

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General for the State of Queensland v Eather* [2009] QSC 148

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
(applicant)  
v  
**EATHER, Colin James**  
(respondent)

FILE NO: BS 913 of 2009

DIVISION: Trial Division

PROCEEDING: Hearing

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 12 June 2009

DELIVERED AT: Brisbane

HEARING DATE: 11 June 2009

JUDGE: Applegarth J

ORDERS: **1. The Court is satisfied to the requisite standard that the respondent, Colin Eather, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.**  
**2. The respondent be subject to the conditions appearing in Annexure A to these reasons for judgment**

CATCHWORDS: CRIMINAL LAW – JURISDICTION PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – OTHER MATTERS – Dangerous Prisoners (Sexual Offenders) Act 2003 – where respondent serving a term of imprisonment for sodomy and indecent assault with circumstances of aggravation – whether a supervision order should be made – whether there is an unacceptable risk that the respondent will commit a serious sexual offence if released from custody without a supervision order

*Dangerous Prisoners (Sexual Offenders) Act 2003, s 3, s 13, s 16, s 19*

*Attorney-General for the State of Queensland v Francis* [2007] 1 Qd R 396; [2006] QCA 324, applied  
*Attorney-General for the State of Queensland v Van Dessel* [2006] QCA 285, cited  
*Fardon v Attorney-General for the State of Queensland*

(2004) 223 CLR 574, cited

COUNSEL: J B Rolls for the applicant  
S M Ryan for the respondent

SOLICITORS: Crown Solicitor for the applicant  
Legal Aid Queensland for the respondent

- [1] The respondent is aged 37 and is serving a term of imprisonment after pleading guilty on 20 October 1993 to five counts of sodomy and three counts of indecent assault, all with circumstances of aggravation. On 26 November 1993 he was sentenced to a term of 12 years imprisonment in relation to the sodomy charges, with eligibility for parole after serving four years. The then Attorney-General appealed against the leniency of the sentence and on 24 March 1994 the Court of Appeal increased the sentence to 16 years imprisonment with no eligibility for parole. Concurrent terms of five years imprisonment for the indecent assault offences were not disturbed on appeal. The respondent's custodial end date is 25 July 2009.
- [2] The Attorney-General applied for orders under s 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ('the Act'). The application was supported by a report prepared by Dr Michael Beech, psychiatrist, dated 8 August 2008. On 12 February 2009 the Court made a risk assessment order and, as a result, the respondent underwent examinations by two psychiatrists, Dr Donald Grant and Professor Barry Nurcombe. The reports of Dr Beech, Dr Grant and Professor Nurcombe will be referred to later in this judgment. In addition, the Court has before it a large volume of material about the respondent's time in custody.
- [3] Counsel for the Attorney-General acknowledges that if the court is satisfied that the respondent constitutes a serious danger to the community then the evidence supports the making of a supervision order, rather than a continuing detention order.
- [4] The respondent accepts that the material establishes to the standard required under s 13(3) of the Act that he is a serious danger to the community in the absence of a Division 3 order. He accepts that the duration of a supervision order should be ten years.

### **The legislation**

- [5] The objects of the Act, as stated in s 3, are:
- “(a) to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community; and
- (b) to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.”
- [6] The Attorney-General may apply for a Division 3 Order in relation to a “prisoner”, which includes a prisoner detained in custody who is serving a period of imprisonment for a “serious sexual offence”. A “serious sexual offence” means an offence of a sexual nature involving violence, or against children.

- [7] Section 13 of the Act applies if, on a hearing of the application, the court is satisfied that the prisoner is “a serious danger to the community in the absence of a division 3 order.” It provides that the court may make an 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*).”
- [8] A prisoner is a serious danger to the community within the meaning of s 13 if there is “an unacceptable risk that the prisoner will commit a serious sexual offence”, if the prisoner is released from custody, or if the prisoner is released from custody without a supervision order being made.<sup>1</sup>
- [9] The court may decide that it is satisfied as required by s 13(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.”<sup>2</sup>
- [10] In deciding whether a prisoner is a serious danger to the community as defined in s 13 the court must have regard to the following:
- “(a) the reports prepared by the psychiatrists under s 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;

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<sup>1</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)*, s 13(2).

<sup>2</sup> The Act, s 13(3).

- (i) the need to protect members of the community from that risk;
- (j) any other relevant matter.”<sup>3</sup>

- [11] The paramount consideration in deciding whether to make a continuing detention order or a supervision order is the need to ensure adequate protection of the community.<sup>4</sup> The Attorney-General has the onus of proving that a prisoner is a serious danger to the community in an application for a Division 3 order.<sup>5</sup>
- [12] Subsection 13(5)(a) identifies the three purposes for which a continuing detention order may be made: control, care or treatment. In some cases, more than one of these considerations will inform the making of an order.<sup>6</sup>
- [13] In *Attorney-General for the State of Queensland v Francis*<sup>7</sup> the Court of Appeal stated:

“It may be, however, that, in some instances, a dangerous prisoner has such clear and pressing prospects of rehabilitation that the court’s choice of an order under s 13(5)(a), rather than under s 13(5)(b), will turn on the answer to the factual question whether further treatment, necessary to ensure adequate protection to the community, is likely to be available or effective only while the prisoner remains in detention. If the court were to be satisfied in a particular case that further treatment of a prisoner was necessary, and likely to reduce the risk of reoffending to acceptable levels, but that such treatment would not be made available to the prisoner in detention, then that would be a good reason to make an order under s 13(5)(b). The choice between an order under s 13(5)(a) or (b) must, of course, be controlled in the end by s 13(6) of the Act; but, in such a case, it might make little sense to make a continuing detention order for the purpose of ‘control, care of treatment’ of the prisoner.”

