S.C.C. 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
(Respondent)

– and –

HER MAJESTY THE QUEEN

Respondent
(Appellant)

– and –

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I N D E X

The tension between the state's purpose and the objective impact of the sanction pervades constitutional deliberation about the concept of punishment.

- George P. Fletcher, *Rethinking Criminal Law* (Oxford: Oxford UP, 1978), pp. 413-14

PART I – OVERVIEW

1. Since 2012, a judge imposing sentence for a sexual offence can make an order preventing the offender from using the Internet for the rest of his life. The availability of this order is predicated on the offender having been convicted of a sex offence. It is imposed at the same time as all the other elements of the sentence. A decision to impose it engages several of the purposes and principles of sentencing. But is it "punishment" for *Charter* purposes?

2. The CLA submits that the common sense answer – "yes" – is also the right one. Being barred from the dominant mode of communication in today's world, for years or for life, is bound to have profoundly negative effects on the offender. It is a substantial constraint on liberty lasting well beyond any period of incarceration that the sentencing court deems proportionate to the offender's moral blameworthiness. Given the importance of Internet access for occupational and social purposes in contemporary Canada, such an order amounts to a judicial prohibition against full re-entry into society. While there are close calls to be made around the edges of s. 11(i), the CLA submits that this is not one of them.

3. In the court below, the majority held that an order under s. 161 is *not* punishment because its main purpose is to protect the public, not to punish the offender. To the extent that this focus on legislative purpose or intent has come to characterize the s. 11 jurisprudence, the CLA submits that the time is ripe for a rebalancing. Consequences imposed as part of a criminal sentence should count as punishment if they can reasonably be expected to be experienced as such – most notably, if the consequences involve a significant incursion on the offender's liberty. In other words, significant consequences of a criminal conviction imposed by the sentencing court should generally count as punishment, even if Parliament's main purpose was something else.

PART II – QUESTIONS IN ISSUE

4. The CLA will address the following three questions:

(i) What is the proper test for determining whether a judicial order amounts to "punishment" within the meaning of s. 11(i) of the *Charter*?

(ii) Does an order under s. 161(1)(d) come within the applicable definition of "punishment"?

(iii) What counts as appropriate s. 1 justification for a s. 11(i) infringement?

PART III – ARGUMENT

A practical perspective on defining punishment across ss. 11(h) and 11(i)

5. Increasingly, sanctions imposed as part of the sentence include not only the primary sentence (such as incarceration) but also a range of ancillary consequences, from forfeiture of property[1] to DNA collection[2] to sex offender registration.[3] Many of these have, to varying degrees, an objectively punitive impact on offenders as they emerge from custody and seek to put their lives back together. Which of these ancillary consequences should attract the protections of s. 11 is therefore a pressing question.

6. The CLA's position is grounded in the practical realities of acting for clients who are potentially subject to such consequences. Criminal defence lawyers need to be able to advise their clients on the likely consequences of conviction, especially when the client is deciding whether to enter a guilty plea. That task is made more difficult by the post-offence enactment of ancillary consequences with retroactive effect. Clients want to know that when they stand before the court and receive sentence, the full extent of the punishment imposed is made known to them at that time.

7. If that concern sounds more relevant to the s. 11(h) right against double punishment than to the s. 11(i) right against retroactivity, the convergence is inevitable. After all, logic and

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[1] *Criminal Code*, s. 490.1
[2] *Criminal Code*, s. 487.051
[3] *Criminal Code*, s. 490.012

common sense dictate that "punishment" should have the same meaning in each subsection of s. 11. This was also the recent holding of the B.C. Court of Appeal in *Liang*,[4] in which it determined that the abolition of accelerated parole engaged s. 11(i) of the *Charter*, just as this Court in *Whaling* held that it engaged s. 11(h).[5] The Court's ruling in *Liang* meant that offenders who committed their offences before abolition would be eligible for accelerated parole – not just those who had already been sentenced when abolition came into effect. The essential reason was simple: punishment is punishment, for both ss. 11(h) and (i).[6] Although s. 11(h) deals with "double punishment" and s. 11(i) with retroactivity, both reflect aspects of the same constitutional guarantee: fairness and predictability in punishment.

