SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v AB* [2010] QSC 418
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **AB** (respondent)
FILE NO/S:	BS 7582 of 2010
DIVISION:	Trial Division
PROCEEDING:	Applications
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	28 October 2010 (ex tempore)
DELIVERED AT:	Brisbane
HEARING DATE:	28 October 2010
JUDGE:	Applegarth J
ORDER:	**1. The Court is satisfied to the requisite standard that the respondent 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 a supervision order until 14 November 2015.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY- where respondent committed serious sexual offences in a single episode in an opportunistic attack upon his victim – where respondent had no history of other sexual offences or of other offences of violence - where respondent had been eligible for parole, had made applications for parole but had not received parole despite psychiatric evidence recommending parole – where decision to refuse parole inadequately explained – where psychiatric evidence identified the need for supervision and support to assist the respondent's further rehabilitation – whether a moderate risk of re-offending was an unacceptable

risk in the circumstances - whether respondent should be subject to a supervision order upon release from custody

CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY- where a supervision order in the form proposed by the applicant was not warranted, conferred excessive discretion upon corrective services officers and was apt to prevent the respondent from establishing positive relationships, employment and accommodation – where a supervision order that imposes excessive and unnecessary constraints and provides inadequate support may be counter-productive and increase the risk of re-offending – need for the terms of a supervision order to facilitate rehabilitation and thereby ensure adequate protection of the community

Dangerous Prisoner (Sexual Offender) Act 2003 (Qld), s 13

Attorney-General for the State of Queensland v Francis [2007] 1 Qd R 396

COUNSEL: BHP Mumford for the applicant
JJ Allen for the respondent

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

HIS HONOUR: The respondent is aged 37. In early 1998 he committed very serious sexual offences. The nature of his crime was opportunistic. He committed those sexual offences whilst abusing cannabis and at a time when he was in a dysfunctional relationship with his then partner.

He has committed no other sexual offences since then. He had committed no sexual offences prior to those offences. His criminal record includes no history of violence. Because of the horrific nature of the sexual offences that he committed in 1998, and the obvious need for punishment and an appropriate deterrent to him and others against committing the same or similar offences, he was sentenced to imprisonment for 12 years.

He is due to be released in the near future. The Attorney-General applied for orders under section 13 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 ("the Act"). The application was supported by a report by Dr Sundin. As a result of orders made, the respondent underwent examinations by Associate Professor Donald Grant and Professor Basil James. In addition, I have before me a large volume of material about the respondent's time in custody, including his completion of programs and assessments of risk undertaken for parole purposes.

Although the application sought a continuing detention order and, in the alternative, a supervision order, counsel for the applicant accepts that the evidence discloses that the risk of

re-offending can be adequately managed in the community by the imposition of a supervision order.

The respondent contests whether a division 3 order should be made. He submits that I should not be satisfied to the extent required that there is an unacceptable risk that he will commit a serious sexual offence if released from custody without a supervision order being made.

I have described the scheme of the legislation on other occasions and given the time of day and the absence of any dispute about the statutory requirements, I will not detail the relevant provisions in this oral judgment.

I remind myself that the paramount consideration in deciding whether to make an order is the need to ensure adequate protection of the community. The Attorney-General has the onus of proving that the respondent is a serious danger to the community. Section 13 identifies the purposes for which a continuing detention order can be made, and authorities of this Court have identified the principles that govern the making of orders under the Act.

In particular, in *Attorney-General for the State of Queensland v Francis* [2007] 1 Qd R 396 at 405, the Court of Appeal observed that the Act does not contemplate that arrangements to prevent a risk must be “watertight”, otherwise a supervision order would never be made. The question is whether the protection of the community is adequately ensured. The Court observed that 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. This was 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 authorises such constraint.

In determining whether an order should be made I have to decide whether there is an unacceptable risk that the respondent will commit a serious sexual offence if released from custody without a supervision order being made. In deciding the issue under section 13 I have to have regard to the matters stated in section 13(4). I will deal with those matters in a different order to their order in section 13(4).

