PREVENTIVE JUSTICE

Common Law and Criminal Code Peace-Keeping Remedies (Part 2)

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Overview

Although the general "peace bond" provision of the federal Criminal Code[1] (section 810, discussed in part 1 of this series) is probably the preventive justice mechanism most often employed to endeavour to preserve the peace, other proactive remedial recourses are available; both at common law and under the Code.

One is the residual "peace bond" jurisdiction reserved to courts at common law, which supplements the Code's general "peace bond" authority under section 810. Another is the special "bonding" remedy in section 810.1 of the Code. (Both of these are considered, together with some other of the Code's peace-fostering opportunities, in this second article on preserving the peace). Provincial legislation contemplates several injunctions against disturbance of personal, familial and proprietary peace and security; including harassment protection orders. (These measures will be addressed in a third article.)

"Peace Bond" – Common Law

Source of Common Law "Peace Bond"

The English common law "peace bond" is an implement of preventive justice "so ancient," writes Halvorson J. in *Stevenson v. Saskatchewan (Minister Of Justice) et al.*,[2] "that its origins are now obscure. It empowers justices to place a person under bond where it appears the person may be a threat to peace, ..."[3] More than 400 years old, this preventive justice tool enfranchised justices in England with "jurisdiction to ... [bind] a person over and ... [require a] surety for his good behaviour even though he may have done nothing to that point which tends to be a breach of the peace."[4]

So ancient is the common law peace bond authority, Bray J. was prompted to write in *Lansbury v. Riley*[5] that "it is too late now...to consider whether [historically] the law was correctly laid down."

Not in doubt is the fact that this English common law "peace bond" jurisdiction was, through settlement of Canada by English immigrants, imported into many (if not all) common law jurisdictions in Canada.[6]

In *MacKenzie v. Martin*,[7] a civil action was taken by Alexander Campbell Mackenzie against Ontario magistrate Oliver M. Martin, due to magistrate Martin having, at common law, ordered MacKenzie to produce two sureties to ensure MacKenzie's good behaviour for three years or be committed to prison. MacKenzie declined to obtain the sureties and, after Ontario Court of Appeal quashed magistrate Martin's order,[8] he sued Martin in tort for false imprisonment. The action, which MacKenzie persued to the Supreme Court of Canada, unsuccessfully challenged the magistrate's common law "peace bond" jurisdiction in Ontario.

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[1] R.S.C. 1985, c. C-34, (the "Code").

[2] (1987), 61 Sask R. 91 (Q.B.) at 93.

[3] Ibid.

[4] *Re Regina and Shaben et al.* (1972), 8 C.C.C. (2d) 422 (Ont. H.C.), Lerner J. at 429. Also see: C.R. Magone, K.C., "Power Of Justices And Magistrates To Dispense 'Preventive Justice'" (1949), 93 C.C.C. 161; G.L. Williams, "Preventive Justice and the Rule of Law" in: *The Criminal Law: The General Part*, 2nd ed. (Stevens & Sons, London, 1961) at 716-721; Robert C. Hunter QC, "Common Law Peace Bonds: The Power Of Justices Of The Peace To Administer 'Preventive Justice'" (1978), 1 C.R. (3d) 70; F. P. Davidson, "Apprehended Breaches of the Peace and Police Preventive Powers" (1985), 19 *Law Teacher* 142; Peter M. Neumann, "Peace Bonds: Preventive Justice? Or Preventing Justice? (1994), 3 *Dal. J. of Leg. Studies* 171.

[5] [1914] 3 K.B. 229 at 233.

[6] As declared, for example, in: *MacKenzie v. Martin*, [1954] S.C.R. 361 (respecting applicability of common law "peace bond" authority in Ontario); *Regina v. White, Ex Parte Chohan* [1969] 1 C.C.C. 19 (B.C.SC.). (respecting British Columbia); and *Stevenson v. Saskatchewan (Minister of Justice) et al* (1987), 61 Sask R. 91 (Q.B.) (respecting Saskatchewan).

[7] Supra note 6.

[8] *R. v. MacKenzie*, [1945] O.R. 787.

Partial codification of the common law "peace bond" jurisdiction is evidenced by Criminal Code section 810.[9]

Characteristics

The goal of the peace bonds authorized by Code sections 810 and 810.1 and recognized at common law is to forestall apprehended harm, in contrast to most federal and provincial penal law which is designed to punish proven harm.