The Court also made the following important statement about supervised release in the context of the risk of the appellant in that case absconding if he began to use alcohol or drugs:<sup>8</sup>

“The Act does not contemplate that arrangements to prevent such a risk might be “watertight”; 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 statute which authorised such constraint.”

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<sup>3</sup> The Act. s 13(4).

<sup>4</sup> The Act. s 13(6).

<sup>5</sup> The Act. s 13(7).

<sup>6</sup> *Attorney-General for the State of Queensland v Francis* [2007] 1 Qd R 396 at 401 [29].

<sup>7</sup> *ibid* at 401 [30].

<sup>8</sup> *ibid* at 405 [39].

[14] Section 16(1) mandates certain requirements of a supervision order. Section 16(2) provides that the order may contain any other requirement the court considers appropriate:

“(a) to ensure adequate protection of the community; or

...

(b) for the prisoner’s rehabilitation or care or treatment.”

[15] An application to amend the requirements a supervision order may be made under s 19 of the Act by a prisoner released under a supervision order or the Chief Executive of Corrective Services with the Attorney-General’s consent.

[16] A supervision order cannot be made for an indefinite period.<sup>9</sup>

**The issue**

[17] The issue is whether there is an unacceptable risk that the respondent will commit a serious sexual offence if he is released from custody without a supervision order being made.

[18] I will address the matters to which I must have regard under s 13(4) in a different order to the order in which they appear in the Act. The respondent’s antecedents and criminal history will provide a context to consider the reports prepared by the psychiatrists under s 11 and the other matters referred to in s 13(4).

**The respondent’s antecedents**

[19] The respondent is a middle child of three brothers. When he was a child, the respondent’s father was often away working as a truck driver and he had a tumultuous relationship with his mother. It appears that he grew up in a family with loose sexual boundaries. He began behaving in a sexual manner from an early age but this was ignored by his parents. He reports being involved, at the age of four or five, in regular sexual acts with a group of children in the neighbourhood, including his cousin and older brother. This continued until he was approximately nine years of age, at which point he became sexually involved with a like-minded boy of his age. When he was around eight to ten years of age, he had sexual contact with a 50 year old man. The extent of this man’s sexual abuse of him is unclear from the material. At some point the respondent reported the events to his parents. A subsequent prosecution was abandoned due to the distress it was causing the respondent. When the respondent was aged about 11 years old, he began sexual activities with an adult male who was 25 years old. The activities included anal sex and he was also encouraged to engage in sex with other children while the adult watched.

[20] The respondent was educated to grade 11 when he decided to leave school. He felt socially ostracised at school. He worked as a casual employee in the retail industry at the age of 15. He later worked at child care centres.

[21] His relationship with his mother was difficult. The respondent described her as being a very angry, unhappy person who yelled a lot. He was afraid of her loud voice and learned not to disturb her in order to avoid verbal abuse which frequently

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<sup>9</sup> *Attorney-General for the State of Queensland v Van Dessel* [2006] QCA 285.

escalated into physical punishment. He also described her as a promiscuous woman and the respondent was often told how unwanted he was. He felt that his mother thought that having had children interfered with her social life. The respondent reports that he could never show her any emotion as he never knew how she would respond. He felt that his mother's erratic behaviour was his fault.

[22] At the age of 16, the respondent was informed by his parents that neither he nor his two brothers were the natural sons of his father, and in fact each had different fathers due to his mother's frequent infidelity during her marriage.

[23] The respondent first undertook work experience in a child care centre while still at school and was drawn to this type of work as he said he felt accepted by the children and was recognised as doing a good job. He secured a weekend position at a child care centre which he found enjoyable in comparison to studying and retail work. He left school in the hope of getting full-time employment in child care and was eventually offered a position. He worked in child care for a number of months until he was dismissed after a young boy accused the respondent of fondling his penis. The respondent emphatically denied that this incident occurred, and believed that the good reference provided to him by the child care centre management indicated that his termination of employment was a precautionary measure taken by the centre.

[24] Following this incident the respondent spent a protracted period on unemployment benefits, during which time he attended a hospitality training course. He reports that he did not feel comfortable in his subsequent employment in a hotel environment, and was retrenched when the company encountered financial hardship. He then returned to childcare work at the age of 19 years where he remained for almost two years until he was charged.

[25] The respondent reports that he began drinking alcohol around age 16 and within a few years had become a heavy drinker, consuming three to four drinks a night and on weekends. He states that he used alcohol during the period of his offending but denied being intoxicated at the time of his offences.

[26] The respondent also reports abuse of butane inhalants from the ages of 15 to 20. He used it after school and on weekends and reports having hallucinations which often involved a fantasy world where people, often children, liked and accepted him. His family members were aware of this, and, although the negative effects were discussed, this did not stop him.

[27] Marijuana usage has also featured in his past although the respondent claims it was never a problem. He has never taken injection drugs such as amphetamines or heroin.

