as "better suited to an adult facility" due to

his anti-social personality and lack of motivation to change his thought patterns, and had consistently demonstrated intimidating and aggressive behaviour toward peers, teachers and staff. He was disruptive in programming. Since turning 18 he had been incarcerated in an adult facility on two separate occasions.

[284] S.P. (*R. v. S.P., 2014 YJCN 1*) was 18 years old. He had a history of being disrespectful, aggressive and threatening. He had made no progress at the youth centre, had refused programming and was disruptive. He had been spending most of his time in segregation to protect other residents. The Court noted it had been acknowledged that “over the long term this is sure to negatively impact on his mental health.” (*para. 23*)

[285] K.K. (*Ontario (Ministry of Childhood and Youth Services) v. K.K., 2011 ONCJ 592*) was 20 years old. He was said to be “extensively and continually involved in bullying other youth to become involved in various illegal and illicit institutional or “street” activities. He had been transferred 10 times between youth centres in the province because of his threatening behaviour toward other residents, counselling residents to become involved in fights, throwing a basketball at a teacher, and an allegation of sexual assault against another resident.

[286] Cole, J. in *K.K. v. Ontario (Ministry of Children and Youth Services)* viewed the parameters of “the public interest” in *S.D.F. (Re)* as “rather limited.” Cole, J. commented about the decision in *S.D.F. (Re)* that, “rather than making any comment about how the public interest might be construed in such a way as to continue placement in a youth facility that might best promote the young person’s rehabilitation”, the public interest was “restricted” to “the safety and security of other residents of the youth facility...” (*para. 31*)

[287] Cole, J. noted that there are numerous references in the *YCJA* to the “apparently interchangeable terms” - “public interest”, “interests of the public” and “interests of society” - all in different contexts, and found there to have been “little judicial interpretation of these sections” that was of assistance to him and no Parliamentary or Senate debates or committee reports. (*para. 34*) What Cole, J. did emphasize in his decision to order K.K.’s transfer was the fact that what he was “being asked to do here is make what Parliament has expressly referred to as a

“temporary” order...” which he observed would be in effect for a period “as brief as three weeks from now” and “not likely more than a couple of months.” (*para. 35*)

[288] I find the section 30(4) cases to be of quite limited assistance for the purposes of this application. They are readily distinguishable: they involve applications for temporary transfers of young persons, that is young persons under the *YCJA*, who were on remand, and none of them feature the complex range of factors in play here.

[289] I recognize that one of the factors in the mix in this application that is not found in the reported section 30(4) cases is a violent altercation with youth workers that resulted in serious injury. This significant factor led to Mr. B.P. being sent to Northeast and contributed to the Provincial Director’s decision to pursue a transfer order.

The Issue of Rehabilitation and the Public Interest

[290] The Preamble to the *YCJA* provides in part that “...Canadian society should have a youth criminal justice system that commands respect...fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes...”

[291] The emphasis on rehabilitation and reintegration of young persons is reiterated in section 3 of the *Act* which includes the principle that “the youth criminal justice system is intended to protect the public by...promoting the rehabilitation and reintegration of young persons who have committed offences...” (*section 3(a)(ii)*) And section 3(b) of the *Act* foregrounds rehabilitation and reintegration, stating that “the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize...rehabilitation and reintegration...” (*section 3(b)(i)*)

[292] The Provincial Director has acknowledged that the public interest includes rehabilitation. I discussed Mr. B.P.’s rehabilitation as a component of the public interest in my decision on his disclosure application where I said:

[23] I will add however that N.B.P.’s rehabilitation is a matter of public interest. The nexus between effective rehabilitation and the public interest was observed by Hood, J. in *R. v. T.P.D.*, 2009

NSSC 332 at para. 218 where she said: "...If he [T.P.D.] is not rehabilitated, his reintegration into society will not be successful and that, in turn, puts the safety of the public at risk." In N.B.P.'s case I said the following at sentencing:

