

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

BETWEEN:

MANASIE IPEELEE

Appellant
(Appellant)

and

HER MAJESTY THE QUEEN

Respondent
(Respondent)

and

**THE DIRECTOR OF PUBLIC PROSECUTIONS
ABORIGINAL LEGAL SERVICES OF TORONTO INC.**

Interveners

**FACTUM
THE DIRECTOR OF PUBLIC PROSECUTIONS, INTERVENER
(Rule 42)**

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PART I - STATEMENT OF FACTS

A. Overview

1. The appellant is an Inuk long-term offender who was sentenced to three years in prison for breaching the alcohol abstinence clause of his supervision order. At issue in this appeal are the fitness of the sentence and the proper application of s. 718.2(e) of the *Criminal Code*, as interpreted by this Court in *R. v. Gladue*.¹

2. Section 718.2(e) and the interpretative principles set out in *R. v. Gladue* must be considered by a sentencing court, even in the case of long-term offenders. However, because public safety is a primary consideration in sentencing long-term offenders for breaches of supervision orders, the weight to be given to s. 718.2(e) and the *Gladue* principles will vary according to the risk to public safety posed by the breach of the long-term supervision order.

3. Therefore, the sentencing court must begin by considering the nature of the breach and its impact on the risk of re-offence. If the breach is of a condition central to the correctional authority's ability to safely manage that risk, the breach will be serious and greater weight must be afforded to the principles of deterrence, denunciation and separation in imposing a fit sentence.

B. Facts

4. The intervener takes no position on the facts.

PART II – QUESTION IN ISSUE

5. The Director of Public Prosecutions intervenes on the general question of how the courts should apply s. 718.2(e) of the *Criminal Code*, as interpreted in *R. v. Gladue*, in sentencing an aboriginal long-term offender who has breached a supervision order. In such circumstances, a sentencing court must consider the principles of restraint mandated by s. 718.2(e), but ensure that their application does not pose a risk to public safety.

¹ *R. v. Gladue*, [1999] 1 S.C.R. 688.

PART III – STATEMENT OF ARGUMENT

A. The Implications of a Long-term Offender Designation

6. The legal prerequisites and factors that lead to the designation of an individual as a long-term offender inform the principles that should govern the sentencing of an offender for a breach of a long-term supervision order.

7. To be designated a long-term offender, three conditions must be met:

(a) an individual must have committed an offence for which a penitentiary sentence (two years or more) is appropriate;

(b) the sentencing judge must be satisfied beyond a reasonable doubt that the individual poses a substantial risk of re-offending; in assessing that “substantial risk”, the sentencing judge must find that: (i) the individual has been convicted of an offence of a sexual nature or of a non-sexual offence that involved serious conduct of a sexual nature; and (ii) the individual has shown a pattern of repetitive behaviour that shows a likelihood of the individual causing injury to or inflicting severe psychological damage on other persons, or has, by conduct in any sexual matter, shown a likelihood of causing injury to other persons in the future; and,

(c) the sentencing judge must be satisfied that there is a reasonable possibility that the risk can be controlled out of custody.²

8. This Court in *R. v. Johnson* recognized the protection of the public as the primary objective of sentencing when determining whether the offender should be designated as a long-term offender.³ Relying on s. 134.1(2) of the *Corrections and Conditional Release Act (CCRA)*, this Court held that the very purpose of a long-term supervision order is “to protect society from the threat that the offender currently poses - and to do so without resort to the blunt instrument of indeterminate detention.”⁴ Section 134.1(2) of the *CCRA* provides that long-term supervision orders may include conditions that are “reasonable and necessary in order to protect society and

² Section 753.1(1) of the *Criminal Code*; *R. v. L.M.*, [2008] 2 S.C.R. 163, 2008 SCC 31 at para. 40.

³ *R. v. Johnson*, [2003] 2 S.C.R. 357, 2003 SCC 46, at para. 32.

⁴ *Johnson*, *supra* at para. 32.

to facilitate the successful reintegration into society of the offender.”⁵ Of those two objectives, s. 101(1)(a) of the *CCRA* deems the protection of society as paramount.⁶

9. Consequently, even though a long-term offender can reasonably be managed in the community through supervision, the premise of a designation of long-term offender remains that, as evidenced by statutory definition and as recognized by this Court, long-term offenders pose a continuing risk to public safety. In that regard, the risk to public safety presented by aboriginal long-term offenders is as real as the risk posed by non-aboriginal long-term offenders.⁷

B. The Importance of Public Protection in Sentencing Breaches of Supervision Orders

10. Courts have concluded that the protection of the public is an important consideration, if not the paramount consideration, when sentencing long-term offenders for breaches of supervision orders.⁸

11. A statistical review of the profile of long-term offenders demonstrates the risks associated with long-term offenders. A 2002 profile of long-term offenders showed that their victims tended to be children, which shows that issues concerning their supervision under long term supervision orders are critically important to their community.⁹ The 2002 profile also showed that 90% of long-term offenders (compared to 98% of dangerous offenders) were classified by Corrections Canada as being a high-risk to reoffend.¹⁰ When assessed by Corrections Canada for their rehabilitative requirements, 92% of long-term offenders were

⁵ *Corrections and Conditional Release Act (CCRA)*, SC 1992, c. 20, s. 134.1(2).

⁶ *CCRA*, *supra*, s. 101(1)(a); see also *CCRA*, s. 99.1, which deems long-term offenders subject to s. 101.