Neither section 810 or 810.1 nor any other Code provision interferes with a court's residual, uncodified jurisdiction to impose the common law "peace bond."[10]

Like a Code "peace bond," the comparable common law remedy does not require "laying" of a criminal charge; if warranted by evidence, does not result in a finding of guilt or a conviction; and, if ordered, does not create a criminal record.

Unlike a Code "peace bond" remedy, the common law "peace bond" is infrequently, if ever, specifically sought by a subject initiating a judicial application. Rather, the common law remedy is usually invoked by a court, either instead of, or ancillary to, the relief sought in a proceeding. For example: in *Stevenson v. Saskatchewan (Minister of Justice) et al,*[11] a common law "peace bond" was imposed on a defendant against whom an application for a Code "peace bond" had been dismissed due to insufficient evidence. And, in *Re Broomes And The Queen*,[12] following dismissal of a Criminal Code assault charge[13] against him, accused was, nonetheless, ordered to sign a common law "peace bond."

Arguably, the common law "peace bond" also could have been ordered, had the accused been found guilty of the assault charge, in addition to any sentence imposed for the assault offence.[14]

Thus, the route to a common law "peace bond" does not (ordinarily) – as in a Code "peace bond" proceeding – commence with a subject's formal application, require particulars, or involve procedural issues of appearance, "showing cause" and the like.

Legal Burden

Imposition of a common law "peace bond" must, however, be justified on the evidence; what Sopinka J., in *R. v. Parks*,[15] defines as "a proven factual foundation which raises a reasonable ground to suspect future [mis]-behaviour." Speculation or conjecture will not suffice.[16]

The *standard* of the legal burden is on a balance of probabilities,[17] as is the standard on an application under Code section 810.[18]

Jurisprudence suggests differing perspectives on the *nature* of the legal burden.

None of these perspectives appear to be as demanding as under Code section 810; namely, evidence satisfying the trier that the informant has reasonable (objective) grounds for (her or his actual subjective) fear of (i) personal injury to informant, informant's spouse or child or of (ii) damage to informant's property.[19]

Although (as to the nature of the legal burden)personal injury that is *physical*, in nature, has routinely been judicially accepted

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[9] The equivalent to Criminal Code s. 810 has been part of the Criminal Code since the Code's inception in Canada on 01 July 1893: S.C. 1892, c. 29, s. 959.

[10] *MacKenzie v. Martin*, [1954] S.C.R. 361; a decision which considered Code s. 748, subsequently renumbered s. 717 (S.C. 1953-54), then s. 745 (R.S.C. 1970, c. C-34) and, with amendments, is now s. 810 (R.S.C. 1985, c. C-34).

[11] (1987), 61 Sask. R. 91 (Q.B.), Halvorson J. espy. at 95-96.

[12] (1984), 12 C.C.C. (3d) 220 (Ont. H.C.).

[13] S.C. 1980-81-82-83, c. 125, s. 19; now: R.S.C. 1985, c. C-34, s. 266.

[14] *Stevenson v. Saskatchewan (Minister of Justice) et al.* (1987), 61 Sask. R. 91 (Q.B.), Halvorson J. at 93.

[15] [1992] 2 S.C.R. 871, at 909.

[16] *R. v. White, Ex Parte Chohan*, [1969] 1 C.C.C. 19 (B.C.S.C.).

[17] See, e.g.: *Stevenson v. Saskatchewan (Minister of Justice) et al.* (1987), 61 Sask. R. 91 (Q.B.), Halvorson J. at 94.

[18] *Miller v. Miller* (1990), 271 A.P.R. 250 (Nfld. P. Ct.), Handrigan P.C.J. at 254-255.