35 I am satisfied that the joint recommendation for an IRCS sentence is the only appropriate sentence for BP under the *YCJA*. It is a sentence that represents a meaningful consequence that will hold him accountable and serve to promote his rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public. No other youth sentence could possibly offer any hope of effectively confronting BP's complex issues and addressing and reducing his risk...(R. v. *B.P.*, 2015 NSPC 38)

[293] Rehabilitation as a factor of the public interest test under section 92(1) will be very fact-specific. In *J.C. (Re)*, the evidence led me to conclude that I did not see "any remaining or residual prospects for J.C.'s rehabilitation in the youth criminal justice system." (*para. 105*)

[294] The Provincial Director's application to transfer J.C. succeeded on the basis of the public interest in protecting the Waterville staff and residents from intimidation and assault and negative role-modeling. (*para. 108*)

[295] There are however important differences in the facts of J.C.'s case and Mr. B.P.'s. J.C. had a history of becoming "aggressive and physically assaultive with NSYF staff" (and peers). (*J.C. (Re)*, *paras. 56 and 58*) He was an adult at the time of the September 4 incident at Waterville, had been denied bail and was remanded to an adult correctional institution.

[296] Mr. B.P. is serving a seven-year sentence for a murder committed when he was 15 years old. He is under an IRCS sentence that was jointly recommended by Crown and Defence following his guilty plea. He was 17 at the time of the September 4 assault on staff. He has spent the past year at an adult institution in "de facto solitary confinement" which has interrupted and compromised the delivery of the

intensive therapeutic interventions identified by the section 34 psychological assessment as essential to his rehabilitation.

[297] My review of the section 30(4) cases and my reasons in *J.C. (Re)* have led me to conclude there is no precedent that helps me determine this application. It presents a unique and unprecedented set of circumstances.

Mr. B.P. as He is Now and the Issue of Rehabilitation

[298] I am required to decide the Provincial Director's application for Mr. B.P.'s transfer by taking Mr. B.P. as he is now. I made this point in *J.C.(Re)* where I held that trying to assess what additional programming could have assisted J.C. at Waterville while he served his sentence there was "far beyond the scope of what is involved in a section 92(1) "transfer" application." (*para. 98*)

[299] In my decision on Mr. B.P.'s disclosure application I said:

[22] I find I have to decide the section 92(1) application on the basis of the evidence of [Mr. B.P.'s] current circumstances and choices and not on what his circumstances and choices might have been if different or more programming had been available or different administrative decisions had been made. This is not an inquiry into what services should have been made available or what resources should have been deployed. I am unable to see how knowing more about the extent of the services and resources delivered to [Mr. B.P.] prior to September 4, 2016, and even any deficiencies in them, will assist me decide if it is now in the public interest to transfer N.B.P. (*B.P. (N.). (Re), 2017 NSPC 41*)

[300] As I will explain, the following excerpts from my reasons on the disclosure application are also relevant:

[24] While I do not find it will assist me in deciding this application to have the information being sought by Ms. McNeil...I am expecting that the IWK witnesses who have yet to testify, such as Dr. Simeon Hanson and Heidi Rodgers, will be giving evidence about the services N.B.P. needs and what, if any,

additional resources are required to implement his IRCS sentence.

[25] The cases confirm there are considerable resources available for IRCS sentences, to a maximum of \$100,000 per year – see for example, *R. v. J.S.*, 2016 BCPC 449, para. 47; *R. v. T.R.D.*, 2011 BCSC 1515, para. 36; *R. v. T.P.D.*, 2009 NSSC 332, para. 198 - and I am independently aware of this fact. I have already received various reports about N.B.P.’s IRCS sentence. I expect the IWK witnesses will speak about the services that had been provided to him and what is needed as his sentence proceeds.