⁷ Nahanee, T., “A profile of Aboriginal sex offenders in Canadian federal custody”, in Forum on Corrections Research, *Managing Sex Offenders* (May 1996, Vol. 8, No. 2), online: <http://www.csc-scc.gc.ca/text/pblct/forum/e082/e082ind-eng.shtml> [**DPP’s Book of Authorities (BA), tab 18**]; Chartrand, L. and McKay, C., “A Review of Research on Criminal Victimization and First Nations, Métis and Inuit Peoples 1990 to 2001”, (January 2006, Research and Statistics Division, Policy Centre for Victim Issues) at p. 21 online: http://publications.gc.ca/collections/collection_2010/justice/J4-10-2006-eng.pdf [**BA, tab 16**].

⁸ In addition to the Appellant’s Record, Vol. I, p. 20, see: *R. v. Deacon*, 2004 BCCA 78 at para. 40 [**BA, tab 3**]; *R. v. W.(H.P.)*, 2003 ABCA 131; *R. v. Ladue*, 2011 BCCA 101 at para. 71 [**BA, tab 7**]; leave granted, 14 July 2011, SCC File Number 34245; *R. v. Murdock*, 2009 MBPC 7 at para. 15 [**BA, tab 10**]; *R. v. MacDonald*, 2009 ONCJ 453 at para. 15-18 [**BA, tab 9**]; *R. v. Gracie*, 2009 BCPC 309 at para. 16 [**BA, tab 5**]; *R. v. Browne*, 2007 ONCJ 453 at para. 65; *R. v. D.P.*, 2008 SKPC 3 at para. 27 [**BA, tab 2**]; *R. v. Sam*, 2006 YKTC 21 at para. 10 [**BA, tab 12**].

⁹ Trevathan, S., Crutcher, N. and Moore, J., “A Profile of Federal Offenders Designated as Dangerous Offenders or Serving Long-Term Supervision Orders”, (December 2002, Research Branch, Correctional Service of Canada), at p. 23, online: <http://www.csc-scc.gc.ca/text/rsrch/reports/r125/r125-eng.shtml> [**BA, tab 19**].

¹⁰ Trevathan, S., Crutcher, N. and Moore, J., *supra* at p. 25 [**BA, tab 19**].

classified as requiring significant support in areas such as substance abuse, social interaction, community functioning, and attitude.¹¹

12. The emphasis on public protection is also evidenced by the procedure and penalties applicable to breaches of supervision orders compared to breaches of other judicial orders. Breaching a supervision order contrary to s. 753.3 of the *Criminal Code* is prosecutable solely by indictment and carries a maximum penalty of 10 years in prison as a “deterrent spectre”.¹² In comparison, the *Code* provisions relating to breaches of probation orders and recognizances are hybrid offences, with penalties not exceeding two years in prison.¹³ As for breaches of conditional sentences, the maximum sanction that can be imposed is the termination of the conditional sentence and the conversion of the remaining community supervision period into a custodial sentence; no additional offence is committed by breaching a condition of a conditional sentence order.¹⁴

13. Parliament’s concern about the public safety implications of breaches of supervision orders is further shown by the 2008 amendments to Part XXIV of the *Criminal Code* (Dangerous Offenders and Long-Term Offenders).¹⁵ Under the new s. 753.01, if a long-term offender is convicted of a breach, the offender is subject, on application of the prosecutor, to a new assessment process. If the prosecutor applies for an indeterminate sentence, the court shall impose it unless satisfied on the evidence that a determinate sentence would protect the public against the offender committing murder or a serious personal injury offence. Similarly, if the prosecutor applies for a new period of long-term supervision, the court must impose it unless satisfied that a determinate sentence alone will adequately protect the public against the offender committing murder or a serious personal injury offence. Prior to these amendments, it was not possible to review the status of a long-term offender, absent the commission of a substantive new offence. The Parliamentary record reveals that the Minister of Justice was concerned by the

¹¹ Trevathan, Crutcher and Moore, *supra* at p. 25 [BA, tab 19].

¹² *R. v. Guilford*, [1999] O.J. No. 4894 (ONSC) at para. 41, 47.

¹³ Sections 733.1 and 811 of the *Criminal Code*.

¹⁴ Section 742.6(9) of the *Criminal Code*.

¹⁵ *Tackling Violent Crime Act*, S.C. 2008, c. 6, ss. 39-51.

number of breaches of long-term supervision and the absence of a mechanism for reviewing an offender's designation following a breach, which posed an undue risk to public safety.¹⁶

C. The Role of s. 718.2(e) in Sentencing Breaches of Supervision Orders

14. Since this Court's decision in *R. v. Gladue*, it is beyond question that courts must consider the principles of restraint, rehabilitation and restoration in sentencing aboriginal offenders.¹⁷

15. Further, in *R. v. L.M.*, this Court recognized the interplay of the principles of rehabilitation and restraint with the principle of punishment in long-term offender sentencing.¹⁸ Accordingly, the *Gladue* principles must be considered in imposing a sentence for an aboriginal offender in breach of a long-term supervision order.