I will deal first with the respondent's antecedents. The respondent had a difficult upbringing. His parents separated when he was about 18 months of age. He then went into a situation which he described as “like a monastery” after his mother left for a period of time until his father could establish a relationship with another woman. His childhood was an unpleasant one.

He described living with his mother and her partner at a later stage as like being in gaol. He was beaten by his stepfather. He had no real relationship with his mother. He had a problematic early childhood. These matters are addressed in much greater detail in the reports to which I have had

reference. Because of his troubled upbringing he was a bed wetter. He was punished for that. I can capture the evidence from an early report of a psychologist, Mr Peros, who has said that the respondent's account of his childhood “read like a textbook of how not to raise a hyperactive, impulsive and somewhat oppositional child embarrassed by his bedwetting. It is little wonder that he grew into an insecure, angry young man.”

He became oppositional. He was placed in a Boys' Home where he described himself as being one of the tougher boys. He started drinking alcohol at 13 or 14. His alcohol consumption diminished later but he started using marijuana and after about the age of 15 or 16 he became a heavy user. He experimented with some other drugs but it was his addiction to cannabis that was the most problematic. As a result of the problems that he experienced he came in contact with the criminal justice system and was convicted of various offences, particularly property offences. There were offences of resisting police and other street offences. He was sentenced to a range of community and custodial sentences.

His Queensland criminal history commences in 1991 and is of a similar character. He entered into a dysfunctional relationship with an older woman. They accessed pornography. He was addicted to cannabis and he committed a range of property offences. He was preparing to commit a property offence late at night when he opportunistically preyed upon the female victim to his sexual offences. Without detailing the grave circumstances of those offences, lest it cause

unnecessary distress, particularly to the victim, the respondent saw a female at a public place which was proximate to a place that he intended to break and enter. He impulsively set upon her. He took her away in his car and committed a number of sexual offences over the following hours.

He left the jurisdiction when he apprehended that his identity had been established. The learned Judge at the District Court who sentenced him properly described the offence as a terrifying and humiliating experience for the victim. He remarked that the respondent had some prospects of rehabilitation and recommended that the prison authorities should provide psychological counselling and treatment in relation to the respondent's aggressive urges.

The evidence concerning the applicant's time in custody consists of a large volume of documents. It was not until 2003 that the applicant underwent an anger management course. He acquired various qualifications and undertook other courses. Because he was sentenced to 12 years imprisonment he was subject to the requirement of serving 80 percent of his sentence and it appears that his parole eligibility date was 16 April 2008.

Given the statements made by the learned sentencing Judge and the importance of the respondent being supervised and rehabilitated prior to the end of his sentence, it is remarkable that the applicant was not enrolled on the "Getting Started" preparatory program until 25 June 2008. He completed

it on 30 July 2008. It is remarkable that he was not admitted into such a program much earlier, given his parole eligibility date and what would seem to have been the importance of providing the rehabilitation, supervision and control that the experts say he now requires.

He made parole applications. He made one such application on 28 October 2008. The progress of his application for parole seems to be extraordinary. He had done, it seems, everything that he could do up to that time to attract the benefit of parole. It is remarkable that it was not until well after his parole eligibility date that he was considered as needing to participate in the intensive intervention course. It was said that his entry to that was to be prioritised but he did not undertake the medium intensity sexual offenders treatment program until February 2009.

Without taking a long time this afternoon, what seems to have then happened was that the Parole Board informed him from time to time that his applications for parole had lapsed. He put before the Parole Board plans for his release and documents that supported his release. He had a sister who was willing to support him, and he had plans to reside in residential accommodation provided by OzCare. Despite this, he was refused parole.

It is equally remarkable that the Parole Board did not call for a psychiatric report until 21 April 2009, more than a year after he was eligible for parole. That request went to Dr Kar. Dr Kar provided his report on 6 May 2009. He

considered a variety of matters. He expressed the opinion that the respondent had matured and that his severe anti-social personality disorder had probably reduced or remitted to a significant extent. He noted that the respondent was able to verbalise empathy for his victim and that he had given a forthright description of the offence and his motivations behind it. After noting that the respondent did not display any cognitive distortions, that he always accepted full responsibility for his own behaviour, had accepted that what he had done was wrong and never minimised the seriousness of his behaviour, Dr Kar concluded that he supported the respondent receiving parole.