[19] See, e.g.: *R. v. Patrick* (1990), 75 C.R. (3d) 222 (B.C. Co. Ct.), Ryan J. at 226- 228; and *R. v. Banks*, [1995] 4 W.W.R. 698 (Sask. Q.B.), Baynton J. at 702-703, where he writes that "before an order can be made against the defendant [under section 810], two elements must be established in evidence ... [A] subjective condition [informant actually fearing defendant will cause personal injury to self or family or to property] .... [and an] objective one [reasonable grounds for informant's fears] ... ".

as a basis of reasonable grounds for informant's belief, in a court's assessment of whether to impose a common law "peace bond," an issue remains as to whether personal injury embraces injury that is *psychological* in nature. Peter M. Neumann contends that *R. v. Nelitz*[20] "may have impliedly extended the meaning of "personal injury" to include some degree of harassment or *psychological* injury."[21]

Among definitions of the nature (i.e. ingredients) of the legal burden proffered as requiring proof, to engage a common law "peace bond," are these: (i) in circumstances of a person "that be not of good fame;"[22] (ii) conduct considered to be "mischievous or suspicious;"[23] and (iii) "probable ground to suspect of future misbehaviour."[24] Of these, Halvorson J. gave effect to the third (and least obscure definition of the nature of proof) – "probable ground to suspect of future misbehavior" – in *Stevenson v. Saskatchewan (Minister Of Justice) et al.*[25]

In distinguishing between (i) the nature of the legal burden that must be proven to justify a court exercising discretion to decide whether to authorize a Code "peace bond" and (ii) the nature of the legal burden that must be met to justify a court giving consideration to a common law "peace bond," Ryan J. wrote in *R. v. Patrick.*

> Under the common law the *magistrate* must apprehend the likely breach of the peace. If so, he may bind over whomsoever he deems necessary to prevent the breach. Under the Code the *informant* must have grounds to believe that the defendant will cause injury to the informant, his spouse or his child or damage to his property. The elements necessary to the exercise of the power are thus somewhat different, although both may be said to be forms of preventive justice. [emphasis in original][26]

Whatever the distinctions between the Code section 810 peace bond and the common law peace bond, advancing evidence that meets the legal burden to justify either remedy will be materially assisted by "evidence of propensity ... since the future behaviour of the defendant is at issue."[27]

Process

Process attending imposition of the common law "peace bond" has often been challenged as unjudicial. *Re Compton And The Queen*[28] illustrates the resulting controversy (which focuses on the extent of the need to employ the rules of natural justices in the process).

A wife applied under Criminal Code section 745 (current section 810) for an order requiring her husband to enter into a recognizance to peace keep toward her. After hearing testimony from both spouses, the Court stated that:

> there's an old common law right that I am going to invoke that when one party asks the Court for protection the Court in its own discretion can make an order that binds both parties,

because, the Court rationalized,

> so often the party that is prohibited from doing this, that and the other ends up as a sort of sitting duck.[29]

Although the Information on which the wife's application was tried was endorsed with an indication that the Court reached its disposition on the basis of (then) section 745 (current section 810) of the Criminal Code, the oral record clearly indicates the Court relied on its common law "peace bond" prerogative to obligate both applicant wife and defendant husband under a peace bond "for one year to keep the peace and be of good behaviour ..."[30]

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[20] [1993] B.C.J. No. 1207 (QuickLaw).

[21] "Peace Bonds: Preventive Justice? Or Preventing Justice?" (1994), 3 *Dal J. of Leg. Studies* 171 at 195.

[22] *Justices of the Peace Act*, 1361, 34 Ed. III (U.K.), c. 1 (historic attempt to codify common law "peace bond"); mentioned in: *Frey v. Fedoruk* (1950), 10 C.R. 26 (S.C.C.) and *MacKenzie v. Martin*, [1954] S.C.R. 361 at 366, and considered in *Family Law in the Family Courts*, H.T.G. Andrews, ed. (Carswell, Toronto, 1973), c. 5, by Steinberg J. espy. at 126.

[23] *R. v. County of London Quarter Sessions*, [1948] 1 All E. R. 72, Lord Goddard C.J. at 74.

[24] *The King v. Sandbach*, [1935] 2 K.B. 192, Avory J. at 196, in apparent reference to *IV Blackstone's Commentaries*, c. 18, espy. at 248.

[25] (1987) 61 Sask. R. 91 (Q.B.) at 94.

[26] (1990), 75 C.R. (3d) 222 (B.C. Co. Ct.) at 226.

[27] Then J. in *R. v. Budreo*, Ont. Ct. Gen. Div. No. U1626/94, 04 January 1996, para. 28, referring *to R. v. Patrick* (1990), 75 C.R. (3d) 222 (B.C. Co. Ct.), Ryan J. at 227-229.