8. Crucially, therefore, whether a s. 161 order counts as "punishment" needs to be considered from the perspectives of *both* s. 11(i) and 11(h). If an order under s. 161 isn't punishment, then not only could it be imposed on someone whose offence post-dates the enactment of the new provisions – it could, consistent with s. 11 of the *Charter*, potentially be imposed on someone who has already been convicted and sentenced. Parliament would just have to pass a law deeming anyone convicted of a certain offence to be subject to such an order. This is what happened with *Christopher's Law* in Ontario, where anyone convicted of a sex offence (even prior to the enactment of the law) was required to register as a sex offender. The Ontario Court of Appeal held that registration wasn't "punishment," and therefore the requirement complied with s. 11(h).[7]

9. Consider the scenario in which an offender, *after conviction*, is told that he is now subject to an order not to use the Internet for 10 years or life. He didn't know this was a possible consequence of conviction when he committed the offence. Neither did he know it when he pled guilty and received sentence.

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[4] *Liang v. Canada (Attorney General)*, 2014 BCCA 190, 311 C.C.C. (3d) 159, leave to appeal denied [2014] S.C.C.A. No. 298

[5] *Canada (Attorney General) v. Whaling*, [2014] 1 S.C.R. 392, 2014 SCC 20

[6] Madam Justice MacKenzie, writing for the Court, did note (at para. 37) that she "would not preclude the possibility, in a future unforeseen circumstance, that the concept of 'punishment' may need to be tailored to each subsection in light of their unique purposes." Nevertheless, in her view it would be "anomalous" if the retrospective abolition of accelerated parole would amount to punishment for double jeopardy purposes, "but not for the section more clearly aimed at ensuring that the objective 'expectation' of punishment will not change over time" (para. 39).

[7] *R. v. Dyck*, 2008 ONCA 309, 232 C.C.C. (3d) 450

10. Seen this way, though the lens of s. 11(h), it seems to be inarguably true that such a development would frustrate an offender's "settled expectation of liberty" in the *Whaling* sense and therefore constitute punishment for s. 11 purposes. And if that's the case, the same definition of "punishment" must obtain in the somewhat more abstract context of s. 11(i).

11. To be clear, the *Charter* does not prevent the government from introducing more ancillary orders into the sentencing process, provided that they don't violate its substantive guarantees like the prohibition against cruel and unusual punishments. But the *Charter* does ensure that such consequences are subject to the fundamental fairness guarantees that *Whaling* so eloquently re-affirmed. Vigilant enforcement of those guarantees promotes certainty and predictability for offenders and members of the public alike.

Clarifying the "Rodgers" test

12. This Court has never enunciated a comprehensive definition of "punishment" for s. 11 purposes. Everyone recognizes that imprisonment and large fines are paradigmatic forms of punishment that would always qualify. The question is what else should fall within that rubric.

13. If it seems surprising that a comprehensive definition of "punishment" has yet to emerge from the jurisprudence, one explanation may be that most of the leading s. 11 cases have been concerned with a different question: when is a person "charged with an offence" so as to trigger the package of protections offered by s. 11? Since the Court's seminal decision in *R. v. Wigglesworth*, [1987] 2 S.C.R. 541, it has employed a two-part test. The matter in question must: (1) by its very nature be a criminal proceeding or, (2) lead to true penal consequences in the event of a conviction. Very recently, in *Guindon v. Canada*, 2015 SCC 41, the Court further refined the application of this threshold test.

14. From *Wigglesworth* through *Guindon*, the most difficult questions in s. 11 jurisprudence revolve around the definition of "offence" in the provision's introductory words. Those qualifying words have real work to do in ensuring that the full procedural protections of the criminal law are available to people facing criminal sanction, but also in ensuring that those protections are not extended into areas where they are neither necessary nor appropriate. There are strong reasons of principle and policy not to cast the net narrowly – but not too widely either. When a particular

proceeding – for instance, the imposition of an administrative monetary penalty – is deemed to constitute an "offence," it means that the rigorous edifice of criminal law procedure must be superimposed onto what may have previously been a streamlined administrative process. Courts have been wary of too readily imposing such requirements.

15. But once we are *indisputably* in the criminal arena and are considering whether an element of a criminal sentence counts as "punishment," things are much more straightforward – and have fewer potential downside consequences from the point of view of administrative efficiency. The only restrictions placed on "punishment" by s. 11 are: (1) that the available punishment can't be varied upward after the commission of the offence, and (2) that once punishment is imposed, it can't be imposed again. The policy reasons for excluding certain regulatory measures like administrative monetary penalties from the s. 11 "offence" threshold are missing when it comes to determining what sanctions imposed after an indisputably criminal trial qualify as punishment.

