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File No. 36200

IN THE SUPREME COURT OF CANADA
(On appeal from the Court of Appeal for British Columbia)

BETWEEN:

K.R.J.

Appellant
(Respondent)

AND:

HER MAJESTY THE QUEEN

Respondent
(Appellant)

ATTORNEY GENERAL OF CANADA,
ATTORNEY GENERAL OF ONTARIO

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TABLE OF CONTENTS

PART I - OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Following a conviction for certain sexual offences, section 161(1) of the *Criminal Code,* R.S.C. 1985 c. C-46 gives sentencing judges the discretion to prohibit offenders from engaging in a wide variety of everyday activities once they are released into the community. The question on this appeal is whether such restrictions constitute "punishment" for the purpose of invoking the protection in section 11(i) of the *Canadian Charter of Rights and Freedoms*.

2. Section 11(i) of the *Charter* protects against the imposition of a retrospective "punishment" – a "punishment" that was not in force when the offender committed his or her offence. In *R. v. Rodgers,* 2006 SCC 15, this Court held that a measure will amount to "punishment" for the purposes of section 11(i) protection when it is a consequence of a criminal offence and is imposed "in furtherance of the purposes and principles of sentencing".

3. In this case, the Appellant committed sexual offences against his young daughter before Parliament enacted more onerous conditions by amending section 161(1) in 2012. These amendments were retrospectively applied. The question arose as to whether the "new" or the "old" conditions apply to the Appellant in light of section 11(i) of the *Charter.*

4. A majority of the Court of Appeal for British Columbia (Groberman J.A. dissenting) determined that orders imposed under section 161(1) do not constitute "punishment" within the meaning of section 11(i) because they are imposed to protect society, which it found not to be among the "purposes and principles of sentencing". As a result, the majority found that the broader prohibitions under the amended scheme could be retrospectively applied to the Appellant without infringing section 11(i) of the *Charter.*

5. The Appellant submits that the majority of the Court of Appeal was wrong to find no *Charter* infringement. Section 161(1) orders are imposed in furtherance of the principles and purposes of sentencing and thus amount to "punishment" under section 11(i). Section 161(1) gives the sentencing court the discretion to impose very onerous conditions on offenders convicted of sexual offences once they are released into the community. That discretion is to be exercised – as all sentencing decisions – in accordance with the principles and purposes of sentencing combined with consideration of the nature of the offence and the circumstances of the offender.

6. These restrictions also amount to significant deprivations of liberty because they prohibit offenders from engaging in everyday activities – from going to a park to simply "using" the Internet – for potentially a lifetime. The nature of the restrictions, both in their purpose and effect, serve a number of recognized purposes and principles of sentencing. The restrictions contribute to the protection of society and the prevention of future offending. Further, the restrictions assist in the rehabilitation and reintegration of offenders into the community while, at the same time, denouncing and deterring specific types of offending behaviour through the separation of sexual offenders from society.

7. In these circumstances, section 161(1) orders generally and the 2012 amendments in particular surely occasion a form of "punishment" under section 11(i) of the *Charter.* If the majority of the majority of the Court of Appeal is correct that section 161(1) orders are not "punishment", then any form of non-custodial disposition or order imposed at sentencing will not amount to "punishment" for section 11 purposes and therefore can be retrospectively imposed. This approach would effectively gut the protection in section 11 and mean that anything short of an actual jail sentence will not constitute "punishment" in this context. This is an unduly narrow approach and should not be accepted, as it is contrary to this Court's jurisprudence and the proper interpretative approach to section 11 of the *Charter.*

8. The appeal should be allowed and the retrospective application of the 2012 amendments to section 161(1) of the *Code* should be declared of no force and effect.

B. Statement of Facts

The offences and the offender

9. The Appellant pleaded guilty to one count of incest and one count of making child pornography in the Provincial Court of British Columbia. The Court heard sentencing submissions on August 8, 2013 and imposed a nine-year custodial sentence that same day, less credit for time served in pre-sentence custody.

10. The subject-matter of the incest offence was captured in three videos, which were filed as exhibits at the sentencing hearing. The videos showed the Appellant inserting his penis into the vagina of his three-year old biological daughter, E.J. The offences were committed against E.J. on July 13, 17, and 18, 2009.

Reasons for Sentence, Appellant's Record ("AR*"),* Vol. I, p.2, at para.2

11. Almost two years later, in October of 2012, police discovered the videos on the Appellant's computer when they executed a search warrant on his residence.

12. The police also seized a number of images of E.J. in various sexualized positions. A binder containing these images was also filed as an exhibit at the sentencing hearing. These images formed the basis of the offence of making child pornography. That offence was committed between January of 2008 and March of 2011.

Reasons for Sentence, AR, Vol. I, p.2, at para.2

13. At the time of the offences, the Appellant was living with his wife and the couple's two children, E.J, and their younger son, J.J. The wife also brought a seven-year old child from a previous relationship into the family home. In August of 2009, the wife left the Appellant and moved to Ontario, taking all three children with her. However, within a week of their move to Ontario, the provincial authorities apprehended the children. The authorities encouraged the Appellant to come to Ontario, take sole custody of his two

children and move them back to British Columbia. He did so. E.J. and J.J. then lived with the Appellant in British Columbia until he was charged with the offences in October of 2012. As a result of the offences, the children were apprehended and now live in foster care.

Reasons for Sentence, AR, Vol. I, p.3, at para.6

14. The Appellant was 37 years' old at the time of sentencing. Throughout his life he suffered from anxiety and depression. He met his wife, the children's mother, in 2004. This was the Appellant's first sexual relationship. Within a year of meeting, they were married. Between 2003 and 2006, it was discovered that the Appellant collected sexually provocative images of children on his computer. The British Columbia Ministry of Social Services and the RCMP investigated the matter and determined that the images did not meet the definition of child pornography in the *Criminal Code*. However, the Ministry put a harm reduction plan in place and the Appellant attended counselling.

Decision of the B.C. Court of Appeal ("*BCCA Decision"*), AR, Vol. I, p.40, at para.14, p.41, at paras.19-20

15. The sentencing judge, Klinger Prov. Ct. J., described the offences as "highly disturbing and disgusting". The sentencing judge imposed a six-year custodial sentence for the incest offence running consecutively to a three-year sentence on the offence of making child pornography. The net result was a global sentence of nine years' imprisonment.

Reasons for Sentence, AR Vol.I, p.3, at para.5

16. The sentencing proceedings were bifurcated. Klinger Prov. Ct. J. heard submissions as to the length of the sentence and imposed the custodial sentence on August 8, 2013. Because the Appellant was convicted of an enumerated sexual offence involving a person under the age of 16 referred to in section 161(1.1) of the *Criminal Code*, the sentencing judge was required to consider whether to impose certain prohibitions on the Appellant under section 161(1) of the *Code*. These prohibitions would take effect once the Appellant was released from custody.

Reasons for Sentence, AR Vol. I. p.10

Orders of Prohibition under section 161(1) of the *Code*

17. Section 161(1) was originally enacted in 1993. As it read at the time the Appellant committed the offences in 2009, section 161(1) gave the sentencing court the discretion to prohibit the Appellant from attending the following places or engaging in the following activities upon his release from custody:

> (a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;
>
> (b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years; or
>
> (c) using a computer system within the meaning of subsection 342.1(2) for the purpose of communicating with a person under the age of 16 years.

18. The duration of a prohibition order is within the discretion of the sentencing judge. It can be for life "or for any shorter duration the court considers desirable". Following the imposition of the order, under section 161(3) of the *Code*, an offender is entitled to apply to vary or modify the conditions prescribed in the order. The Court may, in turn, vary the conditions if the variation is "desirable because of changed circumstances after the conditions were prescribed". Failure to comply with a section 161(1) is an offence that is punishable by indictment with a maximum sentence of two years imprisonment.

19. After the Appellant committed his offences, section 161(1) of the *Code* was amended under the *Safe Streets and Communities Act*, S.C. 2012, c. 1 (the "Amendments"). The Amendments came into force on August 9, 2012. They introduced two important changes to the scheme.

20. First, under s. 161(1)(c) of the *Code*, the Amendments increased the scope of certain "no contact" provisions in the existing scheme by prohibiting "any contact" or communication with a person under the age of 16. The provision restricted an offender from:

> (c) having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate.

21. Second, the previous scheme contained a prohibition in what was then section 161(1)(c) of the *Code,* which prohibited an offender from using a "computer system for the purpose of communicating with a person under the age of 16". The Amendments introduced a new, broader computer-based restriction in section 161(1)(d) that went further to prohibit a person from simply "using" the Internet or digital network. This new provision restricted an offender from:

> (d) using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.

22. Because the Appellant committed his offences in 2009, before the Amendments came into force, the question arose at sentencing as to whether the current version of section 161(1) could be retrospectively applied to the Appellant or whether the scheme, as it stood at the time of the offences, should be imposed on the Appellant.

23. Crown counsel sought to have all the prohibitions in section 161(1) of the *Code* imposed on the Appellant. However, Crown counsel advised the Court that the Nova Scotia Court of Appeal had recently held in *R. v. Farler* that a section 161(1) order amounted to "punishment" under section 11(i) of the *Canadian Charter of Rights and Freedoms* and thus could be not retrospectively imposed. If the Court found that section 161(1) amounted to "punishment", like the Nova Scotia Court of Appeal, this would mean that section 161(1) as it stood at the time the Appellant committed the offences could only be imposed.

R. v. Farler, 2013 NSCA 13, 326 N.S.R. (2d) 55

Proceedings at Sentencing (8 August, 2013), AR, Vol.I, pp.43-46

24. With the agreement of counsel, the sentencing judge adjourned the proceedings for two months for further written and oral submissions on this issue.

Sentencing judge's decision finding section 161(1) to be "punishment"

25. The sentencing judge reviewed the legislative history of section 161(1) of the *Code* and determined that the Amendments "were certainly more extensive and restrictive than was possible under the former legislation".

Decision on Order of Prohibition, AR, Vol. I, p.32, at para.47

26. In particular, he found that the current computer-based restriction in section 161(1)(d) of the *Code* – restricting any use of the Internet or digital network – was "readily punitive" compared to the previous restriction, which only prohibited the offender from using a computer "for the purpose of communicating" with a person under the age of 16. The sentencing judge found that using computers to access the Internet had "evolved from a novelty to an almost indispensable tool of everyday life".

Decision on Order of Prohibition, AR, Vol. I, p.32, at para.47

27. While section 161(1)(d) allowed the court to establish conditions on Internet access in the future, the sentencing judge found that, as a practical matter, it would be "very difficult to frame a condition in a way that would be in line with its purpose, namely the protection of children, and yet not so restrictive as to be non-punitive in effect".

Decision on Order of Prohibition, AR, Vol. I, p.32, at para.48

28. Consistent with all the parties' submissions, Klinger Prov. Ct. J. used section 11(i) of the *Charter* as part of his interpretative exercise in determining whether Parliament intended to apply the Amendments retrospectively. He concluded that the Amendments could not be interpreted as applying retrospectively because section 161(1) generally, and the Amendments in particular, amounted to "punishment" under

section 11(i) of the *Charter.* He agreed with the Nova Scotia Court of Appeal's decision in *Farler*, finding that it was "highly persuasive".

Decision on Order of Prohibition, AR, Vol. I, p.32, at para.58

29. In finding that section 161(1) did constitute "punishment", the sentencing judge looked to *R. v. Rodgers*, where this Court determined that a measure will amount to "punishment" for the purposes of section 11(i) when: (1) it forms part of the "arsenal of sanctions" to which an accused is liable at sentencing; and (2) is imposed "in furtherance of the purposes and principles of sentencing". He found as follows:

> I conclude that a section 161(1) order does constitute punishment. The order forms part of the arsenal of sanctions to which [the Appellant] may be subjected to on sentencing. In fact, section 161(1) requires the sentencing court to consider making such an order in addition to any other punishment. The order can also be considered as one made in furtherance of the purpose and principles of sentencing. By restricting [the Appellant's] liberty to attend public areas where children are present and also restricting his associations and Internet access, his temptation to reoffend will hopefully be lessened and his rehabilitation enhanced. In addition, those restrictions will hopefully also have a deterrent effect on [the Appellant] in that their restrictive terms may lead him to conclude that offending should be avoided.

R. v. Rodgers, 2006 SCC 15, [2006] 1 S.C.R. 544, at para.63

Decision on Order of Prohibition, AR, Vol. I, p.32, at para.52

30. Klinger Prov. Ct. J. found that it was appropriate to make an order under section 161(1) but, in light of his findings on the temporal application of the section, he limited the section 161(1) order to the prohibitions as they stood at the time the Appellant committed his offences. This meant that the "no contact" prohibition in section 161(1)(c) and the broad, Internet-based restriction in section 161(1)(d) were not imposed on the Appellant. The sentencing judge imposed the order for a period of seven years from the date of the Appellant's release from imprisonment.

Proceedings at Sentencing (15 November, 2013), AR, Vol. II, p.142

On appeal to the B.C. Court of Appeal

31. On October 30, 2013, the Appellant filed a Notice of Appeal against the length of the sentence. On December 5, 2013, the Crown filed a separate appeal against the sentencing judge's decision on the section 161(1) issue.

32. In response to the Crown appeal, the Appellant filed a Notice of Constitutional Question under the *Constitutional Question Act,* R.S.B.C. 1996 ch. 68 seeking a remedy under section 52(1) of the *Constitution Act*. The Appellant argued that if the Court of Appeal concluded, contrary to the findings of the sentencing judge, that Parliament had intended to apply the Amendments retrospectively, then such a retrospective intent was a limitation on the Appellant's right under section 11(i) of the *Charter.* In that case, a formal constitutional challenge would be necessary and a section 52(1) remedy would be required to declare the retrospective application of the Amendments of no force and effect. This would then raise the issue of whether the limitation was demonstrably justified under section 1 of the *Charter*.

Notice of Constitutional Question, AR, Vol.I, pp.70-71

BCCA Decision, AR, Vol. I, p.48, at paras. 48-50

33. The Crown objected to the filing of a formal constitutional challenge on appeal, in part, because it did not have the opportunity to file materials addressing section 1 of the *Charter* in the court below.

BCCA Decision, AR, Vol.I, p.48, at para.51

34. The B.C. Court of Appeal was unanimous in deciding that the Appellant should be granted leave to file a formal constitutional challenge on appeal. It concluded that the failure to file the section 52(1) Notice in the court below caused no prejudice, the parties fully canvassed the constitutional arguments regarding section 11(i) below, and as well, all evidence relevant to the constitutional challenge had been presented to the court below.