16. Overrepresentation in the correctional system is an underlying rationale for the application of restorative justice principles.¹⁹ This overrepresentation extends to offenders designated as long-term offenders. Aboriginal people are overrepresented as long-term offenders at a rate similar to their overrepresentation in the general prison population. A 2002 Corrections Canada study found that aboriginal people constituted 17% of the long-term offender population, despite making up only 2% of Canada's population.²⁰

17. This Court's judgment in *R. v. Gladue* provides a framework for the application of s. 718.2(e) that can apply equally to the sentencing of long-term offenders for breaches of supervision orders. Sentencing courts must consider the circumstances of aboriginal offenders, taking into account:

... both the unique systemic or background factors that are mitigating in nature in that they may have played a part in the aboriginal offender's conduct, and the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection (*Gladue*, at para. 66). In particular, given that most traditional aboriginal approaches

¹⁶ House of Commons Debates, 39th Parl, 2nd Sess, No 009 (Oct. 26, 2007) at 1015-1020 (The Honourable Peter Milliken); House of Commons, Legislative Committee on Bill C-2, Evidence (Oct. 30, 2007) at 1640-45 (Rick Dykstra) [BA, tab 14].

¹⁷ *Gladue*, *supra* at para. 33-34, 66; *R. v. Wells*, [2000] 1 S.C.R. 207, 2000 SCC 10, at para. 38-41; *Ladue*, *supra* at para. 45 [BA, tab 7].

¹⁸ *L.M.*, *supra* at para. 42; see also *MacDonald*, *supra* at para 31.

¹⁹ *Wells*, *supra* at para. 37.

²⁰ Trevathan, S., Crutcher, N. and Moore, J., *supra*, at p. 18 [BA, tab 19].

place a primary emphasis on the goal of restorative justice, the alternative of community-based sanctions must be explored.²¹

18. This Court also recognized, however, that sentencing courts should give the greatest weight to the principles of restraint, rehabilitation and restoration only where reasonable to do so.²² In sentencing breaches of long-term supervision orders, the weight to be given to rehabilitation and restraint will depend on the circumstances of the case. Given the substantial risk of re-offending and the red flags raised by non-trivial breaches of supervision, the sentencing court should approach the matter with caution. Depending on the significance of the breach, a focus on restorative justice principles may be unreasonable, and invite an undue risk to public safety.

19. The question is thus how public protection ought to be balanced with the sentencing principles of restraint, rehabilitation and restoration governing.

D. A Principled Approach to Sentencing Breaches of Supervision Orders: Reconciling Public Safety and Restraint

1. The Application of the Proportionality Principle

20. Proportionality is the fundamental principle of sentencing. It requires a sentencing court to assess the gravity of the offence and the degree of responsibility of the offender in determining a fit sentence.²³ Accordingly, the seriousness of a breach is a key component in determining the appropriate sentence for a breach of a supervision order.

2. The Assessment of the Seriousness of the Breach

21. Breaches of supervision orders cover an array of conduct that makes it impossible to adopt a bright-line rule that separates serious from more trivial ones. The seriousness of a breach will depend on the nature of that breach viewed in the totality of the circumstances. Breaches of conditions that are central to the proper management of the long-term offender's risk of recidivism should be treated as more serious than breaches of conditions that are more peripheral

²¹ *Wells, supra* at para. 38.

²² *Wells, supra* at para. 40-42, referring to *Gladue* at para. 79.

²³ *R. v. Nasogaluak*, [2010] 1 S.C.R. 206, 2010 SCC 6, at para. 40-41 [**BA, tab 11**]; *R. v. Arcand*, 2010 ABCA 363 at para. 46-49, 52-54, 65 [**BA, tab 1**].

to the management of such risk.²⁴ This distinction should be a key consideration in selecting the appropriate sentencing principles in any given case.

22. Breaches of long-term supervision orders do not have to be preparatory steps to the commission of other substantive offences to be qualified as serious. Breaches to conditions that are aimed at preventing conduct that is conducive to criminal behaviour, or that are central to the ability to safely manage the offender, should be characterized as serious.

23. An obvious example of such conduct is substance abuse which is usually addressed by including an abstain clause in supervision orders. When a long-term offender's pattern of offending involves substance abuse, any breach of a substance prohibition is potentially serious. In *W.(H.P.)*, the Alberta Court of Appeal noted the hesitancy of sentencing courts to treat substance abuse issues seriously. That Court held that because such breaches could be related to the risk of re-offence, a court should determine the degree of connection between the need for abstinence and the potential for re-offence to assess the seriousness of the breach.²⁵ Ritter J.A., writing for the Court, explained:

I conclude that the condition of abstinence was central to the management of this respondent in the community. When each of the four offences of sexual assault was committed the respondent was intoxicated. Several reports indicate that management of the respondent in the community is only possible if he abstains from the consumption of alcohol. I do not accept that for the breach to be serious, a near repetition of a sexual assault would have to occur. The purpose of the condition is to ensure management of the respondent. It is of no solace to female members of the public, for whom the protection is afforded, if only actions that come close to replicating the respondent's previous crimes are treated severely.²⁶

24. Research confirms the serious nature of substance abuse and its link to re-offending. A 2004 meta-analysis of studies on sexual recidivism highlights the finding that substance abuse is significantly correlated to re-offending.²⁷ Corrections Canada research also shows that substance abuse is a significant factor for the risk of recidivism: a 2009 study documented that

²⁴ *W.(H.P.)*, *supra* at para. 41, 45.

²⁵ *W.(H.P.)*, *supra* at para. 40-42.

²⁶ *W.(H.P.)*, *supra* at para. 47; see also *R. v. Deacon*, *supra* at para. 51 [BA, tab 3].