[27] ...What will be helpful for me is an understanding of what N.B.P.’s rehabilitation under his IRCS sentence is expected to look like if he were to return to Waterville or, if, in the alternative, the Provincial Director’s application is successful and he is transferred to an adult correctional centre. But what Ms. McNeil is seeking as disclosure will not be relevant to these forward-looking questions.

[301] I actually did not hear the evidence I anticipated I would be hearing about the go-forward delivery of Mr. B.P.’s IRCS sentence. I understand now that witnesses weren’t able to talk about that because it is so dependent on the outcome of this transfer application.

[302] What I did hear was Dr. Hanson’s opinion that “there is not much utility in continuing the IRCS sentence.” As I noted earlier, he testified that if progress is defined by a reduction in violence and entrenched values, there has been no progress. He says he does not believe there is anything more that the “very experienced” Treatment Team, that has tried “our very, very best”, can do “to make positive change in Mr. B.P.’s life.”

[303] I appreciate that the Provincial Director has not brought a section 94(19)(c) *YCJA* application to collapse Mr. B.P.’s IRCS sentence. But given the unprecedented nature of this case and the fact that I have no evidence on how an IRCS sentence would be administered in an adult jail, I find that in the mix of factors relevant to the

public interest I must consider very carefully Dr. Hanson's opinion that everything possible has been done under the IRCS sentence to advance Mr. B.P.'s rehabilitation.

[304] As I said in my decision on Mr. B.P.'s disclosure application, I am not conducting an inquiry into what possibly should have been done prior to September 4, 2016. I am deciding this application on the basis of Mr. B.P.'s current circumstances. Contextualizing those circumstances has been a necessary exercise for these reasons. That contextualization involves looking at what interventions may contribute to the revitalization of Mr. B.P.'s IRCS sentence, the sentence designed with the objective of his rehabilitation.

Dr. Hanson's Testimony and What was Known at the Start of Mr. B.P.'s IRCS Sentence

[305] In preparing these reasons I revisited Dr. Hanson's section 34 psychological assessment from May 2015, prepared for Mr. B.P.'s sentencing. Dr. Hanson's thoroughness and careful analysis are to be applauded. It is a comprehensive, thoughtful and illuminating document.

[306] It has been very instructive to see there is nothing that has been learned about Mr. B.P. since May 2015 that was not identified in the section 34 assessment. Mr. B.P. was not one thing before his IRCS sentence and is now something quite different and unexpected. Testimony from Dr. Hanson that I reviewed earlier and what follows are some illustrations of this point.

[307] Dr. Hanson testified that Mr. B.P. was very criminally entrenched. His established way of thinking pivoted around respect. It was Dr. Hanson's opinion that at Waterville Mr. B.P. wanted "to run the institution like an adult institution." He says that Mr. B.P. felt the youth workers didn't have the right to discipline certain youth unless he approved of them doing so.

[308] Dr. Hanson testified about "reactive" and "instrumental" violence. Reactive violence he said tends to emerge from an escalation, and tends to be impulsive. He went on to say: "It's very predictable; it has trigger and escalation points. You can put measures in place to manage it." Mr. B.P.'s violence was, according to Dr. Hanson, instrumental. He testified that it is "planned, in a callous, cold way." Dr. Hanson testified that Mr. B.P. "characterizes instrumental violence perfectly well.

He will sit in a cell and plan and think. He will ruminate about it. He'll plan a moment to strike when the victim is at their most (sic) weakest, when he can gain the most advantage.”

[309] Dr. Hanson described the risk associated with instrumental violence as “very difficult to manage. You never quite know when the violence is going to come, who it's going to be directed to and what particular purpose it serves.”

[310] Dr. Hanson testified that on a daily basis he witnessed Mr. B.P. engaged in under-the-discipline-radar bullying and intimidation of youths at Waterville. He called this behaviour “far more insidious” than Mr. B.P.'s actual violence. He says that Mr. B.P. “disrupted the progress of other youth” and that “vulnerable youth should not be exposed to [Mr. B.P.]” He says he could see Mr. B.P. “having a very detrimental effect on other youth.”