BCCA Decision, AR, Vol. I, pp.49-50, at paras.52-57

35. The Court of Appeal dismissed the Crown's objection based on section 1 of the *Charter*. It found that due to the way in which the sentencing judge decided the case, he would not have had to address section 1 of the *Charter* and therefore the matter reached the Court of Appeal in the exact same way it would have even if the Notice had been filed in the court below:

> It is clear that the trial judge was minded to approach the issues on sentencing in a step-by-step fashion. He would not have addressed the s. 1 issue unless it was necessary to do so. Because he interpreted the 2012 amendments as not applying retrospectively, there would have been no need to proceed to a s. 1 hearing.
> …
> In short, the matter reaches this Court in precisely the same state as it would have if a formal constitutional challenge had been made in the court below.

BCCA Decision, AR, Vol.I, p.49, at paras.55-56

36. On the Appellant's appeal, the B.C. Court of Appeal found his sentence to be fit, but made a slight reduction to the length of the sentence to reflect the appropriate credit for time served in presentence custody.

BCCA Decision, AR, Vol.I, p.45, at para.38

37. On the Crown's appeal, the Court of Appeal disagreed with the sentencing judge and unanimously determined that the Amendments to section 161(1) were properly interpreted as applying retrospectively.

BCCA Decision, AR, Vol.I, p.55, at paras.68-69

38. However, accepting that the Amendments operated retrospectively, the Court was divided on the substantive issue of whether orders of prohibition in section 161(1) generally amounted to "punishment" under section 11(i) and whether the retrospective application of the Amendments, in particular, infringed section 11(i) of the *Charter.*

Newbury J.A. (Kirkpatrick J.A. concurring)

39. Writing for the majority, Newbury J.A. concluded that both the purpose and the effect of a measure are relevant to assessing if it met the *Rodgers* definition of "punishment" under section 11 of the *Charter*, that is, whether the impugned provision was imposed "in furtherance of the principles and purposes of sentencing."

BCCA Decision, AR, Vol.I, pp.63-64, at para.95

40. Newbury J.A. found that the prohibitions under section 161(1) were "designed to protect the public, and in particular, children from sexual offences and offenders". She found that the protection of the public was not a principle or purpose of sentencing. Newbury J.A. further concluded that the consequences of section 161(1) orders on the offender – including prohibiting Internet access – may be "unpleasant", but they are not necessarily punitive in their effects.

BCCA Decision, AR, Vol.I, p.66, at para.99

41. In finding that section 161(1) did not amount to "punishment", Newbury J.A. also emphasized that the section gave the sentencing court considerable discretion in deciding whether to impose the order at all, the length of the order, and in crafting any conditions under the order.

BCCA Decision, AR, Vol.I, p.66, at para.98

42. Having thus found no constitutional infringement, Newbury J.A. allowed the Crown's appeal and imposed the current statutory prohibitions in section 161(1) on the Appellant.

Groberman J.A. (dissenting)

43. Groberman J.A. dissented on the basis that section 161(1) generally, and the Amendments in particular, amounted to "punishment" under section 11(i) of the *Charter*. He therefore concluded that the retrospective operation of the Amendments infringed section 11(i) of the *Charter.*

44. Groberman J.A. noted that this conclusion was consistent with all other decisions across Canada, including the Nova Scotia Court of Appeal's decision in *Farler*, where it was held that section 161(1) of the *Code* could not operate retrospectively.

BCCA Decision, AR, Vol.I, pp.59-60, at para.85

45. Also applying the *Rodgers* definition of "punishment", Groberman J.A. found that the prohibitions under section 161(1) were, in fact, imposed "in furtherance of the principles and purposes of sentencing". Due to the nature of the restrictions and their effects on the offender, he found that the prohibitions under section 161(1) separated them from society and contributed to the purpose of sentencing by ensuring that such offenders are not allowed to engage in certain activities with the rest of society because such separation was determined to be necessary.

46. In terms of the punitive effects of a section 161(1) order, Groberman J.A. found that the section restricted a broad scope of activities, activities which were "within the liberties generally enjoyed by the public". He concluded that section 161(1) contained relatively onerous restrictions – including the restriction on accessing the Internet – which "affect[ed] the offender's ability to fully re-integrate into society, and may seriously limit employment prospects."

BCCA Decision, AR, Vol.I, p.53, at para.62

Before this Court

47. Following this Court's decision granting leave to appeal on March 26, 2015, the Chief Justice stated the constitutional questions arising in this case:

(1) Does the retrospective operation of ss. 161(c) and (d) of the *Criminal Code,* R.S.C. 1985 c. C-46, as enacted by section 16 of the *Safe Streets and Communities Act*, S.C. 2012, c. 1, infringe section 11(i) of the *Canadian Charter of Rights and Freedoms*?

(2) If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under section 1 of the *Canadian Charter of Rights and Freedoms*?

48. With respect to the second stated question, the Chief Justice ordered that the parties address section 1 of the *Charter* separately by way of a Respondent's Motion to Adduce New Evidence and related submissions. The Chief Justice further ordered that the parties provide submissions addressing the new evidence and section 1 of the *Charter*, without prejudice to the Crown's ability to argue that section 1 should not be addressed at all. The evidence and submissions would then be referred to the panel seized of the appeal.

Order of McLachlin C.J.C., AR, Vol.I, pp.86-88

49. The Respondent has filed its motion, the new section 1 evidence, and its supporting submissions, including those addressing a section 1 justification. The Appellant has, in turn, filed his response submissions. The Appellant is adducing no evidence on section 1 and has not opposed the introduction of the Respondent's new evidence. However, the Appellant submits that the Respondent has not met its onus under section 1 of the *Charter* and that the infringement, if established on this appeal, cannot be demonstrably justified. The remainder of this factum addresses the infringement issue.

PART II - POINTS IN ISSUE

50. This appeal raises the following question:

> Do prohibition orders imposed under section 161(1) of the *Criminal Code* generally and the Amendments specifically amount to "punishment" under section 11(i) of the *Charter of Rights and Freedoms* such that they cannot be retrospectively imposed on offenders?

PART III - STATEMENT OF ARGUMENT

51. Section 161(1) of the *Criminal Code* provides for a number of prohibitions to be imposed on offenders convicted of sexual offences to take effect once they are released into the community. A "s.161(1) order", like any community-based disposition imposed at sentencing, is nothing more than the imposition of various prohibitions or restrictions on the offender's conduct once he is living in the community.

52. After the Appellant committed his offences in July of 2009, Parliament amended section 161(1) of the *Code* in 2012 by increasing the scope of the "no contact" prohibition (section 161(1)(c)) and also broadening the computer-based prohibition (section 161(1)(d)). There is no dispute that the prohibitions at issue here were varied between the date of commission of the offences and the date of sentencing. And there should also be no dispute – nor was there in the court below – that the prohibitions under the Amendments are more onerous compared to those that existed at the time the Appellant committed his offences.

53. The only question on this appeal is whether section 161(1) of the *Code* in general, and the Amendments in particular, amount to "punishment" under section 11(i) of the *Charter of Rights and Freedoms.* If they do, the Appellant is entitled to the benefit of "lesser punishment" under section 11(i). This means that the Appellant is entitled to the benefit of the prohibitions that were in force at the time he committed his offences.

54. The majority of the Court of Appeal (*per* Newbury J.A.) concluded that the prohibitions as enacted by the Amendments and section 161(1) in general did not amount to "punishment" under section 11(i) of the *Charter.* As a result, the majority concluded that the more extensive version of section 161(1) could be retrospectively imposed. In so doing, Newbury J.A. wrongly held that a section 161(1) order is not imposed "in furtherance of the purposes and principles of sentencing" and thus does not meet the test this Court has articulated for determining whether a measure amounts to "punishment" under section 11 of the *Charter*.

55. Section 161(1) orders are imposed in furtherance of the principles of sentencing. By restricting an offender's access to important physical and virtual places while in the community, the prohibitions, among other things, protect the public and assist in the rehabilitation of the offender. These are traditionally recognized sentencing goals.

56. The punitive purposes of section 161(1) orders align with their punitive effects. The prohibitions restrict the offender from engaging in a broad range of everyday conduct – from attending parks, going on the Internet or to having any contact with children. This is conduct that lies within the liberties enjoyed by the general public. The effect of a section 161(1) order cannot be brushed off either as trivial or characterized as merely "unpleasant" as Newbury J.A. did in this case.

A. Section 11(i) of the *Charter* and the meaning of "punishment"

57. Section 11(i) of the *Charter* protects against the imposition of a punishment that was not in force when the offender committed his or her offence. Where the "punishment" is varied between the date of commission and the date of sentencing, section 11(i) entitles the offender to the "benefit of lesser punishment":

> 11. Any person charged with an offence has the right
>
> . .
>
> (*i*) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

58. This case centres on the meaning of “punishment” under section 11(i) and whether an order of prohibition falls within that definition.

59. In the leading case of *R v. Rodgers,* this Court set out a two-part test for determining whether a measure amounts to “punishment" for the purposes of section 11(i) of the *Charter*: (1) the measure must be a consequence of a conviction that forms part of the “arsenal of sanctions” to which an accused is liable for committing a particular offence; and (2) it must be one that is imposed “in furtherance of the purposes and principles of sentencing”.

Rodgers, supra, at para.63

60. The “purposes and principles of sentencing” are set out in sections 718 to 718.2 of the *Criminal Code.* Under section 718 of the *Code,* the “fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society” by imposing just sanctions that have one or more of the following objectives:

(a) to denounce unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

61. The meaning of “punishment” under section 11 of the *Charter* is to be interpreted liberally and in a manner consistent with its ordinary meaning. In interpreting the

meaning of "punishment" under section 11, the purpose of the impugned legislative measure must be evaluated together with its effect on the individual.

Canada (A.G.) v. Whaling, 2014 SCC 20, [2014] 1 S.C.R. 392, at para.54

R. v. Cross, 2006 NSCA 91, 205 C.C.C. (3d) 289, at para. 45

B. Orders of prohibition amount to "punishment" under section 11(i) of the *Charter*

62. The Appellant submits that four factors support the overall conclusion that a section 161(1) amounts to "punishment" for the purposes of section 11(i). As such, the Amendments cannot be retrospectively imposed on the offender.

(1) A section 161(1) order is a "consequence of a conviction"

63. Under the first-stage of the *Rodgers* test, there can be no question that a section 161(1) order is a consequence of conviction and forms part of the "arsenal of sanctions" to which an offender may be liable following his conviction for a criminal offence. Section 161(1) directs that the sentencing judge is required to consider whether to exercise his or her discretion to impose the prohibitions once an offender is convicted of an enumerated sexual offence involving a person under the age of 16. Those offences are listed in section 161(1.1). The imposition of a section 161(1) order is not possible without a conviction for an enumerated sexual offence.

Rodgers, supra, at para. 62

R. v. M.K., 2010 NBCA 71, 364 N.B.R. (2d) 166, at para.28

64. This distinguishes section 161(1) orders from recognizances imposed under sections 810, 810.01, 810.1 and 810.2 of the *Criminal Code*, which are not a consequence of conviction as no conviction for any offence is required in order for a recognizance to be imposed. In order for a court to impose a form of recognizance under the *Code*, it simply needs to be satisfied that there are "reasonable grounds" to

believe that the "defendant" will cause harm to a person or property, or commit a certain offence.

(1) The imposition of a section 161(1) order fits within the ordinary definition of the term "punishment"

65. That section 161(1) prohibitions fit within the ordinary meaning of "punishment" under section 11(i) is signalled by Parliament's own express language in section 161(1) of the *Code*. In the opening language of section 161(1) Parliament has explicitly characterized the imposition of the order as "punishment". The prefatory language of section 161(1) reads as follows:

> **161.** (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from . . . [Emphasis added.]

66. It is a fundamental principle of statutory interpretation that every word of a statute is presumed to have a role in achieving the objective of the Act. No word or provision should be interpreted so as to render it mere surplusage or ineffectual.

R. v. Katigbak, 2011 SCC 48, [2011] 3 S.C.R. 326, at para.59

67. The subsequent history of the opening words of section 161(1) also supports the conclusion that Parliament meant what it said when it characterized a prohibition order as "punishment". When Parliament acts it is deemed to act deliberately and to know the law, including the case law interpreting statutes. Despite the jurisprudence emanating from various courts of appeal that had consistently found section 161(1) did not apply to offences committed before the coming into force of the provision, Parliament has since

amended the opening words of s.161(1) five times[1]and each time has chosen to retain the express characterization of the imposition of the order as "punishment".

R. v. Burnett, [1998] B.C.J. No. 245 (C.A.)

R. v. P.A.M., 2000 BCCA 126

R. v. Mundy, 2000 BCCA 265

R. v. Jewell, (1995), 100 C.C.C. (3d) 270 (Ont. C.A.)

68. This Court should not easily find by inference a different result which conflicts with what Parliament said expressly. As this Court recently held in *R. v. Summers*, "Parliament is presumed to know the legal context in which it legislates".

R. v. Summers, 2014 SCC 26, [2014] 1 S.C.R. 575, at para.55-58

69. Parliament's express and consistent usage of the phrase "*in addition to any other punishment"* in section 161(1) was an important consideration for Groberman J.A., dissenting in the Court of Appeal, as well as Nova Scotia Court of Appeal in *R. v. Farler,* when they both concluded that a section 161(1) order was "punishment" for the purposes of section 11(i) of the *Charter.*

70. For both the Nova Scotia Court of Appeal and Groberman J.A., Parliament's use of the term "punishment" in section 161(1) was not necessarily determinative of the question. However, the statutory language, in addition to other factors, supported the overall conclusion that an order of prohibition was punitive.

71. In *Farler,* Beveridge J.A. characterized the prefatory language in section 161(1) as an "important clue" to the question of whether an order imposed under that section amounted to "punishment" under section 11. For his part, Groberman J.A., drawing upon the interpretative approach to section 11 in *Rodgers,* held that Parliament's use of the phrase "*in addition to any other punishment"* suggested that "Parliament itself

[1] *Criminal Law Improvement Act*, *1996*, S.C. 1997, c.18, s.4; *Criminal Law Amendment Act, 2001*, S.C. 2002, c.13, s.4(1); *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, S.C. 2005, c.32, s.5(1); *Tackling Violent Crime Act*, S.C. 2008, c.6, s.54(e).

appears to have considered that the sanctions set out in s. 161(1) come within the ordinary meaning of the word 'punishment'".

