COURT MARTIAL

Citation: *R. v. Kohlsmith*, 2023 CM 3002

Date: 20230411
Dockets: 202101

Asticou Courtroom
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Sergeant R.D. Kohlsmith, offender

Application heard in Gatineau, Quebec, on 30 January 2023.
Decision and written reasons delivered in Gatineau, Quebec, on 11 April 2023.

Before: Lieutenant-Colonel L.-V. d'Auteuil, A.C.M.J.

Restriction on publication: By court order, pursuant to section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, the Court directs that any information that could identify the persons described during these proceedings as the complainants shall not be published in any document or broadcast or transmitted in any way.

REASONS ON ACCUSED'S APPLICATION SEEKING A DECLARATION OF CONSTITUTIONAL INVALIDITY OF SUBSECTION 227.01(1) OF THE *NATIONAL DEFENCE ACT* PURSUANT TO SECTION 52 OF THE *CONSTITUTION ACT, 1982* FOR A BREACH OF HIS RIGHTS GUARANTEED BY SECTION 7 OF THE *CHARTER*

Introduction

[1] Sergeant Kohlsmith was found guilty by this court martial on 14 October 2022 of one service offence punishable under paragraph 130(1)(a) of the *National Defence Act* (*NDA*) for sexual assault contrary to section 271 of the *Criminal Code*.

[2] Immediately after my decision on the finding, a discussion took place in the courtroom with the parties regarding the next steps to be followed by the Court. Then, it adjourned the proceedings to 6 February 2023 for the sentencing proceedings.

[3] Additional discussions occurred after with the parties during two different trial management conference calls held on 16 and 30 November 2022. It is during the last exchange between the Court and the parties that it decided that the hearing for this matter raised by the defence counsel would take place on 30 January 2023.

[4] Sergeant Kohlsmith's defence counsel then filed with the Court on 10 January 2023 a notice in writing concerning an application in which he is seeking from the court martial a declaration of constitutional invalidity of subsection 227.01(1) of the *NDA*. He would like this Court to declare that this subsection is of no force or effect pursuant to section 52 of the *Constitution Act, 1982*, because it violates his rights under section 7 of the *Canadian Charter of Rights and Freedom*.

[5] Just before commencing this hearing to deal with the current application, the Court accepted to adjourn the sentencing proceedings to a later date, which is on 9 May 2023 instead of 6 February 2023, in accordance with a specific request made by Sergeant Kohlsmith.

The evidence

[6] Other than the notice in writing, Sergeant Kohlsmith did not introduce any other evidence.

[7] The prosecution did not introduce any evidence on this matter before the Court.

The legal context

The Supreme Court of Canada's decision

[8] On 28 October 2022, the Supreme Court of Canada (SCC) released its decision in *R. v. Ndhlovu*, 2022 SCC 38, in which it declared sections 490.012 and 490.013(2.1) of the *Criminal Code* of no force or effect under subsection 52(1) of the *Constitution Act, 1982*.

[9] The declaration of invalidity regarding specifically section 490.012 of the *Criminal Code* provision has been suspended by the Supreme Court of Canada for a period of one year from the date on which the judgment was rendered, allowing it to apply prospectively for that specific period.

[10] Section 490.012 of the *Criminal Code* imposes on a civil court of criminal jurisdiction to order the mandatory registration of all offenders who were found guilty by that court of any one of the sexual offences designated in paragraph 490.011(1)(a) of the *Criminal Code*, which includes a sexual assault committed pursuant to section 271 of the *Criminal Code*.

[11] Following such order by a court, a sexual offender is compelled to register his or her personal information on Canada's national sex offender registry, regardless of his or her sexual risk of reoffending, and to respect numerous reporting requirements. Non-compliance with any

reporting obligation with registration carries the threat of being prosecuted and potential incarceration if found guilty.

The Sex Offender Information Registration Act (SOIRA) and the NDA-related provisions

[12] In 2004, Parliament passed the *Sex Offender Information Registration Act*, S.C. 2004, c. 10 (*SOIRA*). However, it was considered that sexual offenders convicted by a court martial were not included in that Act, and accordingly, Parliament passed in 2007 *An Act to amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act*, S.C. 2007, c. 5, to create a scheme that requires offenders, who have committed service offences of a sexual nature specifically designated, to provide information for registration in a national database under the *SOIRA*.