### **Criminal history**

[28] The offences for which the respondent was imprisoned in November 1993 were committed between September 1992 and August 1993. The victims were three male children, each of whom was about two years old at the time of the offences. The respondent was aged between 20 and 21 at the time. The respondent had agreed to privately baby-sit the victims outside of his working hours.

[29] The first victim was abused on two occasions in the respondent's bedroom. Both occasions involved acts of sodomy. The second occasion also included him

performing oral sex on the child concluding with the respondent ejaculating into the victim. The offence was detected when the victim's mother found blood-stained mucus in the child's nappy and the child complained that his bottom was sore. As a result of the offence the child suffered bowel dysfunction, nightmares and weight loss. He was also noted to be displaying inappropriate sexual behaviour for a child of his age. The respondent told Dr Grant and Dr Beech that he tried to kill himself with an overdose of pills after the first offence.

- [30] The second victim was abused in the child's home. The respondent sodomised and performed oral sex on the child. The offences were disclosed when the mother caught the boy trying to put his penis into the mouth of his two year old sister. The mother questioned the boy and he revealed that the respondent had done that to him. He also indicated that the respondent had hurt him in the bottom. In his police record of interview, the respondent admitted the incident and that the child did not struggle much and that he had ejaculated inside of the child. The child suffered nightmares, poor sleep patterns and exhibited inappropriate behaviour. He also developed anal warts as a result of an infection that the respondent had at the time.
- [31] The third victim was abused on two occasions in a similar manner to the other children. On this occasion the respondent had to use his whole body weight to prevent the child's escape. The child's father heard the child's screaming and came to investigate. When questioned, the respondent denied that anything was wrong and managed to alleviate the father's concern. The victim also developed anal warts as a result of the offences and a doctor also found evidence of an anal fissure.
- [32] The police initially acted on complaints by the mothers of two of the abused children and interviewed the respondent. During the interview, the respondent disclosed his abuse of the third child. It appears that the parents of the third complainant were not yet aware that he had been abused.
- [33] In sentencing the respondent, Daly DCJ stated:

“The mothers were perhaps understandably lured into thinking that they had a trusted professional to take care of their children. A trust which you have grievously betrayed with the results that both the children and the parents will undoubtedly suffer serious and probably lasting psychological effects. Indeed the children already manifest the subconscious effects of which the psychiatrist spoke. Further, at the time of the acts you knew you were suffering from infectious genital warts which have been transmitted to two of the victims.

...

You are a man who I accept was sexually abused as a boy yourself, and also as a youth by two adults, although that abuse was not in the degree or character of the type that you yourself perpetrated... I take into account those earlier events which may have caused you to develop uncertainty and unhappy habits.”

- [34] The respondent has not committed any other offences of a sexual nature.

**Psychiatric reports and other assessments**

[35] The reports prepared by Dr Beech, Dr Grant and Professor Nurcombe reach similar conclusions concerning the respondent and the risk that he will commit a serious sexual offence if released from custody without a supervision order being made. In addition to these reports, I have had regard to other psychological assessments relating to the respondent. However, some of these are dated, and I prefer to place much greater weight upon the recent reports of the psychiatrists who have interviewed the respondent and reported upon him for the purpose of the Act. I shall first refer to the earlier psychological assessments.

***Richard Holborn, Psychologist and Sandy McElnea, Psychologist 29 June 2001***

[36] This report provides detail of the respondent's treatment response and outcomes over his period of participation in the Sexual Offenders Treatment Program (SOTP), which was undertaken from 23 November 1999 to 21 May 2001. Overall the respondent's long term risk of sexual re-offence was assessed as medium. However, a number of factors were identified as increasing the respondent's risk of re-offending, including not accessing appropriate assistance when experiencing difficulties, becoming secretive in regard to his sexual thoughts and feelings and difficulties in obtaining appropriate employment.

[37] The authors conclude that the respondent's completion of the SOTP suggests that he is at a low to moderate risk of sexual re-offending, provided that he follows the measures outlined in his Relapse Prevention Plan.

***Isabel Farmer, Consultant Psychologist, 30 July 2002***

[38] The author concludes that, while the respondent has developed intelligent and subtle insights into his offending behaviours, his apparent rehabilitation conceals major deficits in terms of any real ability to empathise with his victims or self-regulate his emotional expression. The respondent was not recommended for resettlement leave of absence at that stage of his sentence.

***Luke Smillie, Psychologist, 27 October 2003***

[39] This report was requested by Sentence Management in relation to the respondent's suitability for remission. The respondent underwent psychometric assessment. The report concludes that the respondent presents a low to moderate risk of re-offending. This was premised on him abstaining from all forms of contact with children, avoiding situations where he may come into contact with children, and focusing on developing both economic and social support. However, should he fail to conduct himself in this manner while unsupervised in the community, the risk of his re-offending was said to be moderate with the potential to increase in the long term.

***Dr Prabal Kar, Consultant Psychiatrist, 3 December 2003***

[40] Dr Kar's assessment was undertaken to assist the Queensland Community Corrections Board in relation to the respondent's application for community-based supervision. Dr Kar's assessment does not accord with other assessments, including the more recent reports. Using the DSM-IV Diagnosis, Dr Kar considered that the respondent has an extremely severe personality pathology and extremely severe paedophilia. Dr Kar considered that the respondent presented a high danger because he was in "complete denial as to his paedophilia". Dr Kar was concerned that the respondent had the intelligence to learn the correct jargon and express responses that an assessor would seek and that, in addition to drug therapy, the respondent required close control and monitoring.

