SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General (Qld) v Brady* [2016] QSC 303
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **CLINTON JAMES BRADY** (respondent)
FILE NO/S:	BS No 11179 of 2006
DIVISION:	Trial Division
PROCEEDING:	Originating application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	16 December 2016
DELIVERED AT:	Brisbane
HEARING DATE:	5 December 2016
JUDGE:	Burns J
ORDER:	**The Orders of the court are that:** **1. The supervision order made on 14 April 2007 with respect to the respondent, Clinton James Brady, is rescinded.** **2. The respondent be detained in custody for an indefinite term for care, control and treatment.**
CATCHWORDS:	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 was made with respect to the respondent under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld) – where it was alleged that the respondent had contravened a requirement of the supervision order – where a warrant was issued for the arrest of the respondent pursuant to s 20 of the Act – where the applicant also sought orders with respect to the respondent under s 22 of the Act – whether the respondent contravened a requirement of the supervision order – whether the adequate protection of the community could, despite any contravention of the order, be ensured by the existing

supervision order – whether the court was obliged to rescind the supervision order and make a continuing detention order

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld), s 20, s 21, s 21A, s 22

Attorney-General (Qld) v Beattie [2007] QCA 96, cited
Attorney-General for the State of Queensland v Brady (Unreported, Supreme Court of Queensland, White J, 16 April 2007), related
Attorney-General (Qld) v Fardon [2011] QCA 111, cited
Attorney-General (Qld) v Francis [2012] QSC 275, followed
Attorney-General (Qld) v Sands [2016] QSC 225, cited
Attorney-General (Qld) v Tiers (Unreported, Supreme Court of Queensland, Douglas J, 14 November 2014), cited
Bickle v The Attorney General (Qld) [2015] QCA 263, considered

COUNSEL: J Rolls for the applicant
B Mumford for the respondent

SOLICITORS: G R Cooper Crown Solicitor for the applicant
Legal Aid Queensland for the respondent

[1] On 16 April 2007, the respondent, Clinton James Brady, was made the subject of a supervision order under Division 3 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act* 2003 (Qld). He is now before the court pursuant to a warrant issued on 19 February 2014 under s 20 of the Act by which it is alleged that he contravened that order. The Honourable Attorney-General for the State of Queensland has also brought application for relief pursuant to s 22 of the Act. By that provision, if the court is satisfied that Mr Brady has contravened the order then, unless he satisfies the court that the adequate protection of the community can, despite the contravention, be ensured by the existing order, the court must rescind the supervision order and make a continuing detention order.

[2] It was not in contest that Mr Brady contravened a requirement of his supervision order. The real issue is whether the court could be satisfied on the balance of probabilities that, despite the contravention, the adequate protection of the community can be ensured by the existing supervision order. For the reasons that follow, I am not satisfied that is so and, as such, the supervision order must be rescinded and a continuing detention order made.

The supervision order

[3] Mr Brady is 43 years of age.

[4] On 8 May 2000, he pleaded guilty in the District Court at Brisbane to one count of taking a child for immoral purposes, one count of deprivation of liberty, two counts of common assault, four counts of indecent treatment of a child under the age of 16 years and two counts of assault occasioning bodily harm. He was sentenced by his Honour Judge Pratt

QC to an effective head sentence of seven years imprisonment. No recommendation for release on parole was made.

[5] The offences to which Mr Brady pleaded guilty were committed during a single episode of offending. His victim, a 13-year-old girl, lived next door to Mr Brady. Until that point in time, Mr Brady had never before come to the adverse attention of the authorities. He was then aged 27 years.

[6] The circumstances of the offending were summarised by White J at the time when the supervision order under consideration was made. Her Honour said:

> "The offences were committed against his 13 year old neighbour whilst she was home alone on 17 October 1999. She was left alone for a relatively short period by her parents, who were taking another child out to a social engagement. The child was known to Mr Brady as his next door neighbour, but it would appear apart from that there was no other particular connection between them. She was induced to go into his home on the pretext of discussing something to do with scouting, with which Mr Brady was connected. Mr Brady was then married and had a three-month old baby daughter, but was alone in the house.
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> The offences, which are set out in detail in the material, were extraordinary inasmuch as he confined the child by the use of handcuffs, ducting tape, perhaps rope, and restrained her. He then committed a number of assaults upon her, including two acts of digital penetration of her vagina. He moved her to several places in his house. She asked to be released on many occasions and eventually he removed the tape from her face, causing some slight injuries, and allowed her to go, hopeful that she would not report these offences. Not surprisingly she immediately told her parents, and the police were contacted. Mr Brady had no previous criminal history of any kind. Neither was he a person who abused drugs or alcohol."[1]

[7] It is relevant to observe that the absence of a recommendation for release on parole was a deliberate and, with respect, entirely appropriate exercise of the sentencing discretion by the learned sentencing judge. His Honour explained why that particular sentencing approach was taken:

> "The prisoner's behaviour was so serious and of such a cruel contrived and treacherous nature that it comes as something of a surprise to learn that he has reached 27 years of age without any previous convictions. Consequently, one is obliged to take that into account in the usual way, together with his pleas and his cooperation with the authorities, notwithstanding the very concerning aspect that he brought his victim to his ready restraint equipment and then proceeded to carry her about from place to place on his property while restrained, interfering with her this way and that at each place. It is as though he was acting out sexual fantasies, but no expert evidence was called which would categorise or explain his behaviour, so one is left merely to wonder at it.
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> Perhaps the prison authorities will be able to have him examined over the years ahead and report to the parole authority. I do not feel able to make a recommendation for parole. The psychiatrist, Dr Grant, provided a report, Exhibit 4, which was not helpful in that regard. He, at least, however, considered the possibility that Brady is suffering from a quite serious sexual deviation with sadistic thoughts and impulses, but seems to reject that possibility on grounds which I found quite unconvincing.

