**Court File No.37596**

**IN THE SUPREME COURT OF CANADA**
(ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN)

**B E T W E E N:**

**SPENCER DEAN BIRD**

**APPELANT**

-and-

**HER MAJESTY THE QUEEN**

**RESPONDENT**

-and-

**THE ATTORNEY GENERAL FOR CANADA**
**ABORIGINAL LEGAL SERVICES**
**DAVID ASPER CENTER FOR CONSIUTUIONAL RIGHTS**
**and CANADIAN CIVIL LIBERTIES ASSOCIATIONS**

**INTERVENERS**

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## PART I:
## OVERVIEW OF ARGUMENT

1. The Parole Board of Canada's power to impose a residency condition at community-based residential facilities is critical to the risk management and rehabilitation component of the dangerous offender and long-term offender regime. Part XXIV of the *Criminal Code* sets out the process for designating offenders as dangerous or long-term offenders. This Part sets out a comprehensive group of provisions aimed at protecting society from a narrow class of habitual offenders who persist in committing violent or sexual offences and thus pose a threat to the safety of the public. While dangerous offender legislation has been in place since 1947, Parliament first introduced long-term offender legislation in 1997 for those offenders who pose "a substantial risk to reoffend" but do not require preventative detention to adequately protect the public. In 2008, the dangerous offender provisions were amended to increase sentencing options for those designated as dangerous offenders. Dangerous offenders now may receive a fixed sentence and a long-term supervision order of up to 10 years. The stand-alone long-term offender provisions still exist under s. 753.1 of the *Criminal Code*. As a result, the term "long-term offender" may refer to an offender with a long-term supervision order imposed during the time period before the 2008 amendments (like the appellant), a dangerous offender who has served a fixed sentence and is subject to a long-term supervision order or a designated long-term offender under s. 753.1 of the *Criminal Code*.

2. Long-term supervision orders are administered in accordance with the *Corrections and Conditional Release Act,* S.C. 1992, c. 20 (*CCRA*). While the length of long-term supervision order is fixed by the sentencing judge, the conditions are determined by the Parole Board of Canada (PBC). The PBC may include a condition "that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender" (*CCRA*, s. 134.1(2)). The PBC may impose a special condition that a long-term offender reside at a community-based residential facility, commonly referred to as a halfway house. This term is reviewed by the PBC every 365 days.

3. Some community-based residential facilities are run by Correctional Service Canada (CSC), called community correctional centres, while others are run by non-governmental

agencies, called community residential facilities. Both provide offenders with programing and supervision. Residency at community-based residential facilities is critical to achieving the twin aims of the long-term offender regime: protection of the public and rehabilitation of the offender.

4. As an intervener in this appeal, the Attorney General of Ontario will address only the second issue raised by the appellant, "was the Parole Board of Canada entitled to order that the appellant reside at a penitentiary?" The Attorney General of Ontario will argue that the PBC is statutorily authorized to impose a residency condition at a community-based residential facility as part of a long-term supervision order and that the imposition of such a condition is entirely consistent with ss. 7, 9 and 11(h) of the *Canadian Charter of Rights and Freedoms*.

5. The Attorney General of Ontario accepts the facts as set out in the appellant's factum, as supplemented by the respondent.

## PART II:
## STATEMENT OF POSITION

6. The Attorney General of Ontario submits that the imposition of a residency condition as part of a long-term supervision order does not violate ss. 7, 9 or 11(h) of the *Charter*. The provisions of the *Criminal Code* and *CCRA* must be read together and understood in the context of the broader dangerous and long-term offender scheme. When the statutory apparatus of the *Criminal Code* and the *CCRA* are considered in this way, a residency condition is not inconsistent with the *Charter* protections in ss. 7, 9 and 11 (h). A long-term offender subject to a residency condition is not incarcerated at a penitentiary but supervised at a community-based residential facility while receiving programing and reintegrating into the community. A residency condition is instrumental to achieving the dual goals of the long-term offender regime, protection of the public and reintegration of the offender.