Farler, supra, at para.127

BCCA Decision, AR, Vol.I, p.58, at para.78

72. By contrast, the majority of the Court of Appeal downplayed the effect of the Parliament's use of the phrase "*in addition to any other punishment"* in determining whether it fit within the ordinary definition of "punishment" Instead, Newbury J.A. focussed on the language that followed the phrase "*in addition to any other punishment*", which is, "*or any other condition prescribed in the order of discharge*". In light of this subsequent phrase, Newbury J.A. found that there was "no reason why the intention behind the restrictions should change depending on whether they are being imposed as part of a discharge or as part of a sentence". Otherwise stated, the fact that order of prohibition can be attached to not only a sentence, but also an order of discharge, signalled that that the order cannot be construed as "punishment".

BCCA Decision, AR, Vol.I, p.66, at para.100

73. The majority's reasoning is flawed as it incorrectly assumes that an order of discharge is not "punishment" and so anything that is attached to discharge can also not amount to "punishment". Most importantly, Newbury J.A. failed to consider this Court's finding in *Rodgers* where it was specifically held that a conditional discharge did amount to "punishment" for the purposes of section 11 of the *Charter.* Charron J. in *Rodgers* even went so far as to find that "*it could not be argued*" that a conditional discharge did not constitute "punishment" in this context.

Rodgers, supra, at para.61

74. A conditional discharge is nothing but a probation order by virtue of sections 730(1) and 731(2) of the *Code*. It is both inconsistent with *Rodgers* and largely circular to suggest that a probation order would not be "punishment" under section 11(i) because it can be attached to a discharge, and a discharge is not in the nature of a "punishment".

(2) Significant effect of an order of prohibition on the offender

75. The nature and effect of the impugned measure must also be examined in determining whether it amounts to "punishment" for the purposes of section 11(i) of the *Charter.* For the reasons set out below, a section 161(1) order occasions a significant deprivation of liberty. This further supports the conclusion that, overall, an order of prohibition constitutes a form of "punishment" under section 11(i) of the *Charter* and thus cannot be retrospectively imposed.

76. This Court in *Rodgers* held that a probation order did amount to "punishment" under section 11(i) of the *Charter.* In terms of their effects on the offender, in this context, there is no principled distinction between a probation order and a prohibition order imposed under section 161(1) of the *Code*. And it has never been suggested, by either the Crown or majority in the Court of Appeal, that these orders are, in any way, distinguishable.

Rodgers, supra, at para.61

77. Both measures amount to "punishment" because they similarly impose restrictions on offenders living in the community from going certain places or refraining from certain activities, which are otherwise within the general liberties enjoyed by the public. This Court has recognized on more than one occasion that living in the community under restrictions constitutes a deprivation of liberty under section 7 of the *Charter* and also attracts a considerable degree of stigma.

Re BC Motor Vehicle Act, [1985] 2 S.C.R. 486, 24 D.L.R. (4th) 536, at 515

R. v. Proulx, 2000 SCC 5, [2000] 1 S.C.R. 61, at paras. 105-106

78. If anything, the conditions contained within a section 161(1) order are arguably more intrusive than a standard probation order. A section 161(1) order can potentially restrict the offender from engaging in a broad spectrum of activities ranging from going to a park, community centre, taking on certain types of employment, and to accessing the Internet. The compulsory and optional conditions of a probation order in sections

732.1(2) and (3) of the *Code* pale in comparison. In addition, a section 161(1) order can be imposed for a lifetime, whereas a probation order can only be imposed for up to three years.

79. For this reason, both the Nova Scotia Court of Appeal and Groberman J.A. correctly held that the imposition of a section 161(1) order occasions a significant deprivation of liberty. This distinguishes DNA orders and orders imposed under the *Sexual Offender Information Registration Act,* S.C. 2004 c. 10 ("*SOIRA*"), which only minimally impact on an offender's liberty. Courts across Canada have determined that both of these measures do not constitute "punishment" for the purposes of section 11 of the *Charter,* in part, due to their trivial impact on the person affected.

80. For example, in *R. v. Murrins*, the Nova Scotia Court of Appeal found a DNA order did not amount to punishment due to the trivial impact of the offender. The Court of Appeal held that being subject to a demand to provide a DNA sample in no direct way limits the future behaviour of the offender. In *Rodgers,* this Court found that the simple requirement to submit to a DNA sample engaged only a "trivial" liberty interest and thus was insufficiently intrusive in order to amount to a "punishment".

R. v. Murrins, 2002 NSCA 12, [2002] N.S.J. No.21, at para.107

Rodgers, supra, at para.64

81. Following *Rodgers*, courts have similarly found that *SOIRA* orders do not constitute punishment by emphasizing their limited and trivial impact on the individual. *SOIRA* orders do not limit people in where they can go, including travel, where they can work or volunteer, who they can have contact and communicate with, or how they may use their computers, the Internet or digital devices. They involve only a minimal deprivation of liberty given that the *SOIRA* orders require a person convicted of a sexual offence to report to a local registration centre and provide his or her current contact information.

P.S.C. v. British Columbia (Attorney General), 2007 BCSC 895, 222 C.C.C. (3d) 230, at para.107

R. v. C. (S.S.), 2008 BCCA 262, [2008] B.C.J. No.1148. at paras.52,55

82. By contrast, a section 161(1) order touches almost every aspect of daily life, especially the very broad prohibitions introduced under the 2012 Amendments. These restrictions are a far cry from an annual reporting requirement under *SOIRA* or the simple requirement to provide a DNA sample.

(3) The imposition of a s.161(1) order is in furtherance of the purposes and principles of sentencing

83. A section 161(1) order is also imposed in "furtherance of the purposes and principles of sentencing" and satisfies the second part of the *Rodgers* test. This, again, distinguishes DNA and *SOIRA* orders, whose statutory purpose is the detection and investigation of crime. There is, at best, only a residual deterrent effect for these types of orders. Because both impugned measures were held to not be punitive in their effects, they were found to align with their non-punitive legislative purpose. In other words, DNA or *SOIRA* orders are not a form of punishment merely dressed up as investigatory aids.

Cross, supra, at para.77

P.S.C., supra, at para.104

R. v. Dyck, 2008 ONCA 309*,* 232 C.C.C. (3d) 450, at para.80

84. Unlike DNA and *SOIRA* orders, section 161(1) orders are punishment because they are imposed in furtherance of the purposes and principles of sentencing. Recently, the Ontario Court of Appeal (*per* Cronk J.A. for the majority) held that even a driving prohibition imposed under section 259(1) of the *Criminal Code* – a far less intrusive order than a section 161(1) order – was "part of a sentencing judge's arsenal of sanctions on sentencing an accused for a criminal driving offence" and the prohibition "facilitate[d] the principles and objectives of sentencing in the criminal law".

R. v. Fernandes, 2013 ONCA 436, 115 O.R. (3d) 746, at paras.98,100

85. A section 161(1) order separates the offender from important social, physical and virtual spaces because of the nature of the offending and the risk the offender presents.

This distinguishes DNA and *SOIRA* orders, which do not similarly restrict an offender's access to such spaces in any significant way and certainly not in the ways provided for under section161(1).

Farler, supra, at para.128

P.S.C.,supra, at para.107

C.(S.S.), *supra*, at paras.52, 55

86. Like imprisonment, the significant deprivation of liberty occasioned by the imposition of a prohibition order denounces the offender's conduct and deters that conduct both generally and specifically. In *R. v. Proulx,* Lamer C.J.C. observed that living in the community under strict restrictions – particularly where, as here, those restrictions relate to everyday activities - can engender considerable shame, and as a result, serve the principles of denunciation. As he stated:

> Living in the community under strict conditions where fellow residents are well aware of the offender's criminal misconduct can provide ample denunciation in many cases. In certain circumstances, the shame of encountering members of the community may make it even more difficult for the offender to serve his or her sentence in the community than in prison.

Proulx, supra, at para.105

87. The imposition of the conditions in section 161(1) also assists in the rehabilitation of the offender by reducing his risk of reoffending by limiting his exposure to high-risk environments and assisting his reintegration into society. The effect of suffering a significant deprivation of liberty also promotes a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

88. The finding that a section 161(1) order is imposed in "furtherance of the purpose and principles of sentencing" is further demonstrated by Parliament's decision to provide sentencing judges wide discretion: (1) whether to impose the order at all; (2) in crafting the conditions of the order; and (3) in setting the duration of the order.

89. Because a section 161(1) order relates to the nature of the offending, it is the principles of sentencing in sections 718 to 718.2 of the *Code* that apply in exercising

that broad discretion. Indeed, appellate courts have considered the fitness of a prohibition order on a stand-alone basis by using concepts from sentencing law. For example, the deferential "demonstrably unfit" standard of appellate review is used to assess the fitness of a section 161(1) order imposed by a sentencing judge.

R. v. R.K.A., 2006 ABCA 82, 208 C.C.C. (3d) 74, at para.4

R. v. B. (R.R.), 2013 BCCA 224, [2013] B.C.J. No.949, at para.32

90. For this reason, the majority of the Court of Appeal was incorrect to find that the wide discretion afforded to sentencing judges under section 161(1) of the *Code* was a factor which suggested that the orders were not, in fact, punishment.

BCCA Decision, AR, Vol.I, p.66, at para.98

91. On the contrary, broad judicial discretion is a hallmark of sentencing law and is a central feature of a multitude of sanctions and orders imposed at sentencing, which are clearly punitive. For example, a sentencing court enjoys broad discretion in crafting both the length and conditions of a probation order, but in light of *Rodgers*, it cannot be contended that a probation order is not "punishment" because of the very existence of that broad discretion. Again, the existence of broad judicial discretion supports the fact that a section 161(1) order is punishment because that discretion must be exercised in accordance with the principles and purposes of sentencing in the context of specific circumstances of the offender and the nature of the offence.

92. There is one further matter concerning a sentencing judge's discretion to impose an order of prohibition that deserves mention. In *R. v. R.K.A.,* the Alberta Court of Appeal found that a section 161(1) order must be considered where the offender is convicted of an enumerated offence and where there is a "serious risk to the safety of a child". This is incorrect. The power to consider or impose a section 161(1) order is not so limited or circumscribed by such a high standard.

R. v. R.K.A., supra, at para.14

93. Rather, the correct view is that expressed by New Brunswick Court of Appeal in *R. v. M.K.* There, Robertson J.A. held that the test for imposing a section 161(1) order is

low – all that is required is a conviction for an enumerated offence and "some evidence" that the offender poses a risk of harm to children.

R. v. M.K., supra, at para.28

94. The imposition of a section 161(1) on offenders also serves the interests of public safety, the protection of the public, and the prevention of future offending.

95. The majority of the Court of Appeal accepted that the purpose behind section 161(1) orders was protection of the public, and in particular, the protection of children from sexual offenders. For Newbury J.A., however, the protection of the public was not a "purpose or principle of sentencing" and thus a section 161(1) order was not "punishment". This reasoning cannot be sustained. It incorrectly assumes that the protection of the public and the prevention of future offending is not a principle of sentencing.

BCCA Decision, AR, Vol.I, p.66, at para.99

96. The protection of the public and the prevention of future offending are among, if not the overarching, principles and purposes of sentencing. As La Forest J. stated in *R. v. Lyons:* "the fundamental purpose of the criminal law generally, and of sentencing in particular [is] the protection of society".

R. v. Lyons, [1987] 2 S.C.R. 309, 37 C.C.C. (3d) 1, at para.26

R. v. Ipeelee, 2012 SCC 13, [2012] 1 S.C.R. 433

97. That the protection of the public and prevention of future offending is a purpose of sentencing is further underscored by the opening words of section 718 of the *Code*, which state:

> The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and maintenance of a just, peaceful and safe society by imposing sanctions that have one or more of the following objectives…

98. The purpose of a probation order is also to protect society and facilitate successful rehabilitation, yet in *Rodgers* this Court found it was "punishment" for the purpose of section 11(i) of the *Charter*.

R. v. Shoker, 2006 SCC 44, [2006] 2 S.C.R. 399, at para.10

Rodgers, supra at para.61

99. To take it further, as noted in *Lyons,* the primary purpose behind the indeterminate sentencing regime in the *Criminal Code* is protection of the public. It would be absurd to suggest that the imposition of an indeterminate sentence would somehow not amount to "punishment" under section 11 of the *Charter* because its primary purpose is to protect the public.

100. In support of its finding that section 161(1) order are not imposed in furtherance of the principles or purposes of sentencing, the majority also relied on this Court's decision in *R. v. L.M* for the apparent proposition that mechanisms for community supervision imposed on offenders were not punitive, but were instead measures designed to protect the public. The majority's reliance on this case was, however, misplaced.

BCCA Decision, AR, Vol.I, p.65, at para.97

R. v. L.M., 2008 SCC 31, [2008] 2 S.C.R. 163, at paras.45, 26

101. *L.M.* dealt with long-term supervision orders imposed under section 753.1(2)(a) of the *Code.* Long-term supervision orders, imposed at the time of sentencing, can be for a period of up to 10 years and follow a fixed-term custodial sentence. The order requires the offender to abide by a number of mandatory and special conditions on their release, including a requirement to reside at a half-way house and to take medication against their will.

