SCC 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)

RESPONDENT'S FACTUM - REDACTED

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. The sole issue on this appeal is whether the retrospective application of the amendments to ss. 161(1)(c) and (d) of the *Criminal Code*, which were enacted by the *Safe Streets and Communities Act*, S.C. 2012, c. 1, constitute "punishment" contrary to s. 11(i) of the *Charter*.

2. Pursuant to s. 161 of the *Code*, a sentencing judge may impose a stand-alone prohibition order with any of the enumerated conditions in s. 161(1), for life or any shorter period, where it is determined that an offender poses a serious risk to the safety of a child or children under the age of sixteen years after the offender is released, treated or discharged.

3. In 2012, s. 161 was amended to include two new conditions: (1) a prohibition on having contact with a person under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate (s. 161(1)(c)); and (2) a prohibition on using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court (s. 161(1)(d)).

4. There is no dispute that ss. 161(1)(c) and (d) operate retrospectively. While there was no transitional provision in the *Safe Streets and Communities Act*, the Court of Appeal for British Columbia, unanimous on this point, held that ss. 161(1.1)(b) and (c) of the *Code* clearly express an intention that the provision in its entirety operates retrospectively: *R. v. K.R.J.*, 2014 BCCA 382, at paras. 66-69, 72 ("*BCCA Reasons*") (*Appellant's Record ("A.R.")*, Vol. 1, pp. 54-55). Sections 161(1.1)(b) and (c) were enacted in 2005 and enumerate a number of historical sexual offences to which a s. 161 order can attach. The appellant has not appealed the finding that s. 161 operates retrospectively. Thus, the sole issue is whether the retrospective application of ss. 161(1)(c) and (d) constitutes "punishment".

5. The purpose of a s. 161 order is the protection of children from future sexual offences. A s. 161 prohibition order has a preventive, rather than penal or punitive purpose. It is a stand-alone ancillary order that is intended to eliminate, or significantly reduce, opportunities for future contact between an offender and persons under the age of 16 years. It is not imposed for the purpose of sanctioning an offender for past conduct or in furtherance of the purpose and principles of sentencing. Rather, its sole purpose is to protect children from the risk of new

sexual offences. The enumerated conditions in ss. 161(1)(c) and (d) are logically connected to that legitimate non-punitive goal – the protection of children from the risk of sexual offences.

6. Newbury J.A., writing for the majority, correctly applied this Court's test for "punishment" set out in *R. v. Rodgers*, 2006 SCC 15, [2006] 1 S.C.R. 554. She concluded that ss. 161(1)(c) and (d) were enacted to protect children from the risk of future sexual offending rather than "in furtherance of" punishment. She held that while the conditions set out in (c) and (d) "impose consequences that may be felt to be 'unpleasant', they are not punitive in effect": *BCCA Reasons*, at paras. 96, 99 (*A.R.*, Vol. 1, pp. 64, 66). Newbury J.A. accepted that "[b]arring offenders from contact with children and from use (or abuse) of the Internet is…an important protective measure": *BCCA Reasons*, at para. 96 (*A.R.*, Vol. 1, p. 64).

7. The appellant submits that the majority of the court below erred in applying the *Rodgers* test. He asserts that a s. 161 order is punishment because it is imposed in furtherance of the purposes and principles of sentencing and that ss. 161(1)(c) and (d) involve a "significant deprivation of liberty". However, his submission fails to address two additional factors considered in *Rodgers:* (1) where an order is made in furtherance of a legitimate state interest (here, the protection of children), rather than the state's interest in sanctioning the offender, it is not "punishment" (para. 64); and (2) the fact that a consequence may, in its application, have an impact on the offender or indirectly further a principle of sentencing does not necessarily make it "punishment" (para. 64). The effects of an impugned order are not determinative in the analysis. Rather, a court should analyse the effects to determine if they are consistent with or detract from the stated purpose of the measure.

8. The legislative history of s. 161 reveals Parliament's intent to create a stand-alone, ancillary order with a clear preventive and protective purpose, a purpose which has not changed over time. Consistent with Parliament's intent, the jurisprudence has repeatedly and consistently characterized the purpose of a s. 161 order as protective, not punitive. Likewise, the test for the imposition of a s. 161 order confirms that its purpose is not to sanction the offender but rather to protect children. The recent amendments to ss. 161(1)(c) and (d) are consistent with that protective purpose. Neither subsection results in an automatic or complete prohibition. Both subsections are discretionary and a court can craft exceptions as necessary. Moreover, while the Internet may have become omnipresent in everyday life, it has also significantly transformed the *modus operandi* of, and exponentially expanded the opportunities for, sexual offending against

children. The shift in terminology in s. 161(1)(d) was a technical change to respond to advancements in technology and to capture the myriad ways in which the Internet is used to offend against children. When viewed in that context, the restriction on Internet use is protective, not punitive.

9. The conclusion that a s. 161 order is not "punishment" is consistent with a wide body of appellate jurisprudence that has upheld the constitutionality of other analogous orders, such as a *Sex Offender Information Registry Act ("SOIRA")* order or a s. 810.1 recognizance, both of which contain similar protective conditions. Provincial appellate courts have consistently concluded that these orders are not "punishment": *R. v. Cross*, 2006 NSCA 30, leave to appeal dismissed, [2006] S.C.C.A. No. 161; *R. v. Dyck*, 2008 ONCA 309; *R. v. C.(S.S.)*, 2008 BCCA 262; *Morin v. R.*, 2009 QCCA 187; *R. v. Youngpine*, 2009 ABCA 89; *R. v. B.(C.L.)*, 2010 ABCA 134; *R. v. Warren*, 2010 ABCA 133; *R. v. Whiting*, 2013 SKCA 127; *R. v. Budreo*, (1996), 104 C.C.C. (3d) 245 (Ont. G.D.), affirmed (2000), 142 C.C.C. (3d) 225 (Ont. C.A.), leave to appeal dismissed, [2000] S.C.C.A. No. 542.

10. This factum addresses the question of whether the retrospective application of ss. 161(1)(c) and (d) of the *Code* violates s. 11(i) of the *Charter*. Pursuant to the Order of the Chief Justice dated May 28, 2015 (*A.R.*, Vol. 1, p. 85), the respondent has already filed the *Respondent's Memorandum of Argument on Motion to Adduce New Evidence and Submissions on Section 1 of the Charter*. The two factums should be read together, in conjunction with the *Affidavit of Trevor Shaw*, dated July 15, 2015 (filed in support of the Motion to Adduce New Evidence), which sets out the full, and somewhat unorthodox, history of the proceedings relating to s. 161 of the *Code* in the courts below.

11. Finally, if this Court concludes that the retrospective application of ss. 161(1)(c) and (d) constitutes "punishment", that finding will likely mean that a s. 161(1) order can never be imposed when an offender is convicted of one of the historical sexual offences enumerated in ss. 161(1.1)(b) and (c). As noted above, in 2005, Parliament enacted ss. 161(1.1)(b) and (c) of the *Code* which enumerate a number of historical sexual offences to which a s. 161 prohibition order can attach. Those historical sexual offences were repealed prior to 2005 and so, logically, the only way that a s. 161 order can be made in those cases is if s. 161 applies retrospectively. While this case did not involve a historical sexual offence, a finding that a s. 161(1) order is "punishment" and cannot apply retrospectively will have significant

implications beyond the scope of this appeal. To that end, Parliament's clear legislative intent to have the section apply retrospectively will be thwarted.

B. Statement of Facts

12. The respondent generally agrees with the appellant's statement of facts and review of the procedural history, subject to amplification on the circumstances of the offences.

13. On October 26, 2012, the RCMP arrested the appellant and searched his residence pursuant to a warrant. A number of items were seized including cameras, camcorders, computer equipment, pornographic DVDs, and journals kept by the appellant. In the ceiling in the kitchen police found 13 disks which contained the majority of the appellant's child pornography collection: *Proceedings at Sentencing* (8 August 2013), p. 7[16-44] (*A.R.*, Vol. 2, p. 9); *BCCA Reasons*, at para. 12 (*A.R.*, Vol. 1, p. 39).

14. A DVD containing the three videos which captured the three acts of incest committed against the appellant's three year old daughter, E.J., was filed as Exhibit 1 on sentence and played in court for the sentencing judge: *Proceedings at Sentencing* (8 August 2013), pp. 8[1] to 9[37] (*A.R.*, Vol. 2, pp. 10-11); *BCCA Reasons*, at para. 7 (*A.R.*, Vol. 1, p. 38). In addition, a binder which contained a sample of the images of child pornography found on the disks seized from the kitchen ceiling was filed as Exhibit 2: *Proceedings at Sentencing* (8 August 2013), pp. 9[39] to 10[40] (*A.R.*, Vol. 2, pp. 11-12); *BCCA Reasons*, at paras. 8-9 (*A.R.*, Vol. 1, p. 39).

15. Given the graphic and disturbing content it is not surprising (nor uncommon in these types of prosecutions) that neither the Crown nor the sentencing judge provided a detailed description of the videos or photographs for the record: *BCCA Reasons*, at paras. 7-11 (*A.R.*, Vol. 1, pp. 38-40). The sentencing judge aptly observed that these offences were "highly disturbing and disgusting" and that the conduct of the appellant was "intrinsically violent and degrading": *Reasons for Sentence*, at para. 5 (*A.R.*, Vol. 1, p. 3). However, in the respondent's submission, it is not possible to fully appreciate the gravity of these offences, or the significance of the conditions in ss. 161(1)(c) and (d) for this offender, in the absence of some detail. To assist the Court, the respondent has reproduced below the description of the videos and photographs which was provided to the Court of Appeal for British Columbia. The appellant did not dispute the accuracy of these descriptions in the court below.

16. [redacted]

17. Police also located a large number of still images which met the definition of child pornography. This collection contained a wide range of images including: infant females through to girls approximately ten years of age being sexually assaulted; graphic bondage of children; young females photographed naked on a beach and in other public places; and photos of young females from the local community in bathing suits or clothed on local beaches: *Proceedings at Sentencing* (8 August, 2013), pp. 9[39] to 10[40] (*A.R.*, Vol. 2, pp. 11-12); *Decision of the Honourable Judge W.W. Klinger* (15 November 2013), at para. 11 (*A.R.*, Vol. 1, p. 19); *BCCA Reasons*, at paras. 8-9 (*A.R.*, Vol. 1, p. 39).

18. The appellant's collection of pornography also contained various graphic still images of the complainant E.J. between June 10, 2009 and August 10, 2009 when she was approximately three years old, as well as two photos taken of E.J. on March 11, 2011 when she was five years old: *Proceedings at Sentencing* (8 August, 2013), p. 10[16-31] (*A.R.*, Vol. 2, p. 12).

19. The 2009 photos show [redacted] Some of the 2009 photos were taken at the same time that the video images in Exhibit 1 were made. [redacted]: *Proceedings at Sentencing* (8 August, 2013), p. 10[16-31] (*A.R.*, Vol. 2, p. 12).

PART II – RESPONDENT'S POSITION ON QUESTIONS IN ISSUE

20. The respondent submits that the majority of the Court of Appeal for British Columbia correctly concluded that the retrospective application of ss. 161(1)(c) and (d) of the *Code* does not constitute "punishment" within the meaning of s. 11(i) of the *Charter*.

21. In the alternative, if this Court finds that the retrospective application of ss. 161(1)(c) and (d) of the *Code* violates s. 11(i) of the *Charter*, the respondent submits that the infringement is a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Charter*.

PART III – STATEMENT OF ARGUMENT

A. Sections 161(1)(c) and (d) are not "punishment"

(i) Overview

22. The respondent submits that Newbury J.A., writing for the majority, correctly held that the retrospective application of ss. 161(1)(c) and (d) does not constitute "punishment". The clear protective purpose of a s. 161 order is confirmed by: (1) the legislative history of s. 161; (2) the test for the imposition of a s. 161 order; (3) the jurisprudence which has considered the purpose of s. 161 orders; and (4) the appellate jurisprudence which has concluded that other similar protective orders, such as *SOIRA* orders and s. 810.1 recognizances, do not constitute "punishment".

23. The respondent will address the *Rodgers* test for "punishment" before canvassing each of the above points in turn.

(ii) The *Rodgers* test for "punishment"

24. The appellant asserts that the majority of the Court of Appeal for British Columbia erred in applying this Court's well-established test for "punishment" set out in *R. v. Rodgers*.

25. In *Rodgers*, this Court considered whether a post-conviction DNA databank order amounted to "punishment" within the meaning of s. 11 of the *Charter*. Charron J., writing for the majority, clarified that "punishment" is not limited to the imposition of a fine or imprisonment (para. 62). However, she also confirmed that not all potential consequences that flow from a conviction, whether imposed at the time of sentencing or later, will amount to "punishment":

> 63 This does not mean, however, that "punishment" under ss. 11(*h*) and 11(*i*) necessarily encompasses every potential consequence of being convicted of a criminal offence, whether that consequence occurs at the time of sentencing or not…. As a general rule, it seems to me that the consequence will constitute a punishment when it forms part of the arsenal of sanctions to which an accused may be liable in respect of a particular offence and the sanction is one imposed in furtherance of the purpose and principles of sentencing.

26. The appellant's primary submission is that a s. 161 order is "punishment" because it is imposed at the time of sentencing, in furtherance of the purpose and principles of sentencing, and that ss. 161(1)(c) and (d) constitute a significant deprivation of liberty. However, the appellant fails to address three other key aspects of the *Rodgers* decision that undermine this submission:

- not all sanctions imposed at the time of sentencing necessarily constitute "punishment" (para. 63);
- the fact that a consequence may, in its application, indirectly further a goal of sentencing does not make it "punishment". Rather, a court should look at whether the order is in furtherance of a legitimate state interest (*i.e.* in *Rodgers*, solving crime) rather than the state's interest in sanctioning the offender (para. 64). That is, the effect of a sanction is used as a measurement tool to assess the *bona fides* of the stated purpose; and
- Charron J. expressly left open the question of whether other similar ancillary orders (such as an order for forfeiture, a firearms prohibition, a driving prohibition or an order for restitution) which are also imposed at the time of sentencing constitute "punishment" (para. 63).

27. The appellant does not ask this Court to revisit or revise the *Rodgers* test, which was recently confirmed in *Canada (A.G.) v. Whaling*, 2014 SCC 20, [2014] 1 S.C.R. 392, at paras. 48, 50, 54. That approach is well-founded as the *Rodgers* test already requires a court to consider both the purpose and effect (impact) of an impugned sanction, as well as the stigma associated with that sanction. Moreover, there is no indication that courts have experienced any difficulty in applying the *Rodgers* test.

28. Even before *Rodgers*, appellate courts employed a similar analytical framework. For example, in *R. v. Cross*, the Nova Scotia Court of Appeal considered both the purpose and effect of an impugned sanction, but cautioned that the effects or consequences of a sanction are not determinative. Rather, a court analyses any potential effects to determine whether they are of such a magnitude as to reveal a punitive intent:

> [45] Thus, while the assessment is an objective one, the "effect" of the consequence cannot be evaluated in complete isolation from its purpose. Whether a measure is, in fact, "a true penal consequence" is not determined simply by assessing the seriousness of the impact on the individual. Relatively minor consequences of a criminal offence may be considered "penal" yet those with a more serious impact on the person may be "non-punitive". The question cannot be answered in the abstract, divorced from the context in which the measure arises. I conclude that if the impact of the sanction aligns with its legislative purpose and is not of such magnitude that it reveals, instead, a punitive intent, it is not "punishment".
>
> [46] In summary, I draw the following guidance from the authorities:
>
> - Punishment in s. 11(i) encompasses more than the official sentence of the court;
> - In interpreting s. 11(i) one must be alive to practical consideration [sic] and not overshoot the purpose of the right;
> - The characteristics of punishment generally include some deprivation of liberty; unpleasant consequences; and public condemnation;
> - All *ex post facto* treatments of an offender, consequent on conviction, are not viewed as punishment;
> - A true penal consequence is one which, by its magnitude, would appear to be imposed for the purpose of redressing the wrong done to society;
> - The *Charter* does not protect against insignificant or trivial limitations of rights.
>
> [Emphasis Added]

29. As will be seen below, Newbury J.A. correctly applied each of these important factors in her analysis: *BCCA Reasons*, at paras. 95-99 (*A.R.*, Vol. 1, pp. 63-66).

(iii) The phrase "in addition to any other punishment" is not determinative

30. While s. 161(1) does contain the clause "in addition to any other punishment", Newbury J.A. correctly held that this language was not determinative. Instead, she properly focused on the purpose of the provision and "the fundamental nature of the restrictions at issue": *BCCA Reasons*, at paras. 95, 99, 100 (*A.R.*, Vol. 1, p. 66). Newbury J.A.'s conclusion is consistent with the jurisprudence and principles of statutory interpretation.