## PART III:
## BRIEF OF ARGUMENT

### A. The Operation of the *Criminal Code* and the *Corrections and Conditional Release Act* for Administering Long-Term Supervision Orders

7. Parliament has long recognized the need to have a specialized sentencing regime for the narrow group of offenders who pose a danger to the public through violent and/or sexual recidivism. Dangerous offender legislation was first enacted with separation from society and preventative detention as the primary mechanism to protect the public.[1] In 1997, Parliament introduced a lesser sentencing measure, the long-term supervision order, for those offenders whose risk would be reduced to an acceptable level with rehabilitation. This Court in *R. v. Johnson*, [2003] 2 S.C.R. 357 directed sentencing judges to consider whether protection of the public could be achieved with a long-term supervision order before resorting to indeterminate detention, even for those offenders who met the criteria for "dangerous" within the meaning of s. 753(1).

[1] *R. v. Lyons*, [1987] 2 S.C.R. 309 at paras. 12-16

8. In 2008, Parliament amended the dangerous offender provisions to align the scheme with this Court's guidance in *Johnson* and to provide more sentencing options for dangerous offenders.[2] After 2008, a sentencing judge who determines that an offender meets the statutory criteria in s. 753 of the *Code* shall designate the offender a dangerous offender but has discretion as to what sentence to impose. A dangerous offender may be sentenced to an indeterminate sentence, a fixed sentence with a long-term supervision order or a fixed sentence (s. 753(4)). The application for a long-term offender designation as set out in s. 753.1 remained unchanged. As a result of the legislative changes, at the current time, an offender subject to a long-term supervision order may have been designated a long-term offender under the pre-2008 *Johnson* regime, may have been designated a dangerous offender under the post-2008 regime or may have been designated a long-term offender pursuant to s. 753.1. The sentencing court determines the appropriate designation and sentence by applying Part XXIV of the *Criminal Code*. Once the offender has been sentenced, CSC and the PBC are required to administer any custodial sentence including all forms of release and any long-term supervision order. The sentencing judge does not set out conditions for the long-term supervision order, that task falls to the PBC pursuant to the *CCRA*.[3]

9. Section 753.2(1) of the *Criminal Code* directs that an offender who is subject to a long-term supervision order shall be supervised in the community in accordance with the *CCRA* and sets out when the period of supervision begins. Subsection (3) also permits an offender to apply for a reduction in length or termination of the long-term supervision order on the grounds that the offender "no longer presents a substantial risk of reoffending".

10. The *CCRA* is legislation aimed at the detention and conditional release of offenders who are the responsibility of CSC. It was amended to incorporate the long-term offender scheme, a scheme where the offender is supervised in the community, not detained or on conditional release. As a result, the long-term offender provisions fit imperfectly into the *CCRA*. While some provisions specifically address long-term offenders, other provisions address long-term

[2] This Honourable Court is considering the constitutionality of the 2008 amendments in *R. v. Boutilier,* File No. 37168.
[3] *R. v. Wormell*, 2005 BCCA 328 at para. 27, leave to appeal ref'd, [2006] 1 S.C.R. xvi

offenders by reference to "offenders".[4] Supervision of long-term offenders occurs through the operation of the *CCRA* provisions and the CSC Commissioner's Directives.

11. Section 134.1(1) of the *CCRA* requires that all long-term offenders are subject the mandatory conditions set out in r. 161(1) of the *Corrections and Conditional Release Regulations*, SOR/92-620 (*Regulations*). Additional conditions may be required to ensure that a long-term offender's risk is reduced to an acceptable level while on the supervision order. CSC will make recommendations to the PBC about what special conditions may be required to manage a long-term offender's risk in the community. The PBC may decline to impose the recommended special conditions and may also impose special conditions not recommended by CSC.[5] While the PBC uses its expertise to impose conditions, it is CSC that supervises the offender in the community and monitors compliance with the conditions.[6] The *CCRA* has provisions to address circumstances where the long-term offender has demonstrated an increase in risk to reoffend or has breached a condition of the supervision order.[7]

12. The authority for the PBC to impose special conditions on the long-term supervision order is found in s. 134.1(2) of the *CCRA*:

> (2) The Board may establish conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.