[13] Then, in addition to parallel the provisions of the *Criminal Code* on this specific topic, a new offence under the *NDA* for failure to comply with an order or obligation to provide information to a designated registration centre was created, and some other amendments were made to enhance the administration and enforcement of the current registration scheme for sex offender information in a military context.

[14] It is on 12 September 2008 that the *NDA* provision which mirrored section 490.012 of the *Criminal Code* came into force: it was, and it still is, section 227.01 of the *NDA*.

[15] At the time, as it was before a civil court of criminal jurisdiction, a sex offender convicted by a court martial would only be placed on the registry if the prosecutor first chose to apply to the Court for an order requiring the offender to comply with *SOIRA*.

[16] The *NDA* also gave the court martial the discretion to exclude offenders from the registry if the effects of the order on their privacy or liberty interests were grossly disproportionate to the public interest in protecting society, as it was prescribed in the correspondent *Criminal Code* provision.

[17] As noted by the Supreme Court of Canada in *Ndhlovu* at paragraph 3, in 2011, Parliament chose to remove prosecutorial and judicial discretion from section 490.012 of the *Criminal Code*. It did the exact same thing in the same year for such matter before a court martial by amending section 227.01 of the *NDA* (*An Act to amend the Criminal Code and other Acts*, S.C. 2010, c. 17). Consequently, further to these amendments, it became mandatory for a civil court of criminal jurisdiction, as for a court martial, ordering to sexual offenders to register to the sex offender registry when convicted of a designated sexual offence, such as a sexual assault.

The impugned NDA's provision

[18] The *Criminal Code* and the *NDA* relevant and current provision being at the heart of this application read as follows:

Criminal Code	***NDA***
490.012 (1) When a court imposes a sentence on a person for an offence referred to in paragraph (a), (c), (c.1), (d), (d.1) or (e) of the definition *designated offence* in subsection 490.011(1) or renders a verdict of not criminally responsible on account of mental disorder for such an offence, it shall make an order in Form 52 requiring the person to comply with the *Sex Offender Information Registration Act* for the applicable period specified in section 490.013.	**227.01 (1)** When a court martial imposes a sentence on a person for an offence referred to in paragraph (a) or (c) of the definition *designated offence* in section 227 or finds the person not responsible on account of mental disorder for such an offence, it shall make an order in the prescribed form requiring the person to comply with the *Sex Offender Information Registration Act* for the applicable period specified in section 227.02.

The position of the parties

Sergeant Kohlsmith

[19] Sergeant Kohlsmith's defence counsel suggested to the Court that because the wording of subsection 227.01(1) of the *NDA* is very similar to subsection 490.012(1) of the *Criminal Code*, and because they both served the exact same purpose, then the *Ndhlovu* decision shall be applied to subsection 227.01(1) of the *NDA*, and this latter provision shall be considered unconstitutional. In other words, he told the Court that the same legal analysis made by the Supreme Court of Canada concerning subsection 490.012(1) of the *Criminal Code* shall apply to subsection 227.01(1) of the *NDA*.

[20] However, as this provision of the *NDA* is not subject to a specific declaration of constitutional invalidity by the Supreme Court of Canada, he is of the opinion that it belongs to this Court to make such declaration. Accordingly, he invited the Court to do so.

[21] In addition, he put to the Court that considerations made by the Supreme Court of Canada to conclude and order the suspension of its declaration of invalidity for a period of one year regarding the *Criminal Code* provision cannot be echoed in the context of the military justice system for a court martial, as the consequences for a finding of guilty by a court martial concerning a service offence pursuant to the Code of Service Discipline may potentially not be the same as for a conviction by a civil court of criminal jurisdiction pursuant to the *Criminal Code*. Then, he suggested to the Court that such suspension of the declaration of invalidity shall be disregarded by this Court.

[22] Alternately, if this Court concludes to the necessity of suspending its declaration of invalidity as the Supreme Court of Canada did, he then suggested that Sergeant Kohlsmith is entitled to a personal remedy under subsection 24(1) of the *Charter*.

[23] However, he warned the Court about considering doing such thing, his opinion being that it would be an argument for not considering suspending the declaration of invalidity, as it would put on Sergeant Kohlsmith a legal burden to demonstrate something further to a violation of his own constitutional rights, while logically the legal burden has to be on the prosecution to demonstrate that an order to impose on the offender providing information for registration in a national database under the *SOIRA* shall be issued, despite the constitutional invalidity of the impugned *NDA* provision. In other words, because of the constitutional invalidity of subsection 227.01(1) of the *NDA*, the burden shall be on the prosecution to demonstrate the necessity of such a court order, and not on the offender whose constitutional right was violated.