[28] (1978), 42 C.C.C. (2d) 163 (B.S.S.C.).

[29] Ibid. at 164.

[30] Ibid.

The oral record suggests that the spouses had agreed on peace bond conditions, *if* a bond were ordered. These conditions were incorporated in the common law bond into which the court directed both spouses to enter.

Although the wife signed the bond (formally known as a recognizance), she applied for *certiorari* to quash both the order and the resulting bond into which she entered. The wife succeeded. Per Verchere J.:

> ... the Justice cannot exercise preventive justice arbitrarily or unfairly and without giving the person bound over some notice of what was in store for him or her and an opportunity to be heard in defence. Here, in the case of the respondent [husband] there was ample notice and opportunity given to him as the defendant, and it matters little, I think, which route the learned Judge followed in ordering that he be bound over. But that was not so in dealing with the petitioner [wife]. Perusal of the record makes it clear that although she had been examined by her counsel who was present with her at the hearing and cross-examined, with some aid from the Court, by the defendant, it was never suggested to her, until ... [the court began speaking, in decision, about the "old common law right" quoted above from the oral trial record], that she might, herself, be bound over. ...
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> ... Accordingly, I have had to conclude that here, ..., there was a denial of natural justice to the petitioner [wife] and, that being so, that the jurisdiction which the learned Judge purported to exercise here thereby became lost to him.[31]

The Court relied on similar reasoning in *Re Regina And Shaben et al.*,[32] which quashed a lower court direction that a Crown witness, during criminal trial of an assault charge, enter into a common law "peace bond," based on evidence from this witness and other trial witnesses; without the witness receiving any notice of, or opportunity to be heard regarding, the prospect of such an order.

Some courts have been partial to the imposition of the common law "peace bond" without first providing notice – integral to the rules of natural justice – (i) to a defendant to a Criminal Code "peace bond" application that sunders or (ii) to an accused to a criminal charge, whether or not guilt is established.[33]

Arguably, however, a defendant to a Code "peace bond" application and an accused to a criminal charge should be afforded the same notice and opportunity to be heard as anyone else. Granted, as Halvorson J. contends in *Stevenson v. Saskatchewan (Minister Of Justice) et al.*,[34] the failure to have there done so "was not fatal to the order in the circumstances. A preventive justice order is not a sentence as there is no conviction; so the ramifications of failure to allow an accused to speak to sentence are not necessarily the same."[35] On the other hand, the requirements of proof for imposing a common law "peace bond" are somewhat different from those of the Code "peace bond" and substantially different from requirements of a Criminal Code offence charge; (dismissals of each of which have, nonetheless, resulted in a common law "peace bond" being ordered). Furthermore, to impose a common law "peace bond" on a person against whom a Code "peace bond" application or an offence charge is dismissed, without that person at least being afforded an opportunity to speak to disposition, may influence the duration or other terms and the conditions of the "peace bond."

Failure to Enter into Common Law Recognizance

Should a person refuse, in court, to comply with an order to enter into a recognizance, the court may punish that person for contempt *in facie*. In the event of refusal, *ex facie*, to honor an order to enter into a recognizance, a court – jurisdiction to do so being confined (no matter the court in which the contempt is alleged to have occurred) to a provincial/

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[31] Ibid. at 165; To similar effect: *Sheldon v. Bromfield Justices*, [1964] 2 Q.B. 573 (D.C.); *R. v. Hendon Justices; Ex parte Gorcheim*, [1974] 1 All E.R. 168 (D.C.).

[32] (1972), 8 C.C.C. (2d) 422 (Ont. H.C.).

[33] Decisions supporting that position include: *Re Broomes And The Queen* (1984), 12 C.C.C. (3d) 220 (Ont. H.C.); approved of by Lamer C.J.C. (dissenting on other grounds) in *R. v. Parks*, [1992] 2 S.C.R. 871 and *Stevenson v. Saskatchewan (Minister Of Justice) et al.* (1987), 61 Sask. R. 91 (Q.B.). To the contrary have been such decisions as: *R. v. White, Ex Parte Chohan*, (1969), 1 C.C.C. 19 (B.C.S.C.).

[34] Supra note 36.

