**NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.**

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA305/2021**
**[2021] NZCA 528**

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| BETWEEN | THE CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS<br>Appellant |
| AND | DYLAN EDWARD COLEMAN<br>Respondent |

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| Hearing: | 27 September 2021 |
| Court: | Cooper, Venning and Palmer JJ |
| Counsel: | B C L Charmley for the Appellant<br>J D Lucas and A C Trinder for the Respondent<br>G P Tyrrell as Counsel Assisting |
| Judgment: | 13 October 2021 at 11.45 am |

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**JUDGMENT OF THE COURT**

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**A The appeal is allowed.**

**B The District Court's decision is quashed.**

**C An extended supervision order is imposed on Mr Coleman for a period of five years.**

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**REASONS OF THE COURT**

(Given by Palmer J)

## Summary

[1] Now aged 28, Mr Dylan Coleman committed offences of indecent assault in 2011 and sexual exploitation of a person with a significant impairment in 2014. Since then, he has committed several apparently more minor offences. In light of the impending expiry of Mr Coleman's release conditions, and on the basis of psychological reports, the Chief Executive of the Department of Corrections applied to the District Court for an extended supervision order (ESO) in respect of Mr Coleman. The District Court declined the application, finding that Mr Coleman's pervasive pattern was not of serious sexual offending and he was not at high risk of committing a relevant sexual offence in future.[1] The Chief Executive appeals.

[2] We consider the 2011 and 2014 offending was plainly serious. Together, that offending points towards a pattern of Mr Coleman forcing himself on young women in order to have sex irrespective of their objections. The fact that his subsequent offending and other similar behaviour was interrupted, and did not reach as serious an outcome, does not detract from its consistency with the serious nature of the 2011 and 2014 offending. Rather, it reinforces the pattern of Mr Coleman's serious offending in those cases. We consider Mr Coleman has a pervasive pattern of serious sexual offending and is plainly at high risk of committing serious sexual offending in future. We allow the appeal and quash the District Court's decision. We impose an ESO for a period of five years, which is in reasonable proportion to the importance of protecting the community from the real and ongoing risk of Mr Coleman committing serious sexual offences.

## What happened?

[3] In September 2011, aged 18, Mr Coleman committed his first sexually-motivated offence. In Te Atatū Peninsula, Auckland, he convinced a young woman he had not seen for a year to get into the back seat of his car. He attempted to put his arm around her shoulder and to put his hand on her thigh. She said she was not interested and pushed him away. He pushed her onto her back and said "I'm going to fuck you whether you like it or not". He said he had a knife and threatened to kill

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1 *Department of Corrections v Coleman* [2021] NZDC 7789 [District Court decision] at [92]–[94].

her when she tried to escape. He took her cell phone when she tried to call the police. He was initially charged with assault with intent to commit sexual violation. This was changed to charges of indecent assault and aggravated assault, to which Mr Coleman pleaded guilty. On 1 February 2013, he was sentenced by Judge Rea in the District Court at Auckland to nine months' home detention.[2] He was later re-sentenced to 14 weeks' imprisonment when that address became unavailable.[3] He was released on 17 June 2013.

[4] While on bail for that offending, Mr Coleman was convicted of two charges of threatening to kill his former partner, for which he was sentenced to 18 months' intensive supervision and three months' community detention.[4]

[5] In November and December 2012, aged 19 and also while on bail for the 2011 offending, Mr Coleman offended again. On a bus from Te Atatū South to Auckland City, he chatted to a young woman he knew from intermediate school. At the end of the journey he told her they could go somewhere for five minutes and she could give him a blow-job. She said no. When he saw her on the same bus a week later, he verbally abused her and slapped her across the back of the head. He was convicted of using obscene language and fined $250.