Ipeelee, supra, at para.117

Deacon v. Canada (A.G.), 2006 FCA 265, 143 C.R.R. (2d) 93

Normandin v. Canada (A.G.), 2005 FCA 345, [2006] 2 F.C.R. 112

102. In *L.M.,* this Court held that a sentencing judge should not take into account the length of the long-term supervision order in determining the length of the custodial sentence. It was in this context that this Court found that a conventional sentence of imprisonment and long-term supervision orders had different objectives. *L.M., supra,* at para.42

103. Most importantly, this Court in *L.M.* did not find that long-term supervision orders were not part of the offender's "punishment" for the purpose of section 11 of the *Charter*. In fact, five years before *L.M.* in *R. v. Johnson* this Court found that the long-term supervision provisions within the dangerous offender regime was a "lesser punishment" for section 11 purposes. More recently in *R. v. Ipeelee,* this Court held that the purpose of a long-term supervision order, similar to a probation order, is to protect the public from the risk of re-offending and to rehabilitate the offender and reintegrate him or her into the community. These objectives are well-established principles and purposes of sentencing and apply equally to prohibition orders imposed under section 161(1) of the *Code.*

> *R. v. Johnson,* 2003 SCC 46, [2003] 2 S.C.R. 357
> *Ipeelee, supra,* at para.48

104. According to the flawed approach of the majority of the Court of Appeal in this case, it appears that any community-based order imposed on an offender for the purpose of protecting the public – regardless how intrusive it is – will not amount to "punishment" under section 11. This, again according to the majority, is because the protection of the public is somehow not a principle or purpose of sentencing under the second part of the *Rodgers* test. As a result, a probation order, a section 161(1) order, and even a long-term supervision order cannot be construed as "punishment" and therefore can be retrospectively imposed on an offender without violating section 11(i) of the *Charter.*

105. In the end, the logical extension of majority's reasoning in this case is that anything short of an actual sentence of imprisonment will fall not within the scope of "punishment"

for the purposes of section 11(i) protection. This cannot be what was intended for section 11 of the *Charter.* It also inconsistent with the liberal and purposive interpretation of *Charter* rights and proper interpretative approach to section 11 of the *Charter.*

Rodgers, supra, at para.61

Whaling, supra, at para.52

106. Section 161(1) prohibition orders, similar to standard probation orders and long-term supervision orders, are imposed by sentencing judges on people with specific criminogenic needs after they have committed particular types of offences. The conditions and duration of the orders are crafted through the exercise of judicial discretion after consideration of all the relevant principles of sentencing. Section 161(1) orders do not, however, magically lose their punitive character under section 11 simply because they are imposed to protect the public. In fact, such a purpose only reinforces their status as "punishment" for the purposes of section 11(i) of the *Charter*.

C. Conclusion

107. The Appellant submits that section 161(1) orders generally, and the Amendments in particular, are imposed "in furtherance of the purposes and principles of sentencing" and thus amount to "punishment" under section 11(i) of the *Charter.* As a result, the Amendments cannot be retrospectively imposed on the Appellant because they were not part of the available array of punishments when he committed the offences. Only the conditions as they stood at the time he committed the offences can be imposed.

PART IV - SUBMISSIONS ON COSTS

108. The Appellant does not seek any order as to costs.

PART V - NATURE OF ORDER SOUGHT

109. The Appellant seeks orders:

1. Allowing the appeal;
2. Declaring the amendments to section 161(1) of the *Criminal Code* brought into force on August 9, 2012 by the *Safe Streets and Communities Act,* S.C. 2012, c.1, section 16(1) do not apply to offenders who committed their offences before the coming into force of those amendments; and
3. Varying the prohibition order to the terms originally imposed by the sentencing judge.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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Eric Purtzki
Counsel for the Appellant

August 20th, 2015
Ottawa, Ontario

PART VI - LIST OF AUTHORITIES

PARAGRAPH(S)

PART VII – STATUTORY PROVISIONS

***Criminal Code*, R.S.C. 1985, c. C-46, s.161(1) as it read at the time of the offence (**S.C. 1993, c.45, s.1 for (a) and (b); sub-section (c) added by S.C. 2002, c.13, s.4(2)).	
When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from (a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre; (b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years; (c) using a computer system within the meaning of subsection 342.1(2) for the purpose of communicating with a person under the age of fourteen years.	Dans le cas où un contrevenant est déclaré coupable, ou absous en vertu de l'article 730 aux conditions prévues dans une ordonnance de probation, d'une infraction mentionnée au paragraphe (1.1) à l'égard d'une personne âgée de moins de seize ans, le tribunal qui lui inflige une peine ou ordonne son absolution, en plus de toute autre peine ou de toute autre condition de l'ordonnance d'absolution applicables en l'espèce, sous réserve des conditions ou exemptions qu'il indique, peut interdire au contrevenant : a) de se trouver dans un parc public ou une zone publique où l'on peut se baigner s'il y a des personnes âgées de moins de seize ans ou s'il est raisonnable de s'attendre à ce qu'il y en ait, une garderie, un terrain d'école, un terrain de jeu ou un centre communautaire; b) de chercher, d'accepter ou de garder un emploi — rémunéré ou non — ou un travail bénévole qui le placerait en relation de confiance ou d'autorité vis-à-vis de personnes âgées de moins de seize ans; *c*) d'utiliser un ordinateur au sens du paragraphe 342.1(2) dans le but de communiquer avec une personne âgée de moins de quatorze ans.

***Criminal Code*, R.S.C. 1985, c. C-46, s.161 as it read at the time of the sentencing (**S.C. 1993, c.45, s.1 for (a) and (b), S.C. 2012, c.1, s.16(1) for (c) and (d)).	
When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from (a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre; (b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years; (c) having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or (d) using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.	Dans le cas où un contrevenant est déclaré coupable, ou absous en vertu de l'article 730 aux conditions prévues dans une ordonnance de probation, d'une infraction mentionnée au paragraphe (1.1) à l'égard d'une personne âgée de moins de seize ans, le tribunal qui lui inflige une peine ou ordonne son absolution, en plus de toute autre peine ou de toute autre condition de l'ordonnance d'absolution applicables en l'espèce, sous réserve des conditions ou exemptions qu'il indique, peut interdire au contrevenant : a) de se trouver dans un parc public ou une zone publique où l'on peut se baigner s'il y a des personnes âgées de moins de seize ans ou s'il est raisonnable de s'attendre à ce qu'il y en ait, une garderie, un terrain d'école, un terrain de jeu ou un centre communautaire; b) de chercher, d'accepter ou de garder un emploi — rémunéré ou non — ou un travail bénévole qui le placerait en relation de confiance ou d'autorité vis-à-vis de personnes âgées de moins de seize ans; c) d'avoir des contacts — notamment communiquer par quelque moyen que ce soit — avec une personne âgée de moins de seize ans, à moins de le faire sous la supervision d'une personne que le tribunal estime convenir en l'occurrence; d) d'utiliser Internet ou tout autre réseau numérique, à moins de le faire en conformité avec les conditions imposées par le tribunal. Le tribunal doit dans tous les cas considérer l'opportunité de rendre une

	telle ordonnance.

Note: After sentencing, s.161(1) was amended again by S.C. 2014, c.21, in force September 19, 2014, by adding prohibition (a.1):

(a.1) being within two kilometers, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or any other place specified in the order;	*a.1*) de se trouver à moins de deux kilomètres — ou à moins de toute autre distance prévue dans l'ordonnance — de toute maison d'habitation où réside habituellement la victime identifiée dans l'ordonnance ou de tout autre lieu mentionné dans l'ordonnance;

***Criminal Code*, R.S.C. 1985, c. C-46, ss.718-718.2**	
718. Purpose The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives: (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct; (b) to deter the offender and other persons from committing offences; (c) to separate offenders from society, where necessary; (d) to assist in rehabilitating offenders; (e) to provide reparations for harm done to victims or to the community; and (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.	**718. Objectif** Le prononcé des peines a pour objectif essentiel de protéger la société et de contribuer, parallèlement à d'autres initiatives de prévention du crime, au respect de la loi et au maintien d'une société juste, paisible et sûre par l'infliction de sanctions justes visant un ou plusieurs des objectifs suivants : a) dénoncer le comportement illégal et le tort causé par celui-ci aux victimes ou à la collectivité; b) dissuader les délinquants, et quiconque, de commettre des infractions; c) isoler, au besoin, les délinquants du reste de la société; d) favoriser la réinsertion sociale des délinquants; e) assurer la réparation des torts causés aux victimes ou à la collectivité; f) susciter la conscience de leurs responsabilités chez les délinquants, notamment par la reconnaissance du tort qu'ils ont causé aux victimes ou à la collectivité.

718.01 Objectives — offences against children When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.	**718.01 Objectif — infraction perpétrée à l'égard des enfants** Le tribunal qui impose une peine pour une infraction qui constitue un mauvais traitement à l'égard d'une personne âgée de moins de dix-huit ans accorde une attention particulière aux objectifs de dénonciation et de dissuasion d'un tel comportement.
718.02 Objectives — offence against peace officer or other justice system participant When a court imposes a sentence for an offence under subsection 270(1), section 270.01 or 270.02 or paragraph 423.1(1)(b), the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.	**718.02 Objectifs — infraction à l'égard d'un agent de la paix ou autre personne associée au système judiciaire** Le tribunal qui impose une peine pour l'une des infractions prévues au paragraphe 270(1), aux articles 270.01 ou 270.02 ou à l'alinéa 423.1(1)b) accorde une attention particulière aux objectifs de dénonciation et de dissuasion de l'agissement à l'origine de l'infraction.
718.03 Objectives — offence against certain animals When a court imposes a sentence for an offence under subsection 445.01(1), the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.	**718.03 Objectifs — infraction à l'égard de certains animaux** Le tribunal qui impose une peine pour une infraction prévue au paragraphe 445.01(1) accorde une attention particulière aux objectifs de dénonciation et de dissuasion de l'agissement à l'origine de l'infraction.
718.1 Fundamental principle A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.	**718.1 Principe fondamental** La peine est proportionnelle à la gravité de l'infraction et au degré de responsabilité du délinquant.
718.2 Other sentencing principles A court that imposes a sentence shall also take into consideration the	**718.2 Principes de détermination de la peine** Le tribunal détermine la peine à infliger compte tenu également des principes suivants :

following principles: (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing, (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor, or (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner, (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years, (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim, (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation, (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, (v) evidence that the offence was a terrorism offence, or (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act;* shall be deemed to be aggravating	a) la peine devrait être adaptée aux circonstances aggravantes ou atténuantes liées à la perpétration de l'infraction ou à la situation du délinquant; sont notamment considérées comme des circonstances aggravantes des éléments de preuve établissant : (i) que l'infraction est motivée par des préjugés ou de la haine fondés sur des facteurs tels que la race, l'origine nationale ou ethnique, la langue, la couleur, la religion, le sexe, l'âge, la déficience mentale ou physique ou l'orientation sexuelle, (ii) que l'infraction perpétrée par le délinquant constitue un mauvais traitement de son époux ou conjoint de fait, (ii.1) que l'infraction perpétrée par le délinquant constitue un mauvais traitement à l'égard d'une personne âgée de moins de dix-huit ans, (iii) que l'infraction perpétrée par le délinquant constitue un abus de la confiance de la victime ou un abus d'autorité à son égard, (iii.1) que l'infraction a eu un effet important sur la victime en raison de son âge et de tout autre élément de sa situation personnelle, notamment sa santé et sa situation financière, (iv) que l'infraction a été commise au profit ou sous la direction d'une organisation criminelle, ou en association avec elle, (v) que l'infraction perpétrée par le délinquant est une infraction de terrorisme; (vi) que l'infraction a été perpétrée alors que le délinquant faisait l'objet d'une ordonnance de sursis rendue au titre de l'article 742.1 ou qu'il bénéficiait d'une libération conditionnelle ou d'office ou d'une permission de sortir sans escorte en vertu de la *Loi sur le*

circumstances; (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh; (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.	*système correctionnel et la mise en liberté sous condition*; 2015, ch. 23, art. 16 [Non en vigueur à la date de publication.] — b) l'harmonisation des peines, c'est-à-dire l'infliction de peines semblables à celles infligées à des délinquants pour des infractions semblables commises dans des circonstances semblables; c) l'obligation d'éviter l'excès de nature ou de durée dans l'infliction de peines consécutives; d) l'obligation, avant d'envisager la privation de liberté, d'examiner la possibilité de sanctions moins contraignantes lorsque les circonstances le justifient; e) l'examen, plus particulièrement en ce qui concerne les délinquants autochtones, de toutes les sanctions substitutives qui sont raisonnables dans les circonstances et qui tiennent compte du tort causé aux victimes ou à la collectivité.

***Criminal Code*, R.S.C. 1985, c. C-46, ss.730-731.**	
730(1) Conditional and absolute discharge Where an accused, other than an organization, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for fourteen years or for life, the court before which the accused appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions	**730(1) Absolutions inconditionnelles et sous conditions** Le tribunal devant lequel comparaît l'accusé, autre qu'une organisation, qui plaide coupable ou est reconnu coupable d'une infraction pour laquelle la loi ne prescrit pas de peine minimale ou qui n'est pas punissable d'un emprisonnement de quatorze ans ou de l'emprisonnement à perpétuité peut, s'il considère qu'il y va de l'intérêt véritable de l'accusé sans nuire à l'intérêt public, au lieu de le condamner, prescrire par ordonnance qu'il soit absous inconditionnellement ou aux conditions prévues dans

prescribed in a probation order made under subsection 731(2).	l'ordonnance rendue aux termes du paragraphe 731(2).
730(2) Period for which appearance notice, etc., continues in force	**730(2) Effet de la sommation, de la citation à comparaître, etc.**
Subject to Part XVI, where an accused who has not been taken into custody or who has been released from custody under or by virtue of any provision of Part XVI pleads guilty of or is found guilty of an offence but is not convicted, the appearance notice, promise to appear, summons, undertaking or recognizance issued to or given or entered into by the accused continues in force, subject to its terms, until a disposition in respect of the accused is made under subsection (1) unless, at the time the accused pleads guilty or is found guilty, the court, judge or justice orders that the accused be taken into custody pending such a disposition.	Sous réserve de la partie XVI, lorsque l'accusé qui n'a pas été mis sous garde ou qui a été mis en liberté aux termes ou en vertu de la partie XVI plaide coupable ou est reconnu coupable d'une infraction mais n'est pas condamné, la sommation ou citation à comparaître à lui délivrée, la promesse de comparaître ou promesse remise par lui ou l'engagement contracté par lui demeure en vigueur, sous réserve de ses dispositions, jusqu'à ce qu'une décision soit rendue à son égard en vertu du paragraphe (1) à moins que, au moment où il plaide coupable ou est reconnu coupable, le tribunal, le juge ou le juge de paix n'ordonne qu'il soit mis sous garde en attendant cette décision.
730(3) Effect of discharge	**730(3) Conséquence de l'absolution**
Where a court directs under subsection (1) that an offender be discharged of an offence, the offender shall be deemed not to have been convicted of the offence except that	Le délinquant qui est absous en conformité avec le paragraphe (1) est réputé ne pas avoir été condamné à l'égard de l'infraction; toutefois, les règles suivantes s'appliquent :
(a) the offender may appeal from the determination of guilt as if it were a conviction in respect of the offence;	a) le délinquant peut interjeter appel du verdict de culpabilité comme s'il s'agissait d'une condamnation à l'égard de l'infraction à laquelle se rapporte l'absolution;
(b) the Attorney General and, in the case of summary conviction proceedings, the informant or the informant's agent may appeal from the decision of the court not to convict the offender of the offence as if that decision were a judgment or verdict of acquittal of the offence or a dismissal of the information against the offender; and	b) le procureur général ou, dans le cas de poursuites sommaires, le dénonciateur ou son mandataire peut interjeter appel de la décision du tribunal de ne pas condamner le délinquant à l'égard de l'infraction à laquelle se rapporte l'absolution comme s'il s'agissait d'un jugement ou d'un verdict d'acquittement de l'infraction ou d'un rejet de l'accusation portée contre lui;
(c) the offender may plead autrefois convict in respect of any subsequent charge relating to the offence.	c) le délinquant peut plaider *autrefois*
730(4) Where person bound by probation order convicted of offence	
Where an offender who is bound by the	