[311] It was Dr. Hanson's evidence that Mr. B.P. represents a “very, very serious” risk of imminent violence. He says Mr. B.P. “could cause serious injury or death to other young people” and that it is “very likely another serious violent incident will occur.” He expressed concern that Waterville's primary role of building relationships with troubled, vulnerable youth will be disrupted if Mr. B.P. is returned there and the emphasis will become security. “The whole ethos of the Nova Scotia Youth Facility would have to change if he was returned.”

[312] Dr. Hanson bases his opinion of Mr. B.P.'s risk for violence on the index offence (the murder of Mr. Pellerin), the assessments he did, Mr. B.P.'s lack of progress, his continued criminal entrenchment despite therapy, and the serious violent incidents he perpetrated at Waterville.

[313] What Dr. Hanson describes about Mr. B.P. is evident from his section 34 assessment and a “risk assessment and management plan” he prepared in July 2015 after Mr. B.P. assaulted another youth at Waterville. Ms. Rodgers' report of December 22, 2015 encapsulated that assessment:

...The assessment identified [Mr. B.P.'s] risk for violence as being high and indicated that he demonstrates both reactive violence and instrumental violence which is more planned, purposeful and goal directed. Dr. Hanson reported that [Mr. B.P.]

continues to have homicidal thoughts and poses limited ability to refrain from violence when he considers that a situation warrants it; usually as a result of perceived disrespect or conflict...(Exhibit 30, Progress Report dated December 22, 2015, page 3)

[314] In the section 34 assessment Dr. Hanson had noted that Mr. B.P.'s "aggression can be both reactive and instrumental. [Mr. B.P.] has spoken at length as having anger management and difficulties with emotional regulation." (Exhibit 30, page 49)

[315] When he prepared the section 34 assessment, Dr. Hanson noted that Mr. B.P. "continues to be volatile and at risk of being violent to young people and staff at the facility." (Exhibit 30, section 34 assessment, page 33)

[316] Citing a 2014 report from a previous therapist, the section 34 assessment noted that Mr. B.P. was "capable of extreme anger and violence, usually triggered by some perceived unfairness, injustice or threat. [Mr. B.P.] justifies and attacks and shows no remorse." (Exhibit 30, section 34 psychological assessment, page 24)

[317] For the section 34 assessment Dr. Hanson interviewed Mr. B.P.'s former counsellors, including Alfred Doucet, whose services had been arranged through the Youth Advocacy Program. Mr. Doucet described [Mr. B.P.] as having "layers of complexity" to his character. Dr. Hanson learned from Mr. Doucet that Mr. B.P.,

...was able to open up and discuss aspects of his life...In particular, [he] was able to articulate his feelings with Mr. Doucet...[he] at times "stated that he did not want to be a criminal; however the cultural pull was so strong as to create an inner turmoil and overwhelm him." (Exhibit 30, section 34 assessment, page 31)

[318] Mr. Doucet noted that criminality held an attraction for Mr. B.P. because he discovered that he had "leadership qualities and experienced success in his criminal endeavours." (Exhibit 30, section 34 assessment, page 31)

[319] The "Risk Summary" at page 44 of the section 34 psychological assessment reflects what Dr. Hanson has said about Mr. B.P. in his evidence:

[Mr. B.P.] is a 16 year old young man who is at high risk of reoffending. He is highly anti-social, highly pro-criminal and has been raised in an environment that normalized violence as a first means for dealing with difficult situations. [Mr. B.P.] is criminally versatile and at ease with committing crime. He has experienced some degree of success as a criminal and is heavily invested in a lifestyle of gangs, violence and drugs. [Mr. B.P.] is at high risk of violence. He has entrenched pro-criminal beliefs, values and attitudes that promote and perpetuate both violence and criminality. His current sentence should be seen as a culmination of years of increasing violence and criminality as opposed to an unfortunate idiosyncratic event.