[6] In July 2014, five months after the release conditions on his September 2011 offending expired and aged 21, Mr Coleman offended again. He was convicted of sexual exploitation of a person with a significant impairment. On a train from New Lynn to Glen Eden, he convinced a young woman with a borderline intellectual disability to go with him to buy and drink alcohol. He kissed and touched her and lay on top of her. She said she did not want to go all the way. But he removed her pants and underwear and digitally penetrated her. He penetrated her vagina with his penis and had sex with her despite her saying she did not want to get pregnant, wanted to go home, he was hurting her and she wanted him to stop. She felt him insert what she thought was his penis into her anus. He put his penis in her mouth and then masturbated until he ejaculated into her mouth. He was sentenced to four years and

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2 *R v Coleman* DC Auckland CRI-2011-090-7122, 1 February 2013.
3 *Police v Coleman* DC Waitakere CRI-2011-090-7122, 10 June 2013.
4 *Police v [Coleman]* DC Waitakere CRI-2012-090-4090, 5 September 2012.

two months' imprisonment.[5] His appeal to the High Court failed. Brewer J considered the sentence was too lenient and would have imposed a sentence of five years and five months' imprisonment if the Crown had appealed.[6] Mr Coleman was released on 22 September 2018 and was subject to release conditions until 21 March 2019.

[7] On 1 December 2018, the Chief Executive applied for an ESO in anticipation of the end of Mr Coleman's release conditions. On 5 April 2019, Mr Coleman was made subject to an interim supervision order (ISO) by consent, pending determination of the ESO application.[7]

[8] On 9 April 2019, Mr Coleman breached his ISO conditions by being in a park without prior approval. Also in April 2019, he is said to have followed a young woman home and was reportedly confronted by her father, but no charge was laid. In June 2019, a probation officer witnessed Mr Coleman approach and follow a young woman who was attempting to get on a bus.

[9] On 21 July 2019, aged 26 and subject to the ISO, Mr Coleman approached a woman working at the jewellery counter of a store and asked for personal details in an increasingly demanding manner. He said she had "blown him away". When he did not like her responses, he told her "don't walk away. I am talking to you." He was convicted of intimidation and sentenced to 28 days' imprisonment.[8]

[10] On 24 July 2019, Mr Coleman started talking to a woman on a train in Auckland. He pestered her to skip her lecture and go to a bar with him. He grabbed her hand by interlocking their fingers. He harassed her for her phone number. He followed her to the university and she required assistance from a friend to get safely out of the building. He was convicted of common assault.

[11] On 9 August 2019, Mr Coleman offended again and was convicted of intimidation. He approached a woman at the Newmarket Train Station in Auckland and followed her onto a train to Papakura and then another to Pukekohe. He asked her

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5 *R v Coleman* [2015] NZDC 12457.
6 *Coleman v R* [2015] NZHC 3298 at [27].
7 *Police v Coleman* [2019] NZDC 6499.
8 *Police v [Coleman]* [2019] NZDC 19227.

private questions, sat close to her and asked her to hang out with him that night. He said "I usually go hard and fast with girls, but I'll make an exception for you". He harassed her for her phone number and followed her off the train to where her parents were waiting for her.

[12] For each of the offences committed on 24 July and 9 August 2019, and another breach of the ISO, Mr Coleman was sentenced to two years' intensive supervision.[9] This sentence expires on 22 October 2021.

**Law of extended supervision orders**

[13] Part 1A of the Parole Act 2002 empowers a court to make an ESO regarding an offender who has been sentenced to imprisonment for a relevant sexual or violent offence and has not ceased to be subject to that sentence, release conditions or an ESO.[10] Section 107I provides, relevantly:

> **107I Sentencing court may make extended supervision order**
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> (1) The purpose of an extended supervision order is to protect members of the community from those who, following receipt of a determinate sentence, pose a real and ongoing risk of committing serious sexual or violent offences.
>
> (2) A sentencing court may make an extended supervision order if, following the hearing of an application made under section 107F, the court is satisfied, having considered the matters addressed in the health assessor's report as set out in section 107F(2A), that—
>
> (a) the offender has, or has had, a pervasive pattern of serious sexual or violent offending; and
>
> (b) either or both of the following apply:
>
> (i) there is a high risk that the offender will in future commit a relevant sexual offence:
>
> (ii) there is a very high risk that the offender will in future commit a relevant violent offence.
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> …

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9 *R v Coleman* [2020] NZDC 26598 at [28].
10 Parole Act 2002, s 107C(1).