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1 *Attorney-General for the State of Queensland v Brady* (Unreported, Supreme Court of Queensland, White J, 16 April 2007).

> I shall take into account all the mitigating factors which have been relied upon in the head sentence and leave it to others to decide the question of parole at a later time. I would expect that the services of an experienced psychologist as well as a psychiatrist would be employed in that regard."[2]

[8] Under the sentences to which I have just referred, Mr Brady was due to be released on 6 May 2007. However, on 20 December 2006, the Attorney-General filed an application seeking orders under Division 3 of Part 2 of the Act. That application was decided by White J on 14 April 2007. Her Honour determined that Mr Brady was a serious danger to the community in the absence of a Division 3 order, but was satisfied that the adequate protection of the community could be ensured by his release subject to a supervision order for a duration of 10 years, that is, until 6 May 2017.

[9] In determining the application, her Honour made the following observations:

> "Mr Brady is due to be released from custody probably on 4 May 2007. Justice Philippides ordered psychiatric assessments pursuant to the Act on 22 January 2007, and as a consequence of that order the reports of the three medical specialists to which I have made reference were made. The three specialists have concluded by use of both static and dynamic testing that Mr Brady constitutes a moderate risk of committing a serious sexual offence if released from custody without a supervision order being made. I accept the opinion of those psychiatrists, which varies very little indeed in the analysis of the subject offence, as well as the clinical assessment of Mr Brady. Part of the problem seems to have been, and continues to be, a real difficulty for Mr Brady to explore the sexual fantasies which led to the offending conduct. He has started to participate in the Sex Offenders Treatment Programme, but was unable to participate in an appropriate way in that programme. He had difficulty in articulating his feelings, or indeed empathising with the victim in a more deep way than simply a relatively shallow expression of regret.
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> …
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> Professor Nurcombe particularly articulated in his report that there was no benefit in maintaining Mr Brady in prison, and Dr Beech and Dr Grant agreed. They also agreed that Mr Brady would not benefit from group oriented sex offender treatment, and no therapeutic purpose could be gained from forcing participation in such a programme. He is most likely to benefit from a one-on-one relationship with a skilled therapist, particularly a psychotherapist who can engage with Mr Brady in exploring possible explanations for his conduct. This will take some time. Each of the specialist psychiatrists was of the view that over time it may be appropriate and beneficial for Mr Brady to be able to participate in the group sex offenders treatment programme, but that would be dictated by his progress through his one-on-one therapy.
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> The target group that has been identified as at risk are post pubertal females in the 12 to 17 year old age group, and the proposed orders have been modified to reflect that group. On the material then before the Court I have come to the conclusion that Mr Brady is a serious risk of offending in the way envisaged by the legislation, unless he is subject to a control order."[3]

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2 *The Queen v Clinton James Brady*, District Court, Brisbane, Sentencing Remarks of Pratt QC DCJ, 8 May 2000.

3 *Attorney-General for the State of Queensland v Brady* (Unreported, Supreme Court of Queensland, White J, 16 April 2007).

[10] It is also relevant to note the admissions made by Mr Brady during his assessments with respect to an incident that occurred when he was a teenager. These were described by White J as follows:

> "In the course of his assessments he made admissions of a much less serious occasion when he was approximately 14 or 15 years of age where he induced a girl that he knew to come to his home and he assaulted her by touching her on her clothes against her breasts, and confined her for a very short period with his arms. A complaint was made to the girl's parents and he spoke with a counsellor, but nothing further was done."

Contravention hearings under the Act

[11] Section 22 of the Act provides as follows:

> "**22 Court may make further order**
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> (1) The following subsections apply if the court is satisfied, on the balance of probabilities, that the released prisoner is likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order (each the existing order).
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> (2) Unless the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by the existing order as amended under subsection (7), the court must—
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> (a) if the existing order is a supervision order, rescind it and make a continuing detention order; or
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> (b) if the existing order is an interim supervision order, rescind it and make an order that the released prisoner be detained in custody for the period stated in the order.
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> (3) For the purpose of deciding whether to make a continuing detention order as mentioned in subsection (2)(a), the court may do any or all of the following—
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> (a) act on any evidence before it or that was before the court when the existing order was made;
>
> (b) make any order necessary to enable evidence of a kind mentioned in section 13(4) to be brought before it, including, for example, an order—
>
> (i) in the nature of a risk assessment order …
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> (4) To remove any doubt, it is declared that the court need not make an order in the nature of a risk assessment order if the court is satisfied that the evidence otherwise available under subsection (3) is sufficient to make a decision under subsection (2)(a).
>
> (5) If the court makes an order in the nature of a risk assessment order, the psychiatrist or each psychiatrist examining the released prisoner must prepare a report about the released prisoner and, for that purpose, section 11 applies.
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> (6) For applying section 11 to the preparation of the report—
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> (a) section 11(2) applies with the necessary changes; and

(b) section 11(3) only applies to the extent that a report or information mentioned in the subsection has not previously been given to the psychiatrist.

(7) If the released prisoner satisfies the court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order or interim supervision order, the court—

(a) must amend the existing order to include all of the requirements under section 16(1) if the order does not already include all of those requirements; and

(b) may otherwise amend the existing order in a way the court considers appropriate—

(i) to ensure adequate protection of the community; or

(ii) for the prisoner's rehabilitation or care or treatment.