***Nadia Salerno, Psychologist, 9 June 2005***

- [41] Ms Salerno concludes that the respondent is of a medium level of risk of re-offending. It was recommended that he not be granted participation on a leave of absence program at that time.

***Dr Michael Beech, Psychiatrist, 8 August 2008***

- [42] This report was prepared for the purposes of a potential application under the Act. The report was based on an interview with the respondent undertaken at Wolston Correctional Centre on 1 August 2008, as well as extracts from prison files and the Director of Public Prosecutions' files.
- [43] Dr Beech considered the respondent to be of average intelligence, and that some of the respondent's responses to be slightly shallow. There was evidence of some remorse at times but overall his demeanour remained quite bright despite the serious content being discussed. He seemed to enjoy parts of the interview process and used a range of psychological terms at times. Dr Beech felt that the expression of remorse was not particularly maintained and that the respondent's account of the offences was of an intellectual rather than an empathic kind. The respondent often spoke about what he called his own "abuse" and it was clear that he thought this had a significant impact on his development. However, when describing the abuse there seemed to be very limited evidence of distress.
- [44] Dr Beech drew attention to consistent themes when interviewing the respondent – relative social isolation, very limited relationships and very limited support other than professional support. Overall, the respondent's insight and judgment for day-to-day matters were good.
- [45] Dr Beech states that the reasons for offending still did not entirely make sense to the respondent, but that he understood from subsequent programs that the effects of learned behaviour had contributed to distorted thinking patterns. The respondent told Dr Beech that he had learnt a great deal from the SOTP.
- [46] Dr Beech assessed the respondent with a number of actuarial instruments to indicate risk status:
- Hare Psychopathy Checklist – the respondent was given a pro-rated score of 13.7 which does not operate in the range of psychopathy.
  - Sexual Offender Risk Appraisal Guide – the respondent received a score of 11 which places him in category 5. This indicates he is in a group of people of whom 0.45 will violently re-offend by seven years and 0.59 by ten years.
  - STATIC 99 – the respondent was given a score of 3. This places him in a group of whom 0.12 will sexually offend within 5 years. This is a moderate-low risk category.
  - Sexual Violence Risk – 20 – the respondent was scored positive for 8 out of 20 and possible positive for one item. This indicates he is at moderate risk of re-offending.
- [47] Dr Beech believes that the nature of the offences together with his description of the accompanying long-standing sexual fantasies indicate that the respondent has the condition paedophilia which is of homosexual orientation. He also considers that the respondent's offending should be considered against "the backdrop of his

precocious involvement in sexual behaviour that was aggravated by his recruitment as a child into a long sexual relationship with an adult male". Dr Beech believes that this served to distort the respondent's sense of identity, sexual boundaries and acted to either a trigger or re-enforce a sexual preference for young males. His offending was notable for the "spree like way" in which it escalated, and was further aggravated by the respondent seeking out employment in circumstances where it exposed him to factors which increased his fantasies.

[48] Dr Beech notes from the prison records that there is a degree of maturation, social progression and an increase in self-control and responsibility.

[49] Dr Beech concludes that the respondent presents a moderate risk of re-offending. His fantasies are considered to be dormant. The respondent states that he actively resists them. However, Dr Beech warns that this may change outside the stable structure of a prison environment and if substance abuse poses a threat. Dr Beech believes that the lack of family and social connections outside of prison could precipitate deterioration in the respondent's mood and self esteem so that once again he would indulge in his fantasies. In the absence of an ongoing maintenance program he could revert to earlier distorted thinking:

"He has had very little if any exposure to the outside environment and his social function and his relapse prevention plan are yet to be tested outside the structure of prison. He has very little support outside prison and he risks being destabilised by this lack of family and social connections. The risk is that the removal of the social and structural support of prison would precipitate a deterioration in his mood and self esteem so that once again he would indulge in his fantasies. He would have little employment opportunities to offend but could once again arrange to be in a position of care of a child. Under those circumstances, in the absence of an ongoing maintenance program he could revert to earlier distorted thinking."

[50] Dr Beech is of the opinion that there are not now enough features to indicate that the respondent has a personality disorder. His prior dependence on alcohol and on inhalants is in remission. Dr Beech considered the respondent's moderate risk of re-offending could be managed by the imposition of a number of conditions upon his release:

"These would include a commitment to ongoing psychological support so that his gains with the offender programs are maintained and so that his psychological well being is monitored. He should be abstinent from substances. He should not have any unsupervised contact with children. Instead, he could benefit from support that would allow him to gain employment and to reintegrate into the community."

***Dr Donald Grant, Consultant Psychiatrist, 17 May 2009***

[51] Dr Grant interviewed the respondent on 17 April 2009. As a result of that examination and his review of the relevant material, Dr Grant considered that the respondent was suffering from homosexual paedophilia (non-exclusive). There is insufficient evidence in Dr Grant's view to say that the respondent suffers from sexual sadism. Dr Grant considers that the respondent's sexuality is primarily

homosexual towards adult men and his paedophilia is at least dormant, if not in remission.

[52] Dr Grant did not consider the respondent to be suffering from any other psychiatric disorder. He does not suffer a significant personality disorder and he does not show psychopathic traits.