16. In *R. v. Rodgers*, [2006] 1 S.C.R. 554, the Court proposed a "general" rule of thumb consistent with a generous, inclusive construction of the "punishment" criterion. Under *Rodgers*, a measure will count as punishment if:[8]

> (1) 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.

17. This is a broad test that should be expected to include the vast majority of ancillary orders imposed at the same time as the primary sentence. After all, a sentencing court is in the business of furthering the purposes and principles of sentencing.[9]

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[8] *Rodgers*, *supra*, at para. 63

[9] In the academic literature, the starting point for mapping out the concept of punishment is usually H.L.A. Hart's five-part definition: (i) it must involve pain or other consequences normally considered unpleasant; (ii) it must be for an offence against legal rules; (iii) it must be of an actual or supposed offender for his offence; (iv) it must be intentionally administered by human beings other than the offender; and (v) it must be imposed and administered by an authority constituted by a legal system against which the offence is committed. Like the more compact *Rodgers* test, this too is a broad definition likely to encompass most ancillary orders imposed as part of sentence except those (like a DNA order) that interfere with the offender's liberty in only a trivial or trifling way. See: H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law*, 2nd ed. (Oxford: Oxford UP, 2008), at pp. 4-5.

18. Nonetheless, appellate courts have sometimes applied the *Rodgers* test in a way that gives decisive weight to any *non-punitive purpose* that can be ascribed to Parliament, while underplaying the *punitive effect* experienced by the offender. The majority's approach in the court below exemplifies this difficulty. Newbury J.A. appeared to give decisive weight to her observation that orders pursuant to s. 161 are "designed to protect the public, and in particular, children, from sexual offences and offenders."[10] That is no doubt true. But so are lengthy prison sentences. And no one would suggest that the public protection objective of such a sanction would render it any less a "punishment."[11]

19. Indeed, s. 718 entrenches public protection within the "*fundamental purpose*" of sentencing. The fact that a measure is designed to protect the public can therefore hardly be said to bring it outside the ambit of s. 11. The other principles and purposes that flow from this "fundamental purpose" are diverse and sometimes in tension. Every ancillary order imposed by a sentencing court can be seen as furthering one or more of those objectives. Perhaps for this reason, many courts (like the majority in the court below) have adopted an under-inclusive approach that excludes a consequence from ss. 11(h) and 11(i) if it appears to have a mainly prophylactic purpose. The CLA submits that this approach is inconsistent both with *Rodgers'* purposely inclusive test and with the underlying philosophy of protecting an individual's reasonable expectation of liberty.

20. In particular, the approach of the majority below seems ill-suited to distinguishing administrative-type consequences of a criminal conviction from those which would reasonably be considered to be (and experienced by the offender as) punitive. In *Rodgers* itself, the challenged DNA order was fleeting in its impact on the offender, no more intrusive than the taking of a photograph or fingerprints. According to Charron J., the fact that it may also have a deterrent

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[10] Reasons of the British Columbia Court of Appeal, at para. 96

[11] Or consider the dangerous offender regime. Its primary purpose is not punishment, but the protection of the public: *R. v. Johnson*, [2003] 2 S.C.R. 357, 2003 SCC 46 , at para. 19; *R. v. Lyons*, [1987] 2 S.C.R. 309, at p. 329. As Wagner J. observed in *Whaling*, "[i]ncarceration is 'the most severe deprivation of liberty known to our law' and the most obvious example of punishment in the 'arsenal of sanctions' available under the *Criminal Code*" (para. 51). Incarceration for an *indeterminate* period – the potential consequence of a dangerous offender designation – is likely to result in the offender spending the remainder of his life in prison. It could not be more punitive in its impact. The absurdity of labeling indeterminate incarceration "not punishment" because of its public-protective purpose should be apparent on its face.

effect did not make it "punishment", even though deterrence is a key objective of sentencing.[12] This reasoning should work the other way too, however: just because a s. 161(1)(d) order may have a protective purpose or effect does not suffice to remove it from the category of s. 11 "punishment."

