SUPREME COURT OF QUEENSLAND

CITATION:	*A-G for the State of Queensland v WW* [2007] QCA 334
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant/appellant) **v** **WW** (respondent)
FILE NO/S:	Appeal No 2493 of 2007 SC No 9152 of 2006
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	12 October 2007
DELIVERED AT:	Brisbane
HEARING DATE:	26 September 2007
JUDGES:	Jerrard and Holmes JJA and Jones J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Dismiss the appeal** **2. Order the appellant to pay the respondent's costs agreed or assessed on the standard basis** **3. The conditions imposed on the respondent by order No 2 made on 21 February 2007 be varied to include the further condition (xxxiv) that the respondent comply with any reasonable direction given by an authorised Corrective Services officer to establish the nature of any usage of any computer by the respondent**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY ATTORNEY-GENERAL OR OTHER CROWN LAW OFFICER – APPLICATIONS TO INCREASE SENTENCE – OFFENCES AGAINST THE PERSON – where the learned trial judge was satisfied to the requisite standard that the respondent was a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – where the learned trial judge made an order under s 13(5)(b) of the *Dangerous Prisoners (Sexual Offences) Act 2003* (Qld)

releasing the appellant from custody subject to conditions – where the learned trial judge ordered that the respondent be subject to conditions on release specified by the judge until 1 February 2017, or until further order – where thirty three conditions were specified – where the Attorney General sought to overturn those orders and ask for a continuing detention order – whether the sentence was appropriate

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 13(5)(b)

A-G (Qld) v Francis [2006] QCA 324, Appeal No 452 of 2006, 30 August 2006, considered
Fardon v Attorney-General (Qld) (2004) 223 CLR 607, considered

COUNSEL: J M Horton for the appellant
J Logan SC, with B Mumford, for the respondent

SOLICITORS: Crown Law for the appellant
Legal Aid Queensland for the respondent

[1] **JERRARD JA**: The Attorney-General has appealed against a decision given in the Trial Division of this Court on 21 February 2007, whereby the learned trial judge made an order under s 13(5)(b) of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) ("the Act"), releasing WW from custody subject to conditions. The learned trial judge was satisfied to the requisite standard that WW was a serious danger to the community in the absence of an order pursuant to Division 3 of the Act, and ordered that (on release) he be subject to conditions specified by the judge until 1 February 2017, or until further order. Thirty three conditions were specified. The Attorney seeks to overturn those orders, and asks for an order that WW be detained in custody for an indefinite term for control, care, or treatment (a "continuing detention order").

[2] The provisions of the Act relevant to the two orders asked for are in s 13.

"13 Division 3 orders

(1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a ***serious danger to the community***).

(2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence—

(a) if the prisoner is released from custody; or

(b) if the prisoner is released from custody without a supervision order being made.

(3) On hearing the application, the court may decide that it is

satisfied as required under subsection (1) only if it is satisfied—

(a) by acceptable, cogent evidence; and

(b) to a high degree of probability;

that the evidence is of sufficient weight to justify the decision.

(4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following—

(a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists;

(b) any other medical, psychiatric, psychological or other assessment relating to the prisoner;

(c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future;

(d) whether or not there is any pattern of offending behaviour on the part of the prisoner;

(e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs;

(f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner;

(g) the prisoner's antecedents and criminal history;

(h) the risk that the prisoner will commit another serious sexual offence if released into the community;

(i) the need to protect members of the community from that risk;

(j) any other relevant matter.

(5) If the court is satisfied as required under subsection (1), the court may order—

> (a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (*continuing detention order*); or
>
> (b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (*supervision order*).
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> (6) In deciding whether to make an order under subsection (5)(a) or (b), the paramount consideration is to be the need to ensure adequate protection of the community.
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> (7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1)."

A serious sexual offence is an offence of a sexual nature, involving violence or against children.