[53] Dr Grant undertook a number of actuarial assessments:

- On the Hare Psychopathy Checklist, the respondent recorded a score of 11 out of 40, well below the cut off for psychopathy, which is 30.
- On the STATIC 99, the respondent scored a 6 which put him into the “high risk” category. This test is a historical test formed on the basis of offending behaviour and choice of victims.
- On the Violent Offenders Risk Appraisal Guide, the respondent was placed into category 4 which means that his risk of recidivism at seven years is 17 per cent and at 10 years is 31 per cent.
- On the HCR-20, the respondent achieved an overall risk score of “moderate”.
- On the SCR-20, the respondent scored at the “moderate risk” level.
- On the Sexual Offenders Risk Appraisal Guide, the respondent fell into category 6 which translated to a risk of recidivism over seven years of 58% and over 10 years of 76%.
- On the Sexual Offender Needs Assessment Rating which looked at intimacy deficits, social influences, attitudes and self regulation, the respondent fell into the “low risk” category.

[54] Dr Grant notes that the respondent’s paedophilic drives have been controlled in prison with the help of maturation and treatment programs. There is a risk that these paedophilic drives could be reactivated.

[55] Dr Grant reports that the respondent recognises that, despite the progress he has made in custody, he may still have an underlying predisposition to be sexually attracted to underage males. The respondent told Dr Grant that he “could not deny” that he was paedophile. He recognised his vulnerability to developing fantasies involving underage boys and the need to exercise vigilance in this regard.

[56] Dr Grant considered the respondent to have been a “model prisoner” who had “benefited significantly” from the intensive sexual offenders treatment program. Of his insight, remorse and change over time, Dr Grant said:

“He now describes good insight into his offending. He expresses remorse for his behaviour and has developed a comprehensive relapse prevention plan. He has a good understanding of the traumatic experiences which have affected him and shaped his emotions. He expresses a convincing determination to never offend again and an understanding of the conditions he must impose upon himself to make this certain. He is happy to have these conditions imposed as part of a supervision order.

Whilst his understanding of the motivations for his offending may not be complete, and his empathy for his victims may still be to some extent lacking or less than perfect... he has sufficient appreciation to provide a good basis for putting his relapse plans into effect.”

- [57] If the respondent is able to achieve satisfactory employment and an appropriate relationship, he has a greater prospect of controlling his paedophilic drives. However, should his life become unstable, lonely, isolated or frustrating, then these drives could re-emerge.
- [58] Dr Grant did not identify any mental illness that acted as a risk factor, and drug and alcohol abuse was “unlikely to represent a major area of risk”. Supervision, support and counselling would be best addressed towards the issues which assist the respondent to achieve stability.
- [59] Dr Grant assesses the respondent as being at a risk of re-offending which is “moderately severe”. This risk will remain for some “considerable period of time”.
- [60] Dr Grant considers that the risk of re-offending is such that the respondent will require a supervision order after release from custody, and that the supervision order should be for a minimum period of 10 years. He must not have unsupervised contact with children nor be the carer of children. Nor should he enter a relationship which places him in such a situation. He has to avoid situations where he could come into sustained contact with children such as playgrounds at schools. He should not access pornography.
- [61] Dr Grant advised that the respondent should have access to ongoing psychological counselling, and should participate in a maintenance program.

***Professor Barry Nurcombe, Consultant Psychiatrist, 18 March 2009***

- [62] This report was prepared pursuant to the order of Daubney J made 12 February 2009. As a result of his examination of the respondent and review of the relevant material, Professor Nurcombe made the following diagnosis:
- (a) paedophilia, homosexual, non-exclusive, fixated in nature, chronic
  - (b) volatile inhalant (butane) dependence, in remission due to incarceration
  - (c) borderline personality disorder.
- [63] Professor Nurcombe also administered actuarial instruments. The results of these are as follows:
- On the Hare Psychopathy Checklist, the respondent scored between 6 and 12, well below the cut off for a diagnosis of psychopathy personality disorder which is 30 out of 40.
  - On the STATIC 99, the respondent scored 4. He was placed into a group of persons who is likely to re-offend sexually in 5, 10 & 15 years is 0.26, 0.31 and 0.36 respectively. The likelihood of violent re-offence in 5, 10 & 15 years is 0.36, 0.44 and 0.52 respectively. Professor Nurcombe describes this as a “moderate” level of risk.
  - On the STABLE-2000, the respondent scored 4/12, indicating a “low” risk of sexual recidivism.
  - Combining the STABLE-2000 and STATIC 99 results produced an overall risk in the moderate to low category.

- On the Violent Offenders Risk Appraisal Guide, the respondent was placed into category 5 meaning that the likelihood of violent recidivism in 7 and 10 years is 0.35 and .48 respectively which is a moderate to high level of risk.
- On the Sexual Offenders Risk Appraisal Guide, the respondent achieved a score of +15 which placed him in category 5 being a group of offenders whose likelihood of sexual recidivism in 5 and 10 years is 0.45 and 0.59 respectively. He presented a high level of risk of sexual recidivism.
- On the Vermont Assessment of Sex Offender Risk, the respondent was placed into the high risk category.

[64] Professor Nurcombe considers that if the respondent is restricted from contact with underage males and satisfactorily adjusts to life after incarceration then the risk of sexual reoffending is moderate to low. However, if his adjustment is poor resulting in a sense of social rejection then the risk of sexual reoffending is moderate to high.