Dr Kar’s recommendation, understandably, was that if the respondent received parole he would have a high level of monitoring over both his ability to handle life outside of prison as well as any potential use of drugs, alcohol and other substances. Dr Kar reached the conclusion, given the respondent's presentation and his compliance in prison, that the respondent had at least a fair chance of doing reasonably well in the community during the remainder of his sentence while on parole. For reasons that are formally stated in a Statement of Reasons dated 15 December 2009, the Queensland Parole Board declined parole. I am not conducting a review of the Parole Board's decision, but I must say that its Statement of Reasons completely fails to address why the Board did not act on Dr Kar's recommendation.

The end result of the refusal of the application for parole is that the respondent has received none of the benefits that

would have been open to him on parole. The more important consequence is that the community has not received the benefit of the respondent being subjected to the strict requirements of parole, which could have been the same or stricter than the supervision orders contended for by the applicant. He has had no opportunity to establish accommodation, employment and important relationships, including a relationship with his son. The material before me shows that the applicant places a high priority on establishing a relationship with his son with whom he communicates by telephone. That young man has lost his mother in recent years.

In short, the Parole Board, for reasons best known to it and inadequately explained in its Statement of Reasons dated 15 December 2009, has placed the respondent in a situation in which the rehabilitation which might have been provided by the parole system is now sought by way of a supervision order.

It is concerning, to say the least, that the system of correctional services did not enrol the respondent in programs that would prepare him for a parole application prior to his parole eligibility date. It is unexplained why, when a Judge of the District Court made a specific recommendation for the respondent to receive treatment and counselling, that such treatment and counselling should come, as it were, at the eleventh hour and after his parole eligibility date.

An available inference is that such programs were not provided in a timely fashion before his parole eligibility date because there is a working assumption in the Department of Corrective

Services that sexual offenders will be refused parole. That is an available inference and there is no evidence that really competes with it.

There is a competing inference that there is a system of incompetence or inadequate resourcing. Nothing before me explains why the Department of Corrective Services seemed to mismanage the system of rehabilitation and parole, contrary to the recommendations that were given in this case concerning the provision of treatment. If the respondent had been admitted to parole, and had established accommodation, support and other links into the community, then the psychiatrists who have examined him for the purpose of the Act would have been better placed to provide an opinion concerning the level of risk that would be posed by his not being subject to a supervision order.

It seems obvious in the light of their considered opinions that the kind of rehabilitation that they expect him to receive under a supervision order could have been obtained under a parole order. That would have had the effect of de-institutionalising the respondent to some extent. By de-institutionalising him there would have been a corresponding reduction in the risk of his reoffending.

It seems to me, in the absence of any explanation, that the parole system in this case has not only failed the respondent. It has failed the community. Perhaps the Parole Board operates on the working assumption that supervision orders under this Act are a form of Clayton's parole order: the

parole order you get when you don't get parole. If it has that view, it should be disabused of it.

I accept the submission of the respondent that a supervision order is no substitute for parole. However, that submission does not address the question that has to be addressed in these proceedings. That question is: the respondent and our community, not having had the benefit of the respondent being subject to parole under strict conditions over the last several months, if not, the last two and half years, should he be subject to a supervision order?

I should not decline to make a supervision order because Corrective Services failed to enrol the respondent, in a timely fashion, in the medium intensity sexual offenders treatment program, or because the Parole Board declined the respondent parole contrary to the recommendation of Dr Kar and for what would seem to be inadequate reasons.
The issue for me is whether, in terms of section 13(2)(b), 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.

Dr Sundin assessed the risk of reoffending as moderate. She observed that the respondent ought to be managed in the community on a supervision order, that he is in need of the level of support that such a supervision order would provide and that it should be for a duration of five years. She recommended that the respondent be completely abstinent from

alcohol, cannabis and other mood altering substances, legal or otherwise.

Associate Professor Grant, in his report, carefully reviewed earlier assessments including the medium intensity sexual offender treatment program in February 2009 which reported that the respondent had identified realistic release plans including finding suitable alternate accommodation, employment, re-establishing his relationship with his son, budgeting and making friends.