(8) The existing order may not be amended under subsection (7)(b) so as to remove any requirements mentioned in section 16(1)."

[12] In *Attorney-General (Qld) v Sands,*[4] I made the following observations about the onus of proof at contravention hearings:

"[4] On the final hearing pursuant to s 22 of the Act, the court may make a further order but only if satisfied, on the balance of probabilities, that the prisoner is 'likely to contravene, is contravening, or has contravened, a requirement of the supervision order or interim supervision order': s 22(1). Because the Act confers a right on the Attorney-General to appear at the final hearing (and any earlier hearing pursuant to s 21 of the Act) to make submissions, call evidence and test the evidence before the court (s 22A), the filing of an application by the Attorney-General to be heard on what is effectively a final hearing on the return of the warrant is not strictly necessary. However, in practice, an application is invariably filed on behalf of the Attorney-General and served on the prisoner. That is a commendable practice because, by doing so, the prisoner is given clear notice of the orders that will be sought by the Attorney-General at the final hearing as well as the factual basis for the alleged contravention or likely contravention. Furthermore, by doing so, the Attorney-General takes on the onus of establishing that the prisoner is likely to contravene, is contravening, or has contravened a requirement of the relevant supervision order, something about which the Act is silent.

[5] The Act is not however silent on the question of who bears the onus if the court is satisfied that the prisoner is likely to contravene, is contravening, or has contravened a requirement of a supervision order. In that event, the onus is cast on the prisoner to satisfy the court, again on the balance of probabilities, that the adequate protection of the community can, despite "the contravention or likely contravention", be ensured by the terms of the existing supervision order and any other requirements the court considers necessary in order to comply with s 16(1) of the Act or that are appropriate to ensure adequate protection of the community or for the prisoner's rehabilitation, care or treatment: s 22(2) and s 22(7)."[5]

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4 [2016] QSC 225.

5 Ibid [4]-[5].

[13] Given the imminent expiration of the existing supervision order (6 May 2017), one question that arises in this case is, if Mr Brady satisfies the court that the adequate protection of the community can be ensured by his re-release on supervision, whether the term of that order may be extended. In my opinion it can. The court is empowered by s 22(7) of the Act to amend the existing order in "a way the court considers appropriate" to, relevantly, ensure the "adequate protection of the community" (s 22(7)(a)) or "for the prisoner's rehabilitation or care or treatment" (s 22(7)(b)) and I can see no reason why, in an appropriate case, such an amendment cannot be made so as to achieve one or more of those objectives. Indeed, there are sound reasons why the provision should be construed in that way, as Byrne SJA explained in *Attorney-General (Qld) v Francis*:[6]

> "The concession that s 22(7)(b) confers a power to extend the duration of a supervision order looks to be correct. First, the statutory authority is to amend 'the existing order', not just its 'requirements': contrast s 19(1). Secondly, the Act posits two regimes, either of which can result in an extension. One is enlivened by contravention, or likely contravention, of a supervision order. Section 19B, on the other hand, may be invoked, and only by the Attorney-General, to seek a 'further' – that is, a new – supervision order even where no contravention has happened or is likely. Thirdly, an interpretation of s 22(7)(b) that precludes an amendment to extend duration produces a consequence so odd that it is unlikely to have been intended: if the Attorney-General does not apply under s 19B for a new supervision order and s 22(7)(b) does not authorise an extension of an existing order, there will be cases – indeed, the present is an example – where the prisoner must be ordered to continuing detention where extended supervision, if it could be ordered, would suffice to ensure adequate protection against the risk of a 'serious sexual offence': see s 13(2)."[7]

[14] Thus, I proceed on the assumption that, if Mr Brady satisfies the court that the adequate protection of the community can be ensured by his release on supervision, the term of his existing supervision order may be extended.

Notice to eligible persons

[15] By s 21A of the Act, as soon as practicable after the court sets a date for the hearing for making its final decision under s 22, the chief executive is required to give written notice of the issue of the warrant and the hearing date to the actual victim of the serious sexual offence for which the prisoner was serving a term of imprisonment or, if the victim is under 18 years or lacks legal capacity, the victim's parent or guardian.

[16] The hearing notice must invite the eligible person or persons to give to the chief executive a written submission stating the person's views about any further order or conditions of release to which the prisoner should be subject.[8] If a submission is received from an

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6 [2012] QSC 275. And see *Attorney-General (Qld) v Tiers* (Unreported, Supreme Court of Queensland, 14 November 2014) where Douglas J extended the term of the supervision order pursuant to Section 22(7) of the Act.

7 This passage was considered by the Court of Appeal in *Bickle v The Attorney General for the State of Queensland* [2015] QCA 263, however, although the Court held that s 22(7) of the Act does not empower a court to shorten the period of, or discharge, a supervision order, the question whether the period could be extended was expressly left open: [25] per Fraser JA.

8 Section 21A(2).

eligible person before the hearing date, the Attorney-General is obliged to place it before the court.[9]

[17] In accordance with the requirements of these provisions, on 25 July 2016, the chief executive gave a hearing notice to an eligible person in this case. However, no submission has been received from that person.

The alleged contravention

[18] It will not surprise that the supervision order in this case contained a condition prohibiting Mr Brady from committing "an offence of a sexual nature during the period of the order".