31. The phrase “in addition to any other punishment” in s. 161(1) explains the relationship between the primary penalty, or discharge, imposed for an offence and a s. 161 order as an additional ancillary or secondary order made at the time of sentencing. The same clause, “in addition to any other punishment”, also appears in the other ancillary order provisions in the *Code*, including ss. 109 and 110 (firearms prohibitions); s. 259 (driving prohibition); and s. 737 (victim surcharge). As Steele J.A. explained in *R. v. Lambert* (1994), 93 C.C.C. (3d) 88 (Nfld. C.A.), at p. 93:

> 13 On reading Crown counsel's factum, it is apparent that the term "sentence" is frequently used synonymously with the term "punishment". Knowledge of the *Criminal Code*, criminal case and legal literature make it apparent that the term "sentence" and "punishment" are often equivalent terms. The sentence imposed following conviction is the punishment for the offence. On reflection, it seems that the interplay of these two words has contributed to some of the misunderstanding.
>
> …
>
> 20 The framers of the *Canadian Charter of Rights and Freedoms* knew or are presumed to have known that the Canadian *Criminal Code* authorizes a sentencing judge, **in addition** to imposing imprisonment or a fine, or both, to grant various orders or declarations that may qualify as a further punishment. Such orders may or may not be considered part of the formal sentence of the court, but they may comprise an integral part of the punishment levied by the sentencing judge. Section 199(3) "forfeiture"; s. 100(1) or (2) "firearms prohibition"; s. 259(1) or (2) "driving prohibition"; s. 725 "restitution to victim", and s. 737(1) "probation orders", and the like, all are examples of orders made at the time of sentencing that have **the potential to be *additional punishment***. Whether such orders are or are not part of the formal sentence or deemed to be "punishment" within the anticipation of s. 11(i) of the *Charter* is another matter and one that will not be considered here. The only observation to be made is that many of the orders or declarations similar to those above **are ancillary or secondary to the primary penalty** of imprisonment or a fine….
>
> [Underline and bold emphasis added; italics in original]

32. As set out in *Lambert*, the “other punishment" clause clarifies that these secondary or ancillary orders can be imposed in addition to the primary penalty, or discharge, imposed for the offence. The clause refers to the relationships between various court orders (or “sanctions” as Charron J. describes them), not the classification of a particular restriction as “punishment” or not. The latter determination must be made in accordance with the test set out in *Rodgers*.

33. This interpretation is consistent with subsequent jurisprudence which has interpreted the term “punishment”. For example, in *R. v. Murrins*, Bateman J.A. observed that the *Criminal Code* uses the terms “punishment” and “sentence” interchangeably (para. 97). She held that

"'punishment' means the range of sanctions available for a particular offence. 'Sentence' is the sanction actually imposed by the court. Throughout the *Criminal Code*, 'punishment' is referred to as [sic] sanction for which one is 'liable to be sentenced'" (para. 98) (emphasis added). Similarly, in *R.A.T. v. British Columbia (Attorney General)*, 2011 BCCA 263, Saunders J.A. described "punishment" "not as equivalent to 'sentence', but rather as a sub-set of 'sentence'" (para. 10).

34. Even in *Rodgers*, Charron J. appears to acknowledge that there is no magic to the use of the term "punishment", noting that it is used in its ordinary sense to refer to "the arsenal of sanctions to which an accused may be liable upon conviction". She also observed that the *Criminal Code* uses the word "punishment" to describe "the range of sanctions available on sentencing" (para. 62). However, as noted above, Charron J. also held that not all consequences imposed at the time of sentencing constitute "punishment" and expressly left open the question of whether other ancillary orders imposed at the time of sentencing constitute "punishment" (para. 63). Instead, the focus should be on the purpose and effect of the impugned sanction, rather than its label.

35. This approach is consistent with the modern approach to statutory interpretation, which may involve looking at the plain meaning of a statute as well as weighing a number of factors, including the object of the Act and the intention of Parliament: *Bell Express Vu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; see also *Interpretation Act*, R.S.C. 1985, c. I-21, s. 12. Moreover, this Court has held that where the plain, ordinary meaning of a statute would defeat the legislative purpose, a different interpretation that is consistent with the intentions of the legislators should be adopted: *Re Rizzo and Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, at paras. 20-23; *R. v. Egger*, [1993] 2 S.C.R. 451, at pp. 477-478; R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham, Ontario: Lexis Nexis, 2008), at pp. 9-12. As will be seen below, Parliament's clear intent in enacting s. 161 is not to sanction or punish an offender, but to protect children from the risk of future sexual offences.

(iv) Legislative history reveals clear protective purpose of s. 161 order

36. A key aspect of the *Rodgers'* analysis is an assessment of legislative purpose. The legislative history of s. 161 reveals the clear preventive and protective purpose of a s. 161 order, a purpose which has not changed over time.

37. Section 161 was enacted in 1993 following a decision of the B.C. Court of Appeal, *R. v. Heywood* (1992), 20 B.C.A.C. 166, which struck down the offence of loitering under then-s. 179(1)(b) of the *Code*: *R. v. Heywood*, [1994] 3 S.C.R. 761, pp. 799, 801 (paras. 63, 66). Section 161 came into force on August 1, 1993 when *An Act to amend the Criminal Code and the Young Offenders Act*, S.C. 1993, c. 45, s. 1 was enacted. As originally enacted, s. 161 permitted a court to prohibit the offender from:

> (a) attending a public park or public swimming area where persons under the age of fourteen years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre; or
>
> (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 fourteen years.

38. During the second reading of Bill C-126, *An Act to amend the Criminal Code and the Young Offenders Act*, the Minister of Justice explained that s. 161 was enacted to address the risk of recidivism by sexual offenders:

> This bill is part of a series of measures introduced by the government to protect all members of society. Its purpose is to reinforce the provisions of the Criminal Code that deal with family violence, child abuse and violence against women in general….
>
> …
>
> Experts say there is no way to cure sex offenders who go after children and that the treatment given them is intended only to minimize the risks of relapse or repeat offences. Furthermore, the experts say that people who are sexually interested in children tend to occupy positions or have pastimes that give them access to children. The alarming result of this is that once those found guilty of a sexual offence are released, they take advantage of their freedom to prowl around parks in search of children or even to seek a position where they will enjoy the trust of children.
>
> According to some clinicians, sex offenders should be banned for life from situations where they would be likely to commit a repeat offence. The general public has urged the government many times to forbid sex offenders to hold a position where they might have access to children.
>
> To meet these requests, the bill contains a provision which would allow the court to forbid for the period of time it deems appropriate, including life if the judge thinks it necessary, those found guilty of a sexual offence to frequent parks or public bathing areas if children may be found there, child care centres, school yards, playgrounds, community

> centres and also to hold a job that would put them in a position of trust or authority over children. In any case, this provision would not be mandatory. It would be up to the court to determine if such a ban should be imposed and if so for how long. The court can also change the terms of the ban as the offender's situation develops, which leaves the court some freedom of action.
>
> *House of Commons Debates*, 34th Parl., 3rd Sess., Vol. XV, 1993 (6 May 1993), at pp. 19015 to 19016 (1020)

39. In 2002, a third condition, the former s. 161(1)(c), was added by the *Criminal Law Amendment Act, 2001*, S.C. 2002, c. 13, s. 4(2):

> (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.

40. In 2005, Parliament enacted ss. 161(1.1)(b) and (c) which enumerate a number of historical sexual offences, which were repealed prior to 2005, to which a prohibition order can attach: *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. Section 161(1.1) provides:

> (1.1) The offences for the purpose of subsection (1) are
>
> (*a*) an offence under section 151, 152, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171 or 172.1, subsection 173(2) or section 271, 272, 273 or 281;
>
> (*b*) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983; or
>
> (*c*) an offence under subsection 146(1) (sexual intercourse with a female under 14) or section 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988.

41. As noted above, this was a significant amendment. Groberman J.A., writing for the court below on this point, held that s. 161(1.1) "clearly evinces a parliamentary intention that s. 161(1) be applied retrospectively. There is simply no other way to give meaning to s. 161(1.1) (b) and (c)": *BCCA Reasons*, at para. 68 (*A.R.*, Vol. 1, p. 55).

42. It is also important to note that the preamble to the 2005 *Act* expressly stated Parliament's grave concern "regarding the vulnerability of children to all forms of exploitation, including child pornography, sexual exploitation, abuse and neglect" and set out Canada's undertaking, by ratifying the United Nations Convention on the Rights of the Child, "to protect children from all

forms of sexual exploitation and sexual abuse". Moreover, it is self-evident from the face of the amendment that Parliament intended to extend the scope of protection for children in s. 161 by including offenders who had committed historical sexual offences.

43. In 2008, s. 161(1) was amended to increase the age of protected children from 14 to 16 years: *An Act to amend the Criminal Code and to make consequential amendments to other Acts ("Tackling Violent Crime Act")*, S.C. 2008, c. 6, s. 54.

44. Finally, in 2012, s. 161 was amended when the present amendments to ss. 161(1)(c) and (d) were enacted by the *Safe Streets and Communities Act*, s. 16(1).[1] The amendments came into force on August 9, 2012, after the offence dates[2] in the present case. The difference between the restrictions at the relevant times is set out below:

Version from 2008-05-01 to 2012-08-08:	**Version from 2012-08-09 to present:**
(*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.	(*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.

45. The amendments to ss. 161(1)(c) and (d) (as well as parallel amendments to s. 810.1 of the *Code*) were originally contained in Bill C-54, *An Act to amend the Criminal Code (sexual offences against children)* ("*Protecting Children from Sexual Predators Act")*, 3rd Sess., 40th Parl., 2010, s. 8, which died on the Order Paper in the Senate (third reading) in 2011.

46. During the second reading of Bill C-54 on December 3, 2010, the Parliamentary Secretary to the Minister of Justice, Bob Dechert, explained that Bill C-54 sought "to prevent the

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[1] Section 161(1) was further amended after the appeal in the court below. On September 19, 2014, s. 161(1)(a.1) was enacted, which provides that a court may prohibit an offender from "being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order": *An Act to amend the Criminal Code and the Corrections and Conditional Release Act (restrictions on offenders)*, S.C. 2014, c. 21, s. 1.

[2] The offences were committed between January 1, 2008 and March 11, 2011: *Proceedings at Sentencing* (8 August 2013), p. 1[13-40] (*A.R.*, Vol. 2, p. 3). While the Information was amended at the sentencing hearing to reflect the correct offence dates, the Warrant of Committal attached to the BCCA Order (*A.R.*, Vol. 1, pp. 76-79) does not reflect that amendment.

commission of a sexual assault against a child", in part "by requiring courts to consider imposing conditions prohibiting convicted or suspected child sex offenders from engaging in conduct that may facilitate their offending": *House of Commons Debates*, 40th Parl., 3rd Sess., Vol. 145, No. 110 (3 December, 2010), at pp. 6786-6787 (1035). At an appearance before the House of Commons Standing Committee on Justice and Human Rights on February 2, 2011, the Minister of Justice, Rob Nicholson, confirmed that the amended conditions in Bill C-54 "would help to prevent the offender from being placed in a situation where he has access and opportunity to sexually assault a child, and from having unfettered use of the Internet and other technologies that are so instrumental in the commission of child pornography and other child-sexually exploitive offences": *House of Commons Standing Committee on Justice and Human Rights*, 40th Parl, 3rd Sess, No. 45 (2 February 2011), at p. 2 (1535). Similarly, on third reading, the Minister of Justice stated that the proposed amendments to ss. 161 and 810.1 are "an important step forward in the protection of children in this country": *House of Commons Debates*, 40th Parl., 3rd Sess., Vol. 145, No. 144 (11 March 2011), at p. 8967 (1225 to 1230).

47. At its hearings on Bill C-54, the Standing Committee on Justice and Human Rights heard submissions about the Internet-based dangers of child luring, sexual exploitation and abuse; the exponential increase of crimes of exploitation against children committed on or facilitated by the Internet; the rate of sexual offending in Canada; and recidivism rates of sexual offenders: *House of Commons Standing Committee on Justice and Human Rights*, 40th Parl, 3rd Sess, No. 45 (31 January 2011), at pp. 2-7; No. 46 (7 February 2011), at pp. 4-8; No. 48 (14 February 2011), at p. 9; No. 49 (16 February 2011), at pp. 1-8.

48. The above legislative history confirms that s. 161 is protective, not punitive. Parliament has enacted a series of successive amendments, all of which enhance s. 161 as a measure to protect children from the risk of future sexual violence.

(v) Jurisprudence confirms undisputed purpose of s. 161 is the protection of children

49. Consistent with Parliament's intent, courts have repeatedly and consistently characterized the purpose of a s. 161(1) order as protective, not punitive.

50. As noted above, s. 161 was enacted following the B.C. Court of Appeal's decision in *R. v. Heywood* which struck down the offence of loitering under then-s. 179(1)(b) of the *Code*. When the appeal reached this Court, Cory J., writing for the majority, compared s. 179(1)(b) with the newly enacted s. 161. He commented that the "new section only applies to persons who have committed the listed offences in respect of a person who is under the age of 14 years. In addition, under the new section, the order is discretionary, so that only those offenders who constitute a danger to children will be subject to a prohibition" (p. 799; para. 63) (emphasis added). He further observed that "the objective of s. 179(1)(b) is certainly pressing and substantial. The protection of children from sexual offences is obviously very important to society" and that the "new s. 161 is a good example of legislation which is much more carefully and narrowly fashioned to achieve the same objective as s. 179(1)(b)" (p. 803, para. 70) (emphasis added).

51. Following *Heywood*, lower courts have repeatedly characterized the purpose of a s. 161(1) order as preventive, not punitive: *R. v. A.(R.K.)*, 2006 ABCA 82, at paras. 15, 16, 20; *R. v. Lachapelle*, 2008 BCSC 511, at para. 18, affirmed 2009 BCCA 406, at para. 16; *R. v. Perron*, 2009 ONCA 498, at para. 13. For example, in *R. v. A.(R.K.)*, the Alberta Court of Appeal confirmed the clear preventive purpose of s. 161(1), holding that its "overarching purpose is public protection" (para. 16). Similarly, in *R. v. Lachapelle*, 2008 BCSC 511, affirmed 2009 BCCA 406, the summary conviction appeal justice, Butler J., confirmed that "the purpose of s. 161 is to prohibit pedophiles from having access to specified locations where children under the age of 14 are likely to be present and thus to protect children from becoming victims of sexual offences" (para. 18). On further appeal to the B.C. Court of Appeal in *R. v. Lachapelle*, Newbury J.A. referred with approval at para. 16 to an Ontario Court of Appeal decision, *R. v. Perron*, 2009 ONCA 498. In *Perron*, Goudge J.A., speaking for the court, observed that "the purpose of s. 161(1)(a) is to protect children from becoming victims of sexual offences at the hands of those who have previously committed certain specified offences" (para. 13).

52. In the present case, the court below also confirmed the protective purpose of a s. 161 order. Newbury J.A. held that s. 161 prohibitions "are designed to protect the public, and in particular, children, from sexual offences and offenders": *BCCA Reasons*, at para. 96 (*A.R.*, Vol. 1, p. 64). Even Groberman J.A., dissenting in part, acknowledged that the purpose of the section

is protective. He observed that the "section uses past conduct to identify persons who pose a particular risk for the future and restricts them from activities for the protection of the public. The restrictions are not intended to penalize past conduct but to prevent future offending conduct from occurring": *BCCA Reasons*, at para. 61 (*A.R.*, Vol. 1, p. 51).

53. It is readily apparent from the cited cases that Parliament's overriding concern in the enactment of this provision is the protection of children. It is clearly aimed at separating individuals who pose a risk to children from their targets in an effort to prevent criminal conduct and avoid harm. As will be explored below, the impact of s. 161(1) is closely aligned "with its legislative purpose and is not of such magnitude that it reveals, instead, a punitive intent": *R. v. Cross*, at para. 45.

(vi) Test for the imposition of s. 161 order confirms protective purpose of order

54. Consistent with Parliament's legislative intent, the test for the imposition of a s. 161 order also confirms that its purpose is not to sanction the offender but rather to protect children.

55. By way of overview, a s. 161 order is discretionary and a judge is not mandated to impose it (s. 161(1)). Moreover, none of the enumerated conditions are mandatory. The section provides the judge with discretion to tailor the conditions to the specific circumstances of the offender as the opening language in s. 161(1) expressly provides that the order is "subject to the conditions or exemptions that the court directs". Moreover, additional flexibility and discretion are built into both ss. 161(1)(c) and (d). For example, s. 161(1)(c) provides that an offender may have contact with a person under the age of 16 years if "the offender does so under the supervision of a person whom the court considers appropriate". Similarly, s. 161(1)(d) does not automatically result in a complete prohibition on Internet access; rather, if the condition is imposed, the court can set conditions on use. Finally, the s. 161 prohibition order can be limited in its duration (s. 161(2)) and the *Code* specifically provides an avenue of review (s. 161(3)), such that the offender can subsequently apply to vary the order.