This section allows the *CCRA* to craft a broad range of conditions that are "reasonable and necessary" to manage the risk that a long-term offender poses. Conditions may include prohibition of drug and alcohol consumption, direction to follow treatment plans, restriction on internet access, and reporting of romantic relationships.

13. There is no explicit authority in s. 134.1 to impose a residency condition on a long-term offender.[8] A residency condition is imposed under the authority of subsection (2) only in the

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[4] Sections 2.1, 99.1 and 157.1 of the *CCRA*
[5] *R. v. D.B.*, 2015 ONSC 5900 at para. 140
[6] *R. v. T.J.W.*, 2014 ONSC 5543 at para. 58
[7] Section 135 and 135.1 of the *CCRA*
[8] Section 133(4.1) sets out the authority for the PBC to impose a residency condition on paroled or statutorily released offenders. See *Normandin v. Canada (Attorney General)*, 2005 FCA 345, leave to appeal ref'd, 358 NR 392

circumstances that it is "reasonable and necessary" to protect society and facilitate the reintegration of the offender. Subsection (3) states that the condition is valid for the time period the Board specifies. A residency condition is subject to review by the PBC every 365 days and will automatically expire if the PBC does not impose a new residency condition.[9]

14. Typically a residency condition will refer to a long-term offender residing at a community correctional centre, community residential facility or other approved residence. Community correctional centres and community residential facilities are halfway houses intended to provide housing for offenders on release and long-term supervision.[10] Community-based residential facilities offer support and programing for residents which may include life skills, substance abuse treatment, employment and crisis counselling.[11] Some facilities are owned and operated by non-governmental agencies, community residential facilities, while community correctional centres are owned and operated by CSC. Community correctional centres are not defined in the *CCRA* but are described in the CSC directives. Specific CSC directives are in place for the management of long-term offenders.[12] One directive notes that while community correctional centres are classified as minimum security institutions, due to their role in accommodating long-term offenders, they are not required to conform to all minimum security standards.[13] Standards for a community correctional centre are set out in a directive.[14] Offenders are not locked in cells at a community correctional centre. Offenders have rooms and sign in and out as they leave the facility which is unlocked during the day.[15]

15. Subsection (4) of s. 134.1 permits the PBC to remove or vary any special condition imposed pursuant to subsection (2). CSC can recommend that a condition be varied or removed

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[9] Correctional Service Canada: Commissioner's Directive 719 Long-term Supervision Orders

[10] In 2012, there were 344 offenders subject to a long-term supervision order. Approximately 63% of long-term offenders had a special condition to reside at a community-based residential facility. See Correctional Service Canada, "CSC and Long Term Supervision Orders (LTSO) Judicial Education CD-ROM" (2013) Library and Archives Canada Cataloguing in Publication at p. 7

[11] http://www.csc-scc.gc.ca/facilities-and-security/001-0001-eng.shtml

[12] See Correctional Service Canada: Commissioner's Directive 719 Long-Term Supervision Orders; Correctional Service Canada: Commissioner's Directive 715 Community Supervision Framework.

[13] Correctional Service Canada: Commissioner's Directive 706 Classification of Institutions

[14] Correctional Service Canada: Commissioner's Directive 714 Community Correctional Centre Standards

[15] *R. v. T.J.W.*, 2014 ONSC 5543 at para. 69; *R. v. MacArthur* 2017 ONSC 58 at para. 63

when there is a change in the offender's level of risk or upon request of the offender. It is up to the PBC to accept or reject the recommendation to alter the special condition.[16]

**B. A Residency Condition is Consistent with s. 9 of the *Charter***

16. The appellant attacks the authority of the PBC to impose a residency condition under ss. 7, 9 and 11(h) of the *Charter*. The trial judge found a "significant breach of s. 7" without reference to a specific principle of fundamental justice.[17] The Saskatchewan Court of Appeal did not address the *Charter* issue as it was not necessary to dispose of the appeal.[18] The Attorney General of Ontario adopts the submissions of the respondent on why a residency condition complies with s. 7, 9 and s. 11(h) of the *Charter* and offers the following additional submissions regarding the *Charter* concerns raised by the appellant.

