Court File No. 36200

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

B E T W E E N :

K.R.J.

Appellant

AND

HER MAJESTY THE QUEEN

Respondent

AND

ATTORNEY GENERAL OF CANADA and ATTORNEY GENERAL OF ONTARIO and L'ASSOCIATION DES AVOCATS DE LA DÉFENSE DE MONTRÉAL and DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, UNIVERSITY OF TORONTO FACULTY OF LAW and CRIMINAL LAWYERS' ASSOCIATION (ONTARIO) and BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Interveners

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(Pursuant to Rules 61(4) and 37 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW and STATEMENT OF FACTS

Overview

1. Section 161(1) of the *Criminal Code* gives a sentencing judge discretion to impose a prohibition order on an offender in order to protect children from future risk of harm. These orders are not "punishment". As such, applying recent changes to ss. 161(1)(c) and (d) to any offender regardless of their offence date does not infringe s. 11(*i*) of the *Charter*.

2. "Punishment" necessarily implies a punitive purpose. This is consistent with the Court's determination in *R. v. Rodgers* that, unlike the broader protections of s. 12 of the *Charter*, a sanction is "punishment" within s. 11(i) only if it is imposed in furtherance of the purpose and principles of sentencing. That s. 161(1) prohibition orders may overlap with other features of sentencing or limit an offender's liberty does not render them "punishment". Many legal measures that seek to protect society may negatively affect the interests of those to whom they are directed without being "punishments". These include pre-trial detention or strict bail conditions, detention of those unfit to stand trial or not criminally responsible by reason of mental disorder, detention of deportees and long term offender orders. This Court has held these measures are not "punishment" despite the fact they may significantly affect one's liberty.

3. Should the Court find s. 161(1) orders are "punishment" for the purposes of s. 11(*i*) of the *Charter*, and that applying the current scope of these orders to all offenders breaches that right, this is a reasonable limit. Parliament's objective of creating enhanced measures to protect children from sexual predators is pressing and substantial. Increasing the number of sexual offenders to whom these measures apply advances that objective. The scheme is minimally impairing because it gives discretion to a judge to impose conditions only when, and to the extent, necessary. If circumstances change, an offender or the Crown can apply to the same court to revisit the propriety of these measures. The tailored, discretionary application of ss. 161(i)(c) and (d) to all offenders strikes the appropriate balance.

Statement of Facts

4. The Attorney General of Canada relies on the statement of facts as stated by the parties to this appeal and takes no position with respect to any factual disputes between them.

PART II – ISSUES

5. The Attorney General of Canada intervenes to address the constitutional issues set out by the Chief Justice in the Court's order dated May 28, 2015:

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

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

6. The answer to (a) is "no". The prohibition orders that a judge may impose under s. 161(1) of the *Criminal Code* are not "punishment" within the meaning of s. 11(*i*) of the *Charter*. The availability of prohibition orders under ss. 161(1)(c) and (d) to all offenders irrespective of the date of offence does not breach s. 11(*i*).

7. In the alternative, should the Court conclude that s. 161(1) prohibition orders do amount to "punishment" in s. 11(*i*) of the *Charter*, their availability to sentencing judges in respect of any sex offender who has victimized a child is a reasonable limit prescribed by law under s. 1.

PART III – ARGUMENT

Prohibition orders are not punishment

"Punishment" in s. 11(i) requires that a measure be imposed for the purpose of punishment

8. In *R. v. Rodgers*,[1] this Court set the test to determine whether a particular sanction is "punishment" for the purposes of s. 11 of the *Charter*. As this Court more recently affirmed in *Whaling*, the *Rodgers* test was designed for the specific purpose of determining, "…whether a discrete sanction — one that does not modify the original sanction — has the characteristics of a criminal sanction, and thus constitutes 'punishment'".[2]

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[1] *R. v. Rodgers*, 2006 SCC 15, [2006] 1 S.C.R. 544, Book of Authorities of the Appellant (Appellant Auth.), Tab 27

[2] *Canada (Attorney General) v. Whaling*, 2014 SCC 20, [2014] 1 S.C.R. 392, at para. 52, Appellant Auth., Tab 2

9. Writing for the majority in *Rodgers*, Justice Charron explained that, in its ordinary sense, "punishment" refers to the arsenal of sanctions to which an accused may be liable upon conviction. However, Charron J. noted that, "[t]his does not mean… 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".[3]

10. The term "punishment" in s. 11 of the *Charter* has a specific meaning to reflect the specialized nature of these rights. A particular consequence of conviction will only constitute a punishment for the purposes of s. 11 of the *Charter*: (1) when it forms part of the arsenal of sanctions to which an accused may be liable in respect of a particular offence; and (2) the sanction is one imposed in furtherance of the purpose and principles of sentencing.[4]

11. In order to meet the second branch of the *Rodgers* test, and characterize a measure as "punishment", the focus of the inquiry is on the *purpose* of the measure. That a measure is imposed following a conviction, or that it is imposed by the sentencing judge, is not determinative. At its core, punishment for the purposes of s. 11(*i*) of the *Charter* is a measure that carries the *purpose* of sanctioning the offender for his or her crime.[5]

12. Measures taken during the sentencing process may have effects that coincide with legitimate objectives of sentencing, such as separating the offender from potential victims, deterrence, or rehabilitation. However, these incidental effects are insufficient on their own to qualify a measure as "punishment". The core marker of a punitive purpose in a sanction is a "backward-looking" focus, one meant to punish a criminal offence. A measure which does not have that purpose is not a "punishment" for the purpose of s. 11(*i*) of the *Charter*, even if it contains a feature which overlaps with another goal of sentencing. As this Court held in *Rodgers*:

> For example, random traffic stops to check for alcohol consumption hopefully have the effect of deterring people from drinking and driving, but no one could properly characterize a R.I.D.E. stop as 'punishment'.[6]

And more recently in *Whaling*:

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[3] *Rodgers*, *supra*, at para. 63, Appellant Auth., Tab 27
[4] *Rodgers*, *supra*, at para. 63, Appellant Auth., Tab 27
[5] *Rodgers*, *supra*, at para. 64, citing *R. v. Murrins* (2002), 201 N.S.R. (2d) 288 (C.A.) at para. 102, Appellant Auth., Tab 22
[6] *Rodgers*, *supra*, at para. 64, Appellant Auth., Tab 27

> …[R]ehabilitation and reintegration are principles applied in parole administration, but they are also sentencing principles. It would seem that all retrospective changes to parole eligibility could therefore be said to further the purpose and principles of sentencing, though it is clear to me that not all such changes would be punitive.[7] [Emphasis added]

If a measure does not have a punitive purpose, the fact it may happen to further a sentencing goal is insufficient to make that measure a "punishment".