[19] On 19 February 2014, officers from the Queensland Police Service and the Australian Federal Police executed a search warrant at Mr Brady's home. They located a memory card from a camera that contained video footage which was "date stamped" 12 February 2013. The footage depicted an 11 year old female undressing and then entering a shower inside a bathroom. A second file depicted the same child getting out of the shower and drying herself. The child is Mr Brady's second cousin and, at the time of the offence, she resided with Mr Brady's aunt in a house situated on the same property where Mr Brady resided, albeit in a different house. The footage was obtained by Mr Brady through the use of a "spy cam" which Mr Brady covertly placed in a room adjoining the bathroom.

[20] Mr Brady was subsequently arrested and charged with the offence of recording a visual image of a child under the age of 12 years without legitimate reason. He was remanded in custody. On 17 February 2015, Mr Brady pleaded guilty to this offence in the District Court at Maryborough and was sentenced to a wholly suspended period of imprisonment of 12 months, the operational period for which was two years. Plainly, the sentencing judge, her Honour Judge Sheridan, took into account the time Mr Brady had been held in custody since his arrest. When passing sentence, her Honour remarked:

> "The facts as set out in the agreed statement of facts which is before the court as exhibit 5. By reference to the agreed statement of facts, you have admitted to having placed a camera in the residence of your cousin and having recorded that camera images of your cousin's 11 year old granddaughter undressing, getting into and out of the shower and then drying herself off. Those images were recorded on a memory card of your digital camera.
>
> The granddaughter was, in fact, living with your aunt at the time. It would seem that, from time to time, you visited your aunt in her home. The offending occurred on one of those visits. The camera was set up in an adjoining room to the bathroom and the images were obtained through the slight opening in the bathroom door."[10]

[21] On the hearing of this application it was conceded on behalf of Mr Brady that, by his plea of guilty, the court should be satisfied that he breached a requirement of his supervision order. The evidence is in any event overwhelmingly in favour of a proved contravention of the condition of his supervision order to which I have referred. I therefore find that Mr Brady contravened that condition.

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9 Section 21A(4).

10 *The Queen v Clinton James Brady*, District Court, Maryborough, Sentencing Remarks of Sheridan DCJ, 17 February 2015.

The evidence

[22] Following the issue of the warrant pursuant to s 20 of the Act, Mr Brady was brought before the court and then detained in custody. He has remained in custody ever since although, from 17 February 2015, he has of course been serving the term of imprisonment imposed in the District Court at Maryborough that day.

[23] This contravention hearing was originally set down for 25 May 2015. For that purpose, Mr Brady was assessed by two psychiatrists, Prof Nurcombe and Dr Beech. In their written reports,[11] each expressed reservations about the extent to which Mr Brady had responded to attempts to treat him within the prison system. Dr Beech, in particular, expressed the opinion that Mr Brady would benefit from undertaking the High Intensity Sexual Offenders Program. Accordingly, when the matter came on for hearing on 25 May 2015, an application for an adjournment was successfully made so as to enable Mr Brady to undertake that program.

[24] Subsequently, between 28 August 2015 and 29 August 2016, Mr Brady undertook the High Intensity Sexual Offenders Program. In total, he received 348 hours of treatment over 129 sessions and a completion report dated 13 September 2016 was produced in relation to his participation in the program by the Program Delivery Officer from the Wolston Correctional Centre.

[25] According to the completion report, Mr Brady was initially reluctant to engage with the program. He had negative attitudes towards Corrective Services and specifically with respect to his management under the supervision order. He "externalized responsibility" for his situation and his offending but, over time, he became slightly more open and reflective about his goals. Mr Brady eventually began to talk more openly about his thoughts and feelings in relation to his offending but, it must be said, not to any great degree. Mr Brady did, however, speak at length about his resentment towards his ex-wife for what he perceived was her control over him. Mr Brady said that he hoped that his marriage would end as a result of the offence. He said that he had planned to commit it about two months before it happened. Mr Brady found it difficult to discuss the 2013 offence. He was highly resentful towards Corrective Services and considered that he had received limited opportunities due to the strictures of the supervision order. He said that he had purchased a video camera with the intent of filming his adult cousin (a 50-year-old woman) undressing, and he maintained that it was she who was the intended victim. He did not identify any sexual attraction to children. He gave vague, defensive answers when discussing the 2013 offence, taking little responsibility and appearing to have little insight into his thoughts and feelings associated with this offending. At times, Mr Brady also spoke disparagingly about previous program facilitators and other female staff with whom he has interacted in prison. He regarded the supervision order as having created a great deal of stress for him and identified numerous examples of what he perceived to be injustices in case management. His lack of trust in others was thought by the facilitators to be a barrier during most of his verbal presentations. Mr Brady identified his high risk factors as isolation, lack of control, avoidance coping, and unmet sexual needs. He had little ability to discuss what he would do about these matters. He planned to start his business again, obtain a car, engage in online gaming, and join a community group to expand his social network. He said that he would engage with a psychologist following

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[11] Prof Nurcombe (5 April 2015); Dr Beech (26 April 2015).

release to the community, but thought that there would be little confidentiality in such a relationship. Lastly, on exit, Mr Brady was regarded by the program facilitators as having outstanding treatment needs in relation to deviant sexual interests.

[26] Once the completion report was received, it was forwarded to Prof Nurcombe and Dr Beech for their consideration. Mr Brady was also interviewed again by both psychiatrists and, at the hearing before me, both gave oral evidence. Although I by no means exclude from my consideration the other evidence before me, it is reasonable to observe that the main focus of the contest at hearing was upon the opinions expressed by Prof Nurcombe and Dr Beech in their most recent reports as supplemented by the oral evidence.