[14] Section 107IAA provides, relevantly:

> **107IAA Matters court must be satisfied of when assessing risk**
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> (1) A court may determine that there is a high risk that an eligible offender will commit a relevant sexual offence only if it is satisfied that the offender—
>
> (a) displays an intense drive, desire, or urge to commit a relevant sexual offence; and
>
> (b) has a predilection or proclivity for serious sexual offending; and
>
> (c) has limited self-regulatory capacity; and
>
> (d) displays either or both of the following:
>
> (i) a lack of acceptance of responsibility or remorse for past offending:
>
> (ii) an absence of understanding for or concern about the impact of his or her sexual offending on actual or potential victims.
>
> …

[15] In *Chief Executive, Department of Corrections v Alinizi*, this Court set out a three-step process for determining whether an ESO should be made:[11]

> (i) the Court must determine whether the offender has, or has had, a pervasive pattern of serious sexual or violent offending;
>
> (ii) the Court must make specific findings as to whether the offender meets the qualifying criteria set out in s 107IAA; and
>
> (iii) if those criteria are met the Court must make a determination about the risk of the offender committing a relevant sexual or violent offence.

[16] In considering whether an ESO should be imposed, the court is not confined to offending that has resulted in convictions and it may consider any evidence or information that it thinks fit, whether or not admissible in a court of law.[12] In *Kiddell v Chief Executive of the Department of Corrections*, this Court held that "serious" should be given its natural meaning, viewed against the statutory purpose of protecting

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11 *Chief Executive, Department of Corrections v Alinizi* [2016] NZCA 468 at [13].

12 Parole Act, s 107H(2); and *Kiddell v Chief Executive of the Department of Corrections* [2019] NZCA 171 at [20].

the community from those who pose a real and ongoing risk of sexual offending.[13] And it held a pervasive pattern is "characteristic of the offender", "sufficiently pervasive to serve as a predictor of future conduct" and may be a "pattern that includes relevant but less serious conduct".[14] This approach has recently been applied in two cases of this Court:

(a) In *Talatofi v Chief Executive of the Department of Corrections,* this Court held that two incidents of serious sexual offending in 1992 and 2014/2015 did not constitute a pattern that was pervasive.[15] They were not characteristic of Mr Talatofi such that they served as a predictor of future conduct.[16] The Court held that less serious offending in 1989, in which the sexual component could have been incidental, and in 2009 which was primarily violent, were not part of the pattern.[17]

(b) In *Taakimoeaka v Chief Executive of the Department of Corrections,* this Court held that there was a unifying theme or pattern in two serious episodes of offending (by rape, unlawful sexual connection and attempted unlawful sexual connection in 2005 and by unlawful sexual connection, assault with intent to commit rape and indecent assault in 2013) sufficiently pervasive to serve as a predictor of Mr Taakimoeaka's future conduct.[18] It rejected the submission that two incidents were not sufficient to establish the requisite predilection or proclivity.[19] And it held:[20]

> Where a person has committed serious sexual offending and is at high risk of committing further such offending, it would have to be a rare case where the standard terms of an ESO crafted by Parliament to protect the community from that risk would be regarded by the court as having no utility.

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13 *Kiddell v Chief Executive of the Department of Corrections*, above n 12, at [22].
14 At [23].
15 *Talatofi v Chief Executive of the Department of Corrections* [2021] NZCA 258 at [40]–[41].
16 At [40].
17 At [36].
18 *Taakimoeaka v Chief Executive of the Department of Corrections* [2021] NZCA 467 at [29].
19 At [35].
20 At [41].

[17] The effects of an ESO are significant. On its face, an ESO limits the right to freedom of association and the right to freedom of movement under ss 17 and 18(1) of the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). Section 3(a) of that Act means a court may only make an ESO in a particular case if it does so consistently with the Act. So those limits must be reasonable and demonstrably justified in a free and democratic society in a particular case. The decision-making exercise is fact-specific and evaluative. As this Court said in *Kiddell v Chief Executive of the Department of Corrections*:[21]

> [27] Finally, an ESO engages [Bill of Rights Act]-protected rights. This Court has previously held that the ESO regime creates a retrospective double penalty, so contravening s 26 of the [Bill of Rights Act], but nonetheless must be given effect under s 4 of that Act.[22] The Supreme Court has recognised that the Parole Act's statutory purpose requires that courts not be denied clearly relevant information when deciding whether an offender is eligible under s 107I for an ESO. But when deciding whether to make an ESO, and for how long, courts must recognise that the order may impinge substantially upon the offender's freedom of movement and association. These rights must be borne in mind when deciding both whether the offender has or had the necessary pervasive pattern of serious sexual offending and whether the offender presents a high risk of future serious relevant offending.