13. Similarly, the fact that a measure may negatively impact an offender's interests does not make it a "punishment" if the measure has no punitive purpose. Many legal measures which potentially flow from criminal conduct can have significant effects on an individual's liberty without being **"**punishment".

14. This is not to say that the effect on an individual offender is entirely irrelevant. A particular measure may impose constraints on an offender of such a degree, or nature, that it may reveal a colourable attempt to impose punishment notwithstanding the measure's stated, non-punitive purpose. Subsection 161(1) orders do not constitute such a colourable attempt. Both the legislative record and the jurisprudence relating to s. 161(1) demonstrate these prohibition orders have a *bona fide* objective of protecting children and preventing future criminal offences.

Parliament did not intend s. 161(1) orders to be a form of punishment

15. Parliament introduced s. 161(1) prohibition orders in 1993 through the passage of Bill C-126. This followed the British Columbia Court of Appeal's finding in *R. v. Heywood* that the former vagrancy offence under s. 179(1)(b) of the *Criminal Code* was impermissibly overbroad, contrary to s. 7 of the *Charter*, a decision later affirmed in this Court.[8] According to then Minister of Justice Pierre Blais, s. 161(1) prohibition orders were introduced to protect future victims of child sexual abuse by minimizing the risk of relapsing or repeat sex offenders who have victimized children.[9]

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[7] *Whaling, supra,* at para. 53, Appellant Auth., Tab 2

[8] *R. v. Heywood* (1992), 77 C.C.C. (3d) 502 (B.C.C.A.); aff'd, [1994] 3 S.C.R. 761, Book of Authorities of the Respondent (Respondent Auth.), Tab 27; *House of Commons Debates*, 34th Parl., 3rd Sess., Vol. XV, 1993 (6 May 1993), at *p. 19020,* AGC Auth., Tab 16

[9] *House of Commons Debates*, 34th Parl., 3rd Sess., Vol. XV, 1993 (6 May 1993), at *pp. 19015-19016 (Hon Pierre Blais, Minister of Justice),* AGC Auth., Tab 16

16. Concurrent with the creation of s. 161(1) prohibition orders, Parliament introduced additional preventative measures in s. 810.1 of the *Criminal Code* to protect children in circumstances where no crime has even been committed. That section permits a court to order a person to enter into a recognizance, preventing them from engaging in any activity that includes contact with a child where reasonable grounds exist to believe the person will commit any one of a number of listed sexual offences against a child.[10]

17. At the time it was originally passed, s. 161(1) provided:

> 161. (1) Where an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 736 [now 730], of an offence under section 151, 152, 155 or 159, subsection 160(2) or (3) or section 170, 171, 271, 272 or 273, in respect of a person who is under the age of fourteen 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 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.

> 161. (1) Dans le cas où un contrevenant est déclaré coupable, ou absous sous le régime de l'article 736 aux conditions prescrites dans une ordonnance de probation, d'une infraction visée aux articles 151, 152, 155 ou 159, aux paragraphes 160(2) ou (3) ou aux articles 170, 171, 271, 272 ou 273 a l'égard d'une personne âgée de moins de quatorze ans, le tribunal qui lui inflige une peine ou ordonne son absolution sous condition, 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 ou l'on peut se baigner s'il y a des personnes âgées de moins de quatorze 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 quatorze ans.
>
> Le tribunal doit dans tous les cas considérer l'opportunité de rendre une telle ordonnance.

[10] S.C. 1993, c. 45, s. 11

18. By way of S.C. 2002, c.13, s. 4(2), Parliament added a clause allowing for a further possible order prohibiting:

(*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) d'utiliser un ordinateur au sens du paragraphe 342.1(2) dans le but de communiquer avec une personne âgée de moin de quatorze ans.

19. In 2005, Parliament further amended s. 161(1) such that prohibition orders could potentially issue in relation to offenders convicted of historical sexual offences against children, notwithstanding that all of these historical offences had been repealed by 2005.[11] This amendment resulted from several appellate decisions in which courts concluded prohibition orders were not available in respect of offenders who committed their offence prior to the date the s. 161(1) regime was brought into force in 1993.[12]

20. In 2008, Parliament further amended s. 161(1) to increase the age of protected children from fourteen to sixteen years.[13]

21. The version of s. 161(1) in place at the time the appellant was sentenced arose from amendments introduced in 2010 in Bill C-54 and ultimately brought into force through the passage of Bill C-10 in 2012. Parliament introduced amendments to the protections in both ss. 161(1) and 810.1 of the *Code* which drew the support of all parties.[14] Again, Parliament's stated objective was to prevent convicted sex offenders from committing further offences against children.[15]

22. In place of the former s. 161(1)(c) above, Parliament put the following two distinct measures into place:

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[11] *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, S.C. 2005, c. 32, Respondent Auth., Tab 72

[12] *R. v. Jewell; R. v. Gramlick*, [1995] O.J. No. 2213 (C.A.) (Q.L.), at para. 33, Appellant Auth., Tab 16; *R. v. Burnett*, [1998] B.C.J. No. 245 (B.C.C.A.) (Q.L.), at para. 9, Appellant Auth., Tab 9; *R. v. M.(P.A.)*, [2000] B.C.J. No. 356 (B.C.C.A.) (Q.L.), at para. 10, Appellant Auth., Tab 25; *R. v. Mundy*, [2000] B.C.J. No. 871 (B.C.C.A.) (Q.L.), at para. 4, Appellant Auth., Tab 4.