17. Section 9 of the *Charter* establishes that "[e]veryone has the right not to be arbitrarily detained or imprisoned". The broad purpose of s. 9 is to "protect individual liberty from unjustified state interference".[19] A lawful detention is not arbitrary within the meaning of s. 9 unless the law authorizing the detention itself is arbitrary.[20] This Court in *R. v. Luxton*, [1990] S.C.R. 711 determined that the minimum life sentence without eligibility for parole for certain types of murders did not demonstrate arbitrariness. The sentence is statutorily authorized, applies to a narrowly defined class of offenders and specifically prescribes the conditions under which the offender is liable to be convicted.[21]

18. A residency condition on a long-term supervision order is not arbitrary as it is authorized by law. The PBC has authority to impose any condition that is "reasonable and necessary" in order to protect society and to facilitate the successful reintegration of the offender under s. 134.1(2) of the *CCRA*. The authorizing provision does not demonstrate arbitrariness as it has internal criteria to ensure that the PBC imposes a condition that is tailored to both the needs of the offender and the public. Not only must the condition be "reasonable and necessary" but the

[16] Correctional Service Canada: Commissioner's Directive 715-2 Post-Release Decision Process
[17] *R. v. Bird*, 2016 SKPC 28 at para. 40
[18] *R. v. Bird*, 2017 SKCA 32 at para. 60
[19] *R. v. Grant*, [2009] 2 S.C.R. 353 at para. 20
[20] *R. v. Grant*, [2009] 2 S.C.R. 353 at para. 54
[21] *R. v. Luxton*, [1990] 2 S.C.R. 711 at para. 11

condition must be tied to the dual goals of the long-term supervision regime, protection of the public and rehabilitation of the offender.[22] There is statutory authority for the PBC to impose a residency condition and the provision itself is not arbitrary as it contains a robust threshold to be met before a residency condition is imposed.

19. In addition, the connected operation of CSC and the PBC ensures that the PBC does not render decisions on long-term supervision conditions in a factual vacuum. Section 760 of the *Criminal Code* mandates that following a dangerous offender or long-term offender designation, the court will forward to CSC the sentencing judge's reasons and copies of the evidence and reports given by psychiatrist, psychologists, criminologists and other experts. As a result, CSC has comprehensive information about the offender including psychiatric diagnoses, treatment history and offending history. The s. 752.1 report by the psychiatrist will include an assessment of the offender's risk and what risk management tools are needed to manage that risk if the offender is living in the community.[23] This report will often indicate if a residency condition is recommended to reduce the offender's risk and facilitate the offender's rehabilitation. CSC has access to this information when formulating the offender's Correctional Plan and making recommendations to the PBC about necessary special conditions on a long-term supervision order.[24] The CSC also has up to date information about the offender's progress while under the long-term supervision which provides the basis for recommending a residency condition to the PBC.

20. Further, the special condition is not static. If there is a change in the offender's level of risk such that a residency condition is no longer "reasonable and necessary", subsection (4) permits the PBC to vary or remove the condition. While the residency may remain in place for up to 365 days before the PBC must once again determine that it is a "reasonable and necessary" condition in the circumstances of a particular offender, the offender may seek to vary or remove the condition earlier if there is a change in circumstances. Often, such as the

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[22] *R. v. Ipeelee*, [2012] 1 S.C.R. 433 at para. 50

[23] Defence psychiatrists/psychologists often also provide evidence about whether residence at a community-based residential facility is recommended.