[3] WW was born on 6 July 1941, so is now 66. On 21 December 1971, when aged 30, he was sentenced for an aggravated assault of a sexual nature, and fined $200. On 11 August 1986, when aged 45, he was convicted in the Supreme Court on two counts of incest and sentenced to concurrent terms of imprisonment for five years. The sentencing judge remarked that WW had admitted allegations of sexual misconduct against each of those complainants over a period of approximately 10 years prior to the date of the offences, and that WW "apparently fairly regularly had sexual intercourse with each child". Both children were quite young when the sexual misconduct began. The dates charged regarding those counts of incest alleged that they occurred between 31 July 1984 and 2 January 1985. A lengthy report by a Dr R J Moyle, a psychiatrist, records that WW said he had three brothers and one sister, and grew up in a violent household where his sister was the subject of child sexual abuse.[1] He was sexually abused by his father[2] and physically abused by his mother.[3]

[4] WW was next convicted on his pleas of guilty on 2 December 1997 on 43 counts of sexual offences. Twenty five of those related to one complainant, his niece, with whom he was convicted of having maintained an unlawful sexual relationship from 1 June 1995 until 23 March 1997, when she was a child under the age of 16. She was aged 12 and 13 at the time of the sexual relationship, which had included acts of sexual touching, and which had progressed to regular sexual intercourse over a period of about 10 months. He was also convicted of approximately 16 counts concerning another complainant, a friend of the first, and of five counts in respect of a third complainant, also a friend of the first one. Regarding the second complainant, the Crown prosecutor described the offences committed with respect to her as charges which:

> "relate to the prisoner showing pornographic videos to the complainant, taking indecent photos of the complainant in a naked state, having intercourse and oral sex with the (first) complainant...in

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1 At AR 256.
2 At AR 261.
3 At AR 261.

> the presence of this complainant and procuring [this complainant] to commit indecent acts upon the other complainants. The prisoner has performed oral sex and digital penetration in respect of this complainant."[4]

The prosecutor described the five counts in respect of the third complainant as charges which:

> "Relate to the prisoner showing pornographic videos to the complainant, the prisoner taking photographs of this complainant naked and procuring the complainant to commit indecent acts."[5]

[5] The offences of which WW was convicted on 2 December 1997 included offences of knowingly possessing child abuse computer games, taking indecent photographs of a child under the age of 12 with circumstances of aggravation, procuring a child under 12 to commit an indecent act with circumstances of aggravation, indecent dealing with a child under the age of 16 with circumstances of aggravation, carnal knowledge of a female child under 16, taking indecent photographs of a child under 16 with circumstances of aggravation, procuring a child under 16 to commit an indecent act with circumstances of aggravation, recording by means of a video camera an indecent visual image of a child under 16 with circumstances of aggravation, permitting himself to be indecently dealt with by a child under 16, carnal knowledge of a child under 16 with circumstances of aggravation, wilfully exposing a child under 16 to an indecent video tape with circumstances of aggravation, wilfully exposing a child under 16 to an indecent act with circumstances of aggravation, wilfully exposing a child under 16 to an indecent object with circumstances of aggravation, and attempted carnal knowledge of a female child under the age of 16 with circumstances of aggravation.

[6] One or more of those counts concerned his possession of 129 pornographic images on computer discs, of which 24 of the images were of the first complainant, and 105 were of other children. WW was sentenced to 10 years imprisonment for maintaining a sexual relationship, and to concurrent terms of eight years, five years, and one year respectively on the various other counts. All were ordered to be served concurrently. He was refused parole, and has now served almost all of the 10 years.

[7] WW was employed as a bus driver and aged between 53 and 55 when he committed those offences of which he was convicted in December 1997. The Appeal Record reveals that in 1998, 1999, and 2000 he had either intended or attempted to write letters to one of his victims, and attempted to substitute her name as his next of kin. In 2002 he voluntarily withdrew from a sexual offenders treatment program, and since then had refused to participate in a specialised assessment to allocate him to an appropriate sexual offender's program.

[8] The learned judge had reports and heard evidence from three psychiatrists. One was a Dr Beech, who saw WW briefly on 9 June 2006, when WW declined to be interviewed by that doctor. Dr Beech considered that WW met the criteria for paedophilia, and was sexually attracted to females. That doctor considered that WW had a moderate to high risk of re-offending, adding:

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4 At AR 442.

5 Also At AR 442.

> "Mitigating factors are his advancing years and physical health. There are other factors which may act to lower this risk. In particular, he maintained an adult relationship for many years...there is no history of substance use disorder, and no history of employment problems. The offences do not involve harm to the victims or the use of threats or weapons."