56. According to the jurisprudence, a s. 161(1) order should only be imposed where there is a serious risk to the safety of a child or children under the age of sixteen after the offender is released, treated or discharged: *R. v. Heywood* (S.C.C.), at para. 63; *R. v. A.(R.K.)*, 2006 ABCA 82, at para. 14; *R. v. L.M.R.*, 2010 ABCA 286, at para. 17; *BCCA Reasons*, at para. 98.

This involves consideration of a wide variety of factors, none of which is determinative: *R. v. A.(R.K.)*, at paras. 21-26, 28, 32. There must be an evidentiary basis for the judge to conclude that the particular offender poses a serious risk to children and be satisfied that the terms of the order are a reasonable attempt to minimize the risk: *R. v. A.(R.K.)*, at para. 32; *R. v. B.(R.R.)*, 2013 BCCA 224, at paras. 32-34. This jurisprudence demonstrates that s. 161 orders are not imposed as a means of redressing the wrong done to society or in furtherance of the purposes and principles of sentencing. Rather, they are imposed exclusively for the future protection of children.

57. While the appellant now relies on *R. v. M.K.*, 2010 NBCA 71 in support of his assertion that the test for imposing a s. 161(1) order is "low" (*Appellant's Factum*, at paras. 92-93), there was no dispute in the courts below about what the appropriate test is for the imposition of a s. 161 order: see *A.R.*, Vol. 2, p. 70[13-41]. In any event, the issue addressed in *R. v. M.K.* was whether a s. 161 order can be imposed where an offender has been convicted of a child pornography offence and there is no actual identifiable victim (paras. 2, 27-28). The *M.K.* decision does not engage in an in-depth analysis of the test for the imposition of s. 161 orders. Further, the decision does not consider *R. v. A.(R.K.)*, which, to the best of the respondent's knowledge, is the most comprehensive appellate decision on the test for the imposition of a s. 161 order. However, if, as the appellant suggests, the threshold for imposing a s. 161(1) order is "low" and only requires "'some evidence' that an offender poses a risk of harm to children" (*Appellant's Factum*, at para. 93), then that conclusion would only further reinforce the respondent's argument that the purpose of a s. 161 order is protection not punishment.

58. The appellant submits that Groberman J.A., writing in dissent on this point, correctly held that a s. 161 order is a sanction that falls within the sentencing objectives set out in s. 718 of the *Code* and is therefore "punishment"*: BCCA Reasons*, at paras. 80-81 (*A.R.*, Vol. 1, p. 58). However, in coming to this conclusion, both Groberman J.A. and the appellant fail to address Charron J.'s conclusion in *Rodgers* that the fact that a consequence may, in its application, indirectly further a goal of sentencing does not make it "punishment": *R. v. Rodgers*, at para. 64. While it is true that a s. 161 prohibition order protects the public and may have deterrent and rehabilitative effects, the purpose of the order is not to sanction the offender. Further, the fact that s. 161 orders might be seen by some as being a deterrent does not take away from their preventive purpose. As will be further addressed below, DNA and *SOIRA* orders also protect the

public and may deter offenders, but courts have concluded that they do not constitute "punishment".

59. The appellant also submits that a s. 161 order is "punishment" because the test for imposition involves the exercise of broad judicial discretion (*Appellant's Factum*, at paras. 88-91). However, that factor is not determinative. By way of comparison, prior to the 2011 amendments to the *SOIRA* provisions, judges were also required to exercise their discretion under the-then exemption provisions in ss. 490.012(4) and 490.023(2) of the *Code* and assess whether the impact of the order on the offender would be "grossly disproportionate relative to the public interest in protecting society": see, for example, *R. v. C.(S.S)*, at paras. 74-87. Nevertheless, as will be further explored below, appellate courts have unanimously concluded that a *SOIRA* order is not "punishment": *R. v. Cross*; *R. v. C.(S.S)*; *Morin v. R.*; *R. v. Youngpine*; *R. v. B.(C.L.)*; *R. v. Warren*.

60. Finally, while the appellant points to concerns with respect to the stigma attached to a s. 161 order (*Appellant's Factum*, at paras. 77, 86), the only significant stigmatization flows from the conviction for sexual offending, not from the imposition of a s. 161(1) order. The "fact that a treatment may occasion a certain stigma does not turn it into punishment. Stigma may be occasioned by the simple fact of being arrested and charged with a criminal offence": *R. v. Rodgers*, at para. 64; see also *R. v. Cross*, at para. 55; *R. v. C.(S.S.)*, at paras. 47, 63-64; *R. v. Dyck*, at paras. 74, 81. Those offenders subject to a s. 161 order "must have been convicted of a sexual offence. There is significant stigma associated with such a conviction": *P.S.C. v. British Columbia (Attorney General)*, 2007 BCSC 895, at para. 109. The stigma "will attach whether [s. 161] is preventive or punitive": *Budreo* (ONCA), at para. 28. Even if it could be said that some stigma flows from a s. 161 order, it will be so insignificant as compared to the stigma that flows from the conviction for the predicate sexual offence that it is practically and analytically inconsequential.

(vii) Restrictions in s. 161(1) do not constitute a "significant deprivation of liberty"

61. The appellant submits that the imposition of a s. 161(1) order occasions a "significant deprivation of liberty" because it prohibits an offender from engaging in "everyday activities – from going to a park to simply 'using' the Internet" (*Appellant's Factum*, at para. 6; see also para. 79). Similarly, Groberman J.A. spoke of the "liberties generally enjoyed by the

public": *BCCA Reasons*, at para. 62 (*A.R.*, Vol. 1, p. 53). However, the respondent submits that it is important to be precise about what constitutes the "liberty" interest constitutionally protected under s. 7 of the *Charter* and the extent to which a s. 161 order actually impacts it.

62. It is true that "liberty", within the meaning of s. 7 of the *Charter*, "means more than freedom from physical restraint". Liberty includes "the right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference". However, the constitutional protection of "liberty" under s. 7, as defined by this Court, does not capture all personal decisions or activities, but only those matters that "can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence": *R. v. Malmo-Levine*, 2003 SCC 74, [2003] 3 S.C.R. 571, at para. 85, citing *Godbout v. Longeuil (City)*, [1997] 3 S.C.R. 844, at para. 66. The *Charter* "cannot be stretched to afford protection to whatever activity an individual chooses to define as central to his or her lifestyle": *R. v. Malmo-Levine*, at para. 86. The activity must involve a fundamental personal choice "going to the core of what it means to enjoy individual dignity and independence".

63. A s. 161(1) prohibition order does not involve imprisonment. To that end, it is not, as the appellant suggests, analogous to the deprivation of liberty that arises from serving a conditional sentence order (a sentence of imprisonment in the community) (*Appellant's Factum*, at para. 86).

64. The respondent acknowledges that the geographic restrictions and prohibition on working or volunteering in roles that involve a position of trust or authority towards persons under the age of sixteen years engage liberty interests. However, all of those terms are directly connected to the risk that an offender poses to children and, therefore, the order has a limited and narrowly defined impact on liberty. For example, courts have held that the registration and reporting requirements under *SOIRA*, which include a travel restriction, engage liberty interests, although the impact is "minimal" and "not significant": see, for example, *R. v. C.(S.S.)*, at paras. 52, 55.

65. A legitimate question arises as to whether being able to access the Internet is a protected "liberty" interest under s. 7. The respondent submits that while the Internet is extraordinarily convenient and aggregates masses of data, it is not absolutely essential for social or commercial

existence, or to exercise legal rights.[3] There is no free-standing right to access the Internet for recreational or employment purposes: *R. v. Malmo-Levine*, at para. 87. People can, and do, lead full lives without access to the Internet. Therefore, while the condition may feel onerous to some, the right to use and access the Internet is not a "liberty" interest within the meaning of s. 7 of the *Charter*. The Court should be wary of constitutionally enshrining access to a particular technology or defining a *Charter* right centred around it, especially where its nature and use is constantly shifting and evolving. Matters that appear crucial in the digital world today could be trivial in a few short years and vice-versa. Therefore, the Court should retain its focus under s. 7 on core liberty interests rather than pegging them to any specific device or network of information, despite calls to the contrary.

66. However, even if this Court were to conclude that a restriction on Internet access impacts "liberty", the respondent says that s. 161(1)(d) also has a limited and narrowly defined impact on it. As will be explored below, the condition is protective not punitive and is directly connected to the risk that an offender poses to children. Moreover, where the offending behaviour or future risk to children relates to the Internet or other digital network, an offender cannot reasonably expect that he or she will have unlimited or unsupervised access to the Internet and other digital networks.

(viii) The restriction on Internet access is protective not punitive

67. While this appeal relates to both ss. 161(1)(c) and (d), significant emphasis has been placed on the impact of the restriction on Internet access in s. 161(1)(d). However, "many conviction-based measures which have significant negative ramifications for an offender, are held to be non-punitive" and "every measure impacting upon the behaviour of an individual need not be regarded as punitive rather than preventative": *R. v. Cross*, at paras. 34, 40.

68. Section 161(1)(d) does not automatically result in a complete prohibition on Internet access. Again, the condition is discretionary, not mandatory. Moreover, if a court ultimately decides to impose the term, the section specifically allows the court to set conditions on use: see, for example, *R. v. Schledermann*, 2014 ONSC 674 (also indexed as *R. v. P.S.)*, at para. 13(c); *R. v. Levin*, 2015 ONCJ 290, at para. 113. Further, s. 161(3) permits a court to vary the

[3] See *R. v. McKay*, 2014 ABQB 70, at paras. 41-66, where the summary conviction appeal justice concluded that s. 10(b) of the *Charter* does not require police to give a detainee access to the Internet.

conditions prescribed in the order "if, in the opinion of the court, the variation is desirable because of changed circumstances".

69. This flexibility in both initial imposition and subsequent modification to suit future changes unequivocally demonstrates that the provision is designed to be protective rather than punitive. Such an accommodation to the variability of the risk posed by the offender bears all the hallmarks of protection and prevention rather than punishment.

70. Moreover, the shift from "computer system" in the old s. 161(1)(c) to "Internet and digital network" in the new s. 161(1)(d) is a technical change designed to reflect advancements in technology but does not alter the order's original preventive purpose. As Carole Morency, the Acting General Counsel for the Criminal Law Policy Section, Department of Justice, explained to the House of Commons Standing Committee on Justice and Human Rights, the term "Internet or other digital networks" was specifically selected in order to

> …include, e-mail, computer systems, other networks of communication, or an iPhone, for example, where telecommunications is being done through a computer system. The intention is to catch that, because those are the tools that offenders are using to either access children or facilitate their offending conduct.
>
> The intention here was to use language that is consistent with other federal legislation….
> …
> …the language is intended to have a consistent meaning and understanding in that it involves a network that is connected to another network for the purpose of communication. That additional part of the term "other digital network", was included to ensure that networks that are not based on the TCP, the protocol on which the Internet itself is run, would be caught too.
>
> For example, in the 1990s, bulletin boards were commonly used and frequently accessed by individuals. That network does not run on that TCP, on that protocol, but if the operation of that network results in the same as with the Internet…in other words, if an accused can communicate with another person through that means for the purpose of facilitating their offending conduct, then the intention with this terminology in the bill before you was to catch that.
>
> *House of Commons Standing Committee on Justice and Human Rights*, 40th Parl, 3rd Sess, No. 45 (2 February, 2011), at p. 14 (1645); No. 50 (28 February 2011), at p. 2.

71. Ms. Morency also explained that it was necessary to delete the phrase "for the purpose of communicating with a person under the age of 16 years" from the old s. 161(1)(c) in order to capture all possible offending behaviour against children on the Internet:

> … you're quite right in terms of looking to what's in section 161 right now, which is only a condition against using a computer system for the purpose of communicating with a

> young person. That condition was added in 2002 when the Internet luring offence was created, because that offence was addressing the use of the means, the computer system, to communicate with a young person.
>
> But what Bill C-54 recognizes is that offenders use the Internet computer systems for all sorts of reasons. Yes, they use it to communicate directly with a young person, and we catch that already, but they use it also to offend, in their offending pattern, whether it's to access child pornography, for example….
>
> So the idea with Bill C-54 is to require a court to turn its mind to this each time it is sentencing a person who is convicted of one of these child sex offences and to consider whether in that instance, with the offender before them, given the nature of the offending pattern and the conduct before the court, there should be a restriction on that individual's access to the Internet or other technology that would otherwise facilitate his or her reoffending.
>
> *House of Commons Standing Committee on Justice and Human Rights*, 40th Parl, 3rd Sess, No. 50 (28 February 2011), at pp. 3-4.

72. The above discussion confirms that s. 161(1)(d) was enacted to keep pace with changes in technology and address the myriad ways in which the Internet and other digital networks are used by offenders to commit offences against children.

73. This was a rational and reasoned response by Parliament, and does not reveal a punitive intent. While the Internet may have become omnipresent, it has also significantly transformed the *modus operandi* of sexual offending against children. The global Internet communications revolution has exponentially expanded the opportunities for sexual offending against children: *R. v. B.(T.L.)*, 2007 ABCA 61, at para. 27, leave to appeal dismissed, [2007] S.C.C.A. No. 136; *R. v. Alicandro*, 2009 ONCA 133, leave to appeal dismissed, [2009] S.C.C.A. No. 395, at para. 36. The jurisprudence is replete with references to the role the Internet plays in sexual offences against children:

- "[t]he Internet is an open door to knowledge, entertainment, communication — *and exploitation*": *R. v. Legare*, 2009 SCC 56, [2000] 3 S.C.R. 551, at para. 1 (emphasis in original);

- "[t]he sexual exploitation of children through child pornography and the use of the Internet to distribute it constitute a profound and present danger to children around the world…the ease with which images of sexually exploited children can be transmitted through this instant, worldwide network adds to the gravity of the offence and the degree of victimization of the children. It takes only a click of a mouse for one child

pornographer to spread graphic images of child sexual abuse internationally in seconds": *R. v. B.(T.L.)*, at para. 27;

- "with widespread Internet distribution of child pornography…exploited children are re-victimized with every click of the mouse as the images of their abuse live forever in the public domain": *R. v. Allen*, 2012 BCCA 377, at para. 21 (citing the *Reasons for Sentence*);
- "[o]ver the last two decades, courts have been on a learning curve to understand both the extent and the effects of the creation and dissemination of child pornography over the Internet and to address the problem appropriately….Unfortunately, the incidence of this behaviour appears to be increasing and expanding as technology becomes more sophisticated, encouraging the production of child pornography and greatly facilitating its distribution. The victims are innocent children who become props in a perverted show, played out for an ever-wider audience not only of voyeurs but of perpetrators": *R. v. D.G.F.*, 2010 ONCA 27, at paras. 21-22;
- "the Internet is a medium in which adults can engage in anonymous, low visibility and repeated contact with potentially vulnerable children. The Internet can be a fertile breeding ground for the grooming and preparation associated with the sexual exploitation of children by adults": *R. v. Alicandro*, at para. 36 (cited with approval by Fish J. in *R. v. Legare*, at para. 26);
- "[c]hildren are frequent users of the Internet. Children, as vulnerable members of our society, must be safeguarded against predators who abuse the Internet to lure children into situations where they can be sexually exploited and abused": *R. v. Golden*, 2009 MBCA 107, at para. 60, citing *R. v. Folino* (2005), 202 C.C.C. (3d) 353 (Ont. C.A.), at para. 25; and
- "Parliament has recognized that the internet has infinitely expanded the opportunity for predators to attract or ensnare children. The anonymity of the internet allows the predator to hide his or her true identity, to mask predatory behaviours through seemingly innocuous but persistent communication, and to count on the victims letting their guard down because the communication occurs in the privacy and supposed safety of their own homes": *R. v. Paradee*, 2013 ABCA 41, at para. 12.

74. Viewed in the above jurisprudential context, the enactment of s. 161(1)(d) does not transform s. 161(1) into punishment; rather it is consistent with Parliament's long-standing purpose of protecting children against the risk of future sexual violence. As Newbury J.A. aptly observed, "[b]arring offenders from contact with children and from use (or abuse) of the Internet is…an important protective measure": *BCCA Reasons*, at para. 96 (*A.R.*, Vol. 1, p. 30).