²⁷ Hanson, R. and Morton-Bourgon, K., "Predictors of Sexual Recidivism: An Updated Meta-Analysis, (2004, Number 2004-02, Public Safety and Emergency Preparedness Canada) at p. 10, 12, online: http://www.publicsafety.gc.ca/res/cor/rep/_fl/2004-02-pred-se-eng.pdf [BA, tab 17].

offenders with the most serious substance abuse problems are twice as likely to re-offend as those with less serious substance abuse issues.²⁸

25. Before categorizing a breach as non-serious, courts should be cautious and have sufficient information to understand both the context of the breach and the offender's past performance on community supervision. The vast majority of the 570 long-term offenders designated between 1997 through 2008 were sexual offenders, followed by those convicted of other serious assaults.²⁹ The 2004 meta-analysis of sexual recidivism revealed a significant correlation between rule violation and sexual recidivism. Indeed, the strongest predictor of sexual recidivism was found to be breach of supervision or release orders, although this finding was based on limited data.³⁰ Further, the report found that a history of rule violation was significantly related to re-offending, and that a general problem with self-regulation was one of the strongest predictors of re-offending.³¹ These studies amplify the need for a rigorous and contextualized assessment of the import of the breach.

3. Breaches of Conditions Peripheral to the Management of the Offender

26. Breaches of conditions that are not closely connected to the offender's risk factors to re-offend and that do not raise public-protection concerns call for the full consideration of the sentencing principles found in s. s. 718.2(e) of the *Criminal Code* with a view to imposing a sentence where rehabilitation plays an important role. Such breaches include technical ones, such as being a few minutes late for an appointment or curfew.³²

4. Breaches of Conditions Central to the Management of the Offender

27. Breaches of supervision orders, viewed in context, may constitute "red flags" that the supervised rehabilitative process is failing to adequately protect the public from the offender's risk of re-offence. Where the violated condition is central to managing the risk of recidivism for the particular offender, the sentencing court will have to take into consideration that the breach is serious and that it requires a disposition primarily focused on public safety.

²⁸ Weekes, J., Moser, A., Ternes, M. and Kunic, D., "Substance Abuse Among Male Offenders", Research Snippet (October 2009, Number 09-02), online: <http://www.csc-scc.gc.ca/text/rsrch/smmrs/rs/rs09-02/rs09-02-eng.shtml>.

²⁹ Axford, M., "Dangerous Offender Designations: A Five-Year Offence Profile" Research Snippet (December 2009, Number 09-3), online: <http://www.csc-scc.gc.ca/text/rsrch/smmrs/rs/rs09-03/rs09-03-eng.shtml> [BA, tab 15]; see also *L.M.*, *supra* at para. 39.

³⁰ Hanson and Morton-Bourgon, *supra* at p. 10 [BA, tab 17].

³¹ Hanson and Morton-Bourgon, *supra* at p. 12 [BA, tab 17].

³² *W.(H.P.)*, *supra* at para. 43-45.

28. The court should first determine whether the public safety objective can be met by relying on the s. 718.2(e) restraint principles to impose a rehabilitative sentence that may include aboriginal-specific or community-based programming. Before doing so, the court must assess the availability of such programming, as well as its projected effectiveness in controlling the particular offender. It would pose an unreasonable risk to public safety to assume such programming exists or would be appropriate for a given offender.³³

29. However, as public safety is a paramount concern and given the substantial risk posed by long-term offenders to re-offend, breaches of conditions that are central to their management require that deterrence, denunciation, and separation be the primary consideration in imposing a fit sentence. Courts should not focus on restraint and rehabilitation unless fully satisfied that this can be done without jeopardizing public protection.³⁴

PART IV – COSTS

30. The intervener makes no submissions as to costs.

PART V – ORDER SOUGHT

31. The intervener requests permission to present oral argument at the hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated in Ottawa, Ontario, this 15th day of July, 2011.

Susanne Boucher
Counsel for the DPP

François Lacasse
Counsel for the DPP

³³ *R. v. Trevor*, 2010 BCCA 331, at para. 34-35 [BA, tab 13]; *R. v. Little*, 2007 ONCA 548, at para. 59 [BA, tab 8].

³⁴ *W.(H.P.)*, *supra* at para. 39 and 46; see also the Appellant's Record, Vol. I, p. 20.

PART VI - TABLE OF AUTHORITIES

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<p>Nahanee, T., “A profile of Aboriginal sex offenders in Canadian federal custody”, in Forum on Corrections Research, Managing Sex Offenders (May 1996, Vol. 8, No.2), online: http://www.csc-scc.gc.ca/text/pblct/forum/e082/e082ind-eng.shtml</p>	9
<p>Trevathan, S., Crutcher, N. and Moore, J., “<i>A Profile of Federal Offenders Designated as Dangerous Offenders or Serving Long-Term Supervision Orders</i>”, (December 2002, Research Branch, Correctional Service of Canada), online: http://www.csc-scc.gc.ca/text/rsrch/reports/r125/r125-eng.shtml</p>	11, 16
<p>Weekes, J., Moser, A., Ternes, M. and Kunic, D., “Substance Abuse Among Male Offenders”, Research Snippet (October 2009, Number 09-02), online: http://www.csc-scc.gc.ca/text/rsrch/smmrs/rs/rs09-02/rs09-02-eng.shtml</p>	24

PART VII- LEGISLATION

Corrections and Conditional Release Act, SC 1992, c.20.