[18] As Mr Lucas submits for Mr Coleman, an ESO will require Corrections' approval of where Mr Coleman lives, where he works, where he moves, whether he can leave New Zealand, and, in some instances, with whom he can associate.[23] If special conditions are imposed on him, as they have been under the ISO, he may be prohibited from using alcohol, subject to a curfew, required to attend a programme, required to tell Corrections if he enters into an intimate relationship with another person, and required not to loiter near a specified park or recreational area.[24]

**The psychologist's report**

[19] The Chief Executive's application for an ESO of 10 years was supported by a Health Assessment Report by Ms Cristina Fon, a clinical psychologist, dated 3 September 2018. Ms Fon considers Mr Coleman may suffer from a

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21 *Kiddell v Chief Executive of the Department of Corrections*, above n 12 (footnotes omitted).

22 *Belcher v Chief Executive of the Department of Corrections* [2007] 1 NZLR 507 (CA). This remains the position following the Supreme Court decision in *Holland v Chief Executive of the Department of Corrections* [2017] NZSC 161, [2018] 1 NZLR 771 at [18].

23 Parole Act, s 107JA.

24 Sections 107K and 15.

neuro-developmental disorder that explains his challenges with making and maintaining friendships and his socio-sexual competence. Mr Coleman's limited consent and partial engagement meant no psychological or neuro-psychological assessment could be undertaken. Using actuarial tools and clinical factors, Ms Fon considers Mr Coleman's risk of committing a further relevant offence in the community is "very high" on the basis that all four factors in s 107IAA(1) are made out. She says:

> Any further sexual offending by Mr Coleman is likely to be targeted towards females who are vulnerable as a result of being a younger age or having some form of disability. They may be known to him, or equally may be someone that he has just met. Mr Coleman is likely to meet potential victims in the community, when out actively seeking persons to have sexual contact with due to his high level of sexual preoccupation and compulsivity.

[20] Ms Fon's report discusses each of the s 107IAA(1) conditions. In summary, she considers:

(a) In respect of s 107IAA(1)(a):

> Mr Coleman has displayed an intense drive, desire or urge to commit relevant sexual offences against others. … Thus, his level of preoccupation interacts synergistically with his impairments in interpersonal functioning and social awareness, increasing his risk of re-offending with a relevant sexual offence.

(b) In respect of s 107IAA(1)(b):

> In my opinion Mr Coleman presents with a proclivity towards engaging in coerced or forced sexual contact with potential partners when they reject his advances, reflected in serious sexual offending behaviour.

(c) In respect of s 107IAA(1)(c):

> [He] has an extremely limited ability to inhibit his sexual impulses and thoughts (sexual self-regulation) …

(d) And in respect of s 107IAA(1)(d):

> Any remorse is likely to reflect a learned cognitive appraisal only, and therefore less likely to inhibit future behaviour.
>
> …

> Mr Coleman is considered to have a very poor capacity to take the perspective of others, and due to this, is unlikely to fully appreciate the impact of his sexual offending upon his victims.

[21] She concludes by saying:

> There is clear evidence that Mr Coleman has a high level of sexual preoccupation, a fixated interest in having sexual encounters with others, and a proclivity to using force or coercion if his advances are rejected. Along with grandiose and egocentric thinking, Mr Coleman's attempts to enact sexual fantasies with people in public has led to his previous sexual offences. … Despite extensive treatment and his ability to articulate some social awareness and rules, his ability to implement this knowledge to prevent further offending is considered extremely low.
>
> Thus, Mr Coleman's overall risk has not been reduced and he is considered to be at very high risk of committing a relevant sexual offence after release, particularly towards more vulnerable persons. He requires a high level of monitoring and support, in order to manage his risk in the community.

[22] Ms Fon provided a further addendum report dated 11 November 2019 in which she expresses her opinion that Mr Coleman remained at very high risk of engaging in further sexual offending. In this report, Ms Fon estimates the likelihood of Mr Coleman reoffending as 53.2 per cent over a five-year period and 67.5 per cent over ten years. She considers Mr Coleman remained in the high-risk category, despite the ISO conditions to which he was then subject. She notes that the 2019 offences:

> … represent a continuation of the modus operandi that resulted in Mr Coleman's former sexual convictions and reflect a pattern of sexual preoccupation and intense drive and urge to engage in sexual contact with others.