[320] The section 34 assessment also found that Mr. B.P. had imported aspects of street life into Waterville. That was not seen as disempowering him to an IRCS sentence or diminishing its appropriateness. Mr. B.P.'s "distorted and rigid thinking was to become the values and attitudes that [Mr. B.P.] currently uses to justify extreme violence." (*Exhibit 30, section 34 assessment, page 41*)

[321] Mr. B.P.'s difficulties with using what he learns in therapy to change his behaviour was explicitly addressed by Dr. Hanson in the section 34 assessment:

[Mr. B.P.] has previously had therapeutic support and engaged regularly and proactively with therapy. He has demonstrated a willingness to undertake such an approach. However, considering that he has engaged in therapy prior to and around the time of the murder, there appears to have been little effect of treatment. [Mr. B.P.] may struggle to take lessons from therapy and generalize them to his life outside. On further reflection [Mr. B.P.'s] learning profile in having such a defective language, comprehension and short-term memory may highlight responsiveness needs that have hitherto not been addressed by tailoring therapy to [Mr. B.P.'s] learning style. (*Exhibit 30, section 34 assessment, page 47*)

[322] This complex mix of factors are what led to Dr. Hanson's opinion in the section 34 assessment that "intensive therapeutic treatment presents as the only viable way that [Mr. B.P.'s] risk to society may be potentially reduced within the context of a youth sentence." (*Exhibit 30, section 34 assessment, page 48*)

[323] And as I have mentioned already, Dr. Hanson identified as imperative that the intensive therapeutic treatment be for "the longest possible time period." (*Exhibit 30, section 34 assessment, page 49*)

"There Has Been No Progress"

[324] I have noted Dr. Hanson's opinion that there has been no progress in reducing Mr. B.P.'s risk or moderating his criminally entrenched values and attitudes. The Provincial Director says this is despite "the highest level of services" being delivered to Mr. B.P. prior to September 4, 2016.

[325] But Dr. Hanson's "no progress" assessment is based on only approximately eight months of therapeutic intervention, hardly the lengthy process of intensive intervention strategies contemplated by the section 34 assessment. The section 34 assessment recognized that, as Ms. McNeil put it, Mr. B.P.'s lifetime of trauma-conditioned behaviour cannot be undone in eight months.

[326] Heidi Rodgers noted that at the time of the September 4 incident, Mr. B.P. had made some "modest gains" but "there were still issues with targeting significant risk factors." She went to say that they were a year into his IRCS sentence and with Mr. B.P.'s "criminogenic needs" the IWK and Corrections needed "a lengthy time and a high degree of services."

[327] This is where what remains left undone is highly relevant to the question of the public interest. I find Mr. B.P.'s rehabilitation, a critical feature of the broader public interest, has not been given the chance the public interest requires. The following is the evidence I rely on in making this finding:

- In the section 34 assessment Dr. Hanson had recommended that Waterville "should consider" a "specific program" that it did not offer – "aimed at young people who commit violent offences and murder." Dr. Hanson stated in the section 34 assessment that Mr. B.P. "would benefit" from that specialized

program. (*Exhibit 34, page 50*) It does not appear that funding has been sought to provide this program.