Professor Nurcombe

[27] Prof Nurcombe interviewed Mr Brady for the purpose of his last report on 17 November 2016. He noted from the completion report for the High Intensity Sexual Offenders Program that Mr Brady had been assessed on exit as having outstanding treatment needs with respect to his deviant sexual interests. Nonetheless, Mr Brady told Prof Nurcombe that he found the program to be "helpful" and that he was able to better express his thoughts and feelings. However, this remained a difficult task for him. He told Prof Nurcombe that he communicates better with people now and has a better understanding of his problems and risk factors. Professor Nurcombe diagnosed Mr Brady as suffering from (1) a paraphilia involving confinement/bonding/rape but one which manifests through a need to control the victim rather than to cause harm or humiliation (a diagnosis of sadism was not made); (2) possible paedophilia or hebephilia; (3) personality disorders with schizoid and avoidant features; and (4) hypertension.

[28] Prof Nurcombe administered a number of actuarial instruments to assist in the assessment of Mr Brady's risk of sexual reoffending:

(a) On the Static 2002–R, Mr Brady achieved a score of 5/13, indicating a moderate risk of sexual reoffence with risks of reoffending in five and 10 years being 17.3% and 24.5% respectively;

(b) On the Stable 2007, Mr Brady's treatment needs were identified as: a lack of significant social influences; poor capacity for relationship stability; poor problem solving skills; possible sexual preoccupation; use of sexuality to cope with psychological problems; and deviant sexual preference. Other problems were noted to a lesser degree, being: hostility towards women; lack of concern for others; intermittent negative emotionality; and ambivalence concerning supervision;

(c) On the Risk for Sexual Violence Protocol, it was noted that Mr Brady can be considered as "at chronic risk of sexual reoffending", with the sexual offences being diverse (sexual touching; bondage and digital rape; possible access to child exploitation material; and filming naked underage females).

[29] Prof Nurcombe remarked that Mr Brady minimises and tends to deny the extent of sexual violence involved in his past offending. He did, however, note that there had been no escalation of sexual violence between the 1999 offences and the 2013 offence. He believes that Mr Brady has difficulties with self-awareness, coping with stress, planning, treatment and, to some degree, supervision.

[30] According to Prof Nurcombe, the actuarial analyses suggest Mr Brady has a moderate or moderate to high risk of sexual reoffending. However, Mr Brady's "inability to disclose his feelings and give a true account of his offences, and his tendency to obfuscate with vagueness and denial, make it impossible to provide a clear evaluation of risk". He then added:

> "I am concerned that, despite twenty months of group psychotherapy and several years of individual psychotherapy, he is little closer to understanding the motivation for his sexual offending than he was in 1999. There is a possibility that the most recent offence (i.e., the filming of a naked 11-year-old girl) was premonitory to a more serious offence."

[31] That said, Prof Nurcombe did think that Mr Brady had done "better" in the High Intensity Sexual Offenders Program than he had when he had previously attempted a program of that type in 2002 and 2003. However, although there has been some improvement in his ability to be frank, Prof Nurcombe considered that Mr Brady remains "prone to denial, minimisation and avoidance with regard to his offences and fantasy life". He doubted whether further group therapy or individual psychotherapy would advance Mr Brady's self-understanding any further.

[32] In oral evidence, Prof Nurcombe agreed that the 2013 offence increases the objective likelihood of Mr Brady reoffending. Further, he did not consider that Mr Brady's completion of the High Intensity Sexual Offenders Program had made any difference to the extent to which he presented as a risk. Although Prof Nurcombe noted that the facilitators of the program had detected some improvement in Mr Brady's capacity to be frank about what had occurred in relation to his offending, when Prof Nurcombe interviewed him he "could see very little difference from when [he had seen] him prior to" Mr Brady undertaking the program.

[33] Prof Nurcombe explained that Mr Brady has great difficulty in establishing intimate relationships with other people and finds "other people who try to intrude … into his private life as extremely painful and difficult". His response is to "avoid directness", to "minimise and deny" and to sometimes "obfuscate … the truth". He doubted that any further individual psychotherapy or group therapy would be helpful to Mr Brady. He expressed the opinion that the making of a supervision order would "add further to [Mr Brady's] sense that he is being controlled and in [an] unsympathetic environment". If that occurs, "his tendency is to break out of that control by controlling somebody else". Prof Nurcombe believes that this may very well have occurred in 1999 when, Mr Brady's "sense of being controlled in an unhappy marriage" caused him to break out of that marriage by "half deliberately … engineering [the offences] against the neighbouring girl".

[34] In Prof Nurcombe's opinion, if Mr Brady feels controlled by the conditions of a supervision order, that might lead to "further offending, probably of a surreptitious type". The only way to avoid this would be for those responsible for administering the supervision order to do so in a "sensitive and helpful way". If that can be achieved, a supervision order would reduce his risk of reoffending. If on the other hand, Mr Brady perceived those administering the order to be "restrictive and intrusive, it would increase the risk". In that regard, Prof Nurcombe confirmed that Mr Brady is "treatment resistant" and prone to "denial, minimisation and avoidance with regard to his offences and fantasy

life". He expressed the view that it would be "very difficult for [Mr Brady] to be frank and open with a supervisor".

[35] Prof Nurcombe was asked whether he supported or opposed release on supervision. He replied, "In balance, I support it, but weakly".