[65] Professor Nurcombe does not consider the respondent to have a psychopathic personality. Rather, he considers him to have a borderline personality characterised by a deficient sense of personal identity, poor emotional regulation and defective social competence.

[66] In Professor Nurcombe's view, the respondent achieved improvement as a result of therapy and self reflection in jail. However, Professor Nurcombe is unable to identify how durable these improvements will be, especially in the face of difficulties following release. The respondent will need therapeutic help to react to the inevitable problems that a decision to lead a homosexual lifestyle would bring and to assist in obtaining employment.

[67] Professor Nurcombe sees no rehabilitative purpose in the respondent's continuing detention.

[68] In Professor Nurcombe's opinion, the respondent should never be in a position where he is responsible for children nor should he associate with people who have dependent children. He should not frequent malls, clubs or other places where underage boys congregate. He should not use inhalants. He should not consume alcohol for "the first two years following his release from prison". Urine and breath testing is advisable.

[69] Professor Nurcombe recommends that the respondent should continue with individual psychotherapy and Mr Ian Campbell should continue in this role. The respondent has already completed the sex offender maintenance program and no purpose in continuing this treatment is identified.

[70] Professor Nurcombe made the following comments about the respondent's presentation to him:

"I did not find him glib or manipulative, but he gave the impression of immaturity and slight effeminacy. He did not make excessive use of jargon learnt from the SOTP. I did not gain the impression that he was attempting to impress me in an inauthentic way. However, although he expressed conventional remorse and regret for his offences and their effect upon the three victims, I did

not have the impression that these emotions were particularly deep...”

- [71] Professional Nurcombe made the following observations of the respondent’s development through childhood and adolescence:

“Emotional neglect in his family of origin led to early erotization in the company of other children, and, in middle childhood, to extensive sexual abuse by two adult men ...

Clearly affected by the abuse, he was a marked underachiever in school, finally dropping out in Grade 11. During his childhood years he was a solitary, effeminate boy, rejected by other children, with an uncertain sense of identity and a tendency to absorb himself into aspects of other people’s personalities. He became heavily dependent on solvent inhalation, compensating for his unhappy social life with fantasy... The fantasies he had following imprisonment... are direct expressions of his primary paedophilic interest at that time: not infants but children five years of age and older.

It is likely that he drifted into childcare work because of latent paedophilia...”

- [72] The respondent was found to have shown realistic insight into his circumstances. As Professor Nurcombe explained:

“He realises that his main problems will be to get a job, find a place to live, and cope with the community. He knows that he has a problem of [a] personal, psychological nature. He has some concept of the cause of his difficulty (relating it to sexual abuse), and is aware that further treatment is required. He realises that he needs to mature further, emotionally.”

***Summary: psychiatric reports and other assessments***

- [73] The assessments of Dr Beech, Dr Grant and Professor Nurcombe are generally in accord. The respondent does not have a psychopathic personality. He has an insight into his own offending and a realistic appreciation of his own vulnerability if he does not receive support and supervision upon his release from prison.
- [74] The respondent is able to recognise the cognitive distortions which have been part of his offending. He does not minimise the offences. He does not seek to evade responsibility for them, nor does he possess an attitude which condones his offending behaviour.
- [75] The respondent’s attitude towards ongoing treatment and supervision is positive.
- [76] So far as the assessment of risk is concerned, I have been assisted by Professor Nurcombe’s discussion about the limitations of actuarial and clinical predictions.
- [77] Dr Beech considered the respondent to be a moderate risk of re-offending which could be managed by the imposition of several conditions upon his release.

[78] Dr Grant considered that, despite the progress the respondent has made in custody, he may still have an underlying predisposition to be sexually attracted to underage males. Dr Grant considered the respondent's overall clinical risk of re-offending as moderately severe, and stated:

“The risk will persist for a considerable period of time as the respondent remains relatively young and will have a lot of work to do in achieving a stable and satisfying existence outside prison after 16 years of incarceration...”

[79] Professor Nurcombe found that the respondent's risk of re-offending sexually was moderate to low if he were to adjust to life after release and be restricted from contact with underage males. If he were to fall into despondency as a result of social rejection in the community, then the risk increased to moderate to high.

[80] No psychiatrist considers that there would be any rehabilitative purpose in the respondent remaining in prison following his release date.

[81] The three psychiatrists who examined the respondent for the purposes of this application had the benefit of earlier reports. None of the psychiatrists suggest the respondent's continuing detention is warranted. Each of the psychiatrist's reports contains recommendations about conditions which will reduce the risk of sexual reoffending.

**Propensity and whether there is a pattern of offending behaviour**

[82] It is convenient to address together the matters referred to in ss 13(4)(c) and (d) of the Act. The respondent does not have a pattern of offending behaviour over a period of years of the kind exhibited by many respondents who have been the subject or orders under Division 3 of the Act. His offending behaviour has previously been described.

**Efforts by the respondent to address the cause of his offending behaviour**

[83] The respondent has completed numerous educational courses whilst in prison and held various positions of employment. He has demonstrated a good attitude to work. Recreationally he has become involved in lead lighting and leatherwork. He has gained great enjoyment through this, which he states has given him a real sense of achievement.