Nevertheless, Dr Beech confirmed that WW had a personality disorder which had interfered with WW's participation in a relevant offender program, and which was associated with distorted views and attitudes to his offending. He added in cross-examination that he thought WW's conduct was not just a matter of sexual deviance, but that WW also sought intimacy with young girls. For that reason, even if WW was now impotent, Dr Beech thought that WW would still be at risk of offending again with young girls, and that his pattern of offending was that of a "groomer". Dr Beech doubted that WW's personality disorder was treatable.

[9] A Dr Moyle, a second psychiatrist, concluded that WW was likely to pose at least a moderately high risk that he would befriend and sexually abuse girls as young as eight to 10, to the extent of full sexual intercourse, if released without an awareness of ways in which he could minimise the risk factors that are subject to his voluntary control, and without having in place restrictions on his freedom to have free access to female children. Dr Moyle considered that WW had a significant narcissistic personality disorder and there was evidence of a preferential heterosexual paedophilia. That doctor considered the moderately high risk of re-offending was not lessened because of the fact that WW now had no intention of working for a living and no independent means of support. He also considered that WW's alleged impotence did not necessarily mean the loss of interest when potential victims might be available. Potency was not necessary for a lot of the crimes which WW had committed.

[10] A third psychiatrist, a Professor Nurcombe, was the only psychiatrist who had had an interview with WW. He assessed WW as a moderate risk of re-offending, with factors reducing that risk including the probability that he was sexually impotent, his age and his ill health. Factors increasing the risk of re-offending including WW's tendency to minimisation, rationalisation, projection of guilt onto others, and resistance to therapy. Professor Nurcombe thought WW would benefit from continued probationary supervision, physical limitations and suitable accommodation. He did not think that WW was likely to abduct children or to inflict physical harm on them.

[11] Professor Nurcombe wrote of WW that:

> "WW is hopeless about the future, has no valid plans for what to do, and is resistant to treatment. He has many physical problems. His Paedophilia stems from parental neglect and rejection, and sexual abuse at the hands of his father. He was physically, emotionally, and sexually abused, exposed to domestic violence by an alcoholic father, and offered no affection or encouragement by either parent. His first sexual experiences, with pre-pubertal children his own age, appeared to have been comforting and to some extent compensatory to him. He minimizes, rationalizes and projects blame concerning sexual abuse. He has great problems discussing the emotional origin

> of his Paedophilia. He has written innumerable complaints to various high officials as a distraction from facing his problem."[6]

[12] His report went on:

> "WW offends against children to whom he is a familiar figure. He adopts a paternal or avuncular role, and offers inducement (gifts of clothing, sweets, etc.) and companionship. He grooms the pre-pubescent or pubescent females and progresses from fondling through digital penetration, to cunnilingus and sexual intercourse. He takes photographs and videotapes of activities for his own delectation...
>
> Depressed at the time of the offences, he overrides any inhibition he might feel, and suppresses guilt. He confuses his own needs with empathy for the child...sexual offences are precipitated by feelings of loneliness, neglect, depression, rejection, and the feeling that much has been demanded of him in return for little affection...the likely victims are females aged 11 to 14 years, related to or familiar to him...sexual re-offending following release would not be imminent. Warning signs that the sexual violence risk is increasing would be depression, and a sense of loneliness and neglect. Sexual re-offending is likely to be repeated should it occur. The risk of offending is chronic but may be diminished (though not necessarily abolished) by post-prostatectomy erectile impotence. The likelihood of relapse would be reduced by supervision after release, a form of occupation suitable given his age and physical limitations, and an effective therapeutic relationship."

Professor Nurcombe considered WW suffered from Dysthymic Depressive Disorder, and from a narcissistic personality disorder, hypertension, coronary artery disease, and type II diabetes.

[13] The learned trial judge concluded that there was an unacceptable risk that WW would commit offences of a sexual nature against children if he was released from custody without a supervision order being made. The learned judge noted that the unanimous view of the psychiatrists and psychologists was that there was an appreciable risk of re-offending. The judge concluded that absent the imposition of appropriate conditions, the risk of WW re-offending was substantial. The judge also recorded that the psychiatrists all agreed that WW's age, loss of libido, and weakened or lost capacity to sustain an erection reduced, but did not remove, the risk of re-offending. The judge held however that that risk could be reduced substantially by the imposition of appropriate conditions. The learned judge went on:

> "The fact that the respondent's offending has always occurred within his family or after or in consequence of the establishment of a close relationship with a young female over a protracted period suggests that appropriate constraints and supervision will prove effective in minimising the risk of re-offending."