75. The risk posed by the Internet and the need for a protective s. 161 order is clearly illustrated by this case. The appellant's trial counsel told the trial judge that the appellant is "addicted to and motivated by child pornography and that he has an attraction to young children. This is exacerbated by access to the Internet where child pornography is rampant and easily accessible": *Proceedings at Sentencing* (8 August 2013), at p. 30[25-29] (*A.R.*, Vol. 2, p. 32) (emphasis added). The author of the forensic psychiatric report also recommended that when the appellant is "eventually allowed back into the community, it would seem prudent to disallow any access to the internet and to furthermore restrict his access to any unsupervised children": Exhibit 5, *Forensic Psychiatric Report*, at p. 11 (*A.R.*, Vol. 2, p. 161) (emphasis added).

(ix) The majority's treatment of s. 161 order is consistent with the assessment of similar protective orders

76. The conclusion that a s. 161 order is not "punishment" is consistent with a wide body of appellate jurisprudence that has upheld the constitutionality of other similar protective orders, such as a *SOIRA* order and a s. 810.1 recognizance.

77. A prohibition order made under s. 161(1) is an ancillary order that has a preventive, rather than penal or punitive purpose. To that end, it should be approached in the same way as other orders which have been held not to constitute "punishment":

- post-conviction DNA databank orders: *R. v. Rodgers*; *R. v. Murrins*;
- registration and reporting orders under *SOIRA*: *R. v. Cross; P.S.C.*; *R. v. C.(S.S)*; *Morin v. R.; R. v. B.(C.L.)*; *R. v. Warren*; *R. v. P.(D.J.)*, (6 January 2012), Victoria Registry No. 147688-2 (B.C.S.C.); *R. v. Whiting*;
- the Ontario Sex Offender Registry order ("*Christopher's Law*"): *R. v. Dyck*; and
- a s. 810.1 recognizance under the *Criminal Code*: *R. v. Budreo*.

78. Groberman J.A., writing in dissent on this point, attempted to distinguish the *SOIRA* decisions on the basis that the primary purpose of those measures was crime prevention and law

enforcement: *BCCA Reasons*, at para. 83 (*A.R.*, Vol. 1, p. 59). However, a s. 161 order is no different. The purpose of a s. 161 order is not to impose a sanction for the offence already committed, but to prevent future sexual offences against children from happening. To that end, it is also analogous to a s. 810.1 recognizance, a provision which permits a court to impose virtually identical activity and geographic restrictions where there are reasonable grounds to believe that the individual will commit an enumerated sexual offence against a person under 16 years of age. In fact, s. 810.1 was also amended by the *Safe Streets and Communities Act*, s. 37(2), to expand the list of conditions that may be added to a s. 810.1 recognizance, including the conditions which were added to s. 161(1) - conditions which restrict contact with a person under the age of 16 years and the use of the Internet or other digital network.

79. The Ontario Court of Appeal has confirmed that a s. 810.1 recognizance is a preventive, rather than punitive, measure: *R. v. Budreo* (ONCA), at paras. 30, 34. In *Budreo*, the hearing judge, Then J., concluded that s. 11 of the *Charter* was not engaged because a person who is placed on a s. 810.1 recognizance is not someone who is "charged with an offence". Although that factor distinguishes the situation somewhat from the case at bar (where the appellant has been charged with and convicted of offences), Then J. went on to note that while there is no question that a s. 810.1 recognizance impacts liberty, the geographic and activity-based restrictions associated with the order are "moderate and circumscribed" and not punitive in nature (paras. 71, 101). A s. 810.1 recognizance is a preventive measure that is designed to address "the present state of dangerousness posed by an accused and the prevention of future crimes" (para. 101). While a person who is subject to a s. 810.1 recognizance may feel they are being punished, "[t]his does not mean that in law the person is being punished" (para. 103) (emphasis added). As Then J. explained:

> 104 ...The restrictions imposed under [s. 810.1(3)] do not involve the retributive aspects of prison or a fine. They are, by their very nature, the type of restrictions that would prevent an offence rather than punish one. The conditions are not premised on society's desire to punish child abusers – if they were I would venture to say the restrictions would be much more severe – but on a wish to forestall such abuse by removing those inclined to sexually exploit children from contact with them.
>
> [Emphasis added]

80. On appeal, the Ontario Court of Appeal affirmed Then J.'s conclusion that a s. 810.1 recognizance is a preventive, rather than punitive, provision. Laskin J.A., writing for the court,

observed that the purpose of the provision was not "to mete out criminal punishment" nor did it have a "true penal consequence" (para. 29). The purpose of the provision "is not to punish crime but to prevent crime from happening. Its sanctions are not punitive, nor are they intended to redress a wrong; they are activity and geographic restrictions on a person's liberty intended to protect a vulnerable group in our society from future harm" (para. 30). It "is a preventative measure. Indeed, if the preventive aspect of the federal criminal law power is going to be used anywhere, I cannot think of a more important use than the protection of young children from likely sexual predators" (para. 34).

81. The appellant submits that Newbury J.A. erred in relying on this Court's decision in *R. v. M.(L.)*, 2008 SCC 31, [2008] 2 S.C.R. 163 (*Appellant's Factum*, at paras. 100-103). However, Newbury J.A.'s reliance on *M.(L.)* was not misplaced as the decision illustrates how different aspects of a sentence can serve difference objectives (punishment vs. prevention of future criminal conduct) (paras. 45-48).

82. The appellant also attempts to draw an analogy to *Criminal Code* driving prohibitions (s. 259(1) of the *Code*) and relies on the Ontario Court of Appeal's decision in *R. v. Fernandes*, 2013 ONCA 436, at paras. 98-100 (*Appellant's Factum*, at paras. 84). However, *Fernandes* was concerned with the interpretation of s. 260 of the *Code*. In its cursory consideration of the issue, the Ontario Court of Appeal does not consider s. 11(i) of the *Charter* or refer to the breadth of jurisprudence cited above that has considered whether a sanction constitutes "punishment". In fact, it does not even cite this Court's decision in *Rodgers*. Moreover, as noted above, in *Rodgers*, Charron J. left open the question of whether a *Criminal Code* driving prohibition constitutes "punishment" (para. 63).

83. While it is beyond the scope of this appeal to comprehensively address whether a driving prohibition constitutes "punishment", it is well-established that driving, like firearms ownership, is a privilege rather than a right, and is not a liberty interest protected by s. 7 of the *Charter*: *Buhlers v. British Columbia (Superintendent of Motor Vehicles)*, 1999 BCCA 114, at paras. 109-110, leave to appeal dismissed, [2000] 1 S.C.R. viii, application for reconsideration refused, 2000 CarswellBC 2346 (S.C.C.); see also *Thomson v. Alberta (Transportation Safety Board)*, 2003 ABCA 112; *Horsefield v. Ontario (Registrar of Motor Vehicles)* (1999), 134 C.C.C. (3d) 161 (Ont. C.A.), at paras. 36-55. Moreover, driving prohibitions are protective and

directed to public safety. While a lower court has held in *obiter* that a *Criminal Code* driving prohibition constitutes punishment (*R. v. Wilson*, 2011 ONSC 89, at paras. 35-37), the respondent submits that there is no basis in principle for distinguishing between a *Criminal Code* driving prohibition and one imposed under provincial motor vehicle legislation. Courts have routinely concluded that provincially imposed driving prohibitions, including those that are consequent upon a criminal conviction, do not constitute "punishment": see, for example, *R. v. Art* (1987), 39 C.C.C. (3d) 363 (B.C.C.A.); *R. v. Frederickson*, 2002 BCSC 1777, at paras. 59-66; *R. v. Wilson*, at paras. 24-34. This conclusion is entirely consistent with the holding of appellate courts that driving itself is a privilege.

84. The appellant also submits that a s. 161 order is analogous to a probation order (*Appellant's Factum*, at paras. 76-78). However, there are three important distinctions.

85. First, unlike s. 161, the *Code* makes it clear that a probation order is part of the punishment for the original offence. Pursuant to s. 732.2(5) of the *Code*, where an offender who is bound by a probation order is convicted of a further offence, including an offence under s. 733.1 (breach of probation), the court that made the probation order may, upon application of the prosecutor, alter the terms of the original sentence: *R. v. Cross*, at para. 67. This can happen in one of two ways:

- where the probation order was made under s. 731(1)(a) (suspended sentence and probation order), the court may revoke the probation order and impose any sentence that could have been imposed if the passing of sentence had not been suspended (s. 732.2(5)(d)); or
- for any other sentence, the court may make such changes to the optional probation conditions as the court deems desirable or extend the period for which the probation order is to remain in force, not exceeding one year (s. 732.2(5)(e)).

This reinforces the conclusion that a probation order is part of the punishment for the original offence.

86. Second, unlike s. 161, there are compulsory statutory conditions in a probation order (s. 732.1(2)).

87. Third, a s. 161 order does not contain a reporting condition (s. 732.1(3)(a)) and "does not authorize the probing inquiries that may be made of an offender by a probation officer": *R. v. Cross*, at para. 68.

88. Finally, from a policy perspective, "it is important that section 161 not be seen as simply an addition to section 732.1(3)(h) of the *Criminal Code*. Such an approach would be inconsistent with Parliament's intent in enacting this provision and it would render section 161 effectively meaningless": *R. v. R.M.G.*, [2001] N.J. No. 269 (Nfld. P.C.), at para. 42.

(x) Conclusion on s. 11(i) of the *Charter*

89. As noted above, in *Rodgers*, Charron J. held that the fact that a consequence may, in its application, indirectly further a goal of sentencing does not make it "punishment" (para. 64). Rather, the key question under s. 11(i) is whether the order is made in furtherance of another legitimate state interest (here, protection of children), rather than the state's interest in sanctioning the offender (para. 64).

90. Applying *Rodgers*, Newbury J.A. correctly held that the impact of s. 161(1) is closely aligned with its legislative purpose (protection of children) and is not of such magnitude that it reveals, instead, a punitive intent: *BCCA Reasons*, at para. 94-96, 99 (*A.R.*, Vol. 1, pp. 63-66). Newbury J.A.'s thorough consideration of the issue is consistent with *Rodgers* and with other appellate jurisprudence that has considered the constitutionality of analogous protective orders.

91. In summary, the respondent submits that ss. 161(1)(c) and (d) are not "punishment" because:

- the jurisprudence universally establishes that the purpose of a s. 161 order is the protection of children from future sexual offences. It is intended to eliminate, or significantly reduce, opportunities for future contact between an offender and persons under the age of 16 years. It has a preventive, rather than penal or punitive purpose. It is not imposed for the purpose of sanctioning an offender or in furtherance of the purpose and principles of sentencing;
- the jurisprudence has established that s. 161 orders may only be imposed where the court is satisfied, on the evidence, that (1) the offender poses a serious risk to the safety of a

child or children; and (2) that the terms of the order are a reasonable attempt to minimize the risk;

- any meaningful stigma experienced by the offender flows from the conviction for a sexual offence and not the s. 161 order;
- the enumerated conditions in ss. 161(1)(c) and (d) are logically connected to a legitimate non-punitive goal – the protection of children from the risk of future sexual offences;
- prohibiting offenders from contact with children and use of the Internet and other digital networks are important protective measures;
- the Internet prohibition keeps pace with changes in technology and addresses the myriad of ways in which the Internet and digital networks are, and may be, used by offenders to commit sexual offences against children;
- a s. 161 order is discretionary and a sentencing judge is not mandated to impose it (s. 161(1));
- none of the enumerated conditions are mandatory and a judge has the discretion to tailor the conditions to the specific risk posed by the offender; and
- the *Code* specifically provides an avenue of review (s. 161(3)), such that an offender can subsequently apply to vary the order.

92. The impact of ss. 161(1)(c) and (d) is closely aligned "with its legislative purpose and is not of such magnitude that it reveals, instead, a punitive intent": *R. v. Cross*, at para. 45. As a result, the amendments are not "punishment" within the meaning of s. 11(i) of the *Charter*.

B. Section 1

93. If this Court finds that the retrospective application of ss. 161(1)(c) and (d) of the *Code* violates s. 11(i) of the *Charter*, the respondent submits that the infringement is a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Charter*. As noted above, the respondent's submissions on s. 1 are contained in the *Respondent's Memorandum of Argument on Motion to Adduce New Evidence and Submissions on Section 1 of the Charter*, which was filed on July 21, 2015.

PART IV – SUBMISSIONS CONCERNING COSTS

94. The respondent makes no submissions on costs.

PART V – ORDER SOUGHT

95. The respondent respectfully requests that the appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Lesley Ruzicka
Counsel for the Respondent

October 13, 2015
Victoria, British Columbia

PART VI – LIST OF AUTHORITIES

Paragraph

Texts

Hansard (in reverse chronological order)

Legislation

PART VII – STATUTES AND PROVISIONS

Criminal Code, R.S.C., 1985, c. C-46

Code criminal, L.R.C. (1985), ch. C-46

PART V

SEXUAL OFFENCES, PUBLIC MORALS AND DISORDERLY CONDUCT

PARTIE V
INFRACTIONS D'ORDRE SEXUEL, ACTES CONTRAIRES AUX BONNES MOEURS, INCONDUITE

Version in force August 9, 2012 – September 19, 2014

Section 161:

Order of prohibition

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

(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.

Offences

(1.1) The offences for the purpose of subsection (1) are

(a) an offence under section 151, 152, 155 or 159, subsection 160(2) or (3), section 163.1,

Article 161:

Ordonnance d'interdiction

161. (1) 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.

Infractions

(1.1) Les infractions visées par le paragraphe (1) sont les suivantes:

a) les infractions prévues aux articles 151, 152, 155 ou 159, aux paragraphes 160(2) ou (3), aux

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);

(b) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983;

(c) an offence under subsection 146(1) (sexual intercourse with a female under 14) or section 153 (sexual intercourse with stepdaughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

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);

b) les infractions prévues aux articles 144 (viol), 145 (tentative de viol), 149 (attentat à la pudeur d'une personne de sexe féminin), 156 (attentat à la pudeur d'une personne de sexe masculin) ou 245 (voies de fait ou attaque) ou au paragraphe 246(1) (voies de fait avec intention) du Code criminel, chapitre C-34 des Statuts revisés du Canada de 1970, dans leur version antérieure au 4 janvier 1983;

c) les infractions prévues au paragraphe 146(1) (rapports sexuels avec une personne de sexe féminin âgée de moins de 14 ans) ou aux articles 153 (rapports sexuels avec sa belle-fille), 155 (sodomie ou bestialité), 157 (grossière indécence), 166 (père, mère ou tuteur qui cause le déflorement) ou 167 (maître de maison qui permet le déflorement) du *Code criminel*, chapitre C-34 des Statuts revisés du Canada de 1970, dans leur version antérieure au 1er janvier 1988;

Duration of prohibition

(2) The prohibition may be for life or for any shorter duration that the court considers desirable and, in the case of a prohibition that is not for life, the prohibition begins on the later of

(a) the date on which the order is made; and

(b) where the offender is sentenced to a term of imprisonment, the date on which the offender is released from imprisonment for the offence, including release on parole, mandatory supervision or statutory release.

Durée de l'interdiction

(2) L'interdiction peut être perpétuelle ou pour la période que le tribunal juge souhaitable, auquel cas elle prend effet à la date de l'ordonnance ou, dans le cas où le contrevenant est condamné à une peine d'emprisonnement, à celle de sa mise en liberté à l'égard de cette infraction, y compris par libération conditionnelle ou d'office, ou sous surveillance obligatoire.

Court may vary order

(3) A court that makes an order of prohibition or, where the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances after the conditions were prescribed.

Modification de l'ordonnance

(3) Le tribunal qui rend l'ordonnance ou, s'il est pour quelque raison dans l'impossibilité d'agir, tout autre tribunal ayant une juridiction équivalente dans la même province peut, à tout moment, sur demande du poursuivant ou du contrevenant, requérir ce dernier de comparaître devant lui et, après audition des parties, modifier les conditions prescrites dans l'ordonnance si, à son avis, cela est souhaitable en raison d'un changement de circonstances depuis que les conditions ont été prescrites.