[35] Common law "peace bond" imposed on defendant when application to impose Code "peace bond" against defendant dismissed.

territorial superior court[36] – may punish for contempt. In either event (i.e. *in facie* or *ex facie* contempt), the Crown may prosecute the refusing person under Criminal Code section 127[37] for allegedly disobeying a lawful judicial order without lawful excuse (essentially, a form of statutory contempt proceeding).

Appeal

Although not governed *per se* by statute, common law "peace bond" proceedings have been held by Robertson C.J.O. in *R. v. MacKenzie*[38] to be civil, not criminal, in nature. Thus, review of an order requiring or refusing a common law "peace bond" may be sought (i) by prerogative writ or (ii) by appeal under provincial or territorial legislation providing for appellate consideration of orders in summary proceedings, which include common law "peace bond" proceedings."

Breach of Common Law Recognizance

Absent specific legislative provision, options for responding to breach of a common law recognizance to peace keep, once entered into, probably consist of (i) a prosecution under Criminal Code section 145 (in some circumstances) for breach of recognizance; (ii) a proceeding to cite for contempt *ex facie* (jurisdiction over which is restricted to provincial and territorial superior courts)[39] or, if circumstances warrant, a proceeding for contempt *in facie* (in the court involved); and/or (iii) estreatment.[40]

Constitutional Validity

A constitutional facet of the common law "peace bond" powers was discussed by the Supreme Court of Canada in *R. v. Parks*[41] in sustaining acquittal of a person, originally charged for murdering his mother-in-law, on the basis of the defence of non-insane automatism due to sleepwalking. Pertinent to this commentary Lamer C.J.C. and Cory J., concurring, were in minority in contending that the matter should be remitted to the trial judge to exercise common law "peace bond" preventive justice power to attach conditions to the person's release to discourage recurrence of the tragic violent events which had triggered the murder charge. In considering this power, Sopinka J., for the majority, harboured "grave doubts as to whether ... [this common law power] that can be exercised on the basis of 'probable ground[s] to suspect future misbehavior,' without limits as to the type of 'misbehavior' or potential victims, would survive Charter scrutiny."[42]

Special Bond – Section 810.1

Characteristics

Besides Criminal Code section 810 and common law "peace bond" remedies, Code section 810.1[43] constitutes a special preventive justice remedy.

Section 810.1, which, like section 810, provides for an order that a person enter into a recognizance, is "qualitatively different from the standard Criminal Code offences that lawyers and judges deal with daily."[44] Its *raison d'être* is a preventive community protection mechanism instead of a fault-based offence. Its characteristics are, thus, comparable to those of Code section 810.[45] Therefore, a proceeding under Code section 810.1.[46] does not constitute a charge or result in either finding of guilt or conviction. (Granted, a breach of a recognizance entered into under Code section 810.1 (like a breach of a recognizance made under Code section 810) constitutes an offence under Code section 811. That prospect, however, does not convert a proceeding under Code section 810.1 (or under Code section 810) into an offence prosecution.)[47]

Legal Burden

The *standard* of the legal burden under Code section 810.1 (as under Codes section 810) is on a balance of probabilities.[48]

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[36] *C.B.C. v. Cordeau* (1979), 48 C.C.C. (3d) 289 (S.C.C.).
[37] R.S.C. 1985, c. C-34.
[38] [1945] O.R. 787 (C.A.).
[39] *C.B.C. v. Cordeau* (1979), 48 C.C.C. (2d) 289 (S.C.C.).
[40] 10 *Halsburys Laws of England* 3rd ed. (1955) at 495, para. 904 and note *(p)*.
[41] [1992] 2 S.C.R. 871.
[42] Ibid. at 912. *Charter: Canadian Charter of Rights and Freedoms, Constitution Act, 1982, Part I.*
[43] En.: S.C. 1993, c. 45, s. 11.
[44] *R. v. Budreo*, Ont. Ct. Gen. Div. No. U1626/94, 04 January 1996, Then J. at para. 41.
[45] See David C. Day, "Criminal Code's General Peace Bond (Part 1)," (1996) 2 *Family Law* 71 at 72.
[46] En.: S.C. 1993, c. 45, s.11.
[47] *R. v. Budreo*, Ont. Ct. Gen. Div. No. U1626/94, 04 January 1996, Then J. at para. 107.
[48] Ibid. at paras. 21-30.