[36] In cross-examination, Prof Nurcombe accepted that Mr Brady had resided in the community under the supervision order for several years without incident (until 2013), that he was a hard-working man and that he had engaged in psychological therapy as required. Furthermore, after the 2013 offence, it is possible that Mr Brady "took fright" and realised that this was a "very grave mistake". Thereafter, he attempted to make contact with adult women through Internet dating sites. It was therefore possible, in Prof Nurcombe's opinion, that Mr Brady has developed some degree of insight into his offending. Otherwise, Prof Nurcombe accepted that, in this particular case, a supervision order would not operate as an "early warning system" so that any actual offending could be foreseen and avoided; future offending could be planned and carried out without those responsible for supervising Mr Brady becoming aware of his plans.

Dr Beech

[37] Dr Beech also felt that Mr Brady had, as a result of his participation in the High Intensity Sexual Offenders Program, made "some gains" in the sense that he was now able to articulate some of his thoughts and feelings. However, Dr Beech was uncertain of the extent to which Mr Brady had developed any clear strategies to manage the frustrations that he will, if released on supervision again, be likely to experience. He considered that Mr Brady will again find supervision restrictive and that this will cause resentment.

[38] Dr Beech considered that the 2013 offence represented an increase in Mr Brady's actuarial risk. For example, as a result of that offence, his Static-99 score had increased from 2 to 5 which places him in the category of moderate-high risk of sexual reoffending. On the Risk of Sexual Violence Protocol, the number of dynamic factors for reoffending include: persistence; some diversity; physical coercion; problems with self-awareness; problems with coping; likely problems with child abuse; sexual deviance; problems with intimate relationships; problems with treatment; and problems with supervision. On the other hand, Dr Beech also recognised a number of positive factors such as employment, lack of substance abuse, lack of psychopathy and a lack of non-sexual criminality.

[39] Dr Beech opined that Mr Brady is a "moderate-high risk to high risk of sexual reoffending" if released without supervision. He considered that a supervision order would reduce that risk, but it is "difficult to know" to what extent this would occur. Indeed, the restrictions of a supervision order might cause frustration and add to the risk. It was concerning to Dr Beech that "there may be no outward prelude to the offending".

[40] Dr Beech expressed the following conclusions:

> "Clinton Brady is a 43-year-old divorced man who was convicted in 2015 on one count of indecent treatment of a child. He had placed a spy camera in the bathroom in the house of his neighbouring aunt in 2013. In 2014 police serendipitously found [a] camera and located on the SD card two video clips of an 11 year old girl who had been visiting the property. Mr Brady at the time was under a supervision order following his release from prison in 2007. He had been convicted in 2000 of the assault and indecent assault of a 13 year old neighbouring female child whom he had

lured into his house, bound and taped, indecently touched and digitally penetrated repeatedly. He has subsequently disclosed that in his adolescence he had briefly assaulted a female peer.

These three episodes have in common that they have occurred at times when Mr Brady has felt that he has lost control over his life, and when he has felt resentment and had a sense of grievance about the way he was being treated, and when he had a sense that he had lost personal efficacy. In relation to the 2000 conviction, he has said that to some extent it offered him an escape from his circumstances (he would be arrested), while in relation to the 2015 conviction, he has said that [at] the time he did not care if he returned to prison (prison in fact had offered more socialisation). The last two convictions have other parallels. Both involved neighbouring female children, although Mr Brady now asserts that he had in 2013 wanted to film the adult occupant of the household. Concerningly, in both episodes there had been little to indicate that at the time Mr Brady was likely to offend. In part this is likely to be because, while he experiences frustration and resentment, he does not articulate this well and he has few strategies and skills to manage these negative emotional experiences. Instead, it would seem that he uses sex as a way of coping, and to gain a sense of control. It is difficult to be sure, but I think it is likely that voyeurism plays some role, and that the offending is preceded by fantasy. The 2000 offences were clearly planned in advance, and there are specific elements to suggest that sadism and bondage fantasies played a role. The placement of a spy camera in 2013 indicates planning as well.

He is one of a small number of people who have committed a sexual offence while under close monitoring and supervision, and while receiving specific and targeted individual psychological treatment. On the one hand, the offending this time did not involve a hands-on contact offence. The activity had occurred, and presumably ended, a year or so before he was detected. By that time, he had made some progress by developing social contacts through the online gaming community. On the other hand, despite supervision, he had been able to engage in covert offending of a worrying nature. It is likely that the offences again reflected his negative emotional state at the time, his use of sex as a way of coping, and his isolated and lonely state.

He has now completed a high intensity sexual offender program. I think he has made some gains through this, that he is better able to articulate some of his thoughts and feelings. However, there are clear limitations to this, and I am uncertain to what extent he has developed any clear strategies to manage the frustrations that he is likely to experience once he is released again. Instead, I think that it is likely that he will again find the supervision order is restrictive, and he will resent this.

…

It is my opinion that Mr Brady is at moderate-high to high risk of sexual reoffending if he is to be released into the community without supervision. It is possible that on release he might return to his residence, and be supported by his family. He will return to his employment. Without supervision, and without restrictions, he will be able to socialise more freely and pursue his outdoor activities more easily. He will use this to deal with stress, and he will feel less isolated and lonely. With the passage of time, social outlets, and possibly the use of online dating sites, he will find a suitable and amenable female companion, and this will meet his sexual needs. However, he has in general struggled to do this in the past, and relationships have always been difficult for him, and ultimately I think that his limited self-awareness and avoidance, and his tendency to keep his thoughts to himself, will lead to stresses and difficulties for him. He will then seek to use sex as a way of coping. This might be through pornography, but eventually this will not be enough for him, and he will