21. Indeed, *Whaling* signalled a move away from the formalistic tendencies of some of the post-*Rodgers* jurisprudence. Wagner J. stated: "[t]he problem is that the *Rodgers* test does not assist in identifying situations in which, from a functional rather than a formalistic perspective, the harshness of punishment has been increased."[13] In more concrete terms, asking whether parole is granted or withheld based on the "principles and purposes of sentencing" (it isn't) does not assist in determining whether retroactively delaying parole eligibility has an objectively punitive impact on the offender (it clearly does).

22. Justice Wagner's key insight was therefore that s. 11(h) is, at least in large part, about protecting an accused's "settled expectation of liberty."[14] In the CLA's submission, so too is 11(i). The difference between the two kinds of expectation is that they crystallize at different times: for s. 11(i), prior to the commission of the offence; for s. 11(h), prior to the imposition of sentence. As already explained, the constitutional interests protected are deeply linked.

23. In terms of punitive effect on the offender, a contrast with the former s. 161(1)(c) is instructive. That provision authorized an order prohibiting an offender from "using a computer system […] for the purpose of communicating with a person under the age of 16 years." Narrowly drawn to target a potential risk to children, this prohibition lacks the sweeping punitive character of the order now available under s. 161(1)(d) because it neither places a substantial burden on the offender's liberty interests nor prevents the offender from re-joining contemporary online society. The Crown would no doubt argue that most adults can get along fine without using the Internet to communicate with children. But by any measure, the same does not hold true for Internet use at large. Arguably, therefore, the Crown would possess a stronger case for excluding the former s. 161(1)(c) from the ambit of s. 11 "punishment" than it does for the blanket order now available under s. 161(1)(d).

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[12] *Rodgers*, *supra*, at para. 64
[13] *Whaling*, *supra*, at para. 52
[14] *Whaling*, *supra*, at para. 60

24. This kind of under-inclusiveness is a recurring problem with the purpose-based test for distinguishing punitive from non-punitive measures. In its factum, the Crown recites a number of judicial statements to the effect that s. 161 orders are meant to protect children from pedophiles.[15] This is undoubtedly true, yet immaterial to the issue the Court is asked to resolve.

25. The s. 161(1)(d) order is, needless to say, a less extreme interference with an offender's liberty than incarceration. And yet, as noted by Groberman J.A. in the court below, the order is essentially designed to "separate offenders from society, where necessary", consistent with the sentencing objective set out in s. 718(c).[16] This is a substantial incursion on the offender's liberty by any measure. As Beveridge J.A. stated in *R. v. Farler*:[17]

> A prohibition order by its very nature restricts an offender's liberty because it prevents him or her from going to certain places, and it has consequences for an offender who might otherwise want to visit parks, work with children, etc. So it seems to me that a prohibition order under s. 161 fits the definition of "punishment" and, based on that fact alone, an order under that section cannot be granted with respect to offences committed before it came into force in August 1993.

26. In line with this approach, the CLA submits that the best way to determine whether a given measure amounts to "punishment" is to ask whether it has an impact that a reasonable member of society would consider punitive. For instance, if the impugned measure curtails an offender's liberty in a meaningful way, it surely would be seen as "punishment" by a reasonable member of society. Such measures should on any account be subject to the strictures of ss. 11(h) and 11(i) because retrospective application would offend what the Court in *Whaling* described as a "settled expectation of liberty."

27. The legislative measure at issue in this case provides a powerful example of why a purposive approach to s. 11 demands a focus on punitive impact. A restriction on "using the Internet or other digital network" constitutes a profound impingement on an offender's liberty that, in the court's discretion, can extend for many years after his primary sentence has been served – or even for life. Increasingly, the ability to go online is a liberty Canadians from all walks of life take for granted, such that a prohibition on Internet use amounts to a ban on full participation in society. An order under the new s. 161(1)(d) is likely to interfere dramatically

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[15] Respondent's Factum, at paras. 49-51
[16] Reasons of the British Columbia Court of Appeal, at para. 81
[17] *R. v. Farler*, 2013 NSCA 13, at para. 128

with an offender's efforts at reintegration. The CLA will argue that an appropriately purposive approach to s. 11 must necessarily recognize the punitive nature of such a consequence.