conditions of a probation order made at a time when the offender was directed to be discharged under this section is convicted of an offence, including an offence under section 733.1, the court that made the probation order may, in addition to or in lieu of exercising its authority under subsection 732.2(5), at any time when it may take action under that subsection, revoke the discharge, convict the offender of the offence to which the discharge relates and impose any sentence that could have been imposed if the offender had been convicted at the time of discharge, and no appeal lies from a conviction under this subsection where an appeal was taken from the order directing that the offender be discharged.	*convict* relativement à toute inculpation subséquente relative à l'infraction. **730(4) Déclaration de culpabilité d'une personne soumise à une ordonnance de probation** Lorsque le délinquant soumis aux conditions d'une ordonnance de probation rendue à une époque où son absolution a été ordonnée en vertu du présent article est déclaré coupable d'une infraction, y compris une infraction visée à l'article 733.1, le tribunal qui a rendu l'ordonnance de probation peut, en plus ou au lieu d'exercer le pouvoir que lui confère le paragraphe 732.2(5), à tout moment où il peut prendre une mesure en vertu de ce paragraphe, annuler l'absolution, déclarer le délinquant coupable de l'infraction à laquelle se rapporte l'absolution et infliger toute peine qui aurait pu être infligée s'il avait été déclaré coupable au moment de son absolution; il ne peut être interjeté appel d'une déclaration de culpabilité prononcée en vertu du présent paragraphe lorsqu'il a été fait appel de l'ordonnance prescrivant que le délinquant soit absous.
731(1) Making of probation order Where a person is convicted of an offence, a court may, having regard to the age and character of the offender, the nature of the offence and the circumstances surrounding its commission, (a) if no minimum punishment is prescribed by law, suspend the passing of sentence and direct that the offender be released on the conditions prescribed in a probation order; or (b) in addition to fining or sentencing the offender to imprisonment for a term not exceeding two years, direct that the offender comply with the conditions prescribed in a probation order. **731(2) Idem** A court may also make a probation order where it discharges an accused	**731(1) Prononcé de l'ordonnance de probation** Lorsqu'une personne est déclarée coupable d'une infraction, le tribunal peut, vu l'âge et la réputation du délinquant, la nature de l'infraction et les circonstances dans lesquelles elle a été commise : a) dans le cas d'une infraction autre qu'une infraction pour laquelle une peine minimale est prévue par la loi, surseoir au prononcé de la peine et ordonner que le délinquant soit libéré selon les conditions prévues dans une ordonnance de probation;

under subsection 730(1).	b) en plus d'infliger une amende au délinquant ou de le condamner à un emprisonnement maximal de deux ans, ordonner que le délinquant se conforme aux conditions prévues dans une ordonnance de probation. **731(2) Cas d'absolution** Le tribunal peut aussi rendre une ordonnance de probation qui s'applique à l'accusé absous aux termes du paragraphe 730(

***Criminal Code*, R.S.C. 1985, c. C-46, s.732.1.**	
732.1(1) Definitions In this section and section 732.2, **"change"**, in relation to optional conditions, includes deletions and additions; **"optional conditions"** means the conditions referred to in subsection (3) or (3.1). **732.1(2) Compulsory conditions of probation order** The court shall prescribe, as conditions of a probation order, that the offender do all of the following: (a) keep the peace and be of good behaviour; (a.1) abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order, except in accordance with the conditions specified in the order that the court considers necessary, unless (i) the victim, witness or other person gives their consent or, if the victim, witness or other person is a minor, the parent or guardian, or any other person who has the lawful care or charge of them, gives their consent, or	**732.1(1) Définitions** Les définitions qui suivent s'appliquent au présent article et à l'article 732.2. **« conditions facultatives »** Les conditions prévues aux paragraphes (3) et (3.1). *(« optional conditions »)* **« modification »** Comprend, en ce qui concerne les conditions facultatives, les suppressions et les adjonctions. *(« change »)* **732.1(2) Conditions obligatoires** Le tribunal assortit l'ordonnance de probation des conditions suivantes, intimant au délinquant : a) de ne pas troubler l'ordre public et d'avoir une bonne conduite; a.1) de s'abstenir de communiquer, directement ou indirectement, avec toute personne — victime, témoin ou autre — identifiée dans l'ordonnance ou d'aller dans un lieu qui y est mentionné, si ce n'est en conformité avec les conditions qui y sont prévues et que le tribunal estime nécessaires, sauf dans l'un ou l'autre des cas suivants : (i) la personne visée y consent ou, si celle-ci est mineure, le père, la mère, un tuteur ou toute autre personne qui

(ii) the court decides that, because of exceptional circumstances, it is not appropriate to impose the condition; (b) appear before the court when required to do so by the court; and (c) notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation. **732.1(2.1) Consent** For the purposes of subparagraph (2)(a.1)(i), the consent is valid only if it is given in writing or in the manner specified in the order. **732.1(2.2) Reasons** If the court makes the decision described in subparagraph (2)(a.1)(ii), it shall state the reasons for the decision in the record. **732.1(3) Optional conditions of probation order** The court may prescribe, as additional conditions of a probation order, that the offender do one or more of the following: (a) report to a probation officer (i) within two working days, or such longer period as the court directs, after the making of the probation order, and (ii) thereafter, when required by the probation officer and in the manner directed by the probation officer; (b) remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the probation officer; (c) abstain from the consumption of drugs except in accordance with a medical prescription, of alcohol or of any other intoxicating substance; (c.1) provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation on the demand of a peace officer, a probation officer or someone	en a la garde ou la charge légale y consent, (ii) le tribunal conclut qu'il n'est pas indiqué, en raison de circonstances exceptionnelles, d'imposer cette condition; b) de répondre aux convocations du tribunal; c) de prévenir le tribunal ou l'agent de probation de ses changements d'adresse ou de nom et de les aviser rapidement de ses changements d'emploi ou d'occupation. **732.1(2.1) Consentement** Pour l'application du sous-alinéa (2)a.1)(i), le consentement n'est valide que s'il est donné par écrit ou de la manière prévue dans l'ordonnance. **732.1(2.2) Motifs** Si le tribunal en arrive à la conclusion visée au sous-alinéa (2)a.1)(ii), il en consigne les motifs au dossier de l'instance. **732.1(3) Conditions facultatives** Le tribunal peut assortir l'ordonnance de probation de l'une ou de plusieurs des conditions suivantes, intimant au délinquant : a) de se présenter à l'agent de probation : (i) dans les deux jours ouvrables suivant l'ordonnance, ou dans le délai plus long fixé par le tribunal, (ii) par la suite, selon les modalités de temps et de forme fixées par l'agent de probation; b) de rester dans le ressort du tribunal, sauf permission écrite d'en sortir donnée par le tribunal ou par l'agent de probation; c) de s'abstenir de consommer des drogues — sauf sur ordonnance médicale — , de l'alcool ou d'autres substances intoxicantes; c.1) de fournir à des fins d'analyse un échantillon d'une substance corporelle

designated under subsection (9) to make a demand, at the place and time and on the day specified by the person making the demand, if that person has reasonable grounds to believe that the offender has breached a condition of the order that requires them to abstain from the consumption of drugs, alcohol or any other intoxicating substance; (c.2) provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation at regular intervals that are specified by a probation officer in a notice in Form 51 served on the offender, if a condition of the order requires the offender to abstain from the consumption of drugs, alcohol or any other intoxicating substance; (d) abstain from owning, possessing or carrying a weapon; (e) provide for the support or care of dependants; (f) perform up to 240 hours of community service over a period not exceeding eighteen months; (g) if the offender agrees, and the subject to the program director's acceptance of the offender, participate actively in a treatment program approved by the province; (g.1) where the lieutenant governor in council of the province in which the probation order is made has established a program for curative treatment in relation to the consumption of alcohol or drugs, attend at a treatment facility, designated by the lieutenant governor in council of the province, for assessment and curative treatment in relation to the consumption by the offender of alcohol or drugs that is recommended pursuant to the program; (g.2) where the lieutenant governor in council of the province in which the	désignée par règlement, à la demande d'un agent de la paix, d'un agent de probation ou d'une personne désignée en vertu du paragraphe (9) pour faire la demande, aux date, heure et lieu précisés par l'agent ou la personne désignée, si celui-ci a des motifs raisonnables de croire que le délinquant a enfreint une condition de l'ordonnance lui intimant de s'abstenir de consommer des drogues, de l'alcool ou d'autres substances intoxicantes; c.2) de fournir à des fins d'analyse un échantillon d'une substance corporelle désignée par règlement, à intervalles réguliers précisés, par un agent de probation, dans un avis rédigé selon la formule 51 qui est signifié au délinquant, si l'ordonnance est assortie d'une condition lui intimant de s'abstenir de consommer des drogues, de l'alcool ou d'autres substances intoxicantes; d) de s'abstenir d'être propriétaire, possesseur ou porteur d'une arme; e) de prendre soin des personnes à sa charge et de subvenir à leurs besoins; f) d'accomplir au plus deux cent quarante heures de service communautaire au cours d'une période maximale de dix-huit mois; g) si le délinquant y consent et le directeur du programme l'accepte, de participer activement à un programme de traitement approuvé par la province; g.1) si le lieutenant-gouverneur en conseil de la province où doit être rendue l'ordonnance de probation a institué un programme de traitement curatif pour abus d'alcool ou de drogue, de subir, à l'établissement de traitement désigné par celui-ci, l'évaluation et la cure de désintoxication pour abus d'alcool ou de drogue qui sont recommandées dans le cadre de ce programme;

probation order is made has established a program governing the use of an alcohol ignition interlock device by an offender and if the offender agrees to participate in the program, comply with the program; and (h) comply with such other reasonable conditions as the court considers desirable, subject to any regulations made under subsection 738(2), for protecting society and for facilitating the offender's successful reintegration into the community. **732.1(3.1) Optional conditions — organization** The court may prescribe, as additional conditions of a probation order made in respect of an organization, that the offender do one or more of the following: (a) make restitution to a person for any loss or damage that they suffered as a result of the offence; (b) establish policies, standards and procedures to reduce the likelihood of the organization committing a subsequent offence; (c) communicate those policies, standards and procedures to its representatives; (d) report to the court on the implementation of those policies, standards and procedures; (e) identify the senior officer who is responsible for compliance with those policies, standards and procedures; (f) provide, in the manner specified by the court, the following information to the public, namely, (i) the offence of which the organization was convicted, (ii) the sentence imposed by the court, and (iii) any measures that the organization is taking — including any policies, standards and procedures established	g.2) si le lieutenant-gouverneur en conseil de la province où est rendue l'ordonnance de probation a institué un programme visant l'utilisation par le délinquant d'un antidémarreur avec éthylomètre et s'il accepte de participer au programme, de se conformer aux modalités du programme; h) d'observer telles autres conditions raisonnables que le tribunal considère souhaitables, sous réserve des règlements d'application du paragraphe 738(2), pour assurer la protection de la société et faciliter la réinsertion sociale du délinquant. **732.1(3.1) Conditions facultatives — organisations** Le tribunal peut assortir l'ordonnance de probation visant une organisation de l'une ou de plusieurs des conditions ci-après, intimant à celle-ci : a) de dédommager toute personne de la perte ou des dommages qu'elle a subis du fait de la perpétration de l'infraction; b) d'élaborer des normes, règles ou lignes directrices en vue de réduire la probabilité qu'elle commette d'autres infractions; c) de communiquer la teneur de ces normes, règles et lignes directrices à ses agents; d) de lui rendre compte de l'application de ces normes, règles et lignes directrices; e) de désigner celui de ses cadres supérieurs qui veillera à l'observation de ces normes, règles et lignes directrices; f) d'informer le public, selon les modalités qu'il précise, de la nature de l'infraction dont elle a été déclarée coupable, de la peine infligée et des mesures — notamment l'élaboration des normes, règles ou lignes directrices — prises pour réduire la

under paragraph (b) — to reduce the likelihood of it committing a subsequent offence; and (g) comply with any other reasonable conditions that the court considers desirable to prevent the organization from committing subsequent offences or to remedy the harm caused by the offence. **732.1(3.2) Consideration — organizations** Before making an order under paragraph (3.1)(b), a court shall consider whether it would be more appropriate for another regulatory body to supervise the development or implementation of the policies, standards and procedures referred to in that paragraph. **732.1(4) Form and period of order** A probation order may be in Form 46, and the court that makes the probation order shall specify therein the period for which it is to remain in force. **732.1(5) Obligations of court** The court that makes a probation order shall (a) cause a copy of the order to be given to the offender and, on request, to the victim; (b) explain the conditions of the order set under subsections (2) to (3.1) and the substance of section 733.1 to the offender; (c) cause an explanation to be given to the offender of the procedure for applying under subsection 732.2(3) for a change to the optional conditions and of the substance of subsections 732.2(3) and (5); and (d) take reasonable measures to ensure that the offender understands the order and the explanations. **732.1(6) For greater certainty** For greater certainty, a failure to comply with subsection (5) does not	probabilité qu'elle commette d'autres infractions;— g) d'observer telles autres conditions raisonnables qu'il estime indiquées pour empêcher l'organisation de commettre d'autres infractions ou réparer le dommage causé par l'infraction. **732.1(3.2) Organismes de réglementation** Avant d'imposer la condition visée à l'alinéa (3.1)b), le tribunal doit prendre en considération la question de savoir si un organisme administratif serait mieux à même de superviser l'élaboration et l'application des normes, règles et lignes directrices mentionnées à cet alinéa. **732.1(4) Forme et période de validité de l'ordonnance** L'ordonnance de probation peut être rédigée selon la formule 46 et le tribunal qui rend l'ordonnance y précise la durée de son application. **732.1(5) Obligations du tribunal** Le tribunal qui rend l'ordonnance de probation : a) en fait remettre une copie au délinquant et, sur demande, à la victime; b) lui explique les conditions imposées au titre des paragraphes (2) à (3.1) et le contenu de l'article 733.1; c) veille à ce que les modalités de présentation de la demande de modification des conditions facultatives prévue au paragraphe 732.2(3) et le contenu des paragraphes 732.2(3) et (5) lui soient expliqués; d) prend les mesures voulues pour s'assurer qu'il comprend l'ordonnance elle-même et les explications qui lui sont fournies. **732.1(6) Validité de l'ordonnance** Il est entendu que la non-observation du paragraphe (5) ne porte pas atteinte