[13] *An Act to amend the Criminal Code and to make consequential amendments to other Act ("Tackling Violent Crime Act")*, S.C. 2008, c. 6, s. 54, Respondent Auth., Tab 73

[14] *House of Commons Debates*, 40th Parl., 3rd Sess., Vol. 145, No. 110 (3 December, 2010), at *p. 6786 (Mr. Bob Dechert, Parliamentary Secretary to the Minister of Justice); p. 6804 (Mr. Derek Lee, Scarborough—Rouge River, Lib.); p. 6812 (Mr. Jim Maloway, Elmwood-Transcona, NDP)*, AGC Auth., Tab 17

[15] *House of Commons Debates*, 40th Parl., 3rd Sess., Vol. 145, No. 110 (3 December, 2010), at *p. 6786 (Mr. Bob Dechert, Parliamentary Secretary to the Minister of Justice)*, Respondent Auth., Tab 68

(*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.

(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.[16]

23. In early 2011, then Minister of Justice, the Hon. Rob Nicholson, articulated the legislative intent behind these amendments:

> The imposition of these conditions 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.[17]

24. The Parliamentary Secretary to the Minister of Justice acknowledged that the amendments, in part, reflected the technological changes taking place in society and their impact on child sex crime: "Finding access to a child or the opportunity to be alone with a child is a key for many child sex offenders. An increasing number of child sex offenders also use the Internet and other new technologies to facilitate the grooming of victims or to commit other child sex offences."[18]

25. Later in 2011, when Parliament re-introduced the identical amendments, the goal of ss. 161(1) and 810.1 remained protective – to prevent new child victims:

> Last, Bill C-10 proposes reforms to prevent child sex offenders from engaging in conduct or practices that can facilitate their sexual offending
>
> Currently a court can impose a condition on convicted child sex offenders, a prohibition order under section 161, or on suspected child sex offenders, a recognizance or peace bond under section 810.1, prohibiting them from engaging in specified conduct that would facilitate their commission of one of the enumerated child sex offences or even the abduction offences.

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[16] S.C. 2012, c. 1, s. 16(1)(c) and (d).

[17] *House of Commons Standing Committee on Justice and Human Rights*, 40th Parl, 3rd Sess, No. 45 (2 February 2011), at *p. 6786 (Hon. Rob Nicholson, Minister of Justice)*, AGC Auth., Tab 18

[18] *House of Commons Debates*, 40th Parl., 3rd Sess., Vol. 145, No. 110 (3 December, 2010), at *p. 6787 (Mr. Bob Dechert, Parliamentary Secretary to the Minister of Justice)*, Respondent Auth., Tab 68

> …
>
> Bill C-10 also proposes to require the court to consider imposing two new conditions: prohibiting the offender from having any unsupervised access to a young person; and prohibiting the offender from having any unsupervised use of the Internet.
>
> These types of conditions, to put it plainly, just make sense. If we prevent the offender from having the opportunity or the tools to commit a child sex offence, then we prevent new children from becoming victims.[19]

The text of s. 161(1) does not establish that these orders are punishment

26. The statement in the opening words of s. 161(1), "in addition to any other punishment" does not suggest s. 161(1) orders are, or that Parliament intended them to be, punishment. Rather, it demonstrates that a sentencing judge may impose a prohibition order under s. 161 in conjunction with whatever various combinations of punishments are available in the sentencing process for the underlying crime, and not just in addition to a single punishment.

27. The French version of s. 161(1) confirms this interpretation. Stripped to its essential words, the provisions reads as follows:

> 161.(1) Dans le cas où un contrevenant est déclaré coupable... d'une infraction... à l'égard d'une personne âgée de moins de seize ans, le tribunal qui lui inflige une peine... [ie. the first punishment] en plus de toute autre peine... [ie. the second, third, or any other punishment] peut interdire au contrevenant... [ie. the 161 order]. [Emphasis added]

28. When Parliament uses the expression, "autre peine", the word "autre" is in reference to the first "peine" for the underlying offence mentioned a few words before, and not to imply that a s. 161 order would somehow be a "peine".

29. That Parliament does not consider s. 161 orders "punishment" does not exhaust the constitutional analysis. The Court must consider the substance of the measure to determine whether it is a punishment as understood by s. 11(*i*) of the *Charter*. The Attorney General of Canada submits it is not.

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[19] *House of Commons Debates*, 41st Parl., 1st Sess., Vol. 146, No. 021 (27 September 2011), at *pp. 1554-1555 (Mr. Kevin Sorenson, Crowfoot, CPC)*, AGC Auth., Tab 19

Subsection 161(1) orders are not "punishment" within the meaning of s. 11(i)

30. Neither the text of s. 161(1), nor the legislative context leading to its passage, suggests these prohibition orders are meant to achieve any purpose other than preventing convicted sex offenders from committing more offences against children. Nothing suggests these orders are meant to punish the offender for past behaviour.

31. At the time s. 161(1) was first enacted in 1993, this Court in *Heywood* determined the scheme is directed at protecting children from sex offenders,[20] ensuring, "…that only those offenders who constitute a danger to children will be subject to a prohibition".[21] Provincial appellate courts have similarly held that the purpose of s. 161(1) orders is protective and preventative, not punitive.[22] Judges must tailor these orders so that they are proportionate to the offender's ongoing risk to society. The principles of proportionality governing the imposition of s. 161(1) orders are forward-looking in relation to future risk. Unlike the fundamental principle of sentencing set out in s. 718.1 of the *Code*, s. 161(1) orders are not backward-looking and do not aim to achieve proportionality in relation to the gravity of the offence.

32. The 2012 amendments to s. 161(1) do not represent any shift in the purpose of prohibition orders, which remains the protection of children from future risk posed by certain sex offenders. Nor do the amendments constitute a colourable attempt to impose punishment. The 2012 amendments better reflect current technology and the manner in which many of the subject offences are committed.

33. Orders under s. 161(1) are entirely discretionary. The scope of any terms included in such orders are, "subject to the conditions or exemptions that the court directs".[23] Limits to the use of technology are not absolute.[24] The duration of any order may be time limited where the court deems appropriate.[25] Subsection 161(3) provides for review of the order at any time by the Court on application by the offender or the Crown. It ensures that the measure will at no point in time exceed

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[20] *Heywood*, *supra*, at p. 803, Respondent Auth., Tab 27
[21] *Heywood*, *supra*, at p. 799, Respondent Auth., Tab 27
[22] *R. v. Perron*, 2009 ONCA 498, at para. 13, Respondent Auth., Tab 39; *R. v. A.(R.K.)*, 2006 ABCA 82, at paras. 15, 16, 20, Appellant Auth., Tab 28; *R. v. Lachapelle*, 2008 BCSC 511, at para. 18, aff'd 2009 BCCA 406, at para. 16, Respondent Auth., Tab 28
[23] *Criminal Code*, s. 161(1)
[24] *Criminal Code*, s. 161(1)(d)
[25] *Criminal Code*, s. 161(2)

what is necessary to achieve the protective purpose of the provision. Such continuous review is not a feature of punishments which are designed to focus on past conduct.