Offence

(4) Every person who is bound by an order of prohibition and who does not comply with the order is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 161; R.S., 1985, c. 19 (3rd Supp.), s. 4; 1993, c. 45, s. 1; 1995, c. 22, s. 18; 1997, c. 18, s. 4; 1999, c. 31, s. 67; 2002, c. 13, s. 4; 2005, c. 32, s. 5; 2008, c. 6, s. 54; 2012, c. 1, s. 16;

Criminal Code, R.S.C., 1985, c. C-46

PART V

SEXUAL OFFENCES, PUBLIC MORALS AND DISORDERLY CONDUCT

Version in Force September 19, 2014 – Present

Section 161:

Order of prohibition

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

(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;

(a.1) being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order;

(b) seeking, obtaining or continuing any employment, whether or not the employment is

Infraction

(4) Quiconque ne se conforme pas à l'ordonnance est coupable:

a) soit d'un acte criminel passible d'un emprisonnement maximal de deux ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

L.R. (1985), ch. C-46, art. 161; L.R. (1985), ch. 19 (3e suppl.), art. 4; 1993, ch. 45, art. 1; 1995, ch. 22, art. 18; 1997, ch. 18, art. 4; 1999, ch. 31, art. 67; 2002, ch. 13, art. 4; 2005, ch. 32, art. 5; 2008, ch. 6, art. 54; 2012, ch. 1, art. 16;

Code criminal, L.R.C. (1985), ch. C-46

PARTIE V

INFRACTIONS D'ORDRE SEXUEL, ACTES CONTRAIRES AUX BONNES MOEURS, INCONDUITE

Article 161:

Ordonnance d'interdiction

161. (1) 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;

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;

b) de chercher, d'accepter ou de garder un emploi — rémunéré ou non — ou un travail

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.

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.

Offences

(1.1) The offences for the purpose of subsection (1) are

(a) an offence under section 151, 152, 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);

(b) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983;

(c) an offence under subsection 146(1) (sexual intercourse with a female under 14) or section 153 (sexual intercourse with stepdaughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

(d) an offence under subsection 212(1) (procuring), 212(2) (living on the avails of prostitution of person under 18 years), 212(2.1) (aggravated offence in relation to living on the avails of prostitution of person under 18 years) or 212(4) (prostitution of person under 18 years)

Infractions

(1.1) Les infractions visées par le paragraphe (1) sont les suivantes :

a) les infractions prévues aux articles 151, 152, 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);

b) les infractions prévues aux articles 144 (viol), 145 (tentative de viol), 149 (attentat à la pudeur d'une personne de sexe féminin), 156 (attentat à la pudeur d'une personne de sexe masculin) ou 245 (voies de fait ou attaque) ou au paragraphe 246(1) (voies de fait avec intention) du Code criminel, chapitre C-34 des Statuts revisés du Canada de 1970, dans leur version antérieure au 4 janvier 1983;

c) les infractions prévues au paragraphe 146(1) (rapports sexuels avec une personne de sexe féminin âgée de moins de 14 ans) ou aux articles 153 (rapports sexuels avec sa belle-fille), 155 (sodomie ou bestialité), 157 (grossière indécence), 166 (père, mère ou tuteur qui cause le déflorement) ou 167 (maître de maison qui permet le déflorement) du Code criminel, chapitre C-34 des Statuts revisés du Canada de 1970, dans leur version antérieure au 1er janvier 1988;

d) les infractions prévues aux paragraphes 212(1) (proxénétisme), 212(2) (vivre des produits de la prostitution d'une personne âgée de moins de dix-huit ans), 212(2.1) (infraction grave — vivre des produits de la prostitution d'une personne âgée de moins de dix-huit ans)

of this Act, as it read from time to time before the day on which this paragraph comes into force.

ou 212(4) (prostitution d'une personne âgée de moins de dix-huit ans) de la présente loi, dans toute version antérieure à l'entrée en vigueur du présent alinéa.

Duration of prohibition

(2) The prohibition may be for life or for any shorter duration that the court considers desirable and, in the case of a prohibition that is not for life, the prohibition begins on the later of

(a) the date on which the order is made; and

(b) where the offender is sentenced to a term of imprisonment, the date on which the offender is released from imprisonment for the offence, including release on parole, mandatory supervision or statutory release.

Durée de l'interdiction

(2) L'interdiction peut être perpétuelle ou pour la période que le tribunal juge souhaitable, auquel cas elle prend effet à la date de l'ordonnance ou, dans le cas où le contrevenant est condamné à une peine d'emprisonnement, à celle de sa mise en liberté à l'égard de cette infraction, y compris par libération conditionnelle ou d'office, ou sous surveillance obligatoire.

Court may vary order

(3) A court that makes an order of prohibition or, where the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances after the conditions were prescribed.

Modificataion de l'ordonnance

(3) Le tribunal qui rend l'ordonnance ou, s'il est pour quelque raison dans l'impossibilité d'agir, tout autre tribunal ayant une juridiction équivalente dans la même province peut, à tout moment, sur demande du poursuivant ou du contrevenant, requérir ce dernier de comparaître devant lui et, après audition des parties, modifier les conditions prescrites dans l'ordonnance si, à son avis, cela est souhaitable en raison d'un changement de circonstances depuis que les conditions ont été prescrites.

Offence

(4) Every person who is bound by an order of prohibition and who does not comply with the order is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

Infraction

(4) Quiconque ne se conforme pas à l'ordonnance est coupable : a) soit d'un acte criminel passible d'un emprisonnement maximal de deux ans; b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

R.S., 1985, c. C-46, s. 161; R.S., 1985, c. 19 (3rd Supp.), s. 4; 1993, c. 45, s. 1; 1995, c. 22, s. 18; 1997, c. 18, s. 4; 1999, c. 31, s. 67; 2002, c. 13, s. 4; 2005, c. 32, s. 5; 2008, c. 6, s. 54; 2012, c. 1, s. 16; 2014, c. 21, s. 1, c. 25, s. 5.

L.R. (1985), ch. C-46, art. 161; L.R. (1985), ch. 19 (3e suppl.), art. 4; 1993, ch. 45, art. 1; 1995, ch. 22, art. 18; 1997, ch. 18, art. 4; 1999, ch. 31, art. 67; 2002, ch. 13, art. 4; 2005, ch. 32, art. 5; 2008, ch. 6, art. 54; 2012, ch. 1, art. 16; 2014, ch. 21, art. 1, ch. 25, art. 5.

Criminal Code, R.S.C., 1985, c. C-46

PART III

FIREARMS AND OTHER WEAPONS

Section 109 and 110:

PROHIBITION ORDERS

Mandatory prohibition order

109. (1) Where a person is convicted, or discharged under section 730, of

(a) an indictable offence in the commission of which violence against a person was used, threatened or attempted and for which the person may be sentenced to imprisonment for ten years or more,

(a.1) an indictable offence in the commission of which violence was used, threatened or attempted against

(i) the person's current or former intimate partner,

(ii) a child or parent of the person or of anyone referred to in subparagraph (i), or

(iii) any person who resides with the person or with anyone referred to in subparagraph (i) or (ii),

(b) an offence under subsection 85(1) (using firearm in commission of offence), subsection 85(2) (using imitation firearm in commission of offence), 95(1) (possession of prohibited or restricted firearm with ammunition), 99(1) (weapons trafficking), 100(1) (possession for purpose of weapons trafficking), 102(1) (making automatic firearm), 103(1) (importing or exporting knowing it is unauthorized) or section 264 (criminal harassment),

(c) an offence relating to the contravention of subsection 5(1) or (2), 6(1) or (2) or 7(1) of the Controlled Drugs and Substances Act, or

Code criminal, L.R.C. (1985), ch. C-46

PARTIE III

ARMES À FEU ET AUTRES ARMES

Articles 109 and 110

ORDONNANCE D'INTERDICTION

Ordonnance d'interdiction obligatoire

109. (1) Le tribunal doit, en plus de toute autre peine qu'il lui inflige ou de toute autre condition qu'il lui impose dans l'ordonnance d'absolution, rendre une ordonnance interdisant au contrevenant d'avoir en sa possession des armes à feu, arbalètes, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions, munitions prohibées et substances explosives pour la période fixée en application des paragraphes (2) ou (3), lorsqu'il le déclare coupable ou l'absout en vertu de l'article 730, selon le cas :

a) d'un acte criminel passible d'une peine maximale d'emprisonnement égale ou supérieure à dix ans et perpétré avec usage, tentative ou menace de violence contre autrui;

a.1) d'un acte criminel perpétré avec usage, tentative ou menace de violence contre l'une des personnes suivantes :

(i) son partenaire intime, actuel ou ancien,

(ii) l'enfant, le père ou la mère du contrevenant ou de l'une des personnes mentionnées au sous-alinéa (i),

(iii) toute personne qui réside avec le contrevenant ou l'une des personnes mentionnées aux sous-alinéas (i) ou (ii);

b) d'une infraction visée aux paragraphes 85(1) (usage d'une arme à feu lors de la perpétration d'une infraction), 85(2) (usage d'une fausse arme à feu lors de la perpétration d'une infraction), 95(1) (possession d'une arme à feu prohibée ou à autorisation restreinte avec des munitions), 99(1) (trafic d'armes), 100(1) (possession en vue de faire le trafic d'armes), 102(1) (fabrication d'une arme automatique), 103(1) (importation ou exportation non autorisées — infraction délibérée) ou à l'article 264 (harcèlement criminel);

c) d'une infraction relative à la contravention des paragraphes 5(1) ou (2), 6(1) ou (2) ou 7(1) de la Loi réglementant certaines drogues et autres substances;

(d) an offence that involves, or the subject matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition, any prohibited ammunition or an explosive substance and, at the time of the offence, the person was prohibited by any order made under this Act or any other Act of Parliament from possessing any such thing,

d) d'une infraction relative à une arme à feu, une arbalète, une arme prohibée, une arme à autorisation restreinte, un dispositif prohibé, des munitions, des munitions prohibées ou des substances explosives, perpétrée alors que celui-ci était sous le coup d'une ordonnance, rendue en vertu de la présente loi ou de toute autre loi fédérale, lui en interdisant la possession.

the court that sentences the person or directs that the person be discharged, as the case may be, shall, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance during the period specified in the order as determined in accordance with subsection (2) or (3), as the case may be.

Duration of prohibition order — first offence

(2) An order made under subsection (1) shall, in the case of a first conviction for or discharge from the offence to which the order relates, prohibit the person from possessing

(a) any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance during the period that

(i) begins on the day on which the order is made, and

(ii) ends not earlier than ten years after the person's release from imprisonment after conviction for the offence or, if the person is not then imprisoned or subject to imprisonment, after the person's conviction for or discharge from the offence; and

(b) any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

Durée de l'ordonnance — première infraction

(2) En cas de condamnation ou d'absolution du contrevenant pour une première infraction, l'ordonnance interdit au contrevenant d'avoir en sa possession :

a) des armes à feu — autres que des armes à feu prohibées ou des armes à feu à autorisation restreinte — , arbalètes, armes à autorisation restreinte, munitions et substances explosives pour une période commençant à la date de l'ordonnance et se terminant au plus tôt dix ans après sa libération ou, s'il n'est pas emprisonné ni passible d'emprisonnement, après sa déclaration de culpabilité ou son absolution;

b) des armes à feu prohibées, armes à feu à autorisation restreinte, armes prohibées, dispositifs prohibés et munitions prohibées, et ce à perpétuité.

Duration of prohibition order — subsequent offences

(3) An order made under subsection (1) shall, in any case other than a case described in subsection (2), prohibit the person from possessing any firearm, cross-bow, restricted weapon, ammunition

Durée de l'ordonnance — récidives

(3) Dans tous les cas autres que ceux visés au paragraphe (2), l'interdiction est perpétuelle

and explosive substance for life.

Definition of "release from imprisonment"

(4) In subparagraph (2)(a)(ii), "release from imprisonment" means release from confinement by reason of expiration of sentence, commencement of statutory release or grant of parole.

Application of ss. 113 to 117

(5) Sections 113 to 117 apply in respect of every order made under subsection (1).

R.S., 1985, c. C-46, s. 109; R.S., 1985, c. 27 (1st Supp.), s. 185(F); 1991, c. 40, s. 21; 1995, c. 39, ss. 139, 190; 1996, c. 19, s. 65.1; 2003, c. 8, s. 4; 2015, c. 27, s. 30.

Discretionary prohibition order

110. (1) Where a person is convicted, or discharged under section 730, of

(a) an offence, other than an offence referred to in any of paragraphs 109(1)(a) to (c), in the commission of which violence against a person was used, threatened or attempted, or

(b) an offence that involves, or the subject matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance and, at the time of the offence, the person was not prohibited by any order made under this Act or any other Act of Parliament from possessing any such thing,

the court that sentences the person or directs that the person be discharged, as the case may be, shall, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, consider whether it is desirable, in the interests of the safety of the person or of any other person, to make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted

Définition de «libération»

(4) À l'alinéa (2)a), «libération» s'entend de l'élargissement entraîné par l'expiration de la peine ou le début soit de la libération d'office soit d'une libération conditionnelle.

Application des articles 113 à 117

(5) Les articles 113 à 117 s'appliquent à l'ordonnance rendue en application du paragraphe (1).

L.R. (1985), ch. C-46, art. 109; L.R. (1985), ch. 27 (1er suppl.), art. 185(F); 1991, ch. 40, art. 21; 1995, ch. 39, art. 139 et 190; 1996, ch. 19, art. 65.1; 2003, ch. 8, art. 4; 2015, ch. 27, art. 30.

Ordonnance d'interdiction discrétionnaire

110. (1) Le tribunal doit, s'il en arrive à la conclusion qu'il est souhaitable pour la sécurité du contrevenant ou pour celle d'autrui de le faire, en plus de toute autre peine qu'il lui inflige ou de toute autre condition qu'il lui impose dans l'ordonnance d'absolution, rendre une ordonnance lui interdisant 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, lorsqu'il le déclare coupable ou l'absout en vertu de l'article 730 :

a) soit d'une infraction, autre que celle visée à l'un des alinéas 109(1)a) à c), perpétrée avec usage, tentative ou menace de violence contre autrui;

b) soit d'une infraction relative à une arme à feu, une arbalète, une arme prohibée, une arme à autorisation restreinte, un dispositif prohibé, des munitions, des munitions prohibées ou des substances explosives, perpétrée alors que celui-ci n'est pas sous le coup d'une ordonnance, rendue en vertu de la pré- sente loi ou de toute autre loi fédérale, lui en interdisant la possession.

weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court decides that it is so desirable, the court shall so order.

Duration of prohibition order

(2) An order made under subsection (1) against a person begins on the day on which the order is made and ends not later than ten years after the person's release from imprisonment after conviction for the offence to which the order relates or, if the person is not then imprisoned or subject to imprisonment, after the person's conviction for or discharge from the offence.

Exception

(2.1) Despite subsection (2), an order made under subsection (1) may be imposed for life or for any shorter duration if, in the commission of the offence, violence was used, threatened or attempted against

(a) the person's current or former intimate partner;

(b) a child or parent of the person or of anyone referred to in paragraph (a); or

(c) any person who resides with the person or with anyone referred to in paragraph (a) or (b).

Reasons

(3) Where the court does not make an order under subsection (1), or where the court does make such an order but does not prohibit the possession of everything referred to in that subsection, the court shall include in the record a statement of the court's reasons for not doing so.

Definition of "release from imprisonment"

(4) In subsection (2), "release from imprisonment" means release from confinement by reason of expiration of sentence, commencement of statutory release or grant of parole.

Application of ss. 113 to 117

(5) Sections 113 to 117 apply in respect of every order made under subsection (1).

R.S., 1985, c. C-46, s. 110; 1991, c. 40, ss. 23, 40; 1995, c. 39, ss. 139, 190; 2015, c. 27, s. 31.

Durée de l'ordonnance

(2) Le cas échéant, la période d'interdiction — commençant sur-le-champ — expire au plus tard dix ans après la libération du contrevenant ou, s'il n'est pas emprisonné ni passible d'emprisonnement, après sa déclaration de culpabilité ou son absolution.

Exception

(2.1) Malgré le paragraphe (2), l'ordonnance d'interdiction peut s'appliquer soit à perpétuité soit pour toute autre période plus courte si l'infraction a été perpétrée avec usage, tentative ou menace de violence contre l'une des personnes suivantes :

a) le partenaire intime, actuel ou ancien, du contrevenant;

b) l'enfant, le père ou la mère du contrevenant ou de l'une des personnes mentionnées à l'alinéa a);

c) toute personne qui réside avec le contrevenant ou l'une des personnes mentionnées aux alinéas a) ou b).

Motifs

(3) S'il ne rend pas d'ordonnance ou s'il en rend une dont l'interdiction ne vise pas tous les objets visés au paragraphe (1), le tribunal est tenu de donner ses motifs, qui sont consignés au dossier de l'instance.

Définition de «libération»

(4) Au paragraphe (2), «libération» s'entend de l'élargissement entraîné par l'expiration de la peine ou le début soit de la libération d'office soit d'une libération conditionnelle.

Application des articles 113 à 117

(5) Les articles 113 à 117 s'appliquent à l'ordonnance rendue en application du paragraphe (1).

L.R. (1985), ch. C-46, art. 110; 1991, ch. 40, art. 23 et 40; 1995, ch. 39, art. 139 et 190; 2015, ch. 27, art. 31.