- Mr. B.P.'s psychiatric needs remain unaddressed notwithstanding that he was assessed as having "a mental illness or disorder, a psychological disorder or an emotional disturbance" which qualified him to receive an IRCS sentence in the first place. (*section 42(7)(b), YCJA*)
- The IRCS sentence has not been as fully resourced as it can be. Roz MacKinnon's evidence establishes this. She confirmed on cross-examination that IRCS money is only funding the intended risk assessment, family therapy and Mr. B.P.'s mentor. (I note for completeness that the evidence indicates IRCS funding was approved for the Treatment Team's travel to Northeast to meet with Mr. B.P. Ms. Rodgers testified that invoicing has also included the external consultant, Professor Mary Ann Campbell.)
- Resources have also not been secured to fund outside psychiatric services for a young person with serious mental health issues. Ms. MacKinnon testified that generally there are no practical difficulties seeking funds for IRCS sentences.
- The option exists for Wayne Horner to be approached for funding to augment staffing to work with Mr. B.P. at Waterville. The evidence indicates that no overtures were made by anyone at Waterville to Wayne Horner for additional resources in the event Mr. B.P. was returned to there so that possibility has not been explored.
- There has been a disruption of 12 months of Mr. B.P.'s IRCS sentence due to his transfer to Northeast. The Provincial Director lays this at Mr. B.P.'s feet. I do not accept that part of the price Mr. B.P. or the public interest should pay for the September 4 attack on staff is the gutting of his IRCS sentence.
- It is relevant that according to Dr. Hanson's evidence at this application he was concerned in November 2016 about the disruption Mr. B.P.'s placement in Northeast was causing to the therapeutic process – "We were building up a

relationship and we lost him.” “Building up a relationship” does not indicate that the potential of Mr. B.P.’s IRCS sentence has been exhausted.

- Mr. B.P. has indicated his willingness to reconnect with the Treatment Team once his legal affairs are concluded and, to quote Dr. Hanson, has the “propensity to make very positive relationships.” I acknowledge that Dr. Hanson testified that Mr. B.P.’s openness to engaging with therapy “does not constitute positive progress” but it does mean there is the potential for gaining traction over time.

[328] Ms. Rodgers testified that the clinical team felt intensive services were Mr. B.P.’s “best shot” for rehabilitation and reducing his risk of recidivism. For the past twelve months, the rehabilitation aspect of Mr. B.P.’s IRCS sentence has not received the focus the IRCS sentence intended. The violent incidents of September 4 and March 16 indicate that Mr. B.P. needs more services. Instead he has been receiving less.

[329] There is another significant issue that weighs against Mr. B.P.’s transfer being in the public interest. I have noted repeatedly Dr. Hanson’s opinion that intensive therapeutic intervention over a lengthy period is required to reduce Mr. B.P.’s risk to himself and others. There is no assurance that if Mr. B.P. is transferred to an adult correctional facility he will receive the intensive therapeutic intervention the IRCS sentence is structured around.

[330] The Provincial Director notes that under section 45 of the *Correctional Services Act*, S.N.S. 2005, c. 37, it is the Executive Director for the Correctional Services Division who determines the placement of “offenders” within the provincial correctional system. “Offenders” include “young persons as defined by the *Youth Criminal Justice Act* (Canada).” (section 2(t), *Correctional Services Act*) Placement can be influenced by a variety of factors.

[331] Deputy Superintendent John Landry indicated that prisoners are moved amongst the four adult facilities in Nova Scotia as determined by the needs of the institution and the needs of offenders. Northeast is “all the time” receiving offenders from the Central Nova Scotia Correctional Facility because of factors including over-crowding, incompatibles, programming, location of family members, and security incidents.

[332] Mr. Landry confirmed that there is a daily flux of prisoners due to the extensive renovations underway at the CNSCF. He said the intention there is to close the units at the CNSCF, starting with the North Unit, and move the prisoners as each unit is closed, to other facilities in the province.

[333] Mr. Landry indicated that were Mr. B.P. to be housed in the adult section of Northeast he could end up in any one of the other three provincial facilities – Yarmouth, the CNSCF at Burnside, or Sydney. He agreed that all of these facilities, including Northeast, and excepting the CNSCF, located in Dartmouth, are a considerable distance from the IWK and Waterville.

[334] Mr. Landry testified that there is “no certainty” about placement and that the Department of Justice decides where an offender gets placed. It is determined by the needs of the facility and the offender.