34. The effects of an order made under s. 161(1) are potentially significant only because the affected offender poses an ongoing threat to children. The effects are less significant than in several other non-punitive schemes which are also aimed at protecting society from potentially dangerous behaviour. Like s. 161(1) orders, these other measures are not punishments despite their significant impact on individual liberty.

Various legislative schemes impact an individual and do not amount to punishment

35. Canadian law provides for a variety of legal measures that may be imposed on an individual directed at the prospective protection of the community. These include pre-trial detention or bail orders, Part XX.1 orders related to mental disorder, deportation orders and security certificates, long term offender orders, or recognizances ordered under s. 810.1 of the *Criminal Code*. Like the scheme under s. 161(1) of the *Code,* many of these measures may coincide with sentencing goals and/or engage the liberty interests of those to whom they apply. Notwithstanding that overlap or effect, none are "punishment". What they consistently lack is a punitive purpose.

Pre-trial detention and conditions of release

36. An accused person may be detained pending trial for several reasons, including safety of the public.[26] Alternatively, an accused may be released on bail, but with onerous conditions. These may include prohibiting an accused from communicating with particular individuals; a limit on the accused's movement that may be as broad as a general requirement to remain in a particular jurisdiction or as constrained as house arrest; a prohibition against engaging in a particular activity; or any other condition that may be necessary to ensure the safety and security of any victim or witness.[27]

37. Pre-trial detention or release with conditions may well result in significant constraints on an accused person. These measures also dovetail with a characteristic of sentencing in that they are aimed, *inter alia,* at neutralizing the accused by separating the individual from the rest of society.

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[26] *Criminal Code,* s. 515(10)(b)
[27] *Criminal Code,* s. 515(4)(d)

However, as this Court noted in *R. v. Pearson*, they are not "punishment".[28] These measures fail both branches of the *Rodgers* test. They are not part of the arsenal of sanctions upon conviction and, like s. 161(1) orders, they lack a punitive purpose

Mental disorder cases

38. Under Part XX.1 of the *Code*, individuals found unfit to stand trial or not criminally responsible (NCR) by reason of mental disorder can be subject to significant constraints on their liberty in the form of detention orders or release orders with sometimes onerous conditions. While these orders can be indeterminate in duration, *Winko v. British Columbia (Forensic Psychiatric Institute)* makes it clear that they are not "punishment".[29] Like s. 161(1) prohibition orders, they are intended not to punish, but to protect society. They also happen to share the protective feature of sentencing.

Deportation and national security cases

39. This Court has recognized that, while deportation of non-citizens following criminal convictions may potentially be considered "treatment" under s. 12 of the *Charter*, it is not "punishment".[30] Consequently, deportation has been found not to raise double jeopardy concerns under s. 11(*h*) of the *Charter*.[31] Again, these measures can have significant effects on individuals and share the societal protection feature of sentencing.

40. Individuals who have not been convicted of any crime but are subject to security certificates issued under the *Immigration and Refugee Protection Act*[32] can be subject to significant constraints, including detention. Such detention can last for several years and, when release is allowed, it can be under very strict conditions. In *Charkaoui v. Canada (Citizenship and Immigration)*, this Court approached such orders as a form of "treatment" for the purposes of s. 12 of the *Charter*, not

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[28] *R. v. Pearson*, [1992] 3 S.C.R. 665, at 687-88, AGC Auth., Tab 10

[29] *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625, at paras. 92-93, AGC Auth., Tab 12

[30] *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711, at para. 29, AGC Auth., Tab 2

[31] *Hurd v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 594 (C.A.), at pp. 606-07, AGC Auth., Tab 5; *Hoang v. Canada (Minister of Employment and Immigration)*, [1990] F.C.J. No. 1096 (FCA), AGC Auth., Tab 4; *Li v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 1193 (FCA) at para. 14, AGC Auth., Tab 6

[32] *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (as amen.), ss. 77, 82, 83 and 84, AGC Auth., Tab 15

"punishment".[33] The Court determined that, while deportation procedures are pending, detention or release under strict conditions to protect the security of the public is not cruel or unusual treatment, provided that such measure are subject to continued review.[34]

41. In the case of Hassan Almrei, this detention lasted for over 5 years.[35] In the case of Mohamed Harkat, the conditions imposed included house arrest, continuous surveillance by the Canada Border Services Agency (CBSA) and RCMP, a requirement to wear an electronic monitoring device and obtain prior CBSA approval before leaving his home, constant supervision by one of his sureties, prohibition against any visitors to his home with very limited exceptions, CBSA monitoring of his telephone and a prohibition against using any cellular phone or any computer with Internet capability.[36]

42. These orders have the potential to be more onerous than any order which could be imposed under s. 161 of the *Code*. Yet, these orders do not amount to "punishment".

Long term supervision orders

43. Like s. 161(1) orders, long term supervision orders issued under Part XXIV of the *Code* are imposed by the sentencing judge and begin operating after the expiration of the offender's sentence. They can be ordered for up to ten years. They can include conditions to ensure public safety and to assist with an offender's reintegration,[37] similar to conditions imposed to offenders on parole. At any time, the Parole Board has jurisdiction to relieve the offender from compliance with some of the conditions or may vary the conditions.[38]

44. In *R.* v. *L.M.*, this Court acknowledged that, in both *purpose* and *function*, a long term supervision order under Part XXIV of the *Code* is distinct from the indeterminate sentences of imprisonment imposed on dangerous offenders,[39] the latter which carries out a partially punitive function.[40] The distinction between them is also born out in the language Parliament uses in the