Dr Grant, independently assessed and inquired into the respondent's plans upon release. The respondent reported to him how the respondent wished to move on and have a proper life and that the respondent realised that it would be hard to develop new relationships and he did not expect things to happen quickly. The respondent wished to become a constructive member of the community for his son's sake.

Dr Grant concluded that the respondent displayed reasonably good levels of empathy and judgment, he had no thought disorder, and his concentration during the interview was good. Doctor Grant concluded that the respondent had matured, developed a degree of insight and worked towards his own rehabilitation. He noted that he had ceased all drug use during his time in prison and also recently ceased the use of nicotine and caffeine.

Doctor Grant undertook actuarial risk assessments as well as a clinical risk assessment and he concluded that the respondent

has undergone all appropriate treatments in prison to address his sexual offending and there is no other treatment that is currently indicated. He said that the respondent would benefit from assistance and social rehabilitation such as with finding housing and employment. He concluded that, given the fact that the respondent's sexual offence occurred once only and the risk is at a moderate level, any supervision order should be in place for five years.

In his oral evidence, Dr Grant expanded upon these points and identified major risk factors as being the risk that the respondent would be isolated and fail to form relationships or not obtain employment. He thought that there were appropriate supervision order conditions that would assist the respondent in his rehabilitation and provide him with a useful structure in his life.

Professor James provided a report which referred to the maturation of the respondent's nervous system and related aspects of his personality over the lengthy period that he has been in prison and the manner in which the respondent has undertaken therapeutic programs. He identified the risk of the respondent reoffending as depending, to a not inconsiderable degree, on the propitiousness or otherwise of environmental factors.

Professor James thought that a significant risk in terms of community safety would exist if the respondent was simply to be precipitately discharged from prison without rehabilitative

assistance and the putting in place of certain restrictions. These included abstinence from all intoxicating substances.

Apart from these aspects of prohibition, Professor James identified matters that would be of considerable value in further reducing the risk to the community. These included the active provision of assistance for the respondent in obtaining and maintaining independent living accommodation in areas away from locations known for substance abuse, commercial sex and a tendency towards disrespect of the law, and the formation of more pro-social relationships than had been his tendency in the past. Professor James expressed the opinion, with which I respectfully concur, that residence in places sited within prison properties should be avoided if at all possible and kept to an absolute minimum duration if it is unavoidable. Professor James also identified the provision of active assistance in obtaining suitable employment, and he also stated that arrangements should be made for the respondent to become involved in regular psychotherapy.

Professor James developed on that point in his oral evidence with particular reference to the need for the respondent to obtain professional assistance in various aspects of his rehabilitation, and assistance in a parenting course that will help him to establish and maintain a relationship with his son.

Professor James concluded that even with a supervision order the risk of further offending would be moderately high. He said that a supervision order with little in the way of

positive rehabilitation support would mean the risk would be moderate but that if all that he suggested occurred, then the risk of further offending would be in the low to moderate range. He concluded the greater the departure from those recommendations, the greater the risk of recidivism.

I will now deal, in a rather summary fashion, with each of the relevant matters in section 13(3). I have dealt with the reports prepared by the psychiatrists under section 11 and other medical, psychiatric and psychological assessments. In terms of section 13(4)(c) and (d), the evidence does not indicate that there is a propensity on the part of the respondent to commit serious sexual offences. There is no pattern of offending behaviour in the past. There was one very serious episode of sexual offences.

The respondent has shown efforts to address the cause or causes of his offending behaviour including participation in rehabilitation programs, and his participation in those programs has had a positive effect upon him.

I have dealt with his antecedents and criminal history. Concerning section 13(4)(h), namely, the risk that he will commit another serious sexual offence if released into the community, the evidence, including the psychiatric evidence to which I have had regard, identifies that this is a moderate risk. It is, by its nature, hard to predict in a case in which the respondent committed what has been described as a one-off sexual offence so many years ago before his maturation. However, the evidence is that that risk will be

higher if he is unable to avoid substance abuse, if he is unable to form positive relationships, if he does not obtain active assistance in obtaining employment, if he does not obtain suitable accommodation in an area away from substance abuse and other nefarious activities and if he has difficulty in establishing his relationship with his son and otherpro-social relationships.