Criminal Code, R.S.C., 1985, c. C-46

PART V

SEXUAL OFFENCES, PUBLIC MORALS AND DISORDERLY CONDUCT

Version in Force 1985 – Present

Section 179:

Vagrancy

179 (1) Every one commits vagrancy who:

(a) supports himself in whole or in part by gaming or crime and has no lawful profession or calling by which to maintain himself; or

(b) having at any time been convicted of an offence under section 151, 152 or 153, subsection 160(3) or 173(2) or section 271, 272 or 273 or of an offence under a provision referred to in a paragraph (b) of the definition "serious personal inquiry offence" in section 687 of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read before January 4, 1983, is found loitering in or near a school ground, playground, public park or bathing area.

Punishment

(2) Every one who commits vagrancy is guilty of an offence punishable on summary conviction.

R.S., c. C-34, s. 175; 1972, c. 13, s. 12; 1984, c. 40, s. 20; R.S.C. 1985, c. 27 (1st Supp.), s. 22; c. 19 (3rd Supp.), s. 8

Code criminal, L.R.C. (1985), ch. C-46

PARTIE V

INFRACTIONS D'ORDRE SEXUEL, ACTES CONTRAIRES AUX BONNES MOEURS, INCONDUITE

Article 179:

Vagabondage

179. (1) Commet un acte de vagabondage toute personne qui, selon le cas :

a) tire sa subsistance, en totalité ou en partie, du jeu ou du crime et n'a aucune profession ou occupation légitime lui permettant de gagner sa vie;

b) ayant été déclarée coupable d'une infraction prévue aux articles 151, 152 ou 153, aux paragraphes 160(3) ou 173(2) ou aux articles 271, 272ou 273 ou visée par une disposition mentionnée à l'alinéa *b*) de la définition de « sévices graves à la personne » à l'article 687 du *Code criminel*, chapitre C-34 des Statuts revisés du Canada de 1970, dans sa version antérieure au 4 janvier 1983, est trouvée flânant sur un terrain d'école, un terrain de jeu, un parc public ou une zone publique où l'on peut se baigner ou à proximité de ces endroits.

Peine

(2) Quiconque commet un acte de vagabondage est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

L.R. (1985), ch. C-46, art. 179; L.R. (1985), ch. 27 (1er suppl.), art. 22, ch. 19 (3e suppl.), art. 8.

Criminal Code, R.S.C., 1985, c. C-46

PART VIII

OFFENCES AGAINST THE PERSON AND REPUTATION

Section 259 and 260:

Mandatory order of prohibition

259. (1) When an offender is convicted of an offence committed under section 253 or 254 or this section or discharged under section 730 of an offence committed under section 253 and, at the time the offence was committed or, in the case of an offence committed under section 254, within the three hours preceding that time, was operating or had the care or control of a motor vehicle, vessel or aircraft or of railway equipment or was assisting in the operation of an aircraft or of railway equipment, the court that sentences the offender

Code criminal, L.R.C. (1985), ch. C-46

PARTIE VIII

INFRACTIONS CONTRE LA PERSONNE ET LA RÉPUTATION

Articles 259 and 260:

Ordonnance d'interdiction obligatoire

259. (1) Lorsqu'un contrevenant est déclaré coupable d'une infraction prévue aux articles 253 ou 254 ou au présent article ou absous sous le régime de l'article 730 d'une infraction pré- vue à l'article 253 et qu'au moment de l'infraction, ou dans les trois heures qui la précèdent dans le cas d'une infraction prévue à l'article 254, il conduisait ou avait la garde ou le contrôle d'un véhicule à moteur, d'un bateau, d'un aéronef ou de matériel ferroviaire, ou aidait à la conduite d'un aéronef ou de matériel ferroviaire, le tribunal qui lui inflige

shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel or an aircraft or railway equipment, as the case may be,

(a) for a first offence, during a period of not more than three years plus any period to which the offender is sentenced to imprisonment, and not less than one year;

(b) for a second offence, during a period of not more than five years plus any period to which the offender is sentenced to imprisonment, and not less than two years; and

(c) for each subsequent offence, during a period of not less than three years plus any period to which the offender is sentenced to imprisonment.

une peine doit, en plus de toute autre peine applicable à cette infraction, rendre une ordonnance lui interdisant de conduire un véhicule à moteur dans une rue, sur un chemin ou une grande route ou dans tout autre lieu public, un bateau, un aéronef ou du matériel ferroviaire :

a) pour une première infraction, durant une période minimale d'un an et maximale de trois ans, en plus de la période d'emprisonnement à laquelle il est condamné;

b) pour une deuxième infraction, durant une période minimale de deux ans et maximale de cinq ans, en plus de la période d'emprisonnement à laquelle il est condamné;

c) pour chaque infraction subséquente, durant une période minimale de trois ans, en plus de la période d'emprisonnement à laquelle il est condamné.

Alcohol ignition interlock device program

(1.1) If the offender is registered in an alcohol ignition interlock device program established under the law of the province in which the offender resides and complies with the conditions of the program, the offender may, subject to subsection (1.2), operate a motor vehicle equipped with an alcohol ignition interlock device during the prohibition period, unless the court orders otherwise.

Programme d'utilisation d'antidémarreurs avec éthylomètre

(1.1) À moins d'ordonnance contraire du tribunal, le contrevenant peut, sous réserve du paragraphe (1.2), conduire, durant la période d'interdiction, un véhicule à moteur équipé d'un antidémarreur avec éthylomètre s'il est inscrit à un programme d'utilisation d'antidémarreurs avec éthylomètre institué sous le régime juridique de la province où il réside et respecte les conditions du programme.

Minimum absolute prohibition period

(1.2) An offender who is registered in a program referred to in subsection (1.1) may not operate a motor vehicle equipped with an alcohol ignition interlock device until

(a) the expiry of a period of

(i) for a first offence, 3 months after the day on which sentence is imposed,

(ii) for a second offence, 6 months after the day on which sentence is imposed, and

(iii) for each subsequent offence, 12 months after the day on which sentence is imposed; or

(b) the expiry of any period that may be fixed by order of the court that is greater than a period referred to in paragraph (a).

Période minimale d'interdiction absolue

(1.2) Le contrevenant qui est inscrit à un programme visé au paragraphe (1.1) ne peut conduire un véhicule à moteur équipé d'un antidémarreur avec éthylomètre qu'après l'expiration :

a) soit de l'une des périodes suivantes :

(i) la période de trois mois suivant l'imposition de la peine, pour la première infraction,

(ii) la période de six mois suivant l'imposition de la peine, pour la deuxième infraction,

(iii) la période de douze mois suivant l'imposition de la peine, pour chaque infraction subséquente;

b) soit de la période supérieure à celle visée à l'alinéa a) que le tribunal peut fixer par ordonnance

(1.3) and (1.4) [Repealed, 2008, c. 18, s. 8]

(1.3) et (1.4) [Abrogés, 2008, ch. 18, art. 8]

Discretionary order of prohibition

(2) If an offender is convicted or discharged under section 730 of an offence under section 220, 221, 236, 249, 249.1, 250, 251 or 252 or any of subsections 255(2) to (3.2) committed by means of a motor vehicle, a vessel, an aircraft or railway equipment, the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel, an aircraft or railway equipment, as the case may be,

(a) during any period that the court considers proper, if the offender is sentenced to imprisonment for life in respect of that offence;

(a.1) during any period that the court considers proper, plus any period to which the offender is sentenced to imprisonment, if the offender is liable to imprisonment for life in respect of that offence and if the sentence imposed is other than imprisonment for life;

(b) during any period not exceeding ten years plus any period to which the offender is sentenced to imprisonment, if the offender is liable to imprisonment for more than five years but less than life in respect of that offence; and

(c) during any period not exceeding three years plus any period to which the offender is sentenced to imprisonment, in any other case.

Ordonnance d'interdiction discrétionnaire

(2) Lorsqu'un contrevenant est déclaré coupable ou absous sous le régime de l'article 730 d'une infraction prévue aux articles 220, 221, 236, 249, 249.1, 250, 251 ou 252 ou à l'un des paragraphes 255(2) à (3.2) commise au moyen d'un véhicule à moteur, d'un bateau, d'un aéronef ou de matériel ferroviaire, le tribunal qui lui inflige une peine peut, en plus de toute autre peine applicable en l'espèce, rendre une ordonnance lui interdisant de conduire un véhicule à moteur dans une rue, sur un chemin ou une grande route ou dans tout autre lieu public, un bateau, un aéronef ou du matériel ferroviaire :

a) durant toute période que le tribunal considère comme appropriée, si le contrevenant est condamné à l'emprisonnement à perpé- tuité pour cette infraction;

a.1) durant toute période que le tribunal considère comme appropriée, en plus de la période d'emprisonnement à laquelle il est condamné si celle-ci est inférieure à l'emprisonnement à perpétuité, dans le cas où le contrevenant est passible d'un emprisonnement à perpétuité pour cette infraction;

b) durant toute période maximale de dix ans, en plus de la période d'emprisonnement à laquelle il est condamné, si le contrevenant est passible d'un emprisonnement de plus de cinq ans mais inférieur à l'emprisonnement à perpétuité;

c) durant toute période maximale de trois ans, en plus de la période d'emprisonnement à laquelle il est condamné, dans tout autre cas.

Consecutive prohibition periods

(2.1) The court may, when it makes an order under this section prohibiting the operation of a motor vehicle, a vessel, an aircraft or railway equipment, as the case may be, order that the time served under that order be served consecutively to the time served under any other order made under this section that prohibits the operation of the same means of transport and that is in force.

Périodes d'interdiction consecutives

(2.1) Dans l'ordonnance qu'il rend en vertu du présent article, le tribunal peut prévoir que la période d'interdiction visant tel moyen de transport s'applique consécutivement à toute autre période d'interdiction prévue relativement au même moyen de transport dans toute autre ordonnance rendue en vertu du présent article qui est toujours en vigueur.

Saving

(3) No order made under subsection (1) or (2) shall operate to prevent any person from acting as master, mate or engineer of a vessel that is required to carry officers holding certificates as master, mate or engineer.

Réserve

(3) Aucune ordonnance rendue en vertu des paragraphes (1) et (2) ne peut empêcher une personne d'agir comme capitaine, lieutenant ou officier mécanicien d'un bateau tenu d'avoir à bord des officiers titulaires d'un certificat de capitaine, lieutenant ou d'officier mécanicien.

Mandatory order of prohibition — street racing

(3.1) When an offender is convicted or discharged under section 730 of an offence committed under subsection 249.4(1), the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place

(a) for a first offence, during a period of not more than three years plus any period to which the offender is sentenced to imprisonment, and not less than one year;

(b) for a second offence, during a period of not more than five years plus any period to which the offender is sentenced to imprisonment, and not less than two years; and

(c) for each subsequent offence, during a period of not less than three years plus any period to which the offender is sentenced to imprisonment

Ordonnance d'interdiction obligatoire (simple)

(3.1) Lorsqu'un contrevenant est déclaré coupable ou absous, sous le régime de l'article 730, d'une infraction au paragraphe 249.4(1), le tribunal, indépendamment de toute autre peine qu'il lui inflige, rend une ordonnance lui interdisant de conduire un véhicule à moteur dans une rue, un chemin ou une grande route ou tout autre lieu public :

a) pour une première infraction, durant une période minimale d'un an et maximale de trois ans, en plus de la période d'emprisonnement à laquelle il est condamné;

b) pour une deuxième infraction, durant une période minimale de deux ans et maximale de cinq ans, en plus de la période d'emprisonnement à laquelle il est condamné;

c) pour chaque infraction subséquente, durant une période minimale de trois ans, en plus de la période d'emprisonnement à laquelle il est condamné.

Mandatory order of prohibition — bodily harm

(3.2) When an offender is convicted or discharged under section 730 of an offence committed under section 249.3 or subsection 249.4(3), the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place

(a) for a first offence, during a period of not more than ten years plus any period to which the offender is sentenced to imprisonment, and not less than one year;

(b) for a second offence, during a period of not more than ten years plus any period to which the offender is sentenced to imprisonment, and not less than two years; and

(c) for each subsequent offence, during a period of not less than three years plus any period to which the offender is sentenced to imprisonment

Ordonnance d'interdiction obligatoire (lésions corporelles)

(3.2) Lorsqu'un contrevenant est déclaré coupable ou absous, sous le régime de l'article 730, d'une infraction à l'article 249.3 ou au paragraphe 249.4(3), le tribunal, indépendamment de toute autre peine qu'il lui inflige, rend une ordonnance lui interdisant de conduire un véhicule à moteur dans une rue, un chemin ou une grande route ou tout autre lieu public :

a) pour une première infraction, durant une période minimale d'un an et maximale de dix ans, en plus de la période d'emprisonnement à laquelle il est condamné;

b) pour une deuxième infraction, durant une période minimale de deux ans et maximale de dix ans, en plus de la période d'emprisonnement à laquelle il est condamné;

c) pour chaque infraction subséquente, durant une période minimale de trois ans, en plus de la période d'emprisonnement à laquelle il est condamné.

Mandatory order of prohibition — death

(3.3) When an offender is convicted or discharged under section 730 of a first offence committed under section 249.2 or subsection 249.4(4), the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender

Ordonnance d'interdiction obligatoire (mort)

(3.3) Lorsqu'un contrevenant est déclaré coupable ou absous, sous le régime de l'article 730, d'une première infraction à l'article 249.2 ou au paragraphe 249.4(4), le tribunal, indépendamment de toute autre peine qu'il lui inflige, rend une ordonnance lui interdisant de conduire un véhicule

from operating a motor vehicle on any street, road, highway or other public place

(a) for an offence under section 249.2, during a period of not less than one year plus any period to which the offender is sentenced to imprisonment; and

(b) for an offence under subsection 249.4(4), during a period of not more than ten years plus any period to which the offender is sentenced to imprisonment, and not less than one year.

Mandatory life prohibition

(3.4) When an offender is convicted or discharged under section 730 of an offence committed under section 249.2 or 249.3 or subsection 249.4(3) or (4), the offender has previously been convicted or discharged under section 730 of one of those offences and at least one of the convictions or discharges is under section 249.2 or subsection 249.4(4), the court that sentences the offender shall make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place for life.

Operation while disqualified

(4) Every offender who operates a motor vehicle, vessel or aircraft or any railway equipment in Canada while disqualified from doing so, other than an offender who is registered in an alcohol ignition interlock device program established under the law of the province in which the offender resides and who complies with the conditions of the program,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

Definition of "disqualification"

(5) For the purposes of this section, "disqualification" means

(a) a prohibition from operating a motor vehicle, vessel or aircraft or any railway equipment ordered pursuant to any of subsections (1), (2) and (3.1) to (3.4); or

(b) a disqualification or any other form of legal restriction of the right or privilege to operate a motor vehicle, vessel or aircraft imposed

à moteur dans une rue, un chemin ou une grande route ou tout autre lieu public :

a) s'agissant d'une infraction à l'article 249.2, durant une période minimale d'un an, en plus de la période d'emprisonnement à laquelle il est condamné;

b) s'agissant d'une infraction au paragraphe 249.4(4), durant une période minimale d'un an et maximale de dix ans, en plus de la période d'emprisonnement à laquelle il est condamné.

Interdiction à perpétuité obligatoire

(3.4) Lorsqu'un contrevenant est déclaré coupable ou absous, sous le régime de l'article 730, de l'une des infraction prévues aux articles 249.2 ou 249.3 ou aux paragraphes 249.4(3) ou (4), qu'il a déjà été déclaré coupable ou absous, sous le régime de l'article 730, de l'une de ces infractions, et qu'au moins une des déclarations de culpabilité ou absolutions concerne une infraction visée à l'article 249.2 ou au paragraphe 249.4(4), le tribunal qui lui inflige une peine rend une ordonnance lui interdisant à perpétuité de conduire un véhicule à moteur dans une rue, un chemin ou une grande route ou tout autre lieu public.