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[33] *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, at para. 107, AGC Auth., Tab 3
[34] *Charkaoui supra*, at para. 110, AGC Auth., Tab 3
[35] *Charkaoui, supra*, at para. 102, AGC Auth., Tab 3
[36] *Charkaoui, supra*, at para. 103, AGC Auth., Tab 3
[37] *Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 134.1(1), AGC Auth., Tab 13
[38] *Ibid*, s. 134.1(4)
[39] *R. v. L.M.*, [2008] 2 S.C.R. 163, at paras. 45-46, Appellant Auth., Tab 19. See also: *R. v. Ipeelee*, [2012] 1 S.C.R. 433, at para. 48, Appellant Auth., Tab 15
[40] *L.M., supra*, at para. 45, Appellant Auth., Tab 19; *R. v. Lyons*, [1987] 2 S.C.R. 309, at 329, AGC Auth., Tab 9

Code for dangerous offenders, expressly characterizing the indeterminate sentence as a "sentence of detention".[41] Contrary to long term supervision orders that can be varied at any time, indeterminate sentences of imprisonment for dangerous offenders are only reviewable seven years after their initial imposition and every two years thereafter.[42]

45. Contrary to the appellant's assertion,[43] this Court's decision in *R. v. Johnson*[44], rendered five years prior to *L.M.*, does not stand for the proposition that long term supervision orders are "punishment". At issue in *Johnson* was whether an accused should benefit from the post-offence enactment of the long term supervision scheme, as an alternative to an indeterminate sentence under the dangerous offender designation, the only available option when he committed his crimes.

46. In *Johnson* the lesser "punishment" to which the offender was entitled under s. 11(*i*) was simply the availability of being relieved from the "punishment" of an indeterminate imprisonment as a dangerous offender, an option rendered possible because of the enactment of the new rules.[45]

Section 810.1 recognizances

47. The Ontario Court of Appeal has confirmed that recognizances ordered under s. 810.1 of the *Code* are preventative, not "punishment".[46] That provision provides for the possibility of conditions identical to those fund in s. 161(1), as well as additional conditions.

Section 743.21 non-communication orders

48. Finally, the Quebec Court of Appeal has held that non-communication orders issued under s. 743.21 of the *Code* are not "punishment" for the purposes of s. 11(*i*) of the *Charter*. This, despite the fact that such orders form part of the formal sentencing regime under Part XXIII of the *Code* and are imposed in tandem with actual punishment; i.e., during a custodial sentence.[47]

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[41] Section 753(4)(a) refers to a "peine de détention" in the French version ("sentence of detention" in the English version)
[42] Para. 761(1) of the *Code*. The version in force when Lyons was decided, former s. 695.1, provided that review was three years after the initial imposition and every two years thereafter.
[43] *Appellant's factum*, para 103
[44] *R. v. Johnson* 2003 SCC 46, [2003] 2 S.C.R. 357, Appellant Auth., Tab 17
[45] *Johnson, supra*, at para. 44-45, Appellant Auth., Tab 17
[46] *R. v. Budreo* (2000), 142 C.C.C. (3d) 225 (Ont. C.A.), leave to appeal dismissed [2000] S.C.C.A. No. 542, Respondent Auth., Tab 18
[47] Section 743.21 of the *Code*; *Roy c. R.*, 2010 QCCA 16, at para. 99, AGC Auth., Tab 11

Conclusion regarding s. 11(i) of the Charter

49. For the reasons above, the Attorney General of Canada submits that orders made under s. 161(1) of the *Criminal Code* are not "punishment". As such, applying the recent amendments to this scheme to all to offenders upon sentencing, regardless of offence date, does not engage s. 11(*i*) of the *Charter*.

50. In the event the Court concludes that s. 161(1) prohibition orders amount to punishment, and that the operation of ss. 161(1)(c) and (d) to offenders who committed their offences prior to the amendments breaches s. 11(*i*) of the *Charter*, the Attorney General of Canada submits this is a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter.*

The application of s. 161(1)(c) and (d) to all offenders is a reasonable limit under s. 1

51. As the appellant acknowledges,[48] the question under s. 1 in the instant case is not whether the amendments to ss. 161(1)(c) and (d) are, in substance, constitutional. The regime has not been challenged pursuant to any provision of the *Charter* other than s. 11(*i*). The analysis under s. 1 must therefore proceed under the assumption that the regime is constitutionally acceptable when applied to offenders who committed their crimes after the 2012 amendment. The focus of the analysis under s. 1 is the choice to have the impugned provisions apply to all offenders who come before the courts for sentencing, rather than only to those offenders whose offence date follows the date of the amendments.[49]

52. The legislative objective in this case is pressing and substantial. The prohibition order scheme is intended to protect children from the future risk that may be posed by a particular convicted sex offender who has victimized a child. Various amendments made to the scheme over time, including amendments specifically designed to capture historic offences, reveal a consistent intention to prevent any convicted sex offenders who pose a risk from committing more offences against children. There is no evidence before the court to suggest any other purpose.

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[48] *Appellant's Response to Crown's Motion to Adduce New Evidence and Submissions on Section 1 of the Charter, para. 14*

[49] *Whaling, supra,* at paras. 77-80, Appellant Auth., Tab 2; *Liang v. Canada (Attorney General),* 2014 BCCA 190, Appellant Auth., Tab 6. See also *R. v. R.S.*, 2015 ONCA 291, at para. 39, Appellant Auth., Tab 29; *Canada (Attorney General) v. Lewis*, 2015 ONCA 379, at para. 31, AGC Auth., Tab 1

53. Sexual offences against children are often prosecuted several years, if not several decades after the facts. The record before the Court shows that, in British Columbia alone, there have been 157 orders imposed under s. 161(1) of the *Code* in relation to offenders who committed their offence subsequent to the coming into force date of the current scheme on August 9, 2012.[50] Sixteen of these orders related to historic offences committed prior to 1993.[51] Again, in British Columbia alone, since January 1, 2009, there have been 107 offenders charged with one of the historical offences set out in s. 161.[52] Accepting that recidivism rates may elude exact measurement,[53] amending a regime designed to protect children from sexual predators so that it applies to more sexual predators, irrespective of offence date, serves to further protect children and is rationally connected to the objective of the scheme.