[335] If I order the transfer of Mr. B.P. to an adult jail there is nothing to ensure he will be readily accessible to the Treatment Team. He could be moved around within the provincial jail system under section 45 of the *Correctional Services Act* “if it is necessary or advisable for the purpose of providing appropriate security, safety or correctional services.” I know from Mr. Landry’s evidence about the transfer of CNSCF prisoners to Northeast that intra-provincial transfers are broadly discretionary.

[336] This is highly relevant to the issue of the public interest in this application. Not only is there no precedent for an IRCS sentence being administered in a jail for adult offenders – Roz MacKinnon noted that no one on the Treatment Team has any experience with a youth on an IRCS sentence in an adult facility – her evidence establishes that the ability of the IWK Treatment Team to deliver intensive and comprehensive services to Mr. B.P. will be affected by his placement.

[337] Ms. MacKinnon explained that the IWK’s clinicians are located in Metro and the Annapolis Valley. The IWK’s ability to continue services is limited outside those catchment areas. It was Ms. MacKinnon’s evidence that a placement at the Central Nova Scotia Correctional Facility “would not place a huge burden” on the IWK’s resources because it is located in close enough proximity.

[338] Northeast would put a much greater strain on resources because clinicians would be losing a day of clinical time in travel. Ms. MacKinnon said this is not sustainable in the long run.

[339] Cape Breton would be even more challenging for the IWK. Ms. MacKinnon testified that they would try to contract with local professionals. The IWK does contract out for services in local communities where the adult facilities are located, and then supervises these contracts. It is also more difficult in the Yarmouth area where there are fewer professionals with the relevant expertise. Contracting out to local professionals means the IWK is “competing” with the other demands and caseloads of the professionals in those communities.

[340] Where a team has to be built in the community, the IWK provides bridging for the new service providers with the existing service providers. Ms. MacKinnon agreed that changing service providers would disrupt continuity. And placements that change because of institutional priorities would be much more challenging to service. “It might not be impossible but it would certainly be more expensive.”

[341] It was Ms. MacKinnon’s evidence that the necessary resources for an IRCS sentence are at Waterville. Ms. Rodgers also testified that Waterville is accustomed to IRCS youth and the administration of IRCS sentences.

[342] Dr. Hanson’s evidence about the impact on Mr. B.P. of disrupted service delivery was instructive. In response to a question I put to him at the end of his evidence he testified that:

One of the things...Mr. B.P. thrives on...is structure and routine. He enjoys the structure and routine. He enjoys knowing what’s going to happen, the identification of the case staff. I think it would be critical to any...plan, IRCS or not, no matter where he is placed that he has stable and consistent environment. That he is exceptionally well structured that includes aspects of therapeutic treatment; aspects of physical programming and correctional programming and as much he could possibly get.

[343] I asked a further question about whether what Dr. Hanson described was conducive to building a therapeutic alliance with Mr. B.P., to which Dr. Hanson

replied:

Indeed yeah...both in the evidence and also in terms of Mr. B.P.'s personality...in order to make those therapeutic gains he needs to build up a significant amount of trust with the individuals. He needs to get set and comfortable in talking with them. He needs that stability over a period of time. That will become therapeutic throughout.

[344] The Provincial Director says that Mr. B.P.'s social isolation will end if he is transferred to an adult jail because he will be placed in the general population. I find I cannot assume that. I have no way of knowing what an adult correctional facility will do in an unprecedented case like this. What I do know from the changes to service delivery at Northeast after March 16 is that an adult institution will control how Mr. B.P.'s IRCS services are delivered. In an adult institution, this will happen in the context of the institution having no experience with, knowledge of, or engagement in, Mr. B.P.'s IRCS sentence, notwithstanding the best intentions of the personnel.

