



Case in Brief: ***R. v. Bird***

Judgment of February 8, 2019 | On appeal from the Court of Appeal for Saskatchewan
Neutral citation: 2019 SCC 7

An offender should have challenged a long-term supervision order directly, instead of challenging it indirectly after he was charged with violating it, the Supreme Court has ruled.

Mr. Bird was a “long-term offender” with over 60 criminal convictions. Long-term offenders are at higher risk of committing more crimes in the future. Because of this, they are “supervised” after they finish their prison sentences to make sure they stay out of trouble. They have to report to corrections officials on a regular basis. They may have to live in a certain place or be home by a certain time, or follow other conditions.

Long-term supervision is meant to protect the public. It is also meant to help long-term offenders re-enter society. A judge decides the length of a long-term supervision order. The Parole Board sets the conditions. The Parole Board is an “administrative” body (meaning it is set up by Parliament to do things on behalf of the state—in this case, deal with parole and related matters). This means a long-term supervision order is an “administrative” order rather than a court order. Still, violating one is a crime. The punishment is up to ten years in prison.

In 2013, after being convicted on a weapons charge, Mr. Bird was sentenced to a year in prison. He hoped to return to his First Nation in north central Saskatchewan and live with his brother after finishing his prison sentence. But the Parole Board decided he would be too much of a risk to the community. It ordered him to live in a “community correctional centre” (a halfway house) in Regina for about six months after his prison sentence. This was a “residency condition” of his long-term supervision order.

Before his prison sentence ended, Mr. Bird got a letter from the Parole Board. It said he could ask the Parole Board to consider changing or removing any of the conditions of his long-term supervision order. He never did. Less than a month after his long-term supervision began, Mr. Bird left the halfway house and didn’t come back. He was arrested over two months later and charged with violating the order.

Mr. Bird fought the charge. He argued that the residency condition was unconstitutional. He said the Parole Board didn’t have the power to impose the condition. He said the condition violated his right to liberty under the *Canadian Charter of Rights and Freedoms*. He argued that being forced to live at the halfway house was like being forced to live in prison. He said long-term supervision orders weren’t meant to put people back in prison after they served their time.

The trial judge accepted Mr. Bird’s argument. He ruled that the residency condition was unconstitutional, so Mr. Bird couldn’t be found guilty of violating it. The Court of Appeal disagreed. It said Mr. Bird wasn’t allowed to launch a “collateral attack” on the residency condition. A collateral attack is an *indirect* attack on an order or decision, through a new or separate case. In this case, a *direct* attack would have been doing what the letter said and asking the Parole Board to think about changing or removing the residency condition. The Court of Appeal found Mr. Bird guilty of violating the order.

The majority at the Supreme Court agreed that the collateral attack was not allowed. Because long-term supervision orders are “administrative” orders, it had to look at what Parliament intended. The key question was whether Parliament meant to allow long-term offenders to launch collateral attacks on these orders. To determine Parliament’s intent, the majority looked at a number of factors. It looked at the wording and purposes of different laws. It looked at whether Mr. Bird could have challenged the order in other ways. It looked at the Parole Board’s expertise in long-term supervision orders. And it looked at the punishment for violating the order. In the end, the majority said that Parliament didn’t intend to allow long-term offenders like Mr. Bird to launch collateral attacks on their long-term supervision orders in criminal proceedings. It noted that he had several options to challenge the condition. It said Parliament meant for him to use these rather than indirectly attacking the condition after he violated it. It sent the case back to the Provincial Court to decide a sentence.

Courts don’t have to decide every question parties ask them. In this case, the majority didn’t need to decide whether the residency condition was actually unconstitutional, because Parliament didn’t intend to allow collateral attacks.

Breakdown of the Decision: *Majority:* Justice Michael [Moldaver](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Côté](#), [Brown](#), and [Rowe](#) agreed) | *Concurring:* Justice Sheilah [Martin](#) said Mr. Bird should have been allowed to challenge the residency condition at his criminal trial for breaching that condition, but she would have dismissed the appeal because the residency condition was not unconstitutional in the way that Mr. Bird argued it was (Justices [Karakatsanis](#) and [Gascon](#) agreed)

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