54. The application of the terms of prohibition orders to all offenders who come before the courts for sentencing also satisfies the proportionality requirements of s. 1. The minimal impairment analysis asks whether the means chosen are reasonably tailored to achieve the objectives of the legislation. According to this Court, "[t]his inquiry does not require the government to adopt the least impairing measure, but rather one 'that falls within a range of reasonable alternatives'."[54] In making this assessment, "the courts accord the legislature a measure of deference, particularly on complex social issues where the legislature may be better positioned than the courts to choose among a range of alternatives".[55]

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[50] *Affidavit of Kirk Eaton, Exhibit B, Question 2(a)*, Respondent's Motion to Adduce New Evidence and Submissions on Section 1 of the Charter, p. 44

[51] *Affidavit of Kirk Eaton, Exhibit B, Question 2(b)*, Respondent's Motion to Adduce New Evidence and Submissions on Section 1 of the Charter, p. 44

[52] *Affidavit of Kirk Eaton, Exhibit B, Question 4*, Respondent's Motion to Adduce New Evidence and Submissions on Section 1 of the Charter, p. 45

[53] C.M. Webster, R. Gartner & A. Doob, "results by design: The artefactual construction of high recidivism rates for sex offenders" (2006), 48(1) *Canadian Journal of Criminology and Criminal Justice* 79, at pp. 79-80, Respondent Auth., Tab 59; R. Langevin, S. Curnoe, and P. Federoff, "Reply to Webster, Garner and Doob", (2006), 48(1) *Canadian Journal of Criminology and Criminal Justice* 107, Respondent Auth., Tab 57; R.K. Hanson & M.T. Bussiere, "Predicting Relapse: A Metz-Analysis of Sexual Offender Recidivism Studies" (1998) 66(2*) Journal of Consulting and Clinical Psychology* 348, Respondent's Motion to Adduce New Evidence and Submissions on Section 1 of the *Charter*, pp. 64-79; A.J.R. Harris and R.K. Hanson, "Sex Offender Recidivism: A Simple Question 2004-03", Government of Canada 2004, at pp. 7, 11, Respondent's Motion to Adduce New Evidence and Submissions on Section 1 of the *Charter*, pp. 80-109

[54] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para. 149, AGC Auth., Tab 8; *Alberta v. Hutterian Brethen of Wilson Colony*, [2009] 2 S.C.R. 567, at para. 55, Appellant Auth., Tab 1

[55] *Hutterian Brethen of Wilson Colony*, *supra*, at para. 53, Appellant Auth., Tab 1

55. A purely prospective application of s. 161(1) would less effectively protect children because it would prevent the application of these orders to sexual predators convicted of historical offences who may still pose a risk to children. Subsection 161(1) ensures that offenders' rights are limited no more than reasonably necessary by allowing a significant degree of judicial discretion and tailoring, on an ongoing basis, as circumstances change.

56. As this Court stated in *Oakes*: "There may be cases where certain elements of the s. 1 analysis are obvious or self-evident".[56] This is such a case. Here, s. 161(1) merely empowers a judge to impose appropriate and necessary conditions on the offender. The judge is free to make an order, "subject to the conditions or exemptions that the court directs".[57] Amongst other factors, the judge may take into consideration the date on which the offence was committed to determine whether the offender is still a danger to children, and whether conditions are warranted. The conditions can later be modified at any time pursuant to s. 161(3). These provisions are sufficiently flexible to ensure that the s. 161(1) scheme meets the proportionality requirements of s. 1.

57. There may be cases where a court imposes a condition under s. 161(1) even though the individual no longer represents a risk. In such circumstances both an application to vary the terms of the prohibition order or appellate intervention would be warranted. However, an unreasonable application of the provision to an offender in a given case is not to be confused with the constitutional invalidity of the provision.[58] As the provision affords the judge with all the required flexibility to decide whether a s. 161 order should be applied in a given case, the application of the provision to historic offenders is justified under s. 1.

58. Applying the current terms of s. 161(1) prohibition orders to a greater number of offenders is consistent with the overarching purpose of the regime, to protect children from the ongoing threat that may be posed by particular sex offenders. By providing the court with the discretion to impose these orders when it deems them necessary, and by providing a review mechanism for the court to reconsider the existence or breadth of any prohibition order based on a change in circumstance, it minimally impairs the s. 11(*i*) right by according fair treatment to the offender.

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[56] *R. v. Oakes*, [1986] 1 S.C.R. 183, at pp. 138-139, at. p. 138, Appellant Auth., Tab 24
[57] Section 161(1)
[58] *Little Sisters Book and Art Emporium v. Canada*, [2000] 2 S.C.R. 1120, para. 125, AGC Auth., Tab 7

59. The beneficial effect of protecting children against a greater number of convicted sex offenders outweighs any possible deleterious effects of a s. 11(*i*) breach in these circumstances. Parliament was faced with a choice between protecting children from the largest number of known sex offenders and negatively affecting a subset of those offenders – those who committed their offence against a child prior to the date the amendments came into force and who have been found by a court to pose a future risk to children. In such circumstances, Parliament reached a reasonable balance that pursues the most urgent societal objectives while permitting a judge to tailor the effects as appropriate in individual circumstances.

Remedy

60. The Attorney General of Canada submits that the answer to Question 1 is "no" and the answer to question 2 is "yes". In the event this Court answers the first constitutional question in the affirmative and the second constitutional question in the negative, the Attorney General of Canada submits the appropriate remedy is a simple declaration to that effect.

PART IV - COSTS

61. The Attorney General of Canada does not seek costs and requests that costs no be awarded against The Attorney General of Canada.

PART V – RELIEF SOUGHT

62. The Attorney General of Canada asks that the constitutional questions be answered as set out in paragraph 59 above. The Attorney General of Canada also seeks permission of the Court to present oral argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED this 16th day of November, 2015

Richard Kramer

Marc Ribeiro

Counsel for the Intervener,
Attorney General of Canada

PART VI – AUTHORITIES

Legislation

Hansard

PART VII – STATUTES / REGULATIONS / RULES

***Criminal Code*, 1985 R.S.C. c. C-46 as amen.**

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

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.

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.

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

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.

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;

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.

Modification de l'ordonnance

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.

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.

(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.

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.

Version in force September 19, 2014 – Present

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

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;

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 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, 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

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 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 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

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

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.

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

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) 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.

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.

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

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.

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.

en raison d'un changement de circonstances depuis que les conditions ont été prescrites.