<p>Application to persons subject to long-term supervision order</p> <p>99.1 A person who is required to be supervised by a long-term supervision order is deemed to be an offender for the purposes of this Part, and sections 100, 101, 109 to 111 and 140 to 145 apply, with such modifications as the circumstances require, to the person and to the long-term supervision of that person.</p> <p>1997, c. 17, s. 18.</p>	<p>Application aux personnes surveillées</p> <p>99.1 La personne soumise à une ordonnance de surveillance de longue durée est assimilée à un délinquant pour l'application de la présente partie; les articles 100, 101, 109 à 111 et 140 à 145 s'appliquent, avec les adaptations nécessaires, à cette personne et à la surveillance de celle-ci.</p> <p>1997, ch. 17, art. 18.</p>
<p>101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are</p> <p>(a) that the protection of society be the paramount consideration in the determination of any case;</p> <p>(b) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender;</p> <p>(c) that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programs to offenders, victims and the general public;</p> <p>(d) that parole boards make the least restrictive determination consistent with the protection of society;</p> <p>(e) that parole boards adopt and be guided by appropriate policies and that their members be provided with the training</p>	<p>101. La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes qui suivent :</p> <p>a) la protection de la société est le critère déterminant dans tous les cas;</p> <p>b) elles doivent tenir compte de toute l'information pertinente disponible, notamment les motifs et les recommandations du juge qui a infligé la peine, les renseignements disponibles lors du procès ou de la détermination de la peine, ceux qui ont été obtenus des victimes et des délinquants, ainsi que les renseignements et évaluations fournis par les autorités correctionnelles;</p> <p>c) elles accroissent leur efficacité et leur transparence par l'échange de renseignements utiles au moment opportun avec les autres éléments du système de justice pénale d'une part, et par la communication de leurs directives d'orientation générale et programmes tant aux délinquants et aux victimes qu'au public, d'autre part;</p> <p>d) le règlement des cas doit, compte tenu de la protection de la société, être le moins restrictif possible;</p> <p>e) elles s'inspirent des directives</p>

<p>necessary to implement those policies; and</p> <p>(f) that offenders be provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.</p>	<p>d'orientation générale qui leur sont remises et leurs membres doivent recevoir la formation nécessaire à la mise en oeuvre de ces directives;</p> <p>f) de manière à assurer l'équité et la clarté du processus, les autorités doivent donner aux délinquants les motifs des décisions, ainsi que tous autres renseignements pertinents, et la possibilité de les faire réviser.</p>
<p>Conditions for long-term supervision</p> <p>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 <i>Corrections and Conditional Release Regulations</i>, with such modifications as the circumstances require.</p> <p>Conditions set by Board</p> <p>(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.</p> <p>Duration of conditions</p> <p>(3) A condition imposed under subsection (2) is valid for the period that the Board specifies.</p> <p>Relief from conditions</p> <p>(4) The Board may, in accordance with the regulations, at any time during the long-term supervision of an offender,</p> <p>(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</p> <p>(b) in respect of conditions imposed under subsection (2), remove or vary any such condition.</p> <p>1997, c. 17, s. 30.</p>	<p>Conditions de la surveillance de longue durée</p> <p>134.1 (1) Sous réserve du paragraphe (4), les conditions prévues par le paragraphe 161(1) du <i>Règlement sur le système correctionnel et la mise en liberté sous condition</i> s'appliquent, avec les adaptations nécessaires, au délinquant surveillé aux termes d'une ordonnance de surveillance de longue durée.</p> <p>Conditions imposées par la Commission</p> <p>(2) La Commission peut imposer au délinquant les conditions de surveillance qu'elle juge raisonnables et nécessaires pour protéger la société et favoriser la réinsertion sociale du délinquant.</p> <p>Période de validité</p> <p>(3) Les conditions imposées par la Commission en vertu du paragraphe (2) sont valables pendant la période qu'elle fixe.</p> <p>Dispense ou modification des conditions</p> <p>(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 au paragraphe (2).</p> <p>1997, ch. 17, art. 30.</p>

Criminal Code, RSC 1985, c. C-46.

Purpose and Principles of Sentencing	Objectif et principes
<p>Purpose</p> <p>718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:</p> <p>(a) to denounce unlawful conduct;</p> <p>(b) to deter the offender and other persons from committing offences;</p> <p>(c) to separate offenders from society, where necessary;</p> <p>(d) to assist in rehabilitating offenders;</p> <p>(e) to provide reparations for harm done to victims or to the community; and</p> <p>(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.</p> <p>R.S., 1985, c. C-46, s. 718; R.S., 1985, c. 27 (1st Supp.), s. 155; 1995, c. 22, s. 6.</p>	<p>Objectif</p> <p>718. Le prononcé des peines a pour objectif essentiel de contribuer, parallèlement à d'autres initiatives de prévention du crime, au respect de la loi et au maintien d'une société juste, paisible et sûre par l'infliction de sanctions justes visant un ou plusieurs des objectifs suivants :</p> <p>a) dénoncer le comportement illégal;</p> <p>b) dissuader les délinquants, et quiconque, de commettre des infractions;</p> <p>c) isoler, au besoin, les délinquants du reste de la société;</p> <p>d) favoriser la réinsertion sociale des délinquants;</p> <p>e) assurer la réparation des torts causés aux victimes ou à la collectivité;</p> <p>f) susciter la conscience de leurs responsabilités chez les délinquants, notamment par la reconnaissance du tort qu'ils ont causé aux victimes et à la collectivité.</p> <p>L.R. (1985), ch. C-46, art. 718; L.R. (1985), ch. 27 (1^{er} suppl.), art. 155; 1995, ch. 22, art. 6.</p>
<p>Fundamental principle</p> <p>718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.</p> <p>R.S., 1985, c. 27 (1st Supp.), s. 156; 1995, c. 22, s. 6.</p>	<p>Principe fondamental</p> <p>718.1 La peine est proportionnelle à la gravité de l'infraction et au degré de responsabilité du délinquant.</p> <p>L.R. (1985), ch. 27 (1^{er} suppl.), art. 156; 1995, ch. 22, art. 6.</p>
<p>Other sentencing principles</p> <p>718.2 A court that imposes a sentence shall also take into consideration the following principles:</p> <p>(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the</p>	<p>Principes de détermination de la peine</p> <p>718.2 Le tribunal détermine la peine à infliger compte tenu également des principes suivants :</p> <p>a) la peine devrait être adaptée aux circonstances aggravantes ou atténuantes liées à la perpétration de l'infraction ou à la situation du délinquant; sont notamment considérées comme des circonstances</p>