affect the validity of the probation order. **732.1(7) Notice — samples at regular intervals** The notice referred to in paragraph (3)(c.2) must specify the places and times at which and the days on which the offender must provide samples of a bodily substance under a condition described in that paragraph. The first sample may not be taken earlier than 24 hours after the offender is served with the notice, and subsequent samples must be taken at regular intervals of at least seven days. **732.1(8) Designations and specifications** For the purposes of paragraphs (3)(c.1) and (c.2) and subject to the regulations, the Attorney General of a province or the minister of justice of a territory shall, with respect to the province or territory, (a) designate the persons or classes of persons that may take samples of bodily substances; (b) designate the places or classes of places at which the samples are to be taken; (c) specify the manner in which the samples are to be taken; (d) specify the manner in which the samples are to be analyzed; (e) specify the manner in which the samples are to be stored, handled and destroyed; (f) specify the manner in which the records of the results of the analysis of the samples are to be protected and destroyed; (g) designate the persons or classes of persons that may destroy the samples; and (h) designate the persons or classes of persons that may destroy the records of the results of the analysis of the	à la validité de l'ordonnance. **732.1(7) Avis : échantillons à intervalles réguliers** L'avis visé à l'alinéa (3)c.2) précise les dates, heures et lieux où le délinquant doit fournir les échantillons de substances corporelles au titre de la condition prévue à cet alinéa. Le premier échantillon ne peut être prélevé moins de vingt-quatre heures après la signification de l'avis et les échantillons subséquents sont prélevés à intervalles réguliers d'au moins sept jours. **732.1(8) Désignations et précisions** Pour l'application des alinéas (3)c.1) et c.2) et sous réserve des règlements, à l'égard d'une province ou d'un territoire donné, le procureur général de la province ou le ministre de la justice du territoire : a) désigne les personnes ou les catégories de personnes qui peuvent prélever des échantillons de substances corporelles; b) désigne les lieux ou les catégories de lieux de prélèvement des échantillons; c) précise les modalités de prélèvement des échantillons; d) précise les modalités d'analyse des échantillons; e) précise les modalités d'entreposage, de manipulation et de destruction des échantillons; f) précise les modalités de protection et de destruction de tout document faisant état des résultats de l'analyse des échantillons; g) désigne les personnes ou les catégories de personnes qui peuvent détruire des échantillons; h) désigne les personnes ou les catégories de personnes qui peuvent détruire des documents faisant état des résultats de l'analyse des échantillons.

samples. **732.1(9) Further designations** For the purpose of paragraph (3)(c.1) and subject to the regulations, the Attorney General of a province or the minister of justice of a territory may, with respect to the province or territory, designate persons or classes of persons to make a demand for a sample of a bodily substance. **732.1(10) Restriction** Samples of bodily substances referred to in paragraphs (3)(c.1) and (c.2) may not be taken, analyzed, stored, handled or destroyed, and the records of the results of the analysis of the samples may not be protected or destroyed, except in accordance with the designations and specifications made under subsection (8). **732.1(11) Destruction of samples** The Attorney General of a province or the minister of justice of a territory, or a person authorized by the Attorney General or minister, shall cause all samples of bodily substances provided under a probation order to be destroyed within the periods prescribed by regulation unless the samples are reasonably expected to be used as evidence in a proceeding for an offence under section 733.1. **732.1(12) Regulations** The Governor in Council may make regulations (a) prescribing bodily substances for the purposes of paragraphs (3)(c.1) and (c.2); (b) respecting the designations and specifications referred to in subsections (8) and (9); (c) prescribing the periods within which samples of bodily substances are to be destroyed under subsection (11); and (d) respecting any other matters relating to the samples of bodily	**732.1(9) Autres désignations** Pour l'application de l'alinéa (3)c.1) et sous réserve des règlements, à l'égard d'une province ou d'un territoire donné, le procureur général de la province ou le ministre de la justice du territoire peut désigner les personnes ou les catégories de personnes qui peuvent faire la demande d'échantillons de substances corporelles. **732.1(10) Restriction** Les échantillons de substances corporelles visés aux alinéas (3)c.1) et c.2) ne peuvent être prélevés, analysés, entreposés, manipulés ou détruits qu'en conformité avec les désignations et les précisions faites au titre du paragraphe (8). De même, les documents faisant état des résultats de l'analyse des échantillons ne peuvent être protégés ou détruits qu'en conformité avec les désignations et les précisions faites au titre de ce paragraphe. **732.1(11) Destruction des échantillons** Le procureur général d'une province ou le ministre de la justice d'un territoire, ou la personne autorisée par l'un ou l'autre, fait détruire, dans les délais prévus par règlement, les échantillons de substances corporelles fournis en application d'une ordonnance de probation, sauf s'il est raisonnable de s'attendre à ce qu'ils soient utilisés en preuve lors de poursuites intentées à l'égard de l'infraction prévue à l'article 733.1. **732.1(12) Règlements** Le gouverneur en conseil peut, par règlement : a) désigner des substances corporelles pour l'application des alinéas (3)c.1) et c.2); b) régir les désignations et les précisions visées aux paragraphes (8)

substances.	ou (9); c) prévoir les délais de destruction des échantillons de substances corporelles pour l'application du paragraphe (11); d) régir toute question relative aux échantillons de substances corporelles.

***Criminal Code*, R.S.C. 1985, c. C-46, s.753.1.**	
753.1(1) Application for finding that an offender is a long-term offender The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted; (b) there is a substantial risk that the offender will reoffend; and (c) there is a reasonable possibility of eventual control of the risk in the community. **753.1(2) Substantial risk** The court shall be satisfied that there is a substantial risk that the offender will reoffend if (a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 163.1(2) (making child pornography), 163.1(3) (distribution, etc., of child pornography), 163.1(4) (possession of child pornography) or 163.1(4.1) (accessing child pornography), section 170 (parent or guardian procuring sexual activity), 171 (householder permitting sexual activity), 171.1 (making sexually explicit material available to child), 172.1 (luring a child) or 172.2 (agreement or arrangement — sexual offence against	**753.1(1) Demande de déclaration — délinquant à contrôler** Sur demande faite, en vertu de la présente partie, postérieurement au dépôt du rapport d'évaluation visé au paragraphe 752.1(2), le tribunal peut déclarer que le délinquant est un délinquant à contrôler, s'il est convaincu que les conditions suivantes sont réunies : a) il y a lieu d'imposer au délinquant une peine minimale d'emprisonnement de deux ans pour l'infraction dont il a été déclaré coupable; b) celui-ci présente un risque élevé de récidive; c) il existe une possibilité réelle que ce risque puisse être maîtrisé au sein de la collectivité. **753.1(2) Risque élevé de récidive** Le tribunal est convaincu que le délinquant présente un risque élevé de récidive si : a) d'une part, celui-ci a été déclaré coupable d'une infraction visée aux articles 151 (contacts sexuels), 152 (incitation à des contacts sexuels) ou 153 (exploitation sexuelle), aux paragraphes 163.1(2) (production de pornographie juvénile), 163.1(3) (distribution de pornographie juvénile), 163.1(4) (possession de pornographie juvénile) ou 163.1(4.1) (accès à la pornographie juvénile), aux articles 170 (père, mère ou tuteur qui sert d'entremetteur), 171 (maître de maison

child), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon) 273 (aggravated sexual assault) or 279.011 (trafficking — person under 18 years) or subsection 279.02(2) (material benefit — trafficking of person under 18 years), 279.03(2) (withholding or destroying documents — trafficking of person under 18 years), 286.1(2) (obtaining sexual services for consideration from person under 18 years), 286.2(2) (material benefit from sexual services provided by person under 18 years) or 286.3(2) (procuring — person under 18 years), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and (b) the offender (i) has shown a pattern of repetitive behaviour, of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or (ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offence. **753.1(3) Sentence for long-term offender** If the court finds an offender to be a long-term offender, it shall (a) impose a sentence for the offence for which the offender has been convicted, which must be a minimum punishment of imprisonment for a term of two years; and (b) order that the offender be subject to	qui permet des actes sexuels interdits), 171.1 (rendre accessible à un enfant du matériel sexuellement explicite), 172.1 (leurre) ou 172.2 (entente ou arrangement — infraction d'ordre sexuel à l'égard d'un enfant), au paragraphe 173(2) (exhibitionnisme), aux articles 271 (agression sexuelle), 272 (agression sexuelle armée), 273 (agression sexuelle grave) ou 279.011 (traite de personnes âgées de moins de dix-huit ans), aux paragraphes 279.02(2) (avantage matériel — traite de personnes âgées de moins de dix-huit ans), 279.03(2) (rétention ou destruction de documents — traite de personnes âgées de moins de dix-huit ans), 286.1(2) (obtention de services sexuels moyennant rétribution — personne âgée de moins de dix-huit ans), 286.2(2) (avantage matériel provenant de la prestation de services sexuels d'une personne âgée de moins de dix-huit ans) ou 286.3(2) (proxénétisme — personne âgée de moins de dix-huit ans) ou a commis un acte grave de nature sexuelle lors de la perpétration d'une autre infraction dont il a été déclaré coupable; b) d'autre part : (i) soit le délinquant a accompli des actes répétitifs, notamment celui qui est à l'origine de l'infraction dont il a été déclaré coupable, qui permettent de croire qu'il causera vraisemblablement la mort de quelque autre personne ou causera des sévices ou des dommages psychologiques graves à d'autres personnes, (ii) soit sa conduite antérieure dans le domaine sexuel, y compris lors de la perpétration de l'infraction dont il a été déclaré coupable, laisse prévoir que vraisemblablement il causera à l'avenir de ce fait des sévices ou autres maux à d'autres personnes.

long-term supervision for a period that does not exceed 10 years. **753.1(3.1) Exception-if application made after sentencing** The court may not impose a sentence under paragraph (3)(*a*) and the sentence that was imposed for the offence for which the offender was convicted stands despite the offender's being found to be a long-term offender, if the application was one that (a) was made after the offender begins to serve the sentence in a case to which paragraphs 753(2)(*a*) and (*b*) apply; and (b) was treated as an application under this section further to the court deciding to do so under paragraph 753(5)(*a*). **753.1(4)** [Repealed 2008, c. 6, s. 44(2).] **753.1(5)** [Repealed 2008, c. 6, s. 44(2).] **753.1(6) If offender not found to be long-term offender** If the court does not find an offender to be a long-term offender, the court shall impose sentence for the offence for which the offender has been convicted.	**753.1(3) Délinquant déclaré délinquant à contrôler** S'il déclare que le délinquant est un délinquant à contrôler, le tribunal lui inflige une peine minimale d'emprisonnement de deux ans pour l'infraction dont il a été déclaré coupable et ordonne qu'il soit soumis, pour une période maximale de dix ans, à une surveillance de longue durée.— **753.1(3.1) Exception — demande présentée après l'imposition de la peine** Le tribunal ne peut toutefois imposer la peine visée au paragraphe (3) au délinquant qu'il déclare délinquant à contrôler — et la peine qui a été imposée à celui-ci pour l'infraction dont il a été déclaré coupable demeure — si la demande a été : a) d'une part, présentée après que le délinquant a commencé à purger sa peine dans les cas où les conditions visées aux alinéas 753(2)a) et b) sont réunies; b) d'autre part, considérée comme demande présentée en vertu du présent article à la suite de la décision du tribunal de la considérer comme telle au titre de l'alinéa 753(5)a). **753.1(4)** [Abrogé, 2008, ch. 6, art. 44(2).] **753.1(5)** [Abrogé, 2008, ch. 6, art. 44(2).] **753.1(6) Délinquant non déclaré délinquant à contrôler** S'il ne déclare pas que le délinquant est un délinquant à contrôler, le tribunal lui impose une peine pour l'infraction dont il a été déclaré coupable.