[24] As no evidence was offered by Sergeant Kohlsmith during this hearing regarding a personal remedy to be considered by this Court pursuant to subsection 24(1) of the *Charter*, the Court understands that he is seeking a declaration from this court martial that he is entitled to do so if the Court does not accept his suggestion not to suspend its declaration of constitutional invalidity of the *NDA* provision, and then he would provide evidence on this specific issue during the sentencing procedure set for a later date in order for this Court to decide on this question.

The prosecution

[25] The prosecutor, on behalf of the Director of Military Prosecutions, put to the Court that subsection 227.01(1) of the *NDA* has a similar wording as subsection 490.012(1) of the *Criminal Code* and, as such, carries the same constitutional flaws identified by the Supreme Court of Canada in *Ndhlovu* concerning the *Criminal Code* provision.

[26] Consequently, the prosecution invited this court martial to consider that the legal conclusions made in *Ndhlovu* regarding the constitutional invalidity of subsection 490.012(1) of the *Criminal Code* extends to subsection 227.01(1) of the *NDA*, including the suspension of such declaration.

[27] As sentencing is considered as an individualized process by the court martial, as taught by the Supreme Court of Canada, the prosecution indicated that in the actual legal context, it is of the opinion that subsection 227.01(1) of the *NDA* still applies, unless the offender can demonstrate, in the context of an application pursuant to subsection 24(1) of the *Charter*, that *SOIRA*'s impacts on his liberty bear no relation or is grossly disproportionate to the objective of this specific provision to the extent that an order which impose on the offender to provide information for registration in a national database under the *SOIRA* shall not be issued by the Court.

[28] It is the understanding of the Court that the prosecution's perspective is that the debate concerning this *Charter* personal remedy for the offender shall occur in the context of the sentencing hearing that will take place later this year.

The analysis

Is the Ndhlovu decision extended to subsection 227.01(1) of the NDA?

[29] The Court agrees with both parties that the wording in subsection 490.012(1) of the *Criminal* Code and in subsection 227.01(1) of the *NDA* is almost identical. In fact, they do the exact same thing: imposing on a court the obligation to order a sexual offender to comply with the *SOIRA* requirements following a conviction of a designated sexual offence.

[30] Consequently, the legal analysis and conclusions made by the Supreme Court of Canada in *Ndhlovu* regarding the constitutional validity of subsection 490.012(1) of the *Criminal Code* shall extend to subsection 227.01(1) of the *NDA*.

[31] As such, as suggested by both parties, this Court considers that the Supreme Court of Canada declared with its decision in *Ndhlovu* that subsection 227.01(1) of the *NDA* is of no force or effect under subsection 52(1) of the *Constitution Act, 1982*, as it did for subsection 490.012(1) of the *Criminal Code*.

[32] Considering that the declaration made by the SCC in *Ndhlovu* regarding the constitutional invalidity of subsection 490.012(1) of the *Criminal Code* extends to subsection 227.01(1) of the *NDA*, then this court martial does not see the need for it to make a specific and separate declaration for this *NDA* provision as suggested by Sergeant Kohlsmith's defence counsel.

Shall the suspension of the declaration of constitutional invalidity be applied?

[33] Concerning the suggestion made by Sergeant Kohlsmith's defence counsel to disregard the suspension for one year of the declaration of invalidity, because the consequences for a finding of guilt by a court martial concerning a service offence pursuant to the Code of Service Discipline may potentially not be the same as for a conviction by a civil court of criminal jurisdiction pursuant to the *Criminal Code*, the Court disagrees with this proposition.

[34] A finding of guilt concerning the commission of a sexual assault contrary to section 271 of the *Criminal Code* made by a civil court of criminal jurisdiction and the one made by a court martial in the context of a service offence is the same: it is the result of the prosecution proving to a trier of facts all the essential elements of the offence beyond a reasonable doubt.

[35] Some consequences resulting from such decision are the same, no matter which court deal with them. In the civil justice system, as in the military justice system, the legal obligation for the court to order an offender to register his or her personal information on Canada's national sex offender registry and to report is the same. Consequently, the context and the dynamic for considering suspending the declaration of invalidity remain the same as well.