[24] Correctional Service Canada: Commissioner's Directive 705-6 Correctional Planning and Criminal Profile

instant case, the special condition is crafted with flexibility to allow for a change in residence with the approval of CSC. This permits an offender to change residence with the approval of CSC without seeking relief from the condition at the PBC. However, in the event that CSC and the offender disagree about the specific residence, the offender can seek to vary the special condition at the PBC. As a result, there are multiple avenues for an offender who wishes to vary or remove a residency condition before the offender seeks relief from the Federal Court via judicial review of the special condition or the Superior Court to reduce the length of the long-term supervision order.

21. The essence of the appellant's argument under s. 9 is that there is no authority for the PBC to impose residency at a community correctional centre because a community correctional centre can be interpreted as a "penitentiary" under the *CCRA*. The appellant does not appear to take issue with a residency condition being imposed in his particular case or with the conditions at the community correctional centre.[25] In the event that a community correctional centre does fall within the definition of "penitentiary" under the *CCRA*, this is not determinative of whether the residency condition is consistent with s. 9 of the *Charter*. If certain interpretations of the *CCRA* result in a long-term offender being labelled as an "inmate" or living at a "penitentiary" for the purposes of the administration of the *CCRA*, this is a statutory artifact of how the long-term offender regime was superimposed upon the existing *CCRA* when it was introduced. A community correctional centre is a halfway house operated by CSC, not a penitentiary. A residency condition at a community correctional centre imposed on a long-term offender is not "unjustified state interference" because it is authorized by law, s. 134.1(2) of the *CCRA*. The law itself is not arbitrary as it is explicitly linked to the dual goals of the long-term offender regime, protection of the public and rehabilitation of the offender. The law has an internal threshold to ensure that the condition is tailored to achieve the dual goals and safeguards are in place to ensure that the condition can be varied or removed if the circumstances of the offender change. Similar to the sentencing provisions this Court considered in *Luxton*, the residency condition will apply to a narrow class of offenders and has specific prescriptions for its

[25] The appellant did note a concern about the lunch and nighttime curfew at Oskana community correctional centre but no evidence was called on the issue. Appellant's Record, Vol. II, Tab 6 (Agreed Statement of Facts), at page. 64

imposition and its variation. A residency condition on a long-term offender supervision order is consistent with s. 9 of the *Charter*.

### C. A Residency Condition is Consistent with s. 7 of the *Charter*

22. Section 7 of the *Charter* states that "[e]veryone 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". This Court has developed a two-stage analysis for considering whether s. 7 of the *Charter* is violated.[26] First, claimants must establish that s. 7 is engaged by establishing that the law interferes with life, liberty or security of the person. Second, they must show that the deprivation in question is not in accordance with the principles of fundamental justice.

23. Section 7 does not prohibit all state interference - only state interferences that violate the principles of fundamental justice. This Court has identified arbitrariness as one of the principles of fundamental justice. In order to determine if a law is arbitrary, the object of the law must be identified.[27] The protection against arbitrariness prevents a situation where there is no rational connection between the object of the law and the limit it imposes.[28]

*Object of the Law*

24. The object of the *CCRA* is found in the purpose of the long-term offender regime and consideration of the *CCRA* as a whole and as it fits within that regime. This Court has considered elements of the long-term offender regime in *L.M.* and in *Ipeelee*. In both instances, the Court recognized that rehabilitation of the offender is a key feature of the long-term offender scheme.[29] After explicitly considering the *CCRA*, this Court stated that a long-term supervision order has two goals: protection of the public and rehabilitation and reintegration of the offender. These twin goals reflect the object of the *CCRA*: supervision of the offender in the community in order to protect the public and rehabilitate the offender. Express provisions of the *CCRA* also demonstrate its object.[30]