[23] Ms Fon provided a further report dated 11 November 2020. She notes that, while residing at Tōruatanga, a supported living accommodation facility, "[d]uring community outings Mr Coleman has continued to display an intense preoccupation and fixated interest in meeting young women for the purpose of developing a sexual relationship". She considers that Mr Coleman's difficulties "appear almost impervious to a range of interventions that have been tried". He required constant education and prompting but continued to engage in inappropriate social behaviour.

[24] Ms Fon gave evidence at the District Court hearing on 26 November 2020. Consistently with her written reports, Ms Fon's evidence was that Mr Coleman was well into the high-risk category, as opposed to sitting on the cusp of that category.

In addition, the Operations Lead at Tōruatanga provided a letter that described outings where Mr Coleman appeared to be searching for women and where, in response to attempts to refocus him, he became abusive and argumentative for long periods of time.

**The District Court decision**

[25] On 30 April 2021, Judge Neave in the District Court at Christchurch declined the application for an ESO.[25] He did not consider Mr Coleman's pervasive pattern of offending was of serious sexual offending:

> [92] It seems to me there is clear evidence that Mr Coleman has displayed a pervasive pattern of sexual offending and sexualised behaviour. There is certainly evidence of him being guilty of previous serious sexual offending but his more recent behaviour tends much more to the nuisance level. One, of course, has to factor in that much of his recent behaviour has been while he has been in closely controlled environments. Nonetheless I am of the view that whilst there is a significant risk of him making a nuisance of himself and that nuisance behaviour undoubtedly having sexual overtones I am not satisfied that there is a pervasive pattern of *serious* sexual offending. Indeed if anything his recent conduct suggests a much lesser degree of offending. …

[26] The Judge also found Mr Coleman was not at high risk of committing a relevant sexual offence:

> [94] Similarly whilst the various risk assessment tools can predict that there is a high risk of further sexual misconduct I need to be satisfied that he will commit a relevant sexual offence. The real question is whether or not he is likely to commit essentially the offence of sexual violation or indecent assault. All the factors discussed above indicate a tendency towards being a sexual nuisance but I do not consider it rises to the point where there is evidence that he will essentially persist in having sex without the consent of the other party. Undoubtedly his previous significant offending involved someone with perhaps limited capacity for consent but there is nothing in his history to detect that this is a pattern of behaviour.

[27] Under s 107R of the Parole Act a decision not to impose an ESO can be appealed to this Court. It is treated as an appeal against sentence.[26] Under s 250(2) of the Criminal Procedure Act 2011, this Court must allow the appeal if it is satisfied there was an error in the decision under appeal and a different decision should have been made.

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25 District Court decision, above n 1.
26 Parole Act, s 107R(2).

**Should an ESO be imposed?**

*Does Mr Coleman have a pervasive pattern of serious sexual offending?*

[28] Ms Charmley, for the Crown, submits Mr Coleman's 2011 and 2014 offences were serious and together constitute a pervasive pattern of serious sexual offending.

[29] Mr Lucas, for Mr Coleman, submits that the highly significant restrictions on Mr Coleman's personal freedoms under an ESO must be considered in assessing whether the very high test under the Parole Act is met. He does not accept the 2011 offending was significantly serious in itself. He submits Mr Coleman's offending has been at the nuisance level, constituting ham-fisted attempts to make contact on a personal level with the complainants. He submits that is particularly true of the recent offending which is significantly less serious than the 2011 or 2014 offending. He submits the decreasing seriousness can show there is not a pervasive pattern of serious sexual offending and may mean Mr Coleman is slowly and finally growing up. He submits the Judge did not err.

[30] Mr Tyrrell, appointed as counsel to assist the Court, was instrumental in ensuring Mr Lucas was appointed as Mr Coleman's counsel. He also provided submissions supportive of those made by Mr Lucas.

[31] The 2011 and 2014 offending were each plainly serious. The 2011 offending involved detaining a young woman in a vehicle, attempting to have sex with her over her objections, a struggle, taking away her means of communication with others, claiming to have a knife and threatening her. Looking at those circumstances overall, we consider the offending was serious irrespective of the charge that was eventually the subject of conviction. The 2014 offending involved penetrative sex with an intellectually impaired young woman over her objections. Together, the 2011 and 2014 offending points towards a pattern of Mr Coleman forcing himself on young women in order to have sex irrespective of their objections.