The *nature* of the legal burden which must be satisfied before a court may authorize a section 810.1 recognizance consists of the following:[49]

- the applicant must be (i) an under-14 person who fears for her(him) self or (ii) a person under, of, or over 14 years who fears for an under-14 year old; and
- the Information on which the application is based must allege

(a) fear

(b) based on reasonable grounds

(c) that another person

(d) will commit, in respect of one or more under 14-year-olds,

(e) behaviour *contra* one or more of the following Criminal Code offences: 151 (sexual interference); 152 (invitation to sexual touching); 155 (incest); 159 (anal intercourse); 160(2) or (3) (bestiality); 170 (parent or guardian procuring sexual activity); 171 (householder permitting sexual activity); 173(2) (exposing genital organs for sexual purpose); 271 (sexual assault); 272 (sexual assault with weapon or with threats to third party, or with bodily harm); or 273 (aggravated sexual assault).

Process

Procedure for instituting and conducting proceedings on an Information under Code section 810.1 is largely identical to that which governs proceedings under Code section 810.[50] There are exceptions, however, such as the requirement the Information under section 810.1 be laid before a provincial court judge,[51] whereas an Information under section 810 may be laid before a justice (which Criminal Code section 2 defines as a justice of the peace or provincial court judge).[52]

As under Code section 810, process requiring Court attendance – pursuant to summons or pursuant to warrant of arrest (subject to admission to judicial interim release)[53] – by a person to answer to an application under Code section 810.1 must be founded on "tangible evidence."[54]

A hearing must be conducted "with the same procedural guarantees as a summary conviction trial."[55] Cacchione Co. Ct. J. (as he then was), in *R. v. Manette*[56] passingly notes the nature of comparable court proceedings under Code section 810 are "hearings ..." and not "trials ...;" the implication being that the hearing is, perhaps, less adversarial and less inclined to rigidly adhere to evidentiary rules.

If, following a hearing, the provincial court judge before whom the Information is heard is satisfied, on a balance of probabilities,[57] that the informant "has reasonable grounds for the fear," the judge *may* – not *shall* – order the defendant to the Information to enter into a recognizance for a term not exceeding 12 months.[58] Conditions of the recognizance may include:

- prohibition against defendant "engaging in any activity that involves contact with persons under the age of 14 years."
- prohibition against defendant "attending a public park or public swimming area where persons under the age of 14 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre."[59]

Although these are the only conditions specified in Criminal Code section 810.1(3), other conditions supported by the evidence may be included in the recognizance.

Section 810.1 does not contemplate sureties supporting a recognizance (as may be ordered under section 810).

Post-Hearing Proceedings

As to such matters as appeal, and breach of recognizance, the provisions of the

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49 S.C. 1993, c. 45, s. 11, en: s. 810.1(1).
50 Supra note 45 at 72-75.
51 S.C. 1993, c. 45, s. 11 en.: s. 810.1(1).
52 R.S.C. 1985, c. C-34, s. 810(1).
53 See: *R. v. Budreo*, Ont. Ct. Gen. Div. No. U1626/94, 04 January 1996, Then J. at paras. 142-149; 184-201.
54 See: *R. v. Budreo*, Ont. Ct. Gen. Div. No. U1626/94, 04 January 1996, Then J. at para. 188.
55 *R. v. Budreo*, Ont. Ct. Gen. Div. No. U1626/94, 04 January 1996, Then J. at para. 75.
56 [1987] N.S.J. No. 308 (QuickLaw).
57 See: *Miller v. Miller* (1990), 271 A.P.R. 250 (Nfld. P. Ct.), Handrigan P.C.J. at 254-255.
58 R.S.C. 1985, c. C-34, s. 810.1(3).
59 Ibid.

Criminal Code that govern Code section 810 likewise apply to section 810.1 proceedings.[60]

Unlike Code section 810(3), however, there is no specific provision in Code section 810.1 for the eventuality of a defendant declining to enter into a recognizance ordered by a court.[61] In this event, though, the defendant risks being charged under Criminal Code section 127 which constitutes the offence of disobeying a lawful judicial order without lawful excuse;[62] or, if circumstances warrant, proceedings for contempt *in facie* (in the court involved) or *ex facie* (in the provincial or territorial superior court of the affected province; whether the contempt is alleged to have occurred in superior or provincial court).