[14] The judge concluded:

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6 At AR 390.

> "The psychiatric evidence also suggests that continued treatment will assist in reducing the risk. I am of the view that it is unlikely that the respondent would re-offend without first breaching the order I'm about to make and without the detection of such a breach or breaches. That conclusion strongly supports the making of a supervision order rather than a continuing detention order."[7]

[15] Counsel for the Attorney, Mr Sofronoff QC, Solicitor-General, submitted in a written argument that in those last two sentences, the learned judge had applied a test not to be found in the Act, and not justified, and applied it in the face of evidence that WW would not comply with conditions, and without evidence that any offences would be likely to be committed only after a detectable breach of conditions. The written submission contended that there was no explanation as to why the learned judge held that re-offending would be preceded by detectable breaches of condition. Further, there was no condition specifically permitting examination of any computer to which WW had access, to see if he had accessed child pornography or communicated with other paedophiles. (I add that the appeal record shows that conditions in those terms were proposed to the learned judge, and not opposed, and it may be that their omission was an oversight).

[16] In support of those criticisms, the appellant referred to WW's repeat offending, and the wide variety of offences committed. The appellant also pointed to WW's refusal to participate co-operatively in any treatment programs, and his general lack of co-operation, including his refusing to be interviewed by at least one of the psychiatrists asked to prepare a report on him for this application. Those submissions reflected an underlying view that the learned judge was not entitled to assume that any ordered supervision would be effective. But the learned judge was entitled to assume that any ordered supervision would be supplied. That was settled by this Court in *A-G (Qld) v Francis* [2006] QCA 324, (discussed below) and accordingly the judge was entitled, if not bound, to proceed on the basis that supervision on conditions specified by the judge would be provided. That meant the only issue was whether there was an unacceptable risk that the ordered supervision would not achieve the purpose of identifying conduct likely to result in re-offending. The Solicitor-General's argument, put on the appeal by Mr J Horton of counsel, did not really challenge the proposition that, if the ordered supervision was provided, it would in all probability allow for detection of breaches of the conditions, in turn likely to precede further offending. That last matter is, of course, subject to specified conditions being imposed requiring that WW allow the inspection of any computer used by him.

[17] The learned trial judge had told the parties at the conclusion of the evidence, that in his view it was more probable than not that re-offending would take place at some time within a few years after WW had been released, but that that risk could be reduced to acceptable levels, and that accordingly it was a case in which a supervision order was appropriate rather than a continuing detention order. The learned judge asked the parties for assistance in preparing the terms of the order. In *A-G (Qld) v Francis* [2006] QCA 324 this Court upheld an appeal against a continuing detention order, made because that trial judge had come to the view that the Department of Corrective Services:

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[7] At [37] in the reasons for judgment at AR 446.

> "Would not provide a sufficiently intensive commitment of resources to provide effective supervision of the appellant to ensure compliance with the conditions essential to supervised relief."

[18] This Court held:

> "[37] There was no evidence, however, that the resources required of the department to provide effective monitoring of the appellant's compliance with the conditions of supervised release would be so extensive that it would be unreasonable to expect them to be provided, or that the effective provision of such resources would be impracticable. It must be borne in mind that any supervision order made by the court under the Act must contain, by virtue of s 16(2)(f), a condition for supervision of the prisoner while on supervised release. The Act thus assumes that supervision will be available. The court should not conclude either that it will not be made available or will not be made sufficiently available in the absence of clear evidence to that effect and an explanation as to why its provision is regarded as unreasonable or impracticable. There was no reason to conclude that any necessary supervision by the department could not, or would not, be made available."

[19] This Court went on:

> "[39]...The Act does not contemplate that arrangements to prevent such a risk must be 'water tight'; otherwise orders under s 13(5)(b) would never be made. The question is whether the protection of the community is adequately ensured. If supervision of the prisoner is apt to ensure adequate protection, having regard to the risk to the community posed by the prisoner, then an order for supervised release should, in principle, be preferred to a continuing detention order on the basis that the intrusions of the Act upon the liberty of the subject are exceptional, and the liberty of the subject should be constrained to no greater extent than is warranted by the statutes which authorises such constraint."