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.

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 paragraph (*b*) of the definition "serious personal injury 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.

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, 272 ou 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.

s. 515(4)(d) The justice may direct as conditions under subsection (2) that the accused shall do any one or more of the following things as specified in the order:

s. 515 (4)(d) Le juge de paix peut ordonner, comme conditions aux termes du paragraphe (2), que le prévenu fasse celle ou celles des choses suivantes que spécifie l'ordonnance :

(d) 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 justice considers necessary;

(d) 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 qu'il estime nécessaires;

s. 515(10)(b) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

(b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

s. 515(10)(b) Pour l'application du présent article, la détention d'un prévenu sous garde n'est justifiée que dans l'un des cas suivants :

(b) sa détention est nécessaire pour la protection ou la sécurité du public, notamment celle des victimes et des témoins de l'infraction ou celle des personnes âgées de moins de dix-huit ans, eu égard aux circonstances, y compris toute probabilité marquée que le prévenu, s'il est mis en liberté, commettra une infraction criminelle ou nuira à l'administration de la justice;

718.1 La peine est proportionnelle à la gravité de l'infraction et au degré de responsabilité du délinquant.

730. (1) Where an accused, other than an organization, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for fourteen years or for life, the court before which the accused appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions prescribed in a probation order made under subsection 731(2).

(2) Subject to Part XVI, where an accused who has not been taken into custody or who has been released from custody under

730. (1) Le tribunal devant lequel comparaît l'accusé, autre qu'une organisation, qui plaide coupable ou est reconnu coupable d'une infraction pour laquelle la loi ne prescrit pas de peine minimale ou qui n'est pas punissable d'un emprisonnement de quatorze ans ou de l'emprisonnement à perpétuité peut, s'il considère qu'il y va de l'intérêt véritable de l'accusé sans nuire à l'intérêt public, au lieu de le condamner, prescrire par ordonnance qu'il soit absous inconditionnellement ou aux conditions prévues dans l'ordonnance rendue aux termes du paragraphe 731(2).

(2) Sous réserve de la partie XVI, lorsque l'accusé qui n'a pas été mis sous garde ou qui a été mis en liberté aux termes ou en vertu de la partie XVI plaide coupable ou est reconnu

or by virtue of any provision of Part XVI pleads guilty of or is found guilty of an offence but is not convicted, the appearance notice, promise to appear, summons, undertaking or recognizance issued to or given or entered into by the accused continues in force, subject to its terms, until a disposition in respect of the accused is made under subsection (1) unless, at the time the accused pleads guilty or is found guilty, the court, judge or justice orders that the accused be taken into custody pending such a disposition.

(3) Where a court directs under subsection (1) that an offender be discharged of an offence, the offender shall be deemed not to have been convicted of the offence except that

- (*a*) the offender may appeal from the determination of guilt as if it were a conviction in respect of the offence;
- (*b*) the Attorney General and, in the case of summary conviction proceedings, the informant or the informant's agent may appeal from the decision of the court not to convict the offender of the offence as if that decision were a judgment or verdict of acquittal of the offence or a dismissal of the information against the offender; and
- (*c*) the offender may plead *autrefois convict* in respect of any subsequent charge relating to the offence.

(4) Where an offender who is bound by the conditions of a probation order made at a time when the offender was directed to be discharged under this section is convicted of an offence, including an offence under section 733.1, the court that made the probation order may, in addition to or in lieu of exercising its authority under subsection 732.2(5), at any time when it may take action under that subsection, revoke the discharge, convict the offender of the offence to which

coupable d'une infraction mais n'est pas condamné, la sommation ou citation à comparaître à lui délivrée, la promesse de comparaître ou promesse remise par lui ou l'engagement contracté par lui demeure en vigueur, sous réserve de ses dispositions, jusqu'à ce qu'une décision soit rendue à son égard en vertu du paragraphe (1) à moins que, au moment où il plaide coupable ou est reconnu coupable, le tribunal, le juge ou le juge de paix n'ordonne qu'il soit mis sous garde en attendant cette décision.

(3) Le délinquant qui est absous en conformité avec le paragraphe (1) est réputé ne pas avoir été condamné à l'égard de l'infraction; toutefois, les règles suivantes s'appliquent :

- *a*) le délinquant peut interjeter appel du verdict de culpabilité comme s'il s'agissait d'une condamnation à l'égard de l'infraction à laquelle se rapporte l'absolution;
- *b*) le procureur général ou, dans le cas de poursuites sommaires, le dénonciateur ou son mandataire peut interjeter appel de la décision du tribunal de ne pas condamner le délinquant à l'égard de l'infraction à laquelle se rapporte l'absolution comme s'il s'agissait d'un jugement ou d'un verdict d'acquittement de l'infraction ou d'un rejet de l'accusation portée contre lui;
- *c*) le délinquant peut plaider *autrefois convict* relativement à toute inculpation subséquente relative à l'infraction.

(4) Lorsque le délinquant soumis aux conditions d'une ordonnance de probation rendue à une époque où son absolution a été ordonnée en vertu du présent article est déclaré coupable d'une infraction, y compris une infraction visée à l'article 733.1, le tribunal qui a rendu l'ordonnance de probation peut, en plus ou au lieu d'exercer le pouvoir que lui confère le paragraphe 732.2(5), à tout moment où il peut prendre une mesure en vertu de ce

the discharge relates and impose any sentence that could have been imposed if the offender had been convicted at the time of discharge, and no appeal lies from a conviction under this subsection where an appeal was taken from the order directing that the offender be discharged.

paragraphe, annuler l'absolution, déclarer le délinquant coupable de l'infraction à laquelle se rapporte l'absolution et infliger toute peine qui aurait pu être infligée s'il avait été déclaré coupable au moment de son absolution; il ne peut être interjeté appel d'une déclaration de culpabilité prononcée en vertu du présent paragraphe lorsqu'il a été fait appel de l'ordonnance prescrivant que le délinquant soit absous.

731. (1) 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.

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

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

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 prévues dans une ordonnance de probation.

(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) [Abrogé, 1997, ch. 17, art. 1]

743.21 (1) The sentencing judge may issue an order prohibiting the offender

743.21 (1) Le tribunal peut ordonner au délinquant de s'abstenir, pendant la période

from communicating, directly or indirectly, with any victim, witness or other person identified in the order during the custodial period of the sentence, except in accordance with any conditions specified in the order that the sentencing judge considers necessary.