[26] *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331 at para. 55
[27] *Carter v. Canada (Attorney General),* [2015] 1 S.C.R. 331 at para. 72
[28] *Carter v. Canada (Attorney General),* [2015] 1 S.C.R. 331 at para. 83; *Bedford v. Canada (Attorney General)*, [2013] 3 S.C.R. 1101 at para. 111
[29] *R. v. L.M.*, [2008] 2 S.C.R. 163; *R. v. Ipeelee*, [2012] 1 S.C.R. 433
[30] *R. v. Ipeelee*, [2012] 1 S.C.R. 433 at para. 50

*Rational Connection Between the Object of the Law and the Limit it Imposes*

25. Section 134.1(2) is rationally connected to the object of the *CCRA*. The internal criteria of "reasonable and necessary" are expressly linked to the purpose of protecting society and rehabilitating the offender, the object of the *Act*. The arguments made above in the context of s. 9 as to why s. 134.1(2) is not arbitrary also demonstrate why there is a rational connection between the object of the law and the limit it imposes. The provision is crafted to ensure that the special condition is carefully tailored to address the needs of the offender and the public. Not only is a robust threshold prescribed before a special condition is imposed, but also there is the opportunity to seek relief from the condition in various ways. The decision is made by the PBC, a tribunal with expertise in risk assessment and rehabilitation, based on detailed information and recommendations from CSC, a body with substantial expertise in risk assessment and risk management. Section 134.1(2) ensures that a residency condition is only imposed on long-term offenders for whom it is "reasonable and necessary" in order to protect the public and to facilitate the reintegration of the offender.

26. Further, it cannot be said that the effects of the intrusion are *unnecessary* for its objective.[31] A residency condition at a community-based residential facility is often critical to delivering the support and supervision a long-term offender needs while in the community for prescribed periods of time. Particularly in light of the fact that the term "long-term offender" now captures offenders designated as dangerous offenders who may pose a higher risk to public safety, the authority to impose a residency condition is necessary for the *CCRA* to achieve its objective. The state's intrusion in this case, to impose a residency condition on a long-term offender, accords with the principles of fundamental justice and does not violate s. 7 of the *Charter*.

## D. A Residency Condition is Consistent with s. 11(h) of the *Charter*

27. A residency condition which requires a long-term offender to reside at a community-based residential facility (community correctional centre or community residential facility) does not constitute double punishment. The imposition of new or varied conditions over the length of

[31] *Bedford v. Canada (Attorney General)*, [2013] 3 S.C.R. 1101 at para. 118

a long-term supervision order is not a new punishment or change which increases the punishment imposed at the time of sentence. Residency at a community correctional centre is not detention in a penitentiary.

28. Section 11(h) prevents the state from punishing an offender more than once for a single offence, or from adding to that punishment after the fact. Integral to the determination of whether s. 11(h) protection is engaged is a consideration of what constitutes "punishment". In *R. v. Rodgers*, the Court identified a two part test to identify the features of punitive sanctions.[32] This Court then expanded on the definition of punishment in *Whaling v. Canada (Attorney General)*, after recognizing that retrospective changes to conditions of a sentence may constitute punishment. In order to assess whether retrospective changes to the conditions of an original sanction constituted punishment, the Court looked at 1) whether the purpose of the law was to retrospectively prolong punishment, and 2) if the effect of the law thwarted a settled expectation of liberty under the former law.[33] More recently, the Court restated the test for punishment in *R. v. J.(K.R.)*. Karakatsanis J. set out that a measure constitutes punishment if:

> (1) it is a consequence of conviction that forms part of the arsenal of sanctions to which an accused may be liable in respect of a particular offence, and either (2) it is imposed in furtherance of the purpose and principles of sentencing, or (3) it has a significant impact on an offender's liberty or security interests.[34]

29. The imposition of a residency condition on a long-term supervision order does not constitute a new or increased punishment from the punishment that was imposed at the time of sentence. When the long-term offender supervision order is imposed at the dangerous or long-term offender hearing, it is understood that the offender will be under supervision and experience a deprivation of liberty for the duration of the order. When considering how a sentencing judge should determine the length of a supervision order in *R. v. L.M.* [2008] 2 S.C.R. 163 at para. 49, this Court noted that the period of community supervision cannot be equated with a new period of deprivation of liberty. As described above, evidence called at the dangerous or long-term offender hearing will often include evidence about the availability of community-based residential facilities and whether the offender must reside at such a facility in order to reduce the risk to the public and encourage the offender's reintegration. Residency at a