***Criminal Code*, R.S.C. 1985, c. C-46, s.810.**	
810(1) If injury or damage feared An information may be laid before a	**810(1) Crainte de blessures, de dommages ou de commission de**

justice by or on behalf of any person who fears on reasonable grounds that another person (a) will cause personal injury to him or her or to his or her spouse or common-law partner or child or will damage his or her property; or (b) will commit an offence under section 162.1. **810(2) Duty of justice** A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division. **810(3) Adjudication** If the justice or summary conviction court before which the parties appear is satisfied by the evidence adduced that the person on whose behalf the information was laid has reasonable grounds for the fear, the justice or court may order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for a period of not more than 12 months. **810(3.01) Refusal to enter into recognizance** The justice or summary conviction court may commit the defendant to prison for a term of not more than 12 months if the defendant fails or refuses to enter into the recognizance. **810(3.02) Conditions in recognizance** The justice or summary conviction court may add any reasonable conditions to the recognizance that the justice or court considers desirable to secure the good conduct of the defendant, including conditions that require the defendant (a) to abstain from the consumption of drugs except in accordance with a	**l'infraction visée à l'article 162.1** Peut déposer une dénonciation devant un juge de paix ou la faire déposer par une autre personne, la personne qui craint, pour des motifs raisonnables, qu'une autre personne : a) soit ne lui cause ou cause à son époux ou conjoint de fait ou à son enfant des lésions personnelles ou n'endommage sa propriété; b) soit ne commette l'infraction visée à l'article 162.1. **810(2) Devoir du juge de paix** Un juge de paix qui reçoit une dénonciation prévue au paragraphe (1) fait comparaître les parties devant lui ou devant une cour des poursuites sommaires ayant juridiction dans la même circonscription territoriale. **810(3) Décision** La cour des poursuites sommaires ou le juge de paix devant lequel les parties comparaissent peut, s'il est convaincu par la preuve apportée que les craintes de la personne pour qui la dénonciation est déposée sont fondées sur des motifs raisonnables, ordonner que le défendeur contracte l'engagement, avec ou sans caution, de ne pas troubler l'ordre public et d'avoir une bonne conduite pour une période maximale de douze mois. **810(3.01) Refus de contracter l'engagement** La cour des poursuites sommaires ou le juge de paix peut infliger au défendeur qui omet ou refuse de contracter l'engagement une peine de prison maximale de douze mois. **810(3.02) Conditions de l'engagement** La cour des poursuites sommaires ou le juge de paix peut assortir l'engagement des conditions raisonnables qu'il estime souhaitables pour garantir la bonne conduite du

medical prescription, of alcohol or of any other intoxicating substance; (b) to provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation on the demand of a peace officer, a probation officer or someone designated under paragraph 810.3(2)(a) to make a demand, at the place and time and on the day specified by the person making the demand, if that person has reasonable grounds to believe that the defendant has breached a condition of the recognizance that requires them to abstain from the consumption of drugs, alcohol or any other intoxicating substance; or (c) to provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation at regular intervals that are specified, in a notice in Form 51 served on the defendant, by a probation officer or a person designated under paragraph 810.3(2)(b) to specify them, if a condition of the recognizance requires the defendant to abstain from the consumption of drugs, alcohol or any other intoxicating substance. **810(3.1) Conditions** Before making an order under subsection (3), the justice or the summary conviction court shall consider whether it is desirable, in the interests of the safety of the defendant or any other person, to include as a condition of the recognizance that the defendant be prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, for any period specified in the recognizance and, where the justice or summary	défendeur, notamment celles lui intimant : a) de s'abstenir de consommer des drogues — sauf sur ordonnance médicale — , de l'alcool ou d'autres substances intoxicantes; b) de fournir à des fins d'analyse un échantillon d'une substance corporelle désignée par règlement, à la demande d'un agent de la paix, d'un agent de probation ou d'une personne désignée en vertu de l'alinéa 810.3(2)a) pour faire la demande, aux date, heure et lieu précisés par l'agent ou la personne désignée, si celui-ci a des motifs raisonnables de croire que le défendeur a enfreint une condition de l'engagement lui intimant de s'abstenir de consommer des drogues, de l'alcool ou d'autres substances intoxicantes; c) de fournir à des fins d'analyse un échantillon d'une substance corporelle désignée par règlement, à intervalles réguliers précisés, dans un avis rédigé selon la formule 51 qui est signifié au défendeur, par un agent de probation ou par une personne désignée en vertu de l'alinéa 810.3(2)b) pour préciser ceux-ci, si l'engagement est assorti d'une condition lui intimant de s'abstenir de consommer des drogues, de l'alcool ou d'autres substances intoxicantes. **810(3.1) Condition** Le juge de paix ou la cour des poursuites sommaires qui, en vertu du paragraphe (3), rend une ordonnance doit, s'il en arrive à la conclusion qu'il est souhaitable pour la sécurité du défendeur, ou pour celle d'autrui, de lui interdire d'avoir en sa possession des armes à feu, arbalètes, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions, munitions prohibées et substances explosives, ou l'un ou

conviction court decides that it is so desirable, the justice or summary conviction court shall add such a condition to the recognizance. **810(3.11) Surrender, etc.** Where the justice or summary conviction court adds a condition described in subsection (3.1) to a recognizance order, the justice or summary conviction court shall specify in the order the manner and method by which (a) the things referred to in that subsection that are in the possession of the accused shall be surrendered, disposed of, detained, stored or dealt with; and (b) the authorizations, licences and registration certificates held by the person shall be surrendered. **810(3.12) Reasons** Where the justice or summary conviction court does not add a condition described in subsection (3.1) to a recognizance order, the justice or summary conviction court shall include in the record a statement of the reasons for not adding the condition. **810(3.2) Idem** Before making an order under subsection (3), the justice or the summary conviction court shall consider whether it is desirable, in the interests of the safety of the informant, of the person on whose behalf the information was laid or of that person's spouse or common-law partner or child, as the case may be, to add either or both of the following conditions to the recognizance, namely, a condition (a) prohibiting the defendant from being at, or within a distance specified in the recognizance from, a place specified in the recognizance where the person on whose behalf the information was laid or that person's spouse or common-law	plusieurs de ces objets, ordonner que celui-ci contracte l'engagement de n'avoir aucun des objets visés en sa possession pour la période indiquée dans l'engagement. **810(3.11) Remise** Le cas échéant, l'ordonnance prévoit la façon de remettre, de détenir ou d'entreposer les objets visés au paragraphe (3.1) qui sont en la possession du défendeur, ou d'en disposer, et de remettre les autorisations, permis et certificats d'enregistrement dont celui-ci est titulaire. **810(3.12) Motifs** Le juge de paix ou la cour des poursuites sommaires qui n'assortit pas l'ordonnance rendue en application du paragraphe (2) de la condition prévue au paragraphe (3.1) est tenu de donner ses motifs, qui sont consignés au dossier de l'instance. **810(3.2) Conditions suplémentaires** Le juge de paix ou la cour des poursuites sommaires qui, en vertu du paragraphe (3), rend une ordonnance doit considérer s'il est souhaitable pour la sécurité du dénonciateur, de la personne pour qui elle dépose la dénonciation, de l'époux ou conjoint de fait de celle-ci ou de son enfant d'ajouter dans l'engagement l'une ou l'autre des conditions suivantes, ou les deux : a) interdiction de se trouver aux lieux, ou dans un certain rayon de ceux-ci, spécifiés dans l'engagement, où se trouve régulièrement la personne pour qui la dénonciation a été déposée, son conjoint ou son enfant; b) interdiction de communiquer directement ou indirectement avec la personne pour qui la dénonciation a été déposée, avec son époux ou conjoint de fait ou avec son enfant.

partner or child, as the case may be, is regularly found; and (b) prohibiting the defendant from communicating, in whole or in part, directly or indirectly, with the person on whose behalf the information was laid or that person's spouse or common-law partner or child, as the case may be. **810(4) Forms** A recognizance and a committal to prison in default of recognizance may be in Forms 32 and 23, respectively. **810(4.1) Modification of recognizance** The justice or the summary conviction court may, on application of the informant or the defendant, vary the conditions fixed in the recognizance. **810(5) Procedure** The provisions of this Part apply, with such modifications as the circumstances require, to proceedings under this section.	**810(4) Formules** L'engagement et le mandat d'incarcération à défaut d'engagement peuvent être rédigés selon les formules 32 et 23, respectivement. **810(4.1) Modification de l'engagement** Le juge de paix ou la cour des poursuites sommaires peut, sur demande du dénonciateur ou du défendeur, modifier les conditions fixées dans l'engagement. **810(5) Procédure** La présente partie s'applique, compte tenu des adaptations de circonstance, aux procédures relevant du présent article.

***Criminal Code*, R.S.C. 1985, c. C-46, s.810.1.**	
810.1(1) Where fear of sexual offence Any person who fears on reasonable grounds that another person will commit an offence under section 151 or 152, subsection 153(1), section 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1 or 172.2, subsection 173(2), section 271, 272, 273 or 279.011, subsection 279.02(2) or 279.03(2), section 280 or 281 or subsection 286.1(2), 286.2(2) or 286.3(2), in respect of one or more persons who are under the age of 16 years, may lay an information before a provincial court judge, whether or not the person or persons in respect of whom it is feared that the offence will be committed are named. **810.1(2) Appearances**	**810.1(1) Crainte d'une infraction d'ordre sexuel** Quiconque a des motifs raisonnables de craindre que des personnes âgées de moins de seize ans seront victimes d'une infraction visée aux articles 151 ou 152, au paragraphe 153(1), aux articles 155 ou 159, aux paragraphes 160(2) ou (3), aux articles 163.1, 170, 171, 171.1, 172.1 ou 172.2, au paragraphe 173(2) ou aux articles 271, 272, 273 ou 279.011, aux paragraphes 279.02(2) ou 279.03(2), aux articles 280 ou 281 ou aux paragraphes 286.1(2), 286.2(2) ou 286.3(2) peut déposer une dénonciation devant un juge d'une cour provinciale, même si les personnes en question n'y sont pas nommées. **810.1(2) Comparution des parties**

A provincial court judge who receives an information under subsection (1) may cause the parties to appear before a provincial court judge. **810.1(3) Adjudication** If the provincial court judge before whom the parties appear is satisfied by the evidence adduced that the informant has reasonable grounds for the fear, the judge may order that the defendant enter into a recognizance to keep the peace and be of good behaviour for a period that does not exceed 12 months. **810.1(3.01) Duration extended** However, if the provincial court judge is also satisfied that the defendant was convicted previously of a sexual offence in respect of a person who is under the age of 16 years, the judge may order that the defendant enter into the recognizance for a period that does not exceed two years. **810.1(3.02) Conditions in recognizance** The provincial court judge may add any reasonable conditions to the recognizance that the judge considers desirable to secure the good conduct of the defendant, including conditions that (a) prohibit the defendant from having any contact — including communicating by any means — with a person under the age of 16 years, unless the defendant does so under the supervision of a person whom the judge considers appropriate; (a.1) prohibit the defendant from using the Internet or other digital network, unless the defendant does so in accordance with conditions set by the judge; (b) prohibit the defendant from attending a public park or public swimming area where persons under the age of 16 years are present or can	Le juge qui reçoit la dénonciation peut faire comparaître les parties devant un juge de la cour provinciale. **810.1(3) Décision** Le juge devant lequel les parties comparaissent peut, s'il est convaincu par la preuve apportée que les craintes du dénonciateur sont fondées sur des motifs raisonnables, ordonner que le défendeur contracte l'engagement de ne pas troubler l'ordre public et d'avoir une bonne conduite pour une période maximale de douze mois. **810.1(3.01) Prolongation** Toutefois, s'il est convaincu en outre que le défendeur a déjà été reconnu coupable d'une infraction d'ordre sexuel à l'égard d'une personne âgée de moins de seize ans, le juge peut lui ordonner de contracter l'engagement pour une période maximale de deux ans. **810.1(3.02) Conditions de l'engagement** Le juge peut assortir l'engagement des conditions raisonnables qu'il estime souhaitables pour garantir la bonne conduite du défendeur, notamment celles lui intimant : a) de ne pas avoir de contacts — notamment communiquer par quelque moyen que ce soit — avec des personnes âgées de moins de seize ans, à moins de le faire sous la supervision d'une personne que le juge estime convenir en l'occurrence; a.1) de ne pas utiliser Internet ou tout autre réseau numérique, à moins de le faire en conformité avec les conditions imposées par le juge; b) ne pas se trouver dans un parc public ou une zone publique où l'on peut se baigner, s'il s'y trouve des personnes âgées de moins de seize ans ou s'il est raisonnable de s'attendre à ce qu'il s'y en trouve, ou dans une

reasonably be expected to be present, or a daycare centre, schoolground or playground; (b.1) prohibit the defendant from communicating, directly or indirectly, with any person identified in the recognizance, or refrain from going to any place specified in the recognizance, except in accordance with the conditions specified in the recognizance that the judge considers necessary; (c) require the defendant to participate in a treatment program; (d) require the defendant to wear an electronic monitoring device, if the Attorney General makes the request; (e) require the defendant to remain within a specified geographic area unless written permission to leave that area is obtained from the provincial court judge; (f) require the defendant to return to and remain at his or her place of residence at specified times; (g) require the defendant to abstain from the consumption of drugs except in accordance with a medical prescription, of alcohol or of any other intoxicating substance; (h) require the defendant to provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation on the demand of a peace officer, a probation officer or someone designated under paragraph 810.3(2)(a) to make a demand, at the place and time and on the day specified by the person making the demand, if that person has reasonable grounds to believe that the defendant has breached a condition of the recognizance that requires them to abstain from the consumption of drugs, alcohol or any other intoxicating substance; or	garderie, une cour d'école ou un terrain de jeu; b.1) de s'abstenir de communiquer, directement ou indirectement, avec toute personne identifiée dans l'engagement ou d'aller dans un lieu qui y est mentionné, si ce n'est en conformité avec les conditions qui y sont prévues et que le juge estime nécessaires; c) de participer à un programme de traitement; d) de porter un dispositif de surveillance à distance, si le procureur général demande l'ajout de cette condition; e) de rester dans une région désignée, sauf permission écrite donnée par le juge; f) de regagner sa résidence et d'y rester aux moments précisés dans l'engagement; g) de s'abstenir de consommer des drogues — sauf sur ordonnance médicale — , de l'alcool ou d'autres substances intoxicantes. h) de fournir à des fins d'analyse un échantillon d'une substance corporelle désignée par règlement, à la demande d'un agent de la paix, d'un agent de probation ou d'une personne désignée en vertu de l'alinéa 810.3(2)a) pour faire la demande, aux date, heure et lieu précisés par l'agent ou la personne désignée, si celui-ci a des motifs raisonnables de croire que le défendeur a enfreint une condition de l'engagement lui intimant de s'abstenir de consommer des drogues, de l'alcool ou d'autres substances intoxicantes; i) de fournir à des fins d'analyse un échantillon d'une substance corporelle désignée par règlement, à intervalles réguliers précisés, dans un avis rédigé selon la formule 51 qui est signifié au défendeur, par un agent de probation