[20] Those observations are relevant in this matter, where the learned trial judge sought, and was given, assistance in imposing conditions intended to alert a supervising corrections officer to an increasing risk of re-offending. The learned judge had been quite scrupulous in making all of the findings required by the Act, and in considering all the relevant matters. The judge was satisfied that adequate protection to the community against the risks posed by WW, if and when released, did not require the making of a continuing detention order, and could be obtained by the supervision order with the conditions imposed by the learned judge. Those included that WW was to report to, and receive visits from, an authorised Corrective Services officer at such times and at such frequency as was reasonably determined by Queensland Corrective Services; was to reside at a place within the State of Queensland as approved by a Corrective Services officer by way of a suitability assessment; comply with every reasonable direction of an authorised Corrective Services officer; not initiate any direct or indirect contact with a victim of his sexual offences without the prior approval of an authorised Corrective Services officer; not have any unsupervised contact with any child under 16 years of age (which was not brief and not pre-arranged or planned) except with the prior written approval of an authorised Corrective Services officer; not establish and maintain contact with any

child under 16 years of age without written prior approval by an authorised Corrective Services officer; not be on the premises of any shopping centre, without reasonable excuse, between 8.00 am to 9.30 am and between 2.30 pm and 4.30 pm on school days other than for the purposes of approved employment, or attending an approved bona fide pre-arranged appointment with a Government agency, medical practitioner, or the like; not reside with a person who has the care of a child or children under 16 years of age without the prior written approval of the Corrective Services officer; and not enter into a relationship with a person who has the care of the child or children under 16 years of age without the prior written approval of a Corrective Services officer; not access pornographic images of children on a computer or on the internet or in any other format; and not communicate with a child under the age of 16 years.

[21] Those are very restricting conditions, if adhered to. Whether they are will depend upon the degree and quality of supervision.

[22] Mr Sofronoff submitted in his written argument that WW had shown that he did not wish to co-operate in undertaking treatment, for example having refused to complete the sex offender's treatment program in prison. A 13 page report by Eli Sky, the co-ordinator of that program at the Wolston Correctional Centre, dated 22 March 2002, described at page 9:

> "WW's...low motivation to WWs making any productive changes in his life, his desire to maintain his 'victim stance', his narcissism, his attempt to manipulate the system and a possible desire to 'avoid' the second module of the program, the Disclosure module, as long as possible."

At page 12 Ms Sky wrote:

> "WW voluntarily withdrew from the Sex Offenders Treatment Program due to his unwillingness to progress through the process. While, on the surface, this reluctance appeared to originate in WW's inability to accept the constraints of a program, there in fact appeared also to be a number of underlying reasons for his withdrawal. It could be hypothesised that WW was reacting to what he perceived as control by authority figures; that he was avoiding disclosing the details of his offences as required by his then current work module, that his cognitive set is so rigid he is unwilling or able to alter."

[23] A retired psychologist, Ann Butler, who had been employed by the Department of Corrective Services as a Sex Offenders' Treatment Program Facilitator (SOTP), said in evidence that WW had been a very negative influence in the program, and denigrated the victims, saying things like:

> "Victims are liars. It is well known they don't tell the truth in court."

Eli Sky, who had been a co-ordinator of that SOTP program up until December 2004, recalled in evidence that WW had denied offending against one of his two daughters, in respect of whom he had pleaded guilty to incest.

[24] Mr Horton agreed that the appeal record revealed WW was likely to be argumentative about the conditions imposed, and how they could be applied, and thus likely to forewarn of any intended disobedience. If so, the Act provides in s 20 for a warrant for his arrest, and possible return to custody, if there is a reasonable

suspicion WW is likely to contravene, or has contravened, a requirement of the supervision order. That makes it appropriate to correct, under the slip rule, the omission to include a condition requiring compliance with directions to reveal the use of any computer.