Conduite durant l'interdiction

(4) À moins d'être inscrit à un programme d'utilisation d'antidémarreurs avec éthylomètre institué sous le régime juridique de la province où il réside et d'en respecter les conditions, quiconque conduit un véhicule à moteur, un bateau, un aéronef ou du matériel ferroviaire au Canada pendant qu'il lui est interdit de le faire est coupable :

a) soit d'un acte criminel et passible d'un emprisonnement maximal de cinq ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

Définition de «interdiction»

(5) Pour l'application du présent article, «interdiction» s'entend selon le cas :

a) de l' interdiction de conduire un véhicule à moteur, un bateau, un aéronef ou du maté- riel ferroviaire prononcée en vertu de l'un des paragraphes (1), (2) et (3.1) à (3.4);

b) dans le cas d'une déclaration de culpabilité ou d'une absolution, sous le régime de l'article 730, relativement à une infraction visée au paragraphe (1), (2) ou (3.1) à (3.4), de l'interdiction ou de

(i) in the case of a motor vehicle, under the law of a province, or

(ii) in the case of a vessel or an aircraft, under an Act of Parliament,

in respect of a conviction or discharge under section 730 of any offence referred to in any of subsections (1), (2) and (3.1) to (3.4).

l'inaptitude à conduire ou de toute autre forme de restriction légale du droit ou de l'autorisation de conduire un véhicule à moteur, un bateau ou un aéronef infligée :

(i) en vertu d'une loi provinciale, dans le cas d'un véhicule à moteur,

(ii) en vertu d'une loi fédérale, dans le cas d'un bateau ou d'un aéronef.

R.S., 1985, c. C-46, s. 259; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), s. 18(F), c. 32 (4th Supp.), s. 62; 1995, c. 22, ss. 10, 18; 1997, c. 18, s. 11; 1999, c. 32, s. 5(Preamble); 2000, c. 2, s. 2; 2001, c. 37, s. 1; 2006, c. 14, s. 3; 2008, c. 6, s. 26, c. 18, s. 8.

L.R. (1985), ch. C-46, art. 259; L.R. (1985), ch. 27 (1er suppl.), art. 36, ch. 1 (4e suppl.), art. 18(F), ch. 32 (4e suppl.), art. 62; 1995, ch. 22, art. 10 et 18; 1997, ch. 18, art. 11; 1999, ch. 32, art. 5(préambule); 2000, ch. 2, art. 2; 2001, ch. 37, art. 1; 2006, ch. 14, art. 3; 2008, ch. 6, art. 26, ch. 18, art. 8.

Proceedings on making of prohibition order

260. (1) If a court makes a prohibition order under section 259 in relation to an offender, it shall cause

(a) the order to be read by or to the offender;

(b) a copy of the order to be given to the offender; and

(c) the offender to be informed of subsection 259(4).

Procédure d'ordonnance d'interdiction

260. (1) Le tribunal qui rend une ordonnance d'interdiction en vertu de l'article 259 s'assure que les exigences ci-après sont respectées :

a) l'ordonnance est lue au contrevenant ou par celui-ci;

b) une copie de l'ordonnance est remise au contrevenant;

c) le contrevenant est informé des dispositions du paragraphe 259(4).

Endorsement by offender

(2) After subsection (1) has been complied with in relation to an offender who is bound by an order referred to in that subsection, the offender shall endorse the order, acknowledging receipt of a copy thereof and that the order has been explained to him.

Signature du contrevenant

(2) Après que les exigences du paragraphe (1) ont été satisfaites, le contrevenant signe l'ordonnance attestant ainsi qu'il en a reçu copie et qu'elle lui a été expliquée.

Validity of order not affected

(3) The failure of an offender to endorse an order pursuant to subsection (2) does not affect the validity of the order.

Validité de l'ordonnance non atteinte

(3) Le défaut de se conformer au paragraphe (2) ne porte pas atteinte à la validité de l'ordonnance.

Onus

(4) In the absence of evidence to the contrary, where it is proved that a disqualification referred to in paragraph 259(5)(b) has been imposed on a person and that notice of the disqualification has been mailed by registered or certified mail to that person, that person shall, after five days following the mailing of the notice, be deemed to have received the notice and to have knowledge of the disqualification, of the date of its commencement

Fardeau

(4) En l'absence de toute preuve contraire, lorsqu'il est prouvé qu'une personne fait l'objet d'une interdiction en conformité avec l'alinéa 259(5)b) et que l'avis de cette interdiction a été envoyé par courrier certifié ou recommandé à cette personne, celle-ci, à compter du sixième jour de la mise à la poste de l'avis, est présumée avoir reçu l'avis et pris connaissance de l'existence de l'interdiction, de sa date d'entrée en vigueur et de sa durée.

and of its duration.

Certificate admissible in evidence

(5) In proceedings under section 259, a certificate setting out with reasonable particularity that a person is disqualified from

(a) driving a motor vehicle in a province, purporting to be signed by the registrar of motor vehicles for that province, or

(b) operating a vessel or aircraft, purporting to be signed by the Minister of Transport or any person authorized by the Minister of Transport for that purpose

is evidence of the facts alleged therein without proof of the signature or official character of the person by whom it purports to be signed.

Admissibilité du certificat ou prevue

(5) Dans les poursuites engagées en vertu de l'article 259, un certificat constitue la preuve des faits qui y sont allégués sans qu'il soit né- cessaire de prouver l'authenticité de la signature ou la qualité officielle du signataire lorsqu'il établit avec détails raisonnables ce qui suit :

a) il est interdit à la personne visée par le certificat de conduire un véhicule à moteur dans une province et le certificat est censé être signé par le directeur du bureau des vé- hicules automobiles de cette province;

b) il est interdit à la personne visée par le certificat de conduire un bateau ou un aéronef, et le certificat est censé être signé par le ministre des Transports ou la personne qu'il désigne à cette fin.

Notice to accused

(6) Subsection (5) does not apply in any proceedings unless at least seven days notice in writing is given to the accused that it is intended to tender the certificate in evidence.

Avis à l'accusé

(6) Le paragraphe (5) ne s'applique à des procédures que si un avis écrit d'au moins sept jours est donné à l'accusé, indiquant l'intention de présenter le certificat en preuve.

Definition of "registrar of motor vehicles"

(7) In subsection (5), "registrar of motor vehicles" includes the deputy of that registrar and any other person or body, by whatever name or title designated, that from time to time performs the duties of superintending the registration of motor vehicles in the province.

R.S., 1985, c. C-46, s. 260; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), s. 18(F); 2006, c. 14, s. 4.

Définition de «directeur du bureau des véhicules automobiles»

(7) Au paragraphe (5), «directeur du bureau des véhicules automobiles » s'entend de son adjoint et de toute personne ou de tout organisme qui, quel que soit son nom ou son titre, remplit les fonctions de directeur de l'immatriculation de ces véhicules dans une province.

L.R. (1985), ch. C-46, art. 260; L.R. (1985), ch. 27 (1er suppl.), art. 36, ch. 1 (4e suppl.), art. 18(F); 2006, ch. 14, art. 4.

Criminal Code, R.S.C., 1985, c. C-46

PART XV

SPECIAL PROCEDURE AND POWERS

Version in Force December 15, 2010 – April 14, 2011

Section 490.012(4) and 490.23(2):

Order to Comply with the Sex Offender Information Registration Act

Exception

490.012(4) The court is not required to make an order under this section if it is satisfied that the person has established that, if the order were made,

Code criminal, L.R.C. (1985), ch. C-46

PARTIE XV

PROCÉDURE ET POUVOIRS SPÉCIAUX

Article 490.012(4) and 490.23(2):

Ordonnance de se conformer à la Loi sur l'enregistrement de renseignements sur les délinquants sexuels

Exception

490.012(4) Le tribunal n'est toutefois pas tenu de rendre l'ordonnance s'il est convaincu que l'intéressé a établi que celle-ci aurait à son égard,

the impact on them, including on their privacy or liberty, would be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature, to be achieved by the registration of information relating to sex offenders under the *Sex Offender Information Registration Act*.

2004, c. 10, s. 20; 2007, c. 5, s. 13.

Exemption order

490.023 (2) The court shall make an exemption order if it is satisfied that the person has established that the impact of the obligation on them, including on their privacy or liberty, would be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature, to be achieved by the registration of information relating to sex offenders under the *Sex Offender Information Registration Act*.

2004, c. 10, s. 20; 2007, c. 5, s. 23.

Criminal Code, R.S.C., 1985, c. C-46

PART XXIII

SENTENCING

Section 731, 732.1, 732.2, 733.1

Probation

Making of probation order

731. (1) 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.

Idem

(2) A court may also make a probation order where it discharges an accused under subsection 730(1).

notamment sur sa vie privée ou sa liberté, un effet nettement démesuré par rapport à l'intérêt que présente, pour la protection de la société au moyen d'enquêtes efficaces sur les crimes de nature sexuelle, l'enregistrement de renseignements sur les délinquants sexuels prévu par la *Loi sur l'enregistrement de renseignements sur les délinquants sexuels*.

2004, ch. 10, art. 20; 2007, ch. 5, art. 13.

Ordonnance

490.023 (2) La cour accorde la dispense si elle est convaincue que l'intéressé a établi que l'obligation aurait à son égard, notamment sur sa vie privée ou sa liberté, un effet nettement démesuré par rapport à l'intérêt que présente, pour la protection de la société au moyen d'enquêtes efficaces sur les crimes de nature sexuelle, l'enregistrement de renseignements sur les délinquants sexuels prévu par la *Loi sur l'enregistrement de renseignements sur les délinquants sexuels*.

2004, ch. 10, art. 20; 2007, ch. 5, art. 23.

Code criminal, L.R.C. (1985), ch. C-46

PARTIE XXIII

DÉTERMINATION DE LA PEINE

Articles 731, 732.1, 732.2, 733.1

Probation

Prononcé de l'ordonnance de probation

731. (1) 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;

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 pré- vues dans une ordonnance de probation.

Cas d'absolution

(2) Le tribunal peut aussi rendre une ordonnance de probation qui s'applique à l'accusé absous aux

termes du paragraphe 730(1).

(3.1) [Repealed, 1997, c. 17, s. 1]

(3.1) [Abrogé, 1997, ch. 17, art. 1]

R.S., 1985, c. C-46, s. 731; 1992, c. 1, s. 58, c. 20, s. 200; 1995, c. 22, s. 6; 1997, c. 17, s. 1.

L.R. (1985), ch. C-46, art. 731; 1992, ch. 1, art. 58, ch. 20, art. 200; 1995, ch. 22, art. 6; 1997, ch. 17, art. 1.

Firearm, etc., prohibitions

731.1 (1) Before making a probation order, the court shall consider whether section 109 or 110 is applicable.

Armes à feu

731.1 (1) Avant de rendre une ordonnance de probation, le tribunal vérifie l'applicabilité des articles 109 ou 110.

Application of section 109 or 110

(2) For greater certainty, a condition of a probation order referred to in paragraph732.1(3)(d) does not affect the operation of section 109 or 110.

Application des articles 109 ou 110

(2) Il est entendu que l'adjonction de la condition visée à l'alinéa 732.1(3)d) à une ordonnance de probation ne porte pas atteinte à l'application des articles 109 ou 110.

1992, c. 20, s. 201; 1995, c. 22, s. 6; 2002, c. 13, s. 73.

1992, ch. 20, art. 201; 1995, ch. 22, art. 6; 2002, ch. 13, art. 73.

Definitions

732.1 (1) In this section and section 732.2,

Définitions

732.1 (1) Les définitions qui suivent s'appliquent au présent article et à l'article 732.2. Définitions «conditions facultatives» Les conditions pré- vues aux paragraphes (3) et (3.1).

"change" «modification »

"change", in relation to optional conditions, includes deletions and additions;

«conditions facultatives» "optional conditions"

«conditions facultatives» Les conditions pré- vues aux paragraphes (3) et (3.1).

"optional conditions" «conditions facultatives»

"optional conditions" means the conditions referred to in subsection (3) or (3.1).

«modification» "change"

«modification» Comprend, en ce qui concerne les conditions facultatives, les suppressions et les adjonctions

Compulsory conditions of probation order

(2) The court shall prescribe, as conditions of a probation order, that the offender do all of the following:

Conditions obligatoires

(2) Le tribunal assortit l'ordonnance de probation des conditions suivantes, intimant au dé- linquant :

(a) keep the peace and be of good behaviour;

a) de ne pas troubler l'ordre public et d'avoir une bonne conduite;

(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

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) 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

(i) la personne visée y consent ou, si celle-ci est mineure, le père, la mère, un tuteur ou toute autre personne qui en a la garde ou la charge légale y consent,

(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.

(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

Consent

(2.1) 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.

Consentement

(2.1) 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.

Reasons

(2.2) If the court makes the decision described in subparagraph (2)(a.1)(ii), it shall state the reasons for the decision in the record.

Motifs

(2.2) 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.

Optional conditions of probation order

(3) 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 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;

Conditions facultatives

(3) 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 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) 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 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 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.

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;

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.

Optional conditions — organization

(3.1) 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;

Conditions facultatives — organisations

(3.1) 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) 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 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.

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 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.

Consideration — organizations

(3.2) 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.

Organismes de réglementation

(3.2) 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.

Form and period of order

(4) 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.

Forme et période de validité de l'ordonnance

(4) L'ordonnance de probation peut être ré- digée selon la formule 46 et le tribunal qui rend l'ordonnance y précise la durée de son application.

Obligations of court

(5) 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

Obligations du tribunal

(5) 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) take reasonable measures to ensure that the offender understands the order and the explanations.

d) prend les mesures voulues pour s'assurer qu'il comprend l'ordonnance elle-même et les explications qui lui sont fournies.

For greater certainty

(6) For greater certainty, a failure to comply with subsection (5) does not affect the validity of the probation order.

Validité de l'ordonnance

(6) Il est entendu que la non-observation du paragraphe (5) ne porte pas atteinte à la validité de l'ordonnance.

Notice — samples at regular intervals

(7) 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.

Avis : échantillons à intervalles réguliers

(7) 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 pré- levés à intervalles réguliers d'au moins sept jours.

Designations and specifications

(8) 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 samples.

Désignations et precisions

(8) 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.

Further designations

(9) For the purpose of paragraph (3)(c.1) and subject to the regulations, the Attorney General of a

Autres designations

(9) Pour l'application de l'alinéa (3)c.1) et sous réserve des règlements, à l'égard d'une province ou

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.

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.

Restriction

(10) 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).

Restriction

(10) 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.

Destruction of samples

(11) 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.

Destruction des échantillons

(11) 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 dé- truire, 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.

Regulations

(12) 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 substances.

Règlements

(12) 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) 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.

1995, c. 22, s. 6; 1999, c. 32, s. 6(Preamble); 2003, c. 21, s. 18; 2008, c. 18, s. 37; 2011, c. 7, s. 3; 2014, c. 21, s. 2; 2015, c. 13, s. 27.

1995, ch. 22, art. 6; 1999, ch. 32, art. 6(préambule); 2003, ch. 21, art. 18; 2008, ch. 18, art. 37; 2011, ch. 7, art. 3; 2014, ch. 21, art. 2; 2015, ch. 13, art. 27.

Coming into force of order

732.2 (1) A probation order comes into force

(a) on the date on which the order is made;

(b) where the offender is sentenced to imprisonment under paragraph 731(1)(b) or was previously sentenced to imprisonment for

Entrée en vigueur de l'ordonnance

732.2 (1) L'ordonnance de probation entre en vigueur :

a) à la date à laquelle elle est rendue;

b) dans le cas où le délinquant est condamné à l'emprisonnement en vertu de l'alinéa

another offence, as soon as the offender is released from prison or, if released from prison on conditional release, at the expiration of the sentence of imprisonment; or

(c) where the offender is under a conditional sentence order, at the expiration of the conditional sentence order.

731(1)b), ou a été condamné antérieurement à l'emprisonnement pour une autre infraction, dès sa sortie de prison, ou, s'il est libéré sous condition, à la fin de sa période d'emprisonnement;

c) lorsque le délinquant a été condamné avec sursis, à la fin de la période de sursis.

Duration of order and limit on term of order

(2) Subject to subsection (5),

(a) where an offender who is bound by a probation order is convicted of an offence, including an offence under section 733.1, or is imprisoned under paragraph 731(1)(b) in default of payment of a fine, the order continues in force except in so far as the sentence renders it impossible for the offender for the time being to comply with the order; and

(b) no probation order shall continue in force for more than three years after the date on which the order came into force.

Durée de l'ordonnance et limite de sa validité

(2) Sous réserve du paragraphe (5) :

a) lorsque le délinquant soumis à une ordonnance de probation est déclaré coupable d'une infraction, y compris une infraction visée à l'article 733.1, ou est emprisonné aux termes de l'alinéa 731(1)b) pour défaut de paiement d'une amende, l'ordonnance reste en vigueur, sauf dans la mesure où la peine met temporairement le délinquant dans l'impossibilité de se conformer à l'ordonnance;

b) la durée d'application maximale d'une ordonnance de probation est de trois ans.

Changes to probation order

(3) A court that makes a probation order may at any time, on application by the offender, the probation officer or the prosecutor, require the offender to appear before it and, after hearing the offender and one or both of the probation officer and the prosecutor,

(a) make any changes to the optional conditions that in the opinion of the court are rendered desirable by a change in the circumstances since those conditions were prescribed,

(b) relieve the offender, either absolutely or on such terms or for such period as the court deems desirable, of compliance with any optional condition, or

(c) decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions, inform the offender of its action and give the offender a copy of the order so endorsed.