<p>foregoing,</p> <p>(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,</p> <p>(ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,</p> <p>(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,</p> <p>(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,</p> <p>(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or</p> <p>(v) evidence that the offence was a terrorism offence</p> <p>shall be deemed to be aggravating circumstances;</p> <p>(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;</p> <p>(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;</p> <p>(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and</p> <p>(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.</p>	<p>aggravantes des éléments de preuve établissant :</p> <p>(i) que l'infraction est motivée par des préjugés ou de la haine fondés sur des facteurs tels que la race, l'origine nationale ou ethnique, la langue, la couleur, la religion, le sexe, l'âge, la déficience mentale ou physique ou l'orientation sexuelle,</p> <p>(ii) que l'infraction perpétrée par le délinquant constitue un mauvais traitement de son époux ou conjoint de fait,</p> <p>(ii.1) que l'infraction perpétrée par le délinquant constitue un mauvais traitement à l'égard d'une personne âgée de moins de dix-huit ans,</p> <p>(iii) que l'infraction perpétrée par le délinquant constitue un abus de la confiance de la victime ou un abus d'autorité à son égard,</p> <p>(iv) que l'infraction a été commise au profit ou sous la direction d'une organisation criminelle, ou en association avec elle;</p> <p>(v) que l'infraction perpétrée par le délinquant est une infraction de terrorisme;</p> <p>b) l'harmonisation des peines, c'est-à-dire l'infliction de peines semblables à celles infligées à des délinquants pour des infractions semblables commises dans des circonstances semblables;</p> <p>c) l'obligation d'éviter l'excès de nature ou de durée dans l'infliction de peines consécutives;</p> <p>d) l'obligation, avant d'envisager la privation de liberté, d'examiner la possibilité de sanctions moins contraignantes lorsque les circonstances le justifient;</p> <p>e) l'examen de toutes les sanctions substitutives applicables qui sont justifiées</p>
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	<p>dans les circonstances, plus particulièrement en ce qui concerne les délinquants autochtones.</p> <p>1995, ch. 22, art. 6; 1997, ch. 23, art. 17; 2000, ch. 12, art. 95; 2001, ch. 32, art. 44(F), ch. 41, art. 20; 2005, ch. 32, art. 25.</p>
<p>Application for remand for assessment — later conviction</p> <p>753.01 (1) If an offender who is found to be a dangerous offender is later convicted of a serious personal injury offence or an offence under subsection 753.3(1), on application by the prosecutor, the court shall, by order in writing, before sentence is imposed, remand the offender, for a period not exceeding 60 days, to the custody of a person designated by the court who can perform an assessment or have an assessment performed by experts for use as evidence in an application under subsection (4).</p> <p>Report</p> <p>(2) The person to whom the offender is remanded shall file a report of the assessment with the court not later than 30 days after the end of the assessment period and make copies of it available to the prosecutor and counsel for the offender.</p> <p>Extension of time</p> <p>(3) On application by the prosecutor, the court may extend the period within which the report must be filed by a maximum of 30 days if the court is satisfied that there are reasonable grounds to do so.</p> <p>Application for new sentence or order</p> <p>(4) After the report is filed, the prosecutor may apply for a sentence of detention in a penitentiary for an indeterminate period, or for an order that the offender be subject to a new period of long-term supervision in addition to any other sentence that may be imposed for the offence.</p> <p>Sentence of indeterminate detention</p> <p>(5) If the application is for a sentence of detention in a penitentiary for an indeterminate</p>	<p>Demande de renvoi pour évaluation — déclaration de culpabilité ultérieure</p> <p>753.01 (1) Si le délinquant déclaré délinquant dangereux est reconnu coupable postérieurement d'une infraction qui constitue des sévices graves à la personne ou d'une infraction prévue au paragraphe 753.3(1), sur demande du poursuivant, le tribunal doit, avant d'infliger une peine au délinquant, le renvoyer, par une ordonnance écrite et pour une période maximale de soixante jours, à la garde de la personne qu'il désigne, laquelle effectue ou fait effectuer par des experts une évaluation qui sera utilisée comme preuve lors de l'examen de la demande visée au paragraphe (4).</p> <p>Rapport</p> <p>(2) La personne qui a la garde du délinquant dépose auprès du tribunal, au plus tard trente jours après l'expiration de la période d'évaluation, un rapport d'évaluation et met des copies de celui-ci à la disposition du poursuivant et de l'avocat du délinquant.</p> <p>Prorogation des délais</p> <p>(3) Sur demande du poursuivant, le tribunal peut, s'il est convaincu qu'il y a des motifs raisonnables de le faire, proroger d'au plus trente jours le délai de dépôt du rapport d'évaluation.</p> <p>Demande pour une nouvelle peine ou ordonnance</p> <p>(4) Le poursuivant peut, postérieurement au dépôt du rapport d'évaluation, demander au tribunal qu'il inflige au délinquant une peine de détention dans un pénitencier pour une période indéterminée ou qu'il rende une ordonnance lui imposant une nouvelle période de surveillance de longue durée, en sus de toute autre peine infligée pour l'infraction.</p>