The evidence is that the respondent does not suffer from any psychopathology. He has matured and has displayed some genuine empathy towards the plight of his victim. He is in a situation where his long incarceration has carried with it an element of personal deterrence but that deterrence could be overwhelmed if he was to abuse alcohol or drugs, or both of them, and be placed in a situation in which he, despite his best intentions, is disinhibited from committing the same or a similar offence.

The question for me is not whether the respondent would benefit from the support and supervision that a supervision order would offer, particularly, if the supervision order was administered in a way that provided the positive rehabilitation benefits that Professor James identified in terms of appropriate independent living, accommodation and the provision of active assistance to gain employment and the like. It is clear that the respondent and society would benefit from that kind of support and supervision.

The issue is whether the risk of his reoffending is unacceptable in the absence of a supervision order. The fact

that the respondent presents a moderate risk, as outlined in the evidence, does not necessarily mean that he poses an unacceptable risk. However, a moderate risk can, in certain circumstances, constitute an unacceptable risk.

One can imagine circumstances in which someone with a moderate risk has established forms of support in terms of family, employment, money, and access to the best psychological and counselling services that money can buy, and there is a high degree of assurance that they will access those forms of support. The moderate risk would not be an unacceptable risk.

Here, unfortunately, the respondent does not have that kind of established network of support and has yet to establish positive relationships. That is, in part, because he was denied parole. He does have sources of support. These include a sister who lives interstate and the support of the Catholic Prison Ministry which is able to provide assistance to him for a period of six months in relation to locating suitable accommodation, accessing counselling, drug and alcohol rehabilitation, accessing benefits and other post-release services. The respondent has a caseworker who recently visited him.

Notwithstanding those sources of support, the unfortunate fact is that the respondent does not have a well-established network of support that ensures that he will be able, with a high degree of assurance, to develop positive relationships, obtain suitable accommodation, and all of the other matters

that are essential to the minimisation of the risk of reoffending.

A supervision order would serve to reinforce the respondent's commitment to remain abstinent. The respondent has shown commendable zeal in wishing to gain qualifications and has gained vocational qualifications. In seeking employment upon his release and in remaining abstinent, a condition that requires him to remain abstinent from illicit drugs and alcohol would serve to reinforce those good intentions. Apart from a supervision order serving in a coercive fashion to compel the respondent to do what he would otherwise hopefully do voluntarily, a supervision order, if appropriately administered, would tend to have the positive supportive consequences that Professor James and others have identified.

I take into account that, depending upon its terms and the manner in which it is administered, a supervision order may actually prove counter-productive to the respondent's rehabilitation and, in so doing, be inconsistent with an objective of the Act, namely, the protection of the community.

A supervision order which placed unnecessary restraints upon the respondent and which was apt to prevent him from establishing positive relationships, employment and accommodation, would leave him in a situation of isolation and in the very situation which Dr Grant and others identify as a situation that would heighten his risk of re-offending. Accordingly, I take into account that a supervision order, as well as providing appropriate supervision and support, might,

depending upon its terms and the manner in which it was administered, provide him with excess supervision and inadequate support, and be counter-productive. Whilst taking these matters into account, I consider, on balance, that without a supervision order the risk of reoffending is unacceptable.

The medical opinions before the Court do not actually answer the question that I have to answer. As important as those assessments are in terms of assessment of risk, the question that I have to decide is not one purely of risk. It is whether I am satisfied to the standard required by section 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.

The evidence persuades me that there is a moderate risk of recidivism if the respondent is released from custody without a supervision order. I consider that such a risk, in the circumstances of this case, is unacceptable.

The reports provided by the psychiatrist and their oral evidence are acceptable cogent evidence and satisfy me to a high degree of probability that the evidence justifies the making of a supervision order.

Any supervision order has to contain certain mandatory requirements. In addition, I am satisfied that there are a number of additional requirements that are appropriate to

ensure adequate protection of the community and for the respondent's rehabilitation, care and treatment.