Modification de l'ordonnance

(3) Le tribunal qui a rendu une ordonnance de probation peut, à tout moment, sur demande du délinquant, de l'agent de probation ou du poursuivant, ordonner au délinquant de comparaître devant lui et, après audition du délinquant d'une part et du poursuivant et de l'agent de probation, ou de l'un de ceux-ci, d'autre part :

a) apporter aux conditions facultatives de l'ordonnance les modifications qu'il estime justifiées eu égard aux modifications des circonstances survenues depuis qu'elle a été rendue;

b) relever le délinquant, soit complètement, soit selon les modalités ou pour la période qu'il estime souhaitables, de l'obligation d'observer une condition facultative;

c) abréger la durée d'application de l'ordonnance.

Dès lors, le tribunal vise l'ordonnance de probation en conséquence et, s'il modifie les conditions facultatives, il en informe le délinquant et lui remet une copie de l'ordonnance ainsi visée.

Judge may act in chambers

(4) All the functions of the court under subsection

Juge en chambre

(4) Les attributions conférées au tribunal par le

(3) may be exercised in chambers.

paragraphe (3) peuvent être exercées par le juge en chambre.

Where person convicted of offence

(5) Where an offender who is bound by a probation order is convicted of an offence, including an offence under section 733.1, and

(a) the time within which an appeal may be taken against that conviction has expired and the offender has not taken an appeal,

(b) the offender has taken an appeal against that conviction and the appeal has been dismissed, or

(c) the offender has given written notice to the court that convicted the offender that the offender elects not to appeal the conviction or has abandoned the appeal, as the case may be, in addition to any punishment that may be imposed for that offence, the court that made the probation order may, on application by the prosecutor, require the offender to appear before it and, after hearing the prosecutor and the offender,

(d) where the probation order was made under paragraph 731(1)(a), revoke the order and impose any sentence that could have been imposed if the passing of sentence had not been suspended, or

(e) make such changes to the optional conditions as the court deems desirable, or extend the period for which the order is to remain in force for such period, not exceeding one year, as the court deems desirable,

and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions or extends the period for which the order is to remain in force, inform the offender of its action and give the offender a copy of the order so endorsed.

Cas de perpétration d'une infraction

(5) Lorsque le délinquant soumis à une ordonnance de probation est déclaré coupable d'une infraction, y compris une infraction visée à l'article 733.1, et que, selon le cas :

a) le délai durant lequel un appel de cette déclaration de culpabilité peut être interjeté est expiré ou le délinquant n'a pas interjeté appel,

b) il a interjeté appel de cette déclaration de culpabilité et l'appel a été rejeté,

c) il a donné avis écrit au tribunal qui l'a déclaré coupable qu'il a choisi de ne pas interjeter appel de cette déclaration de culpabilité ou d'abandonner son appel, selon le cas, en sus de toute peine qui peut être infligée pour cette infraction, le tribunal qui a rendu l'ordonnance de probation peut, à la demande du poursuivant, ordonner au délinquant de comparaître devant lui et, après audition du poursuivant et du délinquant :

d) lorsque l'ordonnance de probation a été rendue aux termes de l'alinéa 731(1)a), révoquer l'ordonnance et infliger toute peine qui aurait pu être infligée si le prononcé de la peine n'avait pas été suspendu;

e) apporter aux conditions facultatives les modifications qu'il estime souhaitables ou prolonger la durée d'application de l'ordonnance pour la période, d'au plus un an, qu'il estime souhaitable.

Dès lors, le tribunal vise l'ordonnance de probation en conséquence et, s'il modifie les conditions facultatives de l'ordonnance ou en prolonge la durée d'application, il en informe le délinquant et lui remet une copie de l'ordonnance ainsi visée.

Compelling appearance of person bound

(6) The provisions of Parts XVI and XVIII with respect to compelling the appearance of an accused before a justice apply, with such modifications as the circumstances require, to proceedings under subsections (3) and (5).

1995, c. 22, s. 6; 2004, c. 12, s. 12(E).

Comparution forcée de la personne soumise à l'ordonnance

(6) Les dispositions des parties XVI et XVIII relatives à la comparution forcée d'un accusé devant un juge de paix s'appliquent, avec les adaptations nécessaires, aux procé- dures prévues aux paragraphes (3) et (5).

1995, ch. 22, art. 6; 2004, ch. 12, art. 12(A).

Failure to comply with probation order

Défaut de se conformer à une ordonnance

733.1 (1) An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order is guilty of

(a) an indictable offence and is liable to imprisonment for a term of not more than four years; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months, or to a fine of not more than $5000, or to both.

Where accused may be tried and punished

(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but where the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province.

1995, c. 22, s. 6; 2015, c. 23, s. 18.

Victim surcharge

737. (1) An offender who is convicted, or discharged under section 730, of an offence under this Act or the Controlled Drugs and Substances Act shall pay a victim surcharge, in addition to any other punishment imposed on the offender.

Amount of surcharge

(2) Subject to subsection (3), the amount of the victim surcharge in respect of an offence is

(a) 30 per cent of any fine that is imposed on the offender for the offence; or

(b) if no fine is imposed on the offender for the offence,

(i) $100 in the case of an offence punishable by summary conviction, and

(ii) $200 in the case of an offence punishable by indictment.

733.1 (1) Le délinquant qui, sans excuse raisonnable, omet ou refuse de se conformer à l'ordonnance de probation à laquelle il est soumis est coupable :

a) soit d'un acte criminel et passible d'un emprisonnement maximal de quatre ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois et d'une amende maximale de cinq mille dollars, ou de l'une de ces peines.

Tribunal competent

(2) Le délinquant qui est inculpé d'une infraction aux termes du paragraphe (1) peut être jugé et condamné par tout tribunal compétent au lieu où l'infraction est présumée avoir été commise, ou au lieu où il est trouvé, est arrêté ou est sous garde, mais si ce dernier lieu est situé à l'extérieur de la province où l'infraction est présumée avoir été commise, aucune poursuite concernant cette infraction ne peut être engagée en ce lieu sans le consentement du procureur général de la province.

1995, ch. 22, art. 6; 2015, ch. 23, art. 18

Suramende compensatoire

737. (1) Dans le cas où il est condamné — ou absous aux termes de l'article 730 — à l'égard d'une infraction prévue à la présente loi ou à la Loi réglementant certaines drogues et autres substances, le contrevenant est tenu de verser une suramende compensatoire, en plus de toute autre peine qui lui est infligée.

Montant de la suramende

(2) Sous réserve du paragraphe (3), le montant de la suramende compensatoire repré- sente :

a) trente pour cent de l'amende infligée pour l'infraction;

b) si aucune amende n'est infligée :

(i) 100 $ pour une infraction punissable sur déclaration de culpabilité par procé- dure sommaire,

(ii) 200 $ pour une infraction punissable sur déclaration de culpabilité par mise en accusation.

Increase in surcharge

(3) The court may order an offender to pay a victim surcharge in an amount exceeding that set out in subsection (2) if the court considers it appropriate in the circumstances and is satisfied that the offender is able to pay the higher amount.

Montant supérieur

(3) Le tribunal peut, s'il estime que les circonstances le justifient et s'il est convaincu que le contrevenant a la capacité de payer, ordonner à celui-ci de verser une suramende compensatoire supérieure à celle prévue au paragraphe (2).

Time for payment

(4) The victim surcharge imposed in respect of an offence is payable within the time established by the lieutenant governor in council of the province in which the surcharge is imposed. If no time has been so established, the surcharge is payable within a reasonable time after its imposition

Échéance de paiement

(4) La suramende compensatoire est à payer à la date prévue par le lieutenant-gouverneur en conseil de la province où la suramende est imposée ou, à défaut, dans un délai raisonnable après l'imposition de la suramende.

(5) and (6) [Repealed, 2013, c. 11, s. 3]

(5) et (6) [Abrogés, 2013, ch. 11, art. 3]

Amounts applied to aid victims

(7) A victim surcharge imposed under subsection (1) shall be applied for the purposes of providing such assistance to victims of offences as the lieutenant governor in council of the province in which the surcharge is imposed may direct from time to time.

Affectation des suramendes compensatoires

(7) Les suramendes compensatoires sont affectées à l'aide aux victimes d'actes criminels en conformité avec les instructions du lieutenant-gouverneur en conseil de la province où elles sont infligées.

Notice

(8) The court shall cause to be given to the offender a written notice setting out

(a) the amount of the victim surcharge;
(b) the manner in which the victim surcharge is to be paid;
(c) the time by which the victim surcharge must be paid; and
(d) the procedure for applying for a change in any terms referred to in paragraphs (b) and (c) in accordance with section 734.3.

Avis

(8) Le tribunal fait donner au contrevenant un avis écrit établissant, en ce qui concerne la suramende compensatoire :

a) le montant;
b) les modalités du paiement;
c) l'échéance du paiement;
d) la procédure à suivre pour présenter une demande visant à modifier les conditions prévues aux alinéas b) et c) en conformité avec l'article 734.3.

Enforcement

(9) Subsections 734(3) to (7) and sections 734.3, 734.5, 734.7, 734.8 and 736 apply, with any modifications that the circumstances require, in respect of a victim surcharge imposed under subsection (1) and, in particular,

(a) a reference in any of those provisions to "fine", other than in subsection 734.8(5), must be read as if it were a reference to "victim surcharge"; and
(b) the notice provided under subsection (8) is deemed to be an order made under section

Exécution

(9) Les paragraphes 734(3) à (7) et les articles 734.3, 734.5, 734.7, 734.8 et 736 s'appliquent, avec les adaptations nécessaires, aux suramendes compensatoires infligées aux termes du paragraphe (1) et, pour l'application de ces dispositions :

a) à l'exception du paragraphe 734.8(5), la mention de « amende » vaut mention de « suramende compensatoire »;
b) l'avis donné conformément au paragraphe (8) est réputé être une ordonnance rendue par le tribunal en application de l'article 734.1.

734.1.

(10) [Repealed, 2013, c. 11, s. 3]

R.S., 1985, c. C-46, s. 737; 1995, c. 22, ss. 6, 18; 1996, c. 19, s. 75; 1999, c. 5, s. 38, c. 25, s. 20(Preamble); 2013, c. 11, s. 3; 2015, c. 13, s. 28.

(10) [Abrogé, 2013, ch. 11, art. 3]

L.R. (1985), ch. C-46, art. 737; 1995, ch. 22, art. 6 et 18; 1996, ch. 19, art. 75; 1999, ch. 5, art. 38, ch. 25, art. 20(préambule); 2013, ch. 11, art. 3; 2015, ch. 13, art. 28.

RESTITUTION

Court to consider restitution order

737.1 (1) If an offender is convicted or is discharged under section 730 of an offence, the court that sentences or discharges the offender, in addition to any other measure imposed on the offender, shall consider making a restitution order under section 738 or 739.

Inquiry by court

(2) As soon as feasible after a finding of guilt and in any event before imposing the sentence, the court shall inquire of the prosecutor if reasonable steps have been taken to provide the victims with an opportunity to indicate whether they are seeking restitution for their losses and damages, the amount of which must be readily ascertainable.

Adjournment

(3) On application of the prosecutor or on its own motion, the court may adjourn the proceedings to permit the victims to indicate whether they are seeking restitution or to establish their losses and damages, if the court is satisfied that the adjournment would not interfere with the proper administration of justice.

Form

(4) Victims and other persons may indicate whether they are seeking restitution by completing Form 34.1 in Part XXVIII or a form approved for that purpose by the lieutenant governor in council of the province in which the court is exercising its jurisdiction or by using any other method approved by the court, and, if they are seeking restitution, shall establish their losses and damages, the amount of which must be readily ascertainable, in the same manner.

Reasons

(5) If a victim seeks restitution and the court does not make a restitution order, it shall include in the record a statement of the court's reasons for not

DÉDOMMAGEMENT

Dédommagement

737.1 (1) Lorsque le délinquant est condamné ou absous en vertu de l'article 730, le tribunal qui inflige la peine ou prononce l'absolution est tenu d'envisager la possibilité de rendre une ordonnance de dédommagement en vertu des articles 738 ou 739, en plus de toute autre mesure.

Obligation de s'enquérir

(2) Dans les meilleurs délais suivant la dé- claration de culpabilité et, en tout état de cause, avant la détermination de la peine, le tribunal est tenu de s'enquérir auprès du poursuivant de la prise de mesures raisonnables pour permettre aux victimes d'indiquer si elles réclament un dédommagement pour leurs dommages ou pertes, dont la valeur doit pouvoir être déterminée facilement.

Ajournement

(3) Le tribunal peut, de sa propre initiative ou à la demande du poursuivant, ajourner la procédure pour permettre aux victimes d'indiquer si elles réclament un dédommagement ou d'établir leurs dommages ou pertes, s'il est convaincu que l'ajournement ne nuira pas à la bonne administration de la justice.

Formulaire

(4) Toute victime ou autre personne peut indiquer si elle réclame un dédommagement en remplissant la formule 34.1 de la partie XXVIII ou le formulaire approuvé à cette fin par le lieutenant-gouverneur en conseil de la province dans laquelle le tribunal a compétence, ou de toute autre manière approuvée par le tribunal. Le cas échéant, elle établit, de la même manière, ses dommages ou pertes, dont la valeur doit pouvoir être déterminée facilement.

Motifs obligatoires

(5) Dans le cas où la victime réclame un dédommagement et où le tribunal ne rend pas l'ordonnance, celui-ci est tenu de donner ses

doing so.
2015, c. 13, s. 29

motifs, qui sont consignés au dossier de l'instance.
2015, ch. 13, art. 29.

Criminal Code, R.S.C., 1985, c. C-46

Code criminal, L.R.C. (1985), ch. C-46

PART XXVII

SUMMARY CONVICTIONS

SURETIES TO KEEP THE PEACE

PARTIE XXVII

DÉCLARATIONS DE CULPABILITÉ PAR PROCEÉDURE SOMMAIRE

ENGAGEMENT DE NE PAS TROUBLER L'ORDRE PUBLIC

Version Currently in Force

Section 810.1:

810.1 (1) 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

Appearances

(2) A provincial court judge who receives an information under subsection (1) may cause the parties to appear before a provincial court judge.

Adjudication

(3) 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.

Duration extended

(3.01) 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.

Conditions in recognizance

(3.02) The provincial court judge may add any reasonable conditions to the recognizance that the

Article 810.1:

810.1 (1) 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 dé- poser une dénonciation devant un juge d'une cour provinciale, même si les personnes en question n'y sont pas nommées.

Comparution des parties

(2) Le juge qui reçoit la dénonciation peut faire comparaître les parties devant un juge de la cour provinciale.

Décision

(3) 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.

Prolongation

(3.01) 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.

Conditions de l'engagement

(3.02) Le juge peut assortir l'engagement des conditions raisonnables qu'il estime souhaitables

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 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

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 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

consumption of drugs, alcohol or any other intoxicating substance; or

(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.

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 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

Conditions — firearms

(3.03) 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.

Conditions — armes à feu

(3.03) 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.

Surrender, etc.

(3.04) 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.

Remise

(3.04) 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.

Condition — reporting

(3.05) 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.

Condition — présentation devant une autorité

(3.05) 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..

Refusal to enter into recognizance

(3.1) 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.

Refus de contracter un engagement

(3.1) Le juge de la cour provinciale peut infliger au défendeur qui omet ou refuse de contracter l'engagement une peine de prison maximale de douze mois.

Judge may vary recognizance

(4) A provincial court judge may, on application of the informant or the defendant, vary the conditions fixed in the recognizance.

Other provisions to apply

(5) Subsections 810(4) and (5) apply, with such modifications as the circumstances require, to recognizances made under this section.

1993, c. 45, s. 11; 1997, c. 18, s. 113; 2002, c. 13, s. 81; 2008, c. 6, ss. 52, 54, 62; 2011, c. 7, s. 9; 2012, c. 1, s. 37; 2014, c. 21, s. 4, c. 25, s. 31.

Modification des conditions

(4) Tout juge de la cour provinciale peut, sur demande du dénonciateur ou du défendeur, modifier les conditions fixées dans l'engagement..

Autres dispositions applicables

(5) Les paragraphes 810(4) et (5) s'appliquent, avec les adaptations nécessaires, aux engagements contractés en vertu du présent article.

1993, ch. 45, art. 11; 1997, ch. 18, art. 113; 2002, ch. 13, art. 81; 2008, ch. 6, art. 52, 54 et 62; 2011, ch. 7, art. 9; 2012, ch. 1, art. 37; 2014, ch. 21, art. 4, ch. 25, art. 31.