

Dangerous Offenders and Long-Term Offenders

When an offender is convicted of a serious personal injury or sexual offence and poses a continuing danger to the public, Crown Counsel may be able to apply to the sentencing court to have the person designated a Dangerous Offender (DO) or a Long-Term Offender (LTO).¹ The overriding aim of the DO and LTO regime is the protection of the public and the prevention of future violence.² As a general rule, these applications cannot be made after an offender has been sentenced³ or has finished serving their sentence.

Legal Test – Dangerous Offender

The court can find an offender to be a DO where they stand convicted of:

- A “serious personal injury offence”⁴ and the offender constitutes a threat to the life, safety, or physical or mental well-being of others, on evidence establishing:
 - a pattern of repetitive behaviour that shows a failure to restrain their behaviour which is likely to cause physical or severe psychological harm to others;
 - a pattern of persistent aggressive behaviour that shows a substantial degree of indifference to the consequences; and,
 - the brutal nature of the offence compels the conclusion that the offender is unlikely to be inhibited by normal standards of behavioural restraint.

OR

- Sexual assault,⁵ and the offender has shown a failure to control their sexual impulses such that harm to others is likely.

Legal Test – Long-Term Offender

The LTO designation was created as a residual sentencing regime to help deal with offenders who are not captured by the DO provisions. Crown Counsel can apply for an LTO designation from the outset, or it can be imposed by the court if the court finds that the evidence falls short of the legal test for a DO designation. It targets sexual and violent offenders who, on the evidence, are likely to re-offend. The court can designate an offender an LTO where:

- a sentence of two or more years is appropriate for the current offence;

- the offender poses a substantial risk of reoffending and causing serious harm; and
- there is a reasonable possibility they can eventually be controlled in the community.

Assessment Order

The DO and LTO regime is initiated by Crown Counsel applying for a court-ordered assessment of the offender.⁶ The court will order the expert assessment if the offender could be found to be a DO or LTO. The expert's report will focus on the offender's risk to reoffend and the offender's prospects for treatment or control in the community. Crown Counsel will review the report and decide whether to proceed with a DO or LTO application. If so, Crown Counsel will need to seek the consent of the Assistant Deputy Attorney General, and if consent is granted, the application can proceed to a hearing.

Hearing Phases

There are two distinct decisions that must be made by the court in a DO or an LTO hearing. The first decision is whether the offender meets the criteria for a DO or LTO designation. Following that decision, the court will impose a sentence for the offence(s) on which the offender was convicted. Although there are two conceptual phases (designation and sentencing), in practice the evidence on both issues is usually heard in one blended hearing. The amount of historical, offence-related, and psychological evidence that can be tendered at these hearings can be substantial.

Designation Phase

The court will apply the legal test to determine whether the evidence supports the conclusion that the offender should be designated a DO or an LTO. Crown Counsel may seek an LTO designation if the offence or the offender does not meet the legal test for a DO designation.

If Crown Counsel seeks a DO designation, and the court finds that the evidence falls short of meeting the legal test for DO designation, the court may then consider whether the offender is an LTO. If the offender is not found to be a DO or an LTO, then the court will proceed to sentence the offender for the offences committed.⁷

Sentencing Phase – Dangerous Offenders

If the court concludes the offender is a DO, then the court will proceed to the sentencing phase. There are three sentencing options for the court to impose on the offender:

- an indeterminate sentence of imprisonment;
- a determinate sentence of at least two years, followed by a long-term supervision order (LTSO) of up to 10 years; or
- a sentence that would normally be imposed for the offence.

The court must impose an indeterminate sentence unless there is a reasonable expectation that a lesser sentence will adequately protect the public.⁸

Sentencing Phase – Long-Term Offenders

If the court concludes the offender is an LTO, the court must impose a sentence of at least two years in prison, followed by supervision in the community for up to ten years under a long-term supervision order (LTSO).⁹

Other Implications of a Dangerous Offender Designation

Where an offender is found to be a DO, the status remains with the offender for life, regardless of the sentence that is ultimately imposed by the court.¹⁰ This life-long designation has important implications. For example, a person designated a DO who commits a further serious personal injury offence or is convicted of breaching a long-term supervision order will be presumptively sentenced to an indeterminate sentence upon application by Crown Counsel.¹¹

Parole Eligibility

Offenders sentenced as dangerous offenders or long-term offenders still become eligible for parole. Dangerous offenders serving an indeterminate sentence become eligible for full parole after completing seven years from the date they were taken into custody. Long-term offenders, and dangerous offenders not serving an indeterminate sentence, are subject to the normal parole provisions which allow for full parole after completing one third of the jail sentence.

An LTSO will commence upon the full completion of the sentence of imprisonment (including any releases on parole). An LTSO is not a term of imprisonment, so it is not reduced or affected by parole provisions.

Breaches of Long-Term Supervision Orders

An offender who is convicted of breaching a condition of an LTSO is liable to a sentence of up to 10 years in prison.¹²

Further Information

Further information about dangerous offenders, long-term offenders, long-term sentence orders, and protection against high-risk offenders can be found here:

www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/protctn-gnst-hgh-rsk-ffndrs

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- ¹ BC Prosecution Service policy *Dangerous Offenders and Long-Term Offenders* (DAN 1) sets standards as to when Crown Counsel should commence DO and LTO applications. It provides that protecting the community from high-risk sexual and violent offenders is a priority: www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/dan-1.pdf. Offenders convicted of the offences listed in s. 753.1(2)(a) may also be subject to an LTO designation.
- ² *R v Lyons*, (1987) 37 CCC (3d) 1 (SCC); *R v Jones*, (1994) 89 CCC (3d) 353 (SCC).
- ³ However, section 753(2) provides that an application can be made up to six months after sentencing but in very narrow circumstances.
- ⁴ As defined in section 752.
- ⁵ Or related sexual offence, as defined under subsection (b) of "serious personal injury offence" in section 752.
- ⁶ Section 752.1; in British Columbia this assessment is conducted by a psychologist or, occasionally, a forensic psychiatrist.
- ⁷ Section 753(5).
- ⁸ For offences committed after July 2, 2008. See section 753(4.1).
- ⁹ Less any time spent by the offender in custody, prior to disposition.
- ¹⁰ In contrast, an LTO finding relates only to the offences for which the person has been convicted. It is not a lifetime designation.
- ¹¹ Section 753.01.
- ¹² As mentioned above, a person who was previously designated a dangerous offender but was sentenced to an LTSO, and who is convicted of breaching the LTSO, will also be presumptively sentenced to an indeterminate sentence upon application by Crown Counsel, unless the offender can prove that a lesser sentence will adequately protect the public.