<p>period, the court shall impose that sentence unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a sentence for the offence for which the offender has been convicted — with or without a new period of long-term supervision — will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.</p> <p>New long-term supervision</p> <p>(6) If the application is for a new period of long-term supervision, the court shall order that the offender be subject to a new period of long-term supervision in addition to a sentence for the offence for which they have been convicted unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that the sentence alone will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.</p> <p>2008, c. 6, s. 43.</p>	<p>Peine de détention pour une période indéterminée</p> <p>(5) Dans le cas où la demande vise l'infliction d'une peine de détention dans un pénitencier pour une période indéterminée, le tribunal y fait droit, sauf s'il est convaincu, sur le fondement des éléments mis en preuve lors de l'audition de la demande, que l'on peut vraisemblablement s'attendre à ce qu'une peine pour l'infraction dont le délinquant a été déclaré coupable — avec ou sans une nouvelle période de surveillance de longue durée — protège de façon suffisante le public contre la perpétration par le délinquant d'un meurtre ou d'une infraction qui constitue des sévices graves à la personne.</p> <p>Nouvelle surveillance de longue durée</p> <p>(6) Dans le cas où la demande vise l'imposition d'une nouvelle période de surveillance de longue durée, le tribunal rend l'ordonnance imposant au délinquant une telle période en sus de la peine infligée pour l'infraction dont celui-ci a été déclaré coupable, sauf s'il est convaincu, sur le fondement des éléments mis en preuve lors de l'audition de la demande, que l'on peut vraisemblablement s'attendre à ce que la peine seule protège de façon suffisante le public contre la perpétration par le délinquant d'un meurtre ou d'une infraction qui constitue des sévices graves à la personne.</p> <p>2008, ch. 6, art. 43.</p>
<p>Application for finding that an offender is a long-term offender</p> <p>753.1 (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that</p> <p>(a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;</p> <p>(b) there is a substantial risk that the</p>	<p>Demande de déclaration — délinquant à contrôler</p> <p>753.1 (1) Sur demande faite, en vertu de la présente partie, postérieurement au dépôt du rapport d'évaluation visé au paragraphe 752.1(2), le tribunal peut déclarer que le délinquant est un délinquant à contrôler, s'il est convaincu que les conditions suivantes sont réunies :</p> <p>a) il y a lieu d'imposer au délinquant une peine minimale d'emprisonnement de deux ans pour l'infraction dont il a été déclaré coupable;</p>