[32] Mr Coleman's subsequent and other behaviour and offending, noted above, is consistent with that pattern continuing throughout most his adult life, including when he was subject to supervision. The fact that his subsequent offending was interrupted,

and did not reach as serious an outcome, does not detract from its consistency with the serious nature of the 2011 and 2014 offending. Rather, it reinforces the pattern of Mr Coleman's offending in those cases. It was plainly more than a "nuisance". We consider Mr Coleman's pattern of forcing himself on young women in order have sex irrespective of their objections is characteristic of him and sufficiently pervasive to serve as a predictor of his future conduct. Ms Fon's expert opinion is clear supporting evidence of that. We conclude Mr Coleman has a pervasive pattern of serious sexual offending.

*Is Mr Coleman at high risk of committing a relevant sexual offence?*

[33] Ms Charmley submits the Judge's conclusion is contrary to the evidence of Ms Fon, particularly her evidence that the 2019 offences were predictive of a risk of more serious offending.

[34] Mr Lucas submits the Judge was entitled to conclude, after a lengthy review of the evidence, that Mr Coleman was not at high risk of committing a relevant sexual offence. He suggests Mr Coleman now appreciates the importance of a woman being under the age of 16 and that Ms Fon accepted he has made progress in not now focussing on underage and vulnerable people. He points to notes from Tōruatanga recording that Mr Coleman was careful in interacting with a girl he was dating under supervision of staff. He submits more is required than there is here to meet the threshold. Mr Tyrrell supports Mr Lucas' submissions.

[35] We consider Mr Coleman is plainly at high risk of future serious sexual offending. His history of offending and pattern of behaviour strongly indicates that is so. Ms Fon's expert opinion is clear that is so. The 2019 offending occurred notwithstanding that Mr Coleman was under supervision. And, as we determined above, it was consistent with and reinforced the pervasive pattern of serious sexual offending. We consider the Judge erred in concluding there was not a high risk that Mr Coleman will in future commit a relevant sexual offence.

*Should an ESO be imposed?*

[36] It follows from our conclusions above that we consider the conditions for imposing an ESO are satisfied. Mr Coleman has a pervasive pattern of serious sexual offending and is at high risk of committing a relevant sexual offence. We are satisfied of the matters in s 107IAA. These are the conditions for which the restrictions of an ESO are designed to protect members of the community. In Mr Coleman's case, those restrictions, and the limits they impose on his rights of freedom of movement and association, are reasonable and demonstrably justified. This is not one of those rare cases in which the standard terms of an ESO crafted by Parliament to protect the community from the risk posed by Mr Coleman would have no utility.

[37] We do not consider the question of imposing an ESO should be remitted to the District Court to consider on the basis of updated evidence, as Mr Lucas and Mr Tyrrell suggest. The District Court hearing was recent enough for this Court to make the decision, rather than imposing the additional time and burden of remission on the parties and the District Court. We allow the appeal, quash the District Court's decision and impose an ESO.

[38] The term of an ESO must be in reasonable proportion to the importance of its objective, consistent with the usual Bill of Rights Act principles.[27] Ms Fon's evidence is that Mr Coleman poses a high risk of relevant sexual offending for at least the next five years, with a possibility of that risk decreasing over the following five years depending on an assessment of dynamic risk factors  If an ESO is imposed and continues to be warranted at the end of its term, the Chief Executive can apply for, and a court can grant, a further ESO after that. Given the significance of impairment of Mr Coleman's freedoms, we consider five years is an appropriate point to require such an assessment to be made. That period is in reasonable proportion to the importance of the objective of protecting the community from the risk of Mr Coleman's real and ongoing risk of committing serious sexual offences.

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[27] *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 (CA) at [18]; and *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1 at [104].

[39] We understand from Ms Charmley that the Chief Executive is likely to apply to the Parole Board to have the ESO made subject to the same special conditions as apply to the current sentence of intensive supervision, which expires on 22 October 2021.

**Result**

[40] The appeal is allowed.

[41] The District Court's decision is quashed.

[42] An ESO is imposed on Mr Coleman for a period of five years.

Solicitors:
Crown Law Office, Wellington for Appellant