[32] *R. v. Rodgers*, [2006] 1 S.C.R. 554 at para. 63
[33] *Whaling v. Canada (Attorney General)*, [2014] 1 S.C.R. 392
[34] *R. v. J.(K.R.)*, [2016] 1 S.C.R. 906 at para. 41

community-based residential facility is contemplated at the time of the hearing and the imposition of sentence. Frequently, residency at such a facility is a critical factor in the determination of whether a dangerous offender receives an indeterminate sentence or a fixed sentence with the supervision order.[35] If a residency condition is no longer available, a real concern emerges that more offenders might be sentenced to indeterminate detention since there is no evidence available that a lesser measure will adequately protect the public.

30. Residency at a community correctional centre is not the equivalent of the long-term offender being detained at a penitentiary. A community correctional centre is a halfway house run by CSC. It provides supervision and support to the long-term offender. The fundamental difference between a community correctional centre and community residential facility is only who is responsible for running the facility, CSC or a private agency. Both facilities will have rules and procedures for residents to follow. This is not a new punishment or change in punishment. The expectation that the long-term offender will abide by rules and supervision is why the offender is not subject to a term of indeterminate imprisonment. One significant benefit of the community correctional centre (because it is run by CSC) is that it must accept a long-term offender as a resident.[36] Privately run community residential facilities may not be willing to accept a particular offender as a resident. Community correctional centres will accept any long-term offender. Community correctional centres play an important role in the reintegration of long-term offenders who require that support to reduce their risk to an acceptable level.

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[35] *R. v. McDonald*, 2013 ONSC 1143 at para. 74-75; *R. v. D.B.*, 2015 ONSC 5900 at para. 231
[36] *R. v. Judge*, 2013 ONSC 6803 at para. 291

## PART IV: SUBMISSIONS ON COSTS

31. The Attorney General of Ontario makes no submissions as to costs.

## PART V: ORDER REQUESTED

32. It is the position of the Intervener, the Attorney General of Ontario, that the issues should be resolved in accordance with the foregoing submissions.

Deborah Krick
Counsel for the Attorney General of Ontario

# PART VI: AUTHORITIES CITED

| Citation | Paragraph(s) |
|---|---|
| **Cases** | |
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| *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331 | 22, 23 |
| *Normandin v. Canada (Attorney General)*, 2005 FCA 345, leave to appeal ref'd, 358 NR 392 | 13 |
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**PART VII:**
**STATUTORY PROVISIONS**

| Citation | Paragraph(s) |
|---|---|
| *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11<br><br>Sections 7, 9, 11(h) | 4, 6, 16, 17, 21, 22, 26, 28 |
| Classification of Institutions, CD 706 (March 29, 2016) | 14 |
| Community Correctional Centre Standards, CD 714 (June 2, 2016) | 14 |
| Community Supervision Framework, CD 715 (June 23, 2014) | 14 |
| Correctional Planning and Criminal Profile, CD 705-6 (January 23, 2017) | 19 |
| *Corrections and Conditional Release Act*, S.C. 1992, c. 20<br><br>Sections 2.1, 99.1, 133(4.1), 134.1, 135, 135.1 | 2, 10, 11, 12, 13, 15, 18, 20, 21, 24, 25 |
| *Corrections and Conditional Release Regulations*, SOR/92-620<br><br>Sections 161(1) | 11 |
| *Criminal Code*, RSC 1985, c C-46<br><br>Sections 753, 753.1, 753.2, 753.2(1), 760 | 1, 7, 8, 9, 19 |
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| Post-Release Decision Process, CD 715-2 (June 1, 2016) | 15 |