Breach of Recognizance

Responses available in event of an alleged breach of a recognizance entered into under Code section 810.1 are the same as those available in event of violation of a Code section 810 recognizance.[63]

Constitutional Validity

On a challenge to the integrity of section 810.1 under the *Canadian Charter of Rights and Freedoms* ("the Charter"),[64] Then J. of the Ontario Court of Justice [General Division] decided January 4, 1996, in *R. v. Budreo*,[65] that Criminal Code section 810.1 was Charter-compatible, provided (i) the words "or community center" – one of the recognizance conditions specified in Criminal Code section 810.1(3) – were inoperative[66] and provided (ii) the term "shall" read "may" in Criminal Code section 810.1(2) that states: "A provincial court judge who receives an information under subsection [810.1](1) shall cause the parties to appear before the provincial court judge."[67]

Other Criminal Code Preventive Orders

A table entitled "Offence Grid," in the annual *Martin's Criminal Code* (first included in the 1996 edition),[68] is a useful reference for identifying other preventive justice Code provisions.

If an offence specified in Code section 161 (1) is committed, an order may be incorporated in sentencing which imposes conditions that include those which may be prescribed under section 810.1(3) if a person is required to enter into a section 810.1 recognizance.

A person (i) found guilty of a criminal offence – for example, a stalking type offence, such as under Code sections 264 and 423(1) (*c*), (*e*), (*f*) and (2) – and *conditionally discharged, must,* and a person (ii) found guilty and *convicted* of most criminal offences, *may,* be ordered to comply with the conditions of a probation order under Criminal Code section 732.1[69] for a maximum of 36 months,[70] One condition, often imposed under the "basket" provision of Criminal Code section 737,[71] is a "no-contact" obligation. This obligation is exhaustively surveyed by Renaud P.D.J. (Ontario Court of Justice [Provincial Division]) in "Mandatory and Discretionary 'no contact' Orders."[72] He classifies the types of "no contact" orders as follows: (i) no contact with the victim of a criminal offence; (ii) non-attendance at victim's residence, place of employment and other specified places; and (iii) no contact with victims and members of that group or class of victims.

Reforms

Although extensive amendments to sentencing provisions of the Criminal Code[73] took effect 03 September 1996,[74] a shortcoming identified by Judge Renaud is that resort to probation orders by courts, in sentencing a

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[60] Supra note 45 at 75-76; S.C. 1993, c. 45, s. 11, en.: s. 810.1(5).

[61] Bill C-118 (First Reading 14 December 1995), clause 113, would enact s. 810.1(3.1) to authorize a provincial court judge, in that event, to commit to prison, as s. 810(3) presently provides.

[62] R.S.C. 1985, c. C-34, s. 127 (1).

[63] Supra note 45 at 76. Not there mentioned, although also available, both in event of a section 810 or a section 810.1 recognizance breach, is resort to estreatment in provinces and territories whose legislation so provides.

[64] *Constitution Act*, 1982; Part I

[65] Ont. Ct. Gen. Div. No. U1626/94.

[66] The Court was not required to rule on similar language in Code s. 161(1)(*a*).

[67] The Court was not required to rule on similar language in s. 810(2).

[68] (Canada Law Book Inc., Aurora, 1995), OG1 to OG24.

[69] S.C. 1985, c. 22, s. 6.

[70] Ibid. s. 6, enacting: s. 732.2(2)(*b*).

[71] Ibid. s. 6, enacting: s. 732.1(3)(*h*).

[72] (1995), 420 A.P.R. 179.

[73] R.S.C. 1985, c. C-34,.

[74] S.C. 1995, c. 22 (enacted: 15 July 1995; proclaimed in force from 03 September 1996: SI (96-79).

person found guilty and convicted for an offence, can only be imposed in cases where a person is sentenced to imprisonment not exceeding two years.

Furthermore: if enacted, clause 113 of Bill C-118, read a first time 14 December 1995, would provide for section 810.1(3.1) of the Code, whereby a provincial court judge may commit to prison, for a maximum of 12 months, a defendant who, having been ordered to do so under Code section 810.1(3), fails or refuses to enter into a recognizance.