I consider that the proposed five-year duration of any supervision order is appropriate. A lesser period of supervision might have been in order had the respondent already been receiving supervision in the community over the last two and a half years. However, one cannot dwell upon what might have been. We are faced with the fact that the respondent has not received that supervision, de-institutionalisation and rehabilitation in the community. Accordingly I consider that a period of five years is appropriate and I base that upon the considered opinions of the psychiatrists and my own assessment that a period of five years is an appropriate period during which the respondent is likely to establish positive relationships, and that a lesser period may be inadequate for him to do so.

In relation to the terms of the supervision order, a draft supervision order was the subject of consideration during the hearing by the professional witnesses and some terms of that supervision order are not in contest. I should say that the terms of the original draft, in many respects, seem to me to be entirely inappropriate for the respondent's circumstances.

The respondent, unlike some persons who are subject to this Act, is not a compulsive paedophile. He is not a paedophile at all. His sexual offending, as grave and as serious as it was, was an isolated act of sexual offending when he was immature, in a dysfunctional relationship, affected by his

resort to pornography and in a situation where he abused cannabis. He does not have a history of sexual offending and conditions that would be appropriate for someone who has a severe psychopathology are inappropriate in his case.

The Act has as its objectives the provision of orders that ensure adequate protection of the community and also that provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation. The decision to make an order under the Act, has to be guided by the objectives of the Act and the precise terms of the Act. Not only should a supervision order be preferred over a continuing detention order on the basis that 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 authorises such constraint. The terms of a supervision order should be consistent with the objectives of the Act and, in that regard, not constrain to any greater extent than is warranted by the statute, the ordinary liberty of the subject. That is not only because the liberty of the subject, upon release from prison, is an important value, in itself. There is the more utilitarian consideration that excessive restraints can be counterproductive and undermine the objective of providing adequate protection of the community and facilitating rehabilitation.

One such example is a condition that would require the respondent to disclose, upon request, to a Corrective Services Officer each person with whom he associates and to give

details of those associates. A further condition proposed by the applicant was that the respondent notify the supervising Corrective Services Officer of all intimate personal relationships entered into by him.

Freedom of association is an important human liberty. Apart from that, as Professor James amply explains in his evidence and in his report, the minimisation of risk will be achieved if the respondent is able to form pro-social relationships.

A requirement to disclose all relationships however innocent and however productive may have unintended consequences. It may deter someone in the respondent's position from actually forming those relationships for fear that, upon forming them, he will have to disclose them to the Corrective Services Office and some well-intentioned Corrective Service Officer will then take it upon himself or herself to inform the associate of the respondent's antecedents and, in all probability, bring that relationship to an end.

There would be a point in a condition that required the respondent to disclose relationships that were not pro-social, for example, if the respondent formed relationships with known criminals or, for example, outlaw bikie gangs, but the proposed condition is far wider than that.

Some of the conditions in the supervision order that I propose to make invest a high degree of discretion in Corrective Services Officers in terms of approving places of residence and approving employment. I am prepared to make orders

containing those terms on the clear understanding that the purpose of those conditions is to ensure that the respondent does not reside in areas that are known for substance abuse or are otherwise unsatisfactory towards his rehabilitation.

I am prepared to make a supervision order containing those kind of conditions on the understanding that it would be not in the respondent's interests or the community’s interests for him to gain certain kinds of employment, for example, employment in certain industries, say, the sex industry in which he may come into contact with sex workers or other people late at night in circumstances where he might, unfortunately, lapse into offending conduct.

The inclusion of these kinds of conditions is not there to provide a mandate for a Correctional Service Officer to inhibit the respondent from obtaining employment in the areas in which he is qualified or in any other area in which he is offered suitable employment.

It is not there so that a Correctional Service Officer can, officiously, disclose to an employer who has not sought this information itself, the fact of the respondent's background.

The same applies to many other of the conditions that vest a high degree of discretion in the Corrective Services Officers in relation to the daily activities of the respondent over the next five years.