[25] Mr Sofronoff QC had also submitted that WW's behaviour before the learned trial judge had been self-centred and self involved, and that WW had explained his failure to continue with treatment because of the opinion that the staff at the Wolston Correctional Centre had developed an unfair, incorrect or biased view of him. Mr Sofronoff QC submitted that in fact in December 2005 WW had been offered an opportunity to participate in a sexual offending treatment program without the involvement of any staff from the former program unit at the Wolston Centre. Mr Sofronoff QC submitted that WW was therefore an untreated sex offender whose risk of re-offending was not only substantial, but who was continuing to be unco-operative. Mr Sofronoff QC pointed to the fact that WW's last set of offending was committed when he was in his mid-50s, and there was a complete absence of material suggesting that WW had any remorse for the commission of his offences.

[26] Mr Sofronoff QC submitted that there were the offences that involved the possession of 105 pornographic images of children of whom he had no relationship, and evidence given before the learned trial judge suggesting that WW had not acted alone in obtaining pornographic images of children, and had encouraged other men to have sexual dealings with the complainants with whom WW had procured. That evidence included reference to a man called "J", to whose home WW took one victim, and reference to a friend T. The first complainant described meeting WW's friend called J in Bundaberg, in a hotel room. She identified an indecent photograph that a man took of her, for which he paid her $50. She described going to that man's house, and seeing a computer with pictures of young girls.[8] She also described being given some CDs, which she was told by WW were from WW's friend "T". Later she described "T" as a person who worked in a show ground, and that WW had said he had sold videos to "T".

[27] Mr Sofronoff QC had submitted that possession of those photographic images necessarily involved WW having created the images or acquired them from other people, and that WW was participating in a market for images which were inherently and necessarily abusive of children. All up, Mr Sofronoff QC argued that WW was an unremorseful, unco-operative, self-centred repeat sexual offender, who was likely to re-offend, and that a breach of the conditions requiring that WW have no unsupervised contact with children would not be detectable before an offence had been committed. Mr Logan SC (as His Honour then was) for the respondent replied to the tenor of those concluding submissions with a reference to the remarks by Gummow J in *Fardon v Attorney-General (Qld)* (2005) 223 CLR 575 at 607, where His Honour cited from Professor Norval Morris in the McGill Law Journal, Vol 13 (1967) 534 at p 552, referring to a statement by Sir Leon Radzinowicz, describing the need to impose indeterminate sentences only with great care, to avoid those being used as an instrument of social aggression.

[28] This is an appeal against a decision involving an exercise of a discretionary judgment. Mr Sofronoff QC and Mr Horton did not establish that the learned trial

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8 At AR 142.

judge had failed to take any relevant matters into account when preferring a supervision order to an order for continued indefinite detention. WW is in his mid-60s, not in good health, and with apparently limited financial resources. Those matters will make it difficult for him to establish circumstances in his life in which he will readily be able to re-offend. The learned trial judge considered those matters, and all the points to which the appellant referred. Mr Logan SC for WW submitted that the conditions imposed by the learned judge entitled an authorised Corrective Services officer to call upon WW wherever he was living, and to direct him to then and there permit inspection of any computer which might be on the premises. For that reason, a more specific condition might not be necessary. Likewise, the supervision of the conditions prohibiting contact with children really depend on the quality and regularity of the supervision. If it is of good quality, the probability is that the learned trial judge would be correct in the view that breach of the conditions ordered would probably be detected before WW could re-offend against children.

[29] I would dismiss the appeal, and order the appellant to pay the respondent's costs, agreed or assessed on the standard basis, but order that the conditions imposed on the respondent by order No 2 made on 21 February 2007 be varied to include the further condition (xxxiv) that WW comply with any reasonable direction given by an authorised Corrective Services officer to establish the nature of any usage of any computer by the respondent.

[30] **HOLMES JA**: I have read the judgment of Jerrard JA and agree with his reasons. The appellant was singularly unsuccessful in demonstrating any error by the learned primary judge in the exercise of his discretion. Great emphasis was placed on his Honour's conclusion that it was unlikely any re-offending would occur without, first, a breach of the order and its detection. That passage did not, as the appellant endeavoured to argue, purport to impose some additional test; it was a finding properly made on the evidence and relevant in applying the test under the Act. I concur with the orders Jerrard JA proposes.

[31] **JONES J**: I have read the judgment of Jerrard JA and I agree with his reasons and with the orders proposed.