(2) Every person who fails, without lawful excuse, the proof of which lies on that person, to comply with the order

- (*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
- (*b*) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

de détention en cause, de communiquer directement ou indirectement avec toute personne — victime, témoin ou autre — identifiée dans l'ordonnance si ce n'est en conformité avec les conditions qui y sont prévues et qu'il estime nécessaires.

(2) Quiconque omet, sans excuse légitime, dont la preuve lui incombe, de se conformer à l'ordonnance visée au paragraphe (1) 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 passible d'un emprisonnement maximal de dix-huit mois.

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.

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

(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

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 déposer une dénonciation devant un juge d'une cour provinciale, même si les personnes en question n'y sont pas nommées.

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

(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

recognizance to keep the peace and be of good behaviour for a period that does not exceed 12 months.

(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.

(3.02) The provincial court judge may add any reasonable conditions to the recognizance that the judge considers desirable to secure the good conduct of the defendant, including conditions that

- (*a*) prohibit the defendant from having any contact — including communicating by any means — with a person under the age of 16 years, unless the defendant does so under the supervision of a person whom the judge considers appropriate;
- (*a.1*) prohibit the defendant from using the Internet or other digital network, unless the defendant does so in accordance with conditions set by the judge;
- (*b*) prohibit the defendant from attending a public park or public swimming area where persons under the age of 16 years are present or can 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;

l’ordre public et d’avoir une bonne conduite pour une période maximale de douze mois.

(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.

(3.02) Le juge peut assortir l’engagement des conditions raisonnables qu’il estime souhaitables pour garantir la bonne conduite du défendeur, notamment celles lui intimant :

- *a*) de ne pas avoir de contacts — notamment communiquer par quelque moyen que ce soit — avec des personnes âgées de moins de seize ans, à moins de le faire sous la supervision d’une personne que le juge estime convenir en l’occurrence;
- *a.1*) de ne pas utiliser Internet ou tout autre réseau numérique, à moins de le faire en conformité avec les conditions imposées par le juge;
- *b*) ne pas se trouver dans un parc public ou une zone publique où l’on peut se baigner, s’il s’y trouve des personnes âgées de moins de seize ans ou s’il est raisonnable de s’attendre à ce qu’il s’y en trouve, ou dans une 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*) require the defendant to wear an electronic monitoring device, if the Attorney General makes the request;
- (*e*) require the defendant to remain within a specified geographic area unless written permission to leave that area is obtained from the provincial court judge;
- (*f*) require the defendant to return to and remain at his or her place of residence at specified times;
- (*g*) require the defendant to abstain from the consumption of drugs except in accordance with a medical prescription, of alcohol or of any other intoxicating substance;
- (*h*) require the defendant to provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation on the demand of a peace officer, a probation officer or someone designated under paragraph 810.3(2)(*a*) to make a demand, at the place and time and on the day specified by the person making the demand, if that person has reasonable grounds to believe that the defendant has breached a condition of the recognizance that requires them to abstain from the consumption of drugs, alcohol or any other intoxicating substance; or
- (*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.

(3.03) The provincial court judge shall consider whether it is desirable, in the

- *d*) de porter un dispositif de surveillance à distance, si le procureur général demande l’ajout de cette condition;
- *e*) de rester dans une région désignée, sauf permission écrite donnée par le juge;
- *f*) de regagner sa résidence et d’y rester aux moments précisés dans l’engagement;
- *g*) de s’abstenir de consommer des drogues — sauf sur ordonnance médicale —, de l’alcool ou d’autres substances intoxicantes;
- *h*) de fournir à des fins d’analyse un échantillon d’une substance corporelle désignée par règlement, à la demande d’un agent de la paix, d’un agent de probation ou d’une personne désignée en vertu de l’alinéa 810.3(2)*a*) pour faire la demande, aux date, heure et lieu précisés par l’agent ou la personne désignée, si celui-ci a des motifs raisonnables de croire que le défendeur a enfreint une condition de l’engagement lui intimant de s’abstenir de consommer des drogues, de l’alcool ou d’autres substances intoxicantes;
- *i*) de fournir à des fins d’analyse un échantillon d’une substance corporelle désignée par règlement, à intervalles réguliers précisés, dans un avis rédigé selon la formule 51 qui est signifié au défendeur, par un agent de probation 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.

(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

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.

(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.

(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.

(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.

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

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

doit assortir l'engagement d'une condition à cet effet et y prévoir la période d'application de celle-ci.

(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.

(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.

(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.

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

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

Canadian Charter of Rights and Freedoms, Being Part I of the Constitution Act, 1982

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society

1 La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique

11(*i*) Any person charged with an offence has the right:

(*i*) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

11(*i*) Tout inculpé a le droit :

i) de bénéficier de la peine la moins sévère, lorsque la peine qui sanctionne l'infraction dont il est déclaré coupable est modifiée entre le moment de la perpétration de l'infraction et celui de la sentence.

Corrections and Conditional Release Act, S.C. 1992, c. 20

134.1 (1) Subject to subsection (4), every offender who is required to be supervised by a long-term supervision order is subject to the conditions prescribed by subsection 161(1) of the *Corrections and Conditional Release Regulations*, with such modifications as the circumstances require.

134.1 (1) Sous réserve du paragraphe (4), les conditions prévues par le paragraphe 161(1) du *Règlement sur le système correctionnel et la mise en liberté sous condition* s'appliquent, avec les adaptations nécessaires, au délinquant surveillé aux termes d'une ordonnance de surveillance de longue durée.

(4) The Board may, in accordance with the regulations, at any time during the long-term supervision of an offender,

- (*a*) in respect of conditions referred to in subsection (1), relieve the offender from compliance with any such condition or vary the application to the offender of any such condition; or
- (*b*) in respect of conditions imposed under subsection (2) or (2.1), remove or vary any such condition.

(4) La Commission peut, conformément aux règlements, soustraire le délinquant, au cours de la période de surveillance, à l'application de l'une ou l'autre des conditions visées au paragraphe (1), ou modifier ou annuler l'une de celles visées aux paragraphes (2) ou (2.1).