(i) require the defendant to provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation at regular intervals that are specified, in a notice in Form 51 served on the defendant, by a probation officer or a person designated under paragraph 810.3(2)(b) to specify them, if a condition of the recognizance requires the defendant to abstain from the consumption of drugs, alcohol or any other intoxicating substance.	ou par une personne désignée en vertu de l'alinéa 810.3(2)b) pour préciser ceux-ci, si l'engagement est assorti d'une condition lui intimant de s'abstenir de consommer des drogues, de l'alcool ou d'autres substances intoxicantes.
810.1(3.03) Conditions — firearms The provincial court judge shall consider whether it is desirable, in the interests of the defendant's safety or that of any other person, to prohibit the defendant from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all of those things. If the judge decides that it is desirable to do so, the judge shall add that condition to the recognizance and specify the period during which the condition applies.	**810.1(3.03) Conditions — armes à feu** Le juge doit décider s'il est souhaitable pour la sécurité du défendeur, ou pour celle d'autrui, de lui interdire d'avoir en sa possession des armes à feu, arbalètes, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions, munitions prohibées et substances explosives, ou l'un ou plusieurs de ces objets, et, dans l'affirmative, il doit assortir l'engagement d'une condition à cet effet et y prévoir la période d'application de celle-ci.
810.1(3.04) Surrender, etc. If the provincial court judge adds a condition described in subsection (3.03) to a recognizance, the judge shall specify in the recognizance how the things referred to in that subsection that are in the defendant's possession should be surrendered, disposed of, detained, stored or dealt with and how the authorizations, licences and registration certificates that are held by the defendant should be surrendered.	**810.1(3.04) Remise** Le cas échéant, l'engagement prévoit la façon de remettre, de détenir ou d'entreposer les objets visés au paragraphe (3.03) qui sont en la possession du défendeur, ou d'en disposer, et de remettre les autorisations, permis et certificats d'enregistrement dont celui-ci est titulaire.
810.1(3.05) Condition — reporting The provincial court judge shall consider whether it is desirable to require the defendant to report to the correctional authority of a province or to an appropriate police authority. If the judge decides that it is desirable to do	**810.1(3.05) Condition — présentation devant une autorité** Le juge doit décider s'il est souhaitable que le défendeur se présente devant les autorités correctionnelles de la province ou les autorités policières compétentes et, dans l'affirmative, il doit assortir l'engagement d'une condition à cet effet.
	810.1(3.1) Refus de contracter un engagement Le juge de la cour provinciale peut infliger au défendeur qui omet ou refuse de contracter l'engagement une

so, the judge shall add that condition to the recognizance. **810.1(3.1) Refusal to enter into recognizance** The provincial court judge may commit the defendant to prison for a term not exceeding twelve months if the defendant fails or refuses to enter into the recognizance. **810.1(4) Judge may vary recognizance** A provincial court judge may, on application of the informant or the defendant, vary the conditions fixed in the recognizance. **810.1(5) Other provisions to apply** Subsections 810(4) and (5) apply, with such modifications as the circumstances require, to recognizances made under this section.	peine de prison maximale de douze mois. **810.1(4) Modification des conditions** Tout juge de la cour provinciale peut, sur demande du dénonciateur ou du défendeur, modifier les conditions fixées dans l'engagement. **810.1(5) Autres dispositions applicables** Les paragraphes 810(4) et (5) s'appliquent, avec les adaptations nécessaires, aux engagements contractés en vertu du présent article.

***Criminal Code*, R.S.C. 1985, c. C-46, s.810.2.**	
810.2(1) Where fear of serious personal injury offence Any person who fears on reasonable grounds that another person will commit a serious personal injury offence, as that expression is defined in section 752, may, with the consent of the Attorney General, lay an information before a provincial court judge, whether or not the person or persons in respect of whom it is feared that the offence will be committed are named. **810.2(2) Appearances** A provincial court judge who receives an information under subsection (1) may cause the parties to appear before a provincial court judge. **810.2(3) Adjudication** If the provincial court judge before whom the parties appear is satisfied by	**810.2(1) En cas de crainte de sévices graves à la personne** Quiconque a des motifs raisonnables de craindre que des personnes seront victimes de sévices graves à la personne au sens de l'article 752 peut, avec le consentement du procureur général, déposer une dénonciation devant un juge d'une cour provinciale, même si les personnes en question n'y sont pas nommées. **810.2(2) Comparution des parties** Le juge qui reçoit la dénonciation peut faire comparaître les parties devant un juge de la cour provinciale. **810.2(3) Décision** Le juge devant lequel les parties comparaissent peut, s'il est convaincu par la preuve apportée que les craintes du dénonciateur sont fondées sur des motifs raisonnables, ordonner que le

the evidence adduced that the informant has reasonable grounds for the fear, the judge may order that the defendant enter into a recognizance to keep the peace and be of good behaviour for a period that does not exceed 12 months. **810.2(3.1) Duration extended** However, if the provincial court judge is also satisfied that the defendant was convicted previously of an offence referred to in subsection (1), the judge may order that the defendant enter into the recognizance for a period that does not exceed two years. **810.2(4) Refusal to enter into recognizance** The provincial court judge may commit the defendant to prison for a term not exceeding twelve months if the defendant fails or refuses to enter into the recognizance. **810.2(4.1) Conditions in recognizance** The provincial court judge may add any reasonable conditions to the recognizance that the judge considers desirable to secure the good conduct of the defendant, including conditions that require the defendant (a) to participate in a treatment program; (b) to wear an electronic monitoring device, if the Attorney General makes the request; (c) to remain within a specified geographic area unless written permission to leave that area is obtained from the provincial court judge; (d) to return to and remain at his or her place of residence at specified times; (e) to abstain from the consumption of drugs except in accordance with a medical prescription, of alcohol or of any other intoxicating substance;	défendeur contracte l'engagement de ne pas troubler l'ordre public et d'avoir une bonne conduite pour une période maximale de douze mois. **810.2(3.1) Prolongation** Toutefois, s'il est convaincu en outre que le défendeur a déjà été reconnu coupable d'une infraction visée au paragraphe (1), le juge peut lui ordonner de contracter l'engagement pour une période maximale de deux ans. **810.2(4) Refus de contracter un engagement** Le juge peut infliger au défendeur qui omet ou refuse de contracter l'engagement une peine de prison maximale de douze mois. **810.2(4.1) Conditions de l'engagement** Le juge peut assortir l'engagement des conditions raisonnables qu'il estime souhaitables pour garantir la bonne conduite du défendeur, notamment celles lui intimant : a) de participer à un programme de traitement; b) de porter un dispositif de surveillance à distance, si le procureur général demande l'ajout de cette condition; c) de rester dans une région désignée, sauf permission écrite donnée par le juge; d) de regagner sa résidence et d'y rester aux moments précisés dans l'engagement; e) de s'abstenir de consommer des drogues — sauf sur ordonnance médicale — , de l'alcool ou d'autres substances intoxicantes. f) de fournir à des fins d'analyse un échantillon d'une substance corporelle désignée par règlement, à la demande d'un agent de la paix, d'un agent de probation ou d'une personne désignée

(f) to provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation on the demand of a peace officer, a probation officer or someone designated under paragraph 810.3(2)(a) to make a demand, at the place and time and on the day specified by the person making the demand, if that person has reasonable grounds to believe that the defendant has breached a condition of the recognizance that requires them to abstain from the consumption of drugs, alcohol or any other intoxicating substance; or (g) to provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation at regular intervals that are specified, in a notice in Form 51 served on the defendant, by a probation officer or a person designated under paragraph 810.3(2)(b) to specify them, if a condition of the recognizance requires the defendant to abstain from the consumption of drugs, alcohol or any other intoxicating substance. **810.2(5) Conditions — firearms** The provincial court judge shall consider whether it is desirable, in the interests of the defendant's safety or that of any other person, to prohibit the defendant from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all of those things. If the judge decides that it is desirable to do so, the judge shall add that condition to the recognizance and specify the period during which the condition applies. **810.2(5.1) Surrender, etc.** If the provincial court judge adds a condition described in subsection (5) to	en vertu de l'alinéa 810.3(2)a) pour faire la demande, aux date, heure et lieu précisés par l'agent ou la personne désignée, si celui-ci a des motifs raisonnables de croire que le défendeur a enfreint une condition de l'engagement lui intimant de s'abstenir de consommer des drogues, de l'alcool ou d'autres substances intoxicantes; g) de fournir à des fins d'analyse un échantillon d'une substance corporelle désignée par règlement, à intervalles réguliers précisés, dans un avis rédigé selon la formule 51 qui est signifié au défendeur, par un agent de probation ou par une personne désignée en vertu de l'alinéa 810.3(2)b) pour préciser ceux-ci, si l'engagement est assorti d'une condition lui intimant de s'abstenir de consommer des drogues, de l'alcool ou d'autres substances intoxicantes. **810.2(5) Conditions — armes à feu** Le juge doit décider s'il est souhaitable pour la sécurité du défendeur, ou pour celle d'autrui, de lui interdire d'avoir en sa possession des armes à feu, arbalètes, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions, munitions prohibées et substances explosives, ou l'un ou plusieurs de ces objets, et, dans l'affirmative, il doit assortir l'engagement d'une condition à cet effet et y prévoir la période d'application de celle-ci. **810.2(5.1) Remise** Le cas échéant, l'engagement prévoit la façon de remettre, de détenir ou d'entreposer les objets visés au paragraphe (5) qui sont en la possession du défendeur, ou d'en disposer, et de remettre les autorisations, permis et certificats d'enregistrement dont celui-ci est titulaire.

a recognizance, the judge shall specify in the recognizance how the things referred to in that subsection that are in the defendant's possession should be surrendered, disposed of, detained, stored or dealt with and how the authorizations, licences and registration certificates that are held by the defendant should be surrendered. **810.2(5.2) Reasons** If the provincial court judge does not add a condition described in subsection (5) to a recognizance, the judge shall include in the record a statement of the reasons for not adding the condition. **810.2(6) Condition — reporting** The provincial court judge shall consider whether it is desirable to require the defendant to report to the correctional authority of a province or to an appropriate police authority. If the judge decides that it is desirable to do so, the judge shall add that condition to the recognizance. **810.2(7) Variance of conditions** A provincial court judge may, on application of the informant, of the Attorney General or of the defendant, vary the conditions fixed in the recognizance. **810.2(8) Other provisions to apply** Subsections 810(4) and (5) apply, with such modifications as the circumstances require, to recognizance made under this section.	**810.2(5.2) Motifs** Le juge qui n'assortit pas l'engagement de la condition prévue au paragraphe (5) est tenu de donner ses motifs, qui sont consignés au dossier de l'instance. **810.2(6) Condition — présentation devant une autorité** Le juge doit décider s'il est souhaitable que le défendeur se présente devant les autorités correctionnelles de la province ou les autorités policières compétentes et, dans l'affirmative, il doit assortir l'engagement d'une condition à cet effet. **810.2(7) Modification des conditions** Tout juge de la cour provinciale peut, sur demande du dénonciateur, du procureur général ou du défendeur, modifier les conditions fixées dans l'engagement. **810.2(8) Autres dispositions applicables** Les paragraphes 810(4) et (5) s'appliquent, avec les adaptations nécessaires, aux engagements contractés en vertu du présent article.

Supreme Court of Canada Cour suprême du Canada

May 28, 2015 le 28 mai 2015

ORDER
MOTION

ORDONNANCE
REQUÊTE

K.R.J. v. HER MAJESTY THE QUEEN
(B.C.) (36200)

THE CHIEF JUSTICE:

UPON APPLICATION by the appellant for an order stating constitutional questions in the above appeal;

AND THE MATERIAL FILED having been read;

IT IS HEREBY ORDERED THAT THE CONSTITUTIONAL QUESTIONS BE STATED AS FOLLOWS:

1. Does the retrospective operation of ss. 161(1)(c) and (d) of the *Criminal Code*, R.S.C. 1985 c. C-46, as enacted by s. 16 of the *Safe Streets and Communities Act*, S.C. 2012, c. 1, infringe s. 11(i) of the *Canadian Charter of Rights and Freedoms*?

2. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under section 1 of the *Canadian Charter of Rights and Freedoms*?

IT IS HEREBY FURTHER ORDERED THAT:

1. The respondent shall serve and file a Motion to Adduce New Evidence, with all new evidence and submissions addressing stated constitutional question two (2), no later than eight (8) weeks from the date of this order;

2. The appellant shall serve and file a Response to the Motion to Adduce New Evidence, with all new evidence and submissions addressing stated constitutional question two (2), no later than four (4) weeks from service of the Motion to Adduce New Evidence;

3. The respondent shall serve and file a Reply to the Response to the Motion to Adduce New Evidence, no later than two (2) weeks from service of the Response to the Motion to Adduce New Evidence; and

4. The Motion to Adduce New Evidence shall be referred to the panel seized with hearing the appeal, without prejudice to the right of the respondent to argue that constitutional question two (2) should not be answered.

Any attorney general who intervenes pursuant to par. 61(4) of the *Rules of the Supreme Court of Canada* shall pay the appellant and respondent the costs of any additional disbursements they incur as a result of the intervention.

À LA SUITE DE LA DEMANDE de l'appelant visant à obtenir la formulation de questions constitutionnelles dans l'appel susmentionné;

ET APRÈS AVOIR LU la documentation déposée;

LES QUESTIONS CONSTITUTIONNELLES SUIVANTES SONT FORMULÉES :

1. L'application rétroactive des al. 161(1)*c*) et *d*) du *Code criminel*, L.R.C. 1985, c. C-46, édictés par l'art. 16 de la *Loi sur la sécurité des rues et des communautés*, L.C. 2012, c. 1, constitue-t-elle une violation de l'al. 11*i*) de la *Charte canadienne des droits et libertés*?

2. Dans l'affirmative, s'agit-il d'une restriction apportée par une règle de droit dans des limites raisonnables et dont la justification peut se démontrer dans une société libre et démocratique au regard de l'article premier de la *Charte canadienne des droits et libertés*?

IL EST EN OUTRE ORDONNÉ QUE:

1. L'intimée signifiera et déposera une demande visant la présentation de nouveaux éléments de preuve, de pair avec les nouveaux éléments de preuve et les observations se rapportant à la deuxième question constitutionnelle formulée, au plus tard huit (8) semaines à partir de la date de la présente ordonnance;

2. L'appelant signifiera et déposera sa réponse à la demande visant la présentation de nouveaux éléments de preuve, de pair avec les nouveaux éléments de preuve et les observations se rapportant à la deuxième question constitutionnelle formulée, au plus tard quatre (4) semaines après la signification de la demande;

3. L'intimée signifiera et déposera sa réplique à la réponse au plus tard deux (2) semaines après la signification de celle-ci;

4. La demande visant la présentation de nouveaux éléments de preuve sera soumise à l'examen de la formation saisie du pourvoi sous réserve du droit de l'intimée de faire valoir qu'il n'y a pas lieu de répondre à la deuxième question constitutionnelle.

Tout procureur général qui interviendra en vertu du par. 61(4) des *Règles de la Cour suprême du Canada* sera tenu de payer à l'appelant et à l'intimée les dépens supplémentaires résultant de son

intervention.

C.J.C.
J.C.C.