<p>offender will reoffend; and</p> <p>(c) there is a reasonable possibility of eventual control of the risk in the community.</p> <p>Substantial risk</p> <p>(2) The court shall be satisfied that there is a substantial risk that the offender will reoffend if</p> <p>(a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 163.1(2) (making child pornography), subsection 163.1(3) (distribution, etc., of child pornography), subsection 163.1(4) (possession of child pornography), subsection 163.1(4.1) (accessing child pornography), section 172.1 (luring a child), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and</p> <p>(b) the offender</p> <p>(i) has shown a pattern of repetitive behaviour, of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or</p> <p>(ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences.</p> <p>Sentence for long-term offender</p> <p>(3) If the court finds an offender to be a long-term offender, it shall</p>	<p>b) celui-ci présente un risque élevé de récidive;</p> <p>c) il existe une possibilité réelle que ce risque puisse être maîtrisé au sein de la collectivité.</p> <p>Risque élevé de récidive</p> <p>(2) Le tribunal est convaincu que le délinquant présente un risque élevé de récidive si :</p> <p>a) d'une part, celui-ci a été déclaré coupable d'une infraction visée aux articles 151 (contacts sexuels), 152 (incitation à des contacts sexuels) ou 153 (exploitation sexuelle), aux paragraphes 163.1(2) (production de pornographie juvénile), 163.1(3) (distribution de pornographie juvénile), 163.1(4) (possession de pornographie juvénile) ou 163.1(4.1) (accès à la pornographie juvénile), à l'article 172.1 (leurre), au paragraphe 173(2) (exhibitionnisme) ou aux articles 271 (agression sexuelle), 272 (agression sexuelle armée) ou 273 (agression sexuelle grave), ou a commis un acte grave de nature sexuelle lors de la perpétration d'une autre infraction dont il a été déclaré coupable;</p> <p>b) d'autre part :</p> <p>(i) soit le délinquant a accompli des actes répétitifs, notamment celui qui est à l'origine de l'infraction dont il a été déclaré coupable, qui permettent de croire qu'il causera vraisemblablement la mort de quelque autre personne ou causera des sévices ou des dommages psychologiques graves à d'autres personnes,</p> <p>(ii) soit sa conduite antérieure dans le domaine sexuel, y compris lors de la perpétration de l'infraction dont il a été déclaré coupable, laisse prévoir que vraisemblablement il causera à l'avenir de ce fait des sévices ou autres maux à d'autres personnes.</p> <p>Délinquant déclaré délinquant à contrôler</p> <p>(3) S'il déclare que le délinquant est un</p>
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<p>(a) impose a sentence for the offence for which the offender has been convicted, which must be a minimum punishment of imprisonment for a term of two years; and</p> <p>(b) order that the offender be subject to long-term supervision for a period that does not exceed 10 years.</p>	<p>délinquant à contrôler, le tribunal lui inflige une peine minimale d'emprisonnement de deux ans pour l'infraction dont il a été déclaré coupable et ordonne qu'il soit soumis, pour une période maximale de dix ans, à une surveillance de longue durée.</p>
<p>Long-term supervision</p> <p>753.2 (1) Subject to subsection (2), an offender who is subject to long-term supervision shall be supervised in the community in accordance with the <i>Corrections and Conditional Release Act</i> when the offender has finished serving</p> <p>(a) the sentence for the offence for which the offender has been convicted; and</p> <p>(b) all other sentences for offences for which the offender is convicted and for which sentence of a term of imprisonment is imposed on the offender, either before or after the conviction for the offence referred to in paragraph (a).</p> <p>Sentence served concurrently with supervision</p> <p>(2) A sentence imposed on an offender referred to in subsection (1), other than a sentence that requires imprisonment, is to be served concurrently with the long-term supervision.</p> <p>Application for reduction in period of long-term supervision</p> <p>(3) An offender who is required to be supervised, a member of the National Parole Board, or, on approval of that Board, the parole supervisor, as that expression is defined in subsection 134.2(2) of the <i>Corrections and Conditional Release Act</i>, of the offender, may apply to a superior court of criminal jurisdiction for an order reducing the period of long-term supervision or terminating it on the ground that the offender no longer presents a substantial risk of reoffending and thereby being a danger to the community. The onus of proving that ground is on the applicant.</p> <p>Notice to Attorney General</p>	<p>Surveillance de longue durée</p> <p>753.2 (1) Sous réserve du paragraphe (2), le délinquant soumis à une surveillance de longue durée est surveillé au sein de la collectivité en conformité avec la <i>Loi sur le système correctionnel et la mise en liberté sous condition</i> lorsqu'il a terminé de purger :</p> <p>a) d'une part, la peine imposée pour l'infraction dont il a été déclaré coupable;</p> <p>b) d'autre part, toutes autres peines d'emprisonnement imposées pour des infractions dont il est déclaré coupable avant ou après la déclaration de culpabilité pour l'infraction visée à l'alinéa a).</p> <p>Peine purgée concurremment avec la surveillance</p> <p>(2) Toute peine — autre que carcérale — infligée au délinquant visé au paragraphe (1) est purgée concurremment avec la surveillance de longue durée.</p> <p>Réduction de la période de surveillance</p> <p>(3) Le délinquant soumis à une surveillance de longue durée peut — tout comme un membre de la Commission nationale des libérations conditionnelles ou, avec l'approbation de celle-ci, son surveillant de liberté conditionnelle au sens du paragraphe 134.2(2) de la <i>Loi sur le système correctionnel et la mise en liberté sous condition</i> — demander à la cour supérieure de juridiction criminelle de réduire la période de surveillance ou d'y mettre fin pour le motif qu'il ne présente plus un risque élevé de récidive et, de ce fait, n'est plus une menace pour la collectivité, le fardeau de la preuve incombant au demandeur.</p> <p>Avis au procureur général</p> <p>(4) La personne qui fait la demande au titre</p>

<p>(4) The applicant must give notice of an application under subsection (3) to the Attorney General at the time the application is made.</p> <p>1997, c. 17, s. 4; 2008, c. 6, s. 45.</p>	<p>du paragraphe (3) en avise le procureur général lors de sa présentation.</p> <p>1997, ch. 17, art. 4; 2008, ch. 6, art. 45.</p>
<p>Breach of long-term supervision</p> <p>753.3 (1) An offender who, without reasonable excuse, fails or refuses to comply with long-term supervision is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years.</p> <p>Where accused may be tried and punished</p> <p>(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but if the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province.</p> <p>1997, c. 17, s. 4; 2008, c. 6, s. 46.</p>	<p>Défaut de se conformer à une surveillance de longue durée</p> <p>753.3 (1) Le délinquant qui, sans excuse raisonnable, omet ou refuse de se conformer à la surveillance de longue durée à laquelle il est soumis est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans.</p> <p>En quel lieu l'accusé peut être jugé et puni</p> <p>(2) Un accusé qui est inculpé d'une infraction aux termes du paragraphe (1) peut être jugé et condamné par tout tribunal ayant juridiction pour juger cette infraction au lieu où l'infraction est présumée avoir été commise, ou au lieu où l'accusé est trouvé, est arrêté ou est sous garde, mais si le lieu où l'accusé est trouvé, est arrêté ou est sous garde est à l'extérieur de la province où l'infraction est présumée avoir été commise, aucune poursuite concernant cette infraction ne devra être engagée en ce lieu sans le consentement du procureur général de cette province.</p> <p>1997, ch. 17, art. 4; 2008, ch. 6, art. 46.</p>