[84] He has also participated in recommended programs:

- Sexual Offender Treatment Program – completed 21.05.01
- Cognitive Skills – completed 20.05.1998
- Anger Management – completed 27.07.1994
- Drug & Alcohol Awareness – completed 17.12.1993
- Staying on Track: Sexual Offenders Maintenance Program – completed 13.09.2006

[85] The psychiatric reports to which I have referred establish that the respondent has addressed his offending behaviour and has insight into it.

**Risk and the need to protect members of the community**

[86] The particular risk that the respondent presents if released from custody without a supervision order has been identified by the recent psychiatric assessments. In

short, the risk is that if the respondent becomes unstable, lonely, isolated, frustrated and despondent, he may regress emotionally and behaviourally and become preoccupied with paedophilic impulses and drives. However, the respondent does not have a psychopathic personality which represents a major area of risk.

**Should a Division 3 order be made?**

- [87] The respondent accepts that the material establishes that he is a serious danger to the community in the absence of a Division 3 order.
- [88] The medical opinions before the court, the various assessments of the level of risk made by the psychiatrists and the identification of the benefits of supervision in the community do not, in themselves, supply the answer to the question that I must answer. That question is whether, having regard to all of the evidence, including the cogent evidence of the three psychiatrists, I am satisfied to the standard required by s 13(3) that there is an unacceptable risk that the respondent will commit a serious sexual offence if he is released from custody without a supervision order being made.
- [89] I am satisfied that there is. The reports provided by the psychiatrists in the proceedings are acceptable, cogent evidence and satisfy me to a high degree of probability that the evidence justifies the making of a supervision order.

**Duration of the supervision order and its requirements**

- [90] Any supervision order must contain the mandatory requirements referred to in s 16(1) of the Act. There are a number of additional requirements that I consider are appropriate to ensure adequate protection of the community and for the respondent's rehabilitation, care or treatment. Dr Grant considers that a supervision order should be for a minimum period of ten years. The applicant and the respondent agree that a supervision order of ten years duration is appropriate.
- [91] The respondent's affidavit addresses his plans when he is released from custody, including receiving professional counselling and other support upon his release. He hopes to find employment, building upon the qualifications and experience that he has gained in custody.
- [92] Having regard to the professional opinions that have been given, the respondent's future plans, the need to ensure that any constraint on the liberty of the subject is no greater than is warranted, the risks that have been identified and the paramount need to ensure adequate protection of the community, I consider that an order of ten years duration is appropriate. A supervision order of such a duration makes it important to ensure that its requirements are warranted and do not unintentionally impede the respondent's plans to reintegrate into the community, obtain employment and establish fulfilling relationships with adults.
- [93] The terms of a draft order<sup>10</sup> proposed by the applicant were the subject of consideration and submissions during the course of the hearing. As a result of those matters, a revised proposed order<sup>11</sup> was placed before the Court and the respondent does not oppose an order being made in these terms. I observe that the terms of this order vest a high degree of control in Corrective Services officers in relation to the daily activities of the respondent for a period of ten years. I mention one matter by

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<sup>10</sup> Exhibit 1.

<sup>11</sup> Exhibit 2.

way of example. I raised a concern about the width of the condition that requires the respondent to obtain the prior written approval of a Corrective Services officer before accessing a computer or the internet. Access to the internet is an essential part of modern living, and an unreasonable restriction on internet use could inhibit the respondent's access to it for legitimate employment, transport and recreational activities. I was informed that administrative practices are likely to lead to the grant of a written approval which will permit the respondent to access a computer or the internet for such legitimate purposes. I stood the matter down so that discussions could occur between counsel on this matter and the respondent was content with the requirement.

- [94] Depending upon the respondent's progress during the term of the supervision order and the order's practical operation, it is possible for an application to be made pursuant to s 19 of the Act to amend its requirements. The Court can amend them if it is satisfied that the amended requirements "are sufficient to ensure adequate protection of the community" and that "it is reasonable to make the amendment in all the circumstances."<sup>12</sup> Given the scope to amend its requirements to take account of future developments, I will make an order in terms of Exhibit 2.

**Order**

- [95] I make an order in terms of Exhibit 2, a copy of which I annexe to these reasons.

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<sup>12</sup> The Act, s 19(2).

**Annexure A**

**SUPREME COURT OF QUEENSLAND**

**REGISTRY:** Brisbane  
**NUMBER:** BS 913/09

Applicant **THE ATTORNEY-GENERAL FOR THE STATE  
OF QUEENSLAND**

AND

Respondent **COLIN JAMES EATHER**

**SUPERVISION ORDER**

Before: Justice Applegarth

Date: 12 June 2009

Initiating document: Originating Application filed 28 January 2009

**THE ORDER OF THE COURT IS THAT:**

1. The Court is satisfied to the requisite standard that the respondent, Colin Eather, is a serious danger to the community in the absence of an order pursuant to Division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*.
2. The respondent be subject to the following conditions until 25 July 2019:

The respondent must:

- i be under the supervision of a Corrective Services officer for the duration of the order;
- ii report to a Corrective Services officer at the Queensland Corrective Services Probation and Parole Office closest to his place of residence between 9 am and