It is obvious that inappropriate disclosure by Corrective Service Officers to potential providers of private or public accommodation may have the result that the respondent is shut out of available accommodation of the kind that Professor James indicates is necessary for his proper rehabilitation and the minimisation of risk. The condition that was originally proposed as condition (xix) is excessive. I accept the respondent's submission that such a condition is embarrassingly wide.

I will deal with the other contentious conditions by reference to the draft that was before me this morning rather than the revised draft. I am not presently inclined to make an order in terms of what was either paragraph (xviii) or (xxi). If there can be an appropriate order that meets the objective of requiring disclosure of inappropriate associations or which constrains what would otherwise be an untrammelled power of a Corrective Services Officer to require the respondent to disclose matters to an unidentified class of persons, then I'll consider such an order. But I am not inclined to make an order which requires the respondent to make a disclosure of the terms of his supervision order simply if he is directed by an authorised Corrective Services Officer to do so. Such a requirement may be completely counterproductive and unnecessary.

There may be circumstances in which it is entirely appropriate for the respondent to make disclosure and to be required to make disclosure, but the fact that there are such circumstances does not justify a condition which places no

constraint upon the circumstances in which a Corrective Services Officer could direct the respondent to make such disclosure.

An issue was whether there should be a complete prohibition upon the respondent consuming alcohol for the duration of the order. The respondent submitted that alcohol played no part in the commission of the index offences and that I should not be satisfied that requiring complete abstinence from alcohol is required to ensure adequate protection of the community. Dr Grant, in his report, did not favour a complete prohibition upon such consumption but was minded to limit such consumption to a moderate amount. As is apparent, what is a moderate amount would need to be the subject of a definition and during his evidence, Dr Grant identified that the .05 measure that applies in traffic situations, would be an appropriate measure. Nonetheless, Dr Grant identified, as did the other experts, that there were dangers of even moderate alcohol use. Professor James and Dr Sundin favoured complete abstinence.

On the one hand, the successful integration of the respondent into the community might be facilitated by his having a moderate intake of alcohol which is less than the amount that would give him a blood alcohol reading of .05. He might mix socially with work colleagues or friends and it would, perhaps, facilitate that social interaction if he could share a drink with them.

There is, however, the danger that if the applicant is permitted to have alcohol, he will purchase alcohol and have

it present at his place of residence. There is the risk that, despite his best intentions, he will not abstain from it or abstain to the extent limiting his consumption to one of moderation.

Although the matters are finely balanced, I consider that it is appropriate, in the circumstances, to have a prohibition upon consumption of alcohol for the duration of the supervision order, subject to the entitlement of the respondent to apply to vary that order.

I do not consider that it is appropriate that the respondent be required to disclose all intimate relationships that he forms. I have not had time to review the revised order. I indicate that I consider that although there may be some purpose in requiring disclosure of a dysfunctional relationship, the requirement to disclose all intimate relationships can be counterproductive for the reasons I have earlier given.

The fact that the respondent had a dysfunctional relationship with a woman when he was in his early twenties does not, in my view, require him to have to disclose all intimate relationships he might enter into hereafter. It would be counterproductive if he did so if it was the case that such disclosure led to such pro-social and supportive relationships being terminated.

It seems to me that conditions that require him to disclose his whereabouts would identify any persons with whom he

cohabited. The difficulty with either a requirement to disclose certain relationships or to disclose them upon request is that it may deter the respondent from forming positive relationships or from disclosing such relationships for fear that a Corrective Services Officer will bring such a relationship to an end by contacting the associate. The same applies in relation to associations with prospective employers and the like.

The terms of any final supervision order are the subject of continuing discussion between counsel. I will review the terms of the draft order which has been placed before me to which there remains a contention so far as new condition (xviii) and (xxi) are concerned. I will review that proposed order in the morning. However, subject to reviewing it and receiving any further submissions concerning the terms of the order, I intend to make a supervision order.

I am satisfied to the requisite standard that the respondent is a serious danger to the community in the absence of an order pursuant to division 3 of the Act. I will make an order that upon his release from custody, he be subject to the requirements of a supervision order until 14 November 2015. I will stand over until a convenient time tomorrow, the formulation of that supervision order.

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