> start to fantasise. The risk is that he will act on his fantasies, and while this might be through some form of voyeurism or covert filming, I believe that there is a risk that he will commit a contact offence.
>
> The concern is that the contact offence would involve a vulnerable female child. The offence itself could involve violence and physical coercion. The thought of arrest and incarceration may not be a deterrent, and they may in fact reflect an escape from his stressful living circumstances.
>
> Of concern is that there may be no outward prelude to the offending.
>
> In my opinion a supervision order would reduce that risk. It is difficult to know though to what extent it would reduce the risk. The restrictions of a supervision order might cause frustration, and might add to the risk. But, a supervision order would ensure ongoing psychological counselling and oversight, so that caseworkers could be alerted to deterioration in Mr Brady's mental state or thinking, and interventions could be undertaken.
>
> Much though would depend on close monitoring and supervision. This would also entail significant restrictions around his contact with children, and, unfortunately, restrictions on social venues that he might attend.
>
> I would recommend ongoing individual psychological treatment, and further group based therapy. He would need to continue to work on self-awareness and stress management. Pornography use, and other signs that he is using sex to cope, would need to be investigated.
>
> Supervision should involve GPS monitoring, and he would need to account for his travel.
>
> Under these circumstances, given the new offending, 1 believe that the supervision order should be extended for at least five years."

[41] In oral evidence, Dr Beech expressed the opinion that, based on the nature of the 1999 offences, there is a "significant risk that Mr Brady suffers from sexual sadism" and that, whether his condition met the criteria for sadism or not, he suffers from a "serious paraphilia". Dr Beech considered it to be important to keep in mind that the 2013 offence occurred whilst Mr Brady was under supervision and receiving psychological therapy. However, since that time, Mr Brady has completed the High Intensity Sexual Offenders Program and, as a result, has a somewhat increased level of insight and knowledge regarding his offending. On the other hand, it has continued to be "very difficult to explore the nature of the offending and the pathway" because of Mr Brady's reluctance to express his feelings in that regard. To Dr Beech, it did not seem that Mr Brady had "gone the next step" so as to be in a position to apply strategies to his risk of reoffending if released. Added to that reservation was the concern on the part of Dr Beech that, over time, Mr Brady will start to resent the "control and restrictions" imposed by a supervision order with the possible consequences discussed in his written report.

[42] Dr Beech elaborated on the opinion expressed in his report to the effect that there may be no outward prelude to any future offending in this man's case. In the case of many offenders a supervision order may operate as something of an "early warning system", so that steps can be taken by those managing a prisoner to curb his behaviour before it translates into offending. However, the same could not be said in the case Mr Brady. Dr Beech referred to the observations made by his Honour Judge Pratt QC at the time of sentencing Mr Brady for the 1999 offences to the effect that this was "a married man,

working, suddenly one day [abducting] a girl from next door", as well as to the circumstances of the 2013 offence which occurred without being detected until 12 months later. Both episodes of offending were surreptitious and involved a degree of planning. No forewarning accompanied either episode. As against that, Dr Beech noted that there had been no escalation in the type of offending, in the sense that the 2013 offence was "hands off" compared to the physical abduction that took place in 1999, although in that regard I observe that the child who was the subject of the footage taken in 2013 moved away to live with her grandmother subsequent to the filming.

[43] On the question of risk, Dr Beech confirmed his opinion that Mr Brady's unmodified risk of reoffending was "moderate high" but that it "could be higher". In Dr Beech's opinion, the "worst case" would be the maintenance of a "significant deviant fantasy life" at a point where Mr Brady:

> "[Feels] that his life's out of control and he wants to act on it and eventually he would get to the point where he thinks I don't really care what happens to me now, if I go back to jail, I go back to jail. Life couldn't be any more miserable than it is now and he will act on it".

[44] Dr Beech was also of the opinion that a supervision order may operate to increase the risk of reoffending in this case because Mr Brady may again resent being controlled. If he then starts to resent the supervision order, he will "internalise" that emotion and, if that occurs:

> "One of the ways he manages, I think, negative emotional experiences is to become sexually preoccupied either by viewing pornography or going on online dating sites or things like that, but eventually I think it would enliven whatever fantasy it was back in 2000.
>
> …
>
> He just festers and ruminates about it. He clearly hasn't groomed any of his victims. He has acted out of the blue, and substances haven't played a role."

[45] Unlike Prof Nurcombe, Dr Beech considered that Mr Brady could benefit from future treatment in the form of "targeted individual therapy".

[46] In the end, Dr Beech agreed that, although he had expressed the opinion in his report that a supervision order would reduce the risk in this case, he was unable to say by what extent. Importantly, that expression of opinion was conveyed with the caveat that, under the influence of a "negative emotional experience" such as that discussed immediately above, the risk could increase under a supervision order. Dr Beech could neither support nor oppose Mr Brady's release on supervision.

[47] Both psychiatrists expressed the opinion that, if the court decides to re-release Mr Brady on supervision, the order will need to be extended. Additional conditions, too, would need to be incorporated, and these were collected in a draft supervision order that became an exhibit in the proceeding.[12]

[48] There is one last evidentiary issue. Contrary to some of the evidence in the case, it will not be the position if a continuing detention order is made that all treatment options

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12 Exhibit 4.

available to Mr Brady in custody have been exhausted. To the contrary, one-on-one psychological treatment will be provided to Mr Brady in custody if requested. In that regard, counsel who appeared for Mr Brady at the hearing confirmed that, if a continuing detention order is made, Mr Brady will make that request.

Which order?