- 4 pm on the day of release from custody and at that time advise the officer of the respondent's current name and address;
- iii report to, and receive visits from, a Corrective Services officer at such times and at such frequency as determined by Queensland Corrective Services;
  - iv notify and obtain the approval of a Corrective Services officer for every change of the prisoners name at least two business days before the change occurs;
  - v comply with a curfew direction or monitoring direction;
  - vi notify a Corrective Services officer of the nature of his employment, or offers of employment, the hours of work each day, the name of his employer and the address of the premises where he is or will be employed;
  - vii seek permission and obtain approval from a Corrective Services officer prior to entering into an employment agreement or engaging in volunteer work or paid or unpaid employment;
  - viii reside at a place within the State of Queensland as approved by a Corrective Services officer by way of a suitability assessment;
  - ix not reside at a place by way of short term accommodation including overnight stays without the permission of a Corrective Services officer;
  - x whilst residing at any accommodation must comply with any regulations or rules in place at that accommodation;
  - xi seek permission and obtain the approval of a Corrective Services officer prior to any change of residence;
  - xii not leave or stay out of Queensland without the written permission of a Corrective Services officer;
  - xiii not commit an offence of a sexual nature or involving children during the period of the order;
  - xiv comply with every reasonable direction of a Corrective Services officer;
  - xv respond truthfully to enquiries by Corrective Services officers about his whereabouts and movements generally;
  - xvi not have any direct or indirect contact with a victim of his sexual offences;
  - xvii disclose to a Corrective Services officer upon request the name of each person with whom he associates and respond truthfully to requests for information from a Corrective Services Officer about the nature of the association, address

- of the associate if known, the activities undertaken and whether the associate has knowledge of his prior offending behaviour;
- xviii notify the Corrective Services officer of the make, model, colour and registration number of any vehicle owned by or generally driven by him, whether hired or otherwise obtained for his use;
- xix attend upon a psychiatrist, psychologist, social worker, counsellor or other mental health professional as directed by the corrective services officer at a frequency and duration which shall be recommended by the treating intervention specialist, the expense of which is to be met by Queensland Corrective Services;
- xx submit and discuss with a Corrective Services officer a schedule of his planned and proposed activities on a weekly basis or as otherwise directed;
- xxi if directed by his supervising Corrective Services Officer, make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by the supervising officer, who may contact such persons to verify that full disclosure has occurred;
- xxii abstain from the consumption of alcohol for a period of 5 years from 25 July 2009;
- xxiii abstain from illicit drugs for the duration of this order;
- xxiv take prescribed drugs as directed by a medical practitioner;
- xxv submit to any form of drug and alcohol testing including both random urinalysis and breath testing as directed by a Corrective Services officer;
- xxvi agree to undergo medical testing or treatment as deemed necessary by the treating psychiatrist and supervising Corrective Services officer, and permit the release of the results and details of the testing to Queensland Corrective Services, if such a request is made for the purposes of updating or amending the supervision order or for ensuring compliance with this order, the expense of which is to be met by Queensland Corrective Services;
- xxvii permit any medical, psychiatrist, psychologist, social worker, counsellor or other mental health practitioner to disclose details of treatment, intervention and opinions relating to level of risk of re-offending and compliance with this order to Queensland Corrective Services if such a request is made for the purposes of updating or amending the supervision order and/or ensuring compliance with this order;

- xxviii attend any program, course, psychologist, social worker or counsellor, in a group or individual capacity, as directed by a Corrective Services officer in consultation with treating medical, psychiatric, psychological or other mental health practitioners where appropriate;
- xxix not to initiate or maintain any contact with children under 16 years of age except with prior written approval of a Corrective Services officer. The respondent is required to fully disclose the terms of the order and nature of offences to the guardians and caregivers of the children before any such contact can take place; Queensland Corrective Services may disclose information pertaining to the offender to guardians or caregivers and external agencies (i.e. Department of Child Safety) in the interests of ensuring the safety of the children;
- xxx not without reasonable excuse be within 100 metres of schools or child care centres;
- xxxi not to visit or attend any place where there is a dedicated children's play area or child minding area without the prior written approval of a Corrective Services officer;
- xxxii seek written permission from a Corrective Services officer prior to joining, affiliating with or attending on the premises of any club, organisation or group;
- xxxiii not be on the premises of any shopping centre, without reasonable excuse, between 8am to 9.30am and between 2.30pm and 4.30pm on school days other than for the purpose of:
- a. approved employment;
  - b. attending an approved bona fide pre-arranged appointment with a Government agency, medical practitioner or the like;
- xxxiv advise Corrective Services Officer of any repeated contact with a parent of a child under the age of 16. The offender shall if directed by his supervising officer make complete disclosure of the terms of this supervision order and the nature of his past offences to any person as nominated by the supervising officer who may contact such persons to verify that full disclosure has occurred;
- xxxv not access pornographic images that display photographs or images of children on a computer or on the internet or in any other format;

- xxxvi obtain the prior written approval of a Corrective Services officer before accessing a computer or the internet;
- xxxvii allow any device where the internet is accessible to be randomly examined using a data exploitation tool to extract digital information or any other recognised forensic examination process upon request by a Corrective Services Officer;
- xxxviii allow any other device including a telephone to be randomly examined. Account detail and/or phone bills are to be provided upon request of a Corrective Services Officer;
- xxxix dispose of any material that contains images of children if directed to do so by a Corrective Services Officer;
- xl develop a risk management plan in consultation with a treating Psychologist or Psychiatrist and discuss it as directed with a Corrective Services Officer.

Signed:

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Registrar of the Supreme Court of Queensland