The threshold for s. 1 justification is exceedingly high

28. The CLA submits that it is inherently unlikely that a violation of any of the s. 11 fair trial guarantees could be justified under s. 1, for the reason that s. 11 instantiates fundamental procedural rights that are all but absolute in our tradition. "Balancing" between individual and state objectives generally occurs elsewhere – for instance, in the determination of what kinds of prohibitions on *conduct* are permissible in a democratic society.[18]

29. But infringements of the ancient right against double jeopardy and related protections are of a different order. What pressing societal goal could justify departing from such bedrock procedural commitments? Like the rights under s. 7, the procedural rights protected by s. 11 are "fundamental, and "not easily overridden by competing social interests".[19] In *any* s. 11(i) case, Parliament will have increased the punishment for an offence and will, by definition, be in a position to say that the old regime was too lenient. This cannot, without much more, amount to a s. 1 justification for retroactive application, or the right would cease to have any meaning. As the B.C. Court of Appeal observed in *Liang*, "the fact the offender will receive a lesser punishment, and perhaps one that does not meet the objectives of the present sentencing regime, is exactly what s. 11(i) contemplates."[20]

30. In this case, the Crown's s. 1 evidence appears geared toward showing that recidivism by pedophiles is a serious problem. That may be true. But it is hardly a justification for holding that sexual offenders can therefore be punished twice for the same conduct or be deprived of the fair notice guarantee established by s. 11(i). To even begin to justify such an infringement, the Crown would need to somehow show that the lack of retrospective application is itself a pressing problem that can *only* be addressed through infringement of fundamental legal guarantees and not

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[18] For example, while reasonable people can disagree on whether a given state objective is sufficient to justify an infringement of the right to free expression in the creation of a criminal offence – see *R. v. Keegstra*, [1990] 3 S.C.R. 697 – all would normally agree that someone charged with such an offence has an unqualified right to the *Charter*'s procedural protections.

[19] *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331, 2015 SCC 5, at para. 95, quoting *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, 2007 SCC 9, at para. 66

[20] *Liang*, supra, at para. 59. See also *R. v. R. S.*, 2015 ONCA 291, at para. 43.

through any less intrusive means. In other words, the Crown would have to show that the earlier unavailability of a s. 161 order in its current form was such a glaring and dangerous legislative oversight that only the extreme step of retrospective application would be sufficient to mitigate the clear and present danger to public safety that the previous statutory lacuna created. This is a tall order, and rightly so.

31. In the real world, this is exceedingly unlikely to be provable. The new s. 161 may be an improvement over the old one, or it may be unnecessarily intrusive. That is a policy judgment on which people can disagree. But it can hardly be said that the old s. 161 was *so deficient* that only the extraordinary and unprecedented step of overriding the fundamental right against retrospective punishment is capable of protecting the public against people subject to the old regime.

PART IV – COSTS

32. The CLA seeks no order as to costs.

PART V – ORDER SOUGHT

33. The CLA seeks permission to present oral argument at the hearing of the appeal. The CLA takes no position on the proper disposition of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this _____ day of November, 2015.

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PART VI – TABLE OF AUTHORITIES

Case law

Commentary

PART VII – LEGISLATION CITED

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c 11

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

11. Any person charged with an offence has the right

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

11. Tout inculpé a le droit :

a) d'être informé sans délai anormal de l'infraction précise qu'on lui reproche;

b) d'être jugé dans un délai raisonnable;

c) de ne pas être contraint de témoigner contre lui-même dans toute poursuite intentée contre lui pour l'infraction qu'on lui reproche;

d) d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;

e) de ne pas être privé sans juste cause d'une mise en liberté assortie d'un cautionnement raisonnable;

f) sauf s'il s'agit d'une infraction relevant de la justice militaire, de bénéficier d'un procès avec jury lorsque la peine maximale prévue pour l'infraction dont il est accusé est un emprisonnement de cinq ans ou une peine plus grave;

g) de ne pas être déclaré coupable en raison d'une action ou d'une omission qui, au moment où elle est survenue, ne constituait pas une infraction d'après le droit interne du Canada ou le droit international et n'avait pas de caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations;

h) d'une part de ne pas être jugé de nouveau pour une infraction dont il a été

(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.

définitivement acquitté, d'autre part de ne pas être jugé ni puni de nouveau pour une infraction dont il a été définitivement déclaré coupable et puni;

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.

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

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 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

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 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

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.

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.