[49] Having already found that Mr Brady contravened a condition of his supervision order, the onus is on him to satisfy the court on the balance of probabilities that, notwithstanding the contravention, the adequate protection of the community can be ensured by his re-release on the existing order, or on a supervision order amended under s 22(7) of the Act. In order to discharge that onus, the court must be satisfied, on all the evidence, that a supervision order will be "efficacious in constraining [Mr Brady's] behaviour by preventing the opportunity for the commission of sexual offences"[13] or, expressed another way, that the likely effect of a supervision order will be to reduce the opportunity for Mr Brady to engage in a serious sexual offence against a child to an "acceptably low level".[14]

[50] For the reasons I have already expressed as to the operation of s 22 of the Act and the evidence of both psychiatrists, I proceed on the basis that, if Mr Brady is to be re-released on supervision, the existing order will need to be extended for a term, in my view, of 10 years and, further, it will need to incorporate each of the further conditions incorporated in Exhibit 4.

[51] That said, it is to be observed that Mr Brady was on supervision for almost six years without breach. Indeed, a further year elapsed before his 2013 offence was discovered. When on supervision, he was apparently working hard and developing some social support. He did not abuse alcohol or any illicit substances. He completed the High Intensity Sexual Offenders Program. Indeed, without the contravention constituted by the 2013 offence, the risk assessments offered by the psychiatrists might well have been different. However, in that regard, it should not be overlooked that Mr Brady's performance on the High Intensity Sexual Offenders Program, whilst complete in a participation sense, was not such as to fully address his treatment needs. His engagement with the facilitators, like his engagement with both psychiatrists, was characterised by a marked reluctance to disclose his thoughts and feelings about, or give a true account of, his past offending. Indeed, Mr Brady's approach has been to minimise and deny the extent of his offending and, at times, to obfuscate. Although Mr Brady has probably developed a slightly greater degree of insight than he had before undertaking the High Intensity Sexual Offenders Program, he has some distance to go in my opinion before he has developed sufficient insight to construct clear strategies to manage the frustrations that he is likely to experience when on supervision.

[52] Furthermore, the 2013 offence is disturbing. It involved a considerable degree of planning and, in its commission, the adoption of surreptitious means. Although described as a "no contact" offence, the victim was even younger than the victim in 1999 and quite fortuitously moved away to live with her grandmother prior to the offence being detected. I agree with the observation made by Prof Nurcombe that there exists a distinct possibility that his offending was "premonitory to a more serious offence."

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13 See *Attorney-General (Qld) v Fardon* [2011] QCA 111 at [29] (Chesterman JA).

14 See *Attorney-General (Qld) v Beattie* [2007] QCA 96 at [19] (Keane JA).

[53] When regard is had to the circumstances of the incident when Mr Brady was a teenager, the extreme nature of the offending in 1999 and the offending detected in 2014, it does not surprise that both Dr Beech and Prof Nurcombe approached the expression of any opinion about Mr Brady's release on supervision with considerable caution. As it was, Dr Beech neither supported nor opposed release and Prof Nurcombe said in evidence that he supported release on supervision "weakly". Moreover, both psychiatrists expressed a number of reservations about the possible effect that the making of a supervision order might have on Mr Brady. If the strictures of an order cause frustration or resentment on his part, it may very well lead to his risk increasing. Additionally, because Mr Brady was (for whatever reason) not prepared to make anywhere near the level of disclosure regarding his thoughts and feelings about his past offending as would have been necessary for the psychiatrists to be confident in the opinions they did express, the clinical picture must be regarded as provisional. As Prof Nurcombe observed, Mr Brady's "inability to disclose his feelings and give a true account of his offences, and his tendency to obfuscate … make it impossible to provide a clear evaluation of risk".

[54] Although it must be said that Mr Brady has made some progress, I am unpersuaded that he has made enough progress. Principal among my concerns are his outstanding treatment needs and the lack of any clear strategies to manage the frustrations that he will inevitably experience if released on supervision. Unless he can satisfactorily manage those frustrations, they may escalate to resentment and, if that occurs, the risk that he will reoffend will increase. Such reoffending may come "out of the blue" and without any warning to those supervising him of his increased level of risk. In that regard, the likely progression from the point of resentment to the point of offending is the one discussed by Dr Beech in his report:

> "He will then seek to use sex as a way of coping. This might be through pornography, but eventually this will not be enough for him, and he will start to fantasise. The risk is that he will act on his fantasies, and while this might be through some form of voyeurism or covert filming, I believe that there is a risk that he will commit a contact offence.
>
> The concern is that the contact offence would involve a vulnerable female child. The offence itself could involve violence and physical coercion. The thought of arrest and incarceration may not be a deterrent, and they may in fact reflect an escape from his stressful living circumstances.
>
> Of concern is that there may be no outward prelude to the offending."

[55] In my opinion, if Mr Brady is unsupervised, there is a moderate to high risk that he will commit a serious sexual offence, most likely a sexual offence against a child. If released on supervision in accordance with the conditions incorporated in Exhibit 4, it is possible that this level of risk will reduce but, equally, it is possible that it will increase. Either way, Mr Brady has outstanding treatment needs that will need to be met before the court can be affirmatively satisfied that the adequate protection of the community will be ensured if he is released on supervision. In that regard, one-on-one psychological treatment will be made available to Mr Brady in custody.

[56] Mr Brady has not satisfied me on the balance of probabilities that the adequate protection of the community can, despite the contravention constituted by his 2013 offence, be ensured by the existing supervision order or by an order extended for a term of 10 years

and on the conditions incorporated in Exhibit 4. That being so, I must rescind the supervision order and make a continuing detention order.

Disposition

[57] For these reasons, it will be ordered pursuant to s 22(2)(a) of the Act that the supervision order made on 14 April 2007 be rescinded and that Mr Brady be detained in custody for an indefinite term for care, control and treatment.