Conclusion

[345] Under section 92(1) of the *YCJA*, the Provincial Director is required to show, on a balance of probabilities, that Mr. B.P.'s transfer to an adult correctional facility to serve remainder of his sentence is in the public interest. For the reasons I have given, I find this has not been established.

[346] Mr. B.P.'s rehabilitation is a critical factor in the public interest analysis. I will repeat what I said when I sentenced Mr. B.P. and reiterated earlier in these reasons: the ultimate objective of an IRCS sentence is to promote the long-term protection of the public by addressing the circumstances underlying the offence. (*R. v. B.P.*, para. 14)

[347] Mr. B.P. has shown that he remains a high risk for serious violence and aggression. His distorted thinking, pro-criminal attitudes and values continue to influence him. An IRCS sentence was identified as offering the best chance of addressing and moderating, through a lengthy period of intensive therapeutic interventions, Mr. B.P.'s complex behavioural and psychological profile.

[348] I am very aware that the management of Mr. B.P. and the administration of his IRCS sentence will present considerable challenges to his Treatment Team and their partners in youth corrections. It will be a challenge to house him, to fully re-engage him, make progress with him, to change his value system, to rehabilitate him. But I find that the public interest can only be served by these challenges being met in the youth system, not an adult correctional facility.

[349] It is not for me to design the delivery of Mr. B.P.'s IRCS sentence or re-tool the Joint Treatment Plan. I will only say that if this is, as I have been told, the most challenging IRCS sentence rolled out in Nova Scotia, then it must be resourced to the fullest extent available. This is a pull-out-all-the-stops case. It is a think-outside-the-box case.

[350] I also do not get to determine where Mr. B.P. is to be housed. But his IRCS sentence remains an imperative and the evidence indicates that the resources and expertise necessary to effectively implement an IRCS sentence are at Waterville. There is no evidence that its intended course has been or can be charted anywhere else, not at the Cape Breton Youth Detention Facility which is located at the Cape Breton Correctional Centre, and not the Northeast THU, which was not established for long-term use, and where the longest previous occupancy was three days. Those are the only other "designated" youth facilities in the Province.

[351] In my discussions in these reasons about Mr. B.P.'s IRCS sentence I have been focusing on the efforts of his Treatment Team and the youth workers involved in his case. As Ralph Hayden said, there have been a lot of good people committed to Mr. B.P.'s rehabilitation. What I say next is for you, Mr. B.P. to hear, loudly and clearly: it is not all down to the good people and skilled professionals who want to see you succeed. Rehabilitation is not something to be done to you, it is a process you are expected to actively participate in. You can be the reason the IRCS sentence succeeds or the reason it fails.

[352] There is also another point I want you to understand, Mr. B.P. There could be another section 92(1) transfer application if circumstances change and there is new evidence to justify the Provincial Director returning to court.

[353] Mr. B.P. did not testify. It would be unfair to infer anything from his opposition to the Provincial Director's application other than that he wants to remain

in the youth system, specifically to go back to Waterville, because he is genuinely committed to using the opportunity of his IRCS sentence to become rehabilitated. Only a genuine commitment of this nature on Mr. B.P.'s part will breathe life back into his IRCS sentence. I am going to repeat what I said to him at sentencing:

... This sentence will not be a walk in the park. It will be challenging, demanding, and difficult. It has the potential of liberating you from the damage done by your experiences and the enormous burdens you are carrying of trauma and anger. But only you can make the changes that have to be made. You must be prepared to use the skills you have been shown to have -- the ability to connect to people trying to help you and the willingness to be open and honest -- and you must be resolute, determined to grab this opportunity and re-make yourself as a man who does not resort to criminality and violence. (*R. v. B.P., para. 44*)

[354] Mr. B.P., you have considerable work to do and you must shoulder the responsibility of doing it, and not shirking from it, resisting its demands or losing focus.

[355] I will not be further involved in Mr. B.P.'s case. But I will remain profoundly hopeful a positive outcome lies ahead.

Derrick, P. C. J.