

2018 Castan Centre Human Rights Moot Competition - Problem

Alistair was a teacher at a high school in Ringwood, Victoria. After his sexual relationship with a 16-year-old student was revealed, he was convicted under section 49L of the *Crimes Act 1958* (Vic) ('Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity') and sentenced to 2 years imprisonment, commencing in November 2015.

During his incarceration, Alistair has been a model prisoner, however, he fails to satisfactorily complete a compulsory sex offenders rehabilitation program. Alistair says that he is different from the other sex offenders, because the student consented to have sex with him. Alistair asks the Corrections service to place him in a program with other offenders convicted of the same offence. According to the medical expert who runs the rehabilitation program, Alistair's belief that he is different from other sex offenders means that there is a risk that Alistair might reoffend, and that it would not be beneficial to put him in the type of program he requests. There is also no capacity at the prison for such a program. In his final assessment report, the medical expert is of the opinion that there is a 40% risk that Alistair will reoffend if released into the community without a supervision order.

Accordingly, in May 2017, in anticipation of Alistair's release from prison, the Secretary to the Department of Justice makes an application for a supervision order in respect of Alistair under section 7 of the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) ('the Act'). The Supreme Court is satisfied that Alistair poses an unacceptable risk of committing further sexual offences if a supervision order is not made and Alistair is in the community. On 20 October 2017, the Court makes a supervision order under section 9 of the Act, to be in force for 10 years.

Along with the core conditions listed in section 16 of the Act, the Court imposes the following conditions pursuant to sections 17 and 19 of the Act:

- Alistair must not enter an educational facility or come within 100 metres of one;
- Alistair must not have contact with persons under 18 years of age;
- Alistair's movements will be electronically monitored 24 hours a day using an ankle bracelet;
- Alistair's internet usage will be electronically monitored, and he must not access any pornographic material on his computer;
- Alistair must live at a residence for released sex offenders in Toorak; and
- Alistair must personally introduce himself as a convicted sex offender to every person who resides within 1km of his residence.

Alistair finds the conditions of his supervision order extremely humiliating. He is particularly upset that he will no longer be able to teach, as he had loved teaching and couldn't think of any other job that he would rather do. Alistair also finds having to introduce himself to his neighbours as a sex offender humiliating, and at times scary. A few weeks after he is released from prison, bricks are thrown through one of his windows.

On 16 January 2018, 3 months after his release from prison, Alistair attends a public forum on reforms to the criminal justice system held in the hall of a local high school. The forum is held on a weekend during school holidays, so no classes are taking place. However, Alistair's ankle bracelet alerts the Adult Parole Board ('the Board') to the fact that Alistair has entered an educational facility.

After conducting an inquiry, in which Alistair does not deny that he had entered the school, the Board is satisfied that Alistair has been in breach of a condition of his supervision order. Under section 163 of the Act, the Board recommends the matter be referred to the Director of Public Prosecutions ('the DPP').

Upon reviewing the matter, the DPP makes an application for a detention order pursuant to section 33 of the Act. Alistair is reassessed by a medical expert, who finds that Alistair still believes that whilst he broke the law, he did nothing morally wrong and that his conviction was a result of social hysteria about the sexuality of young people. The medical expert's conclusion is that Alistair retains a 40% risk of re-offending. On 21 May 2018, the Supreme Court makes a detention order pursuant to section 36 of the Act. The period of detention is to be one year. The previous supervision order is to remain in effect when Alistair is released from detention.

Alistair has appealed the Supreme Court's decision to the Victorian Court of Appeal pursuant to section 96 of the Act. Pursuant to section 101(1)(b) and (c) of the Act, Alistair asks the Court of Appeal to revoke both the supervision order and the detention order.

Note: Please confine your arguments to the Charter, and assume that all procedural requirements were followed by the relevant decision makers.