[36] In *Ndhlovu*, the Supreme Court of Canada said at paragraph 139:

> Declaring s. 490.012 to be of no force or effect immediately would effectively preclude courts from imposing *SOIRA* orders on any offenders, including those at high risk of recidivism. Granting an immediate declaration could therefore endanger the public interest in preventing and investigating

> sexual offences committed by high-risk offenders, undermining public safety. Balanced against this consideration is the significance of the rights violation that the suspension would temporarily prolong. Granting a suspension also runs counter to the public's interest in legislation that complies with the Constitution. On balance, however, the circumstances justify a suspension of the declaration of invalidity for 12 months.

[37] This balanced approach and its conclusion made by the SCC in *Ndhlovu* shall apply to subsection 227.01(1) of the *NDA* too, because what was considered by that Court in its decision applies in full, with no exception, to the court martial. Consideration was given to public interest and the rights of the offender, and this exercise does not call for anything different if made in the context of a court martial.

[38] Then, this Court considers that the suspension of the declaration of constitutional invalidity made by the SCC in *Ndhlovu* extends to subsection 227.01(1) of the *NDA*, and it shall be suspended for the period of one year, starting on the day the SCC decision was issued.

Should judicial discretion be exercised regarding the court order to an offender to comply with SOIRA?

[39] The last thing to be decided by the Court has to do with a personal remedy to be granted to Sergeant Kohlsmith pursuant to subsection 24(1) of the *Charter*, considering that subsection 227.01(1) of the *NDA* infringes the rights of the offender pursuant to section 7 of the *Charter*, because it deprived him of his right to liberty in a manner inconsistent with the principles of fundamental justice against overbreadth, as decided in *Ndhlovu*.

[40] The prosecution is of the view that subsection 227.01(1) of the *NDA* still applies to the offender and if he wishes to have its application considered in a different way, including not to have an order issued by this Court to fulfill any obligation under *SOIRA*, then the burden would be on him to demonstrate that *SOIRA*'s impacts on his liberty bear no relation or is grossly disproportionate to the objective of this specific provision.

[41] At first, Sergeant Kohlsmith disagrees with this affirmation as it imposes on him the burden to demonstrate that an unconstitutional provision shall not apply to him. However, if the Court does not share his perspective, he is of the view that alternatively, it is something that the Court shall consider, and that he can do in the context of the sentencing hearing, by claiming a personal *Charter*'s remedy to be imposed by the court.

[42] Both parties provided an example of such application made by the court martial. They relied on the matter of *R. v. Luis*, 2022 CM 4016, a decision of Pelletier M.J. Since the hearing of this matter, Sukstorf M.J. also considered that issue in her decision of *R. v. Levesque*, 2023 CM 2001.

[43] In both cases, military judges granted the offender's application for a personal remedy and made the decision of not issuing any *SOIRA* order.

[44] In *Levesque*, Sukstorf M.J. said at paragraph 97:

> After declaring the section unconstitutional, the SCC suspended the declaration for one year to allow Parliament to remedy the legislation. However, in doing so, they allowed the exemption that had been granted to Mr Ndhlovu to stand (see paragraph 143). In practical terms, on application from offenders, the SCC's decision in *Ndhlovu* provides trial judges with discretion to determine whether, on the facts of the case before them, the offender's registration in the *SOIRA* violates their section 7 rights. It is not automatic. It is noteworthy that in the absence of a NCQ, trial judges have no discretion with respect to the issuance of a *SOIRA* order, but in this case, the offender has filed the required notice.

[45] After carefully reading the *Ndhlovu*'s decision, and considering the reasons expressed by my colleagues in *Luis* and *Levesque*, I do not share the conclusion expressed by Sukstorf M.J. in *Levesque* regarding the practical effects of this SCC decision. I do not interpret it as allowing trial judges with any discretion regarding the issuance of an order to a sexual offender registering to the sex offender registry when convicted by a court martial of one designated sexual offence, such as a sexual assault.

[46] When read as a whole, it appears clear to me that the *Ndhlovu*'s decision addressed specifically the narrow situation where an offender is convicted of more than one designated offence, making him or her subject to mandatory lifetime registration in the national sex offender registry.

[47] As such, any other situation different than this one would see *SOIRA*'s provisions in the *NDA* being applied as usual. As said in *Ndhlovu* at paragraph 142:

> As a result, the existing provisions that dictate a length of registration will operate, pending any new constitutional provision that would target offenders who commit more than one offence. For instance, those convicted of offences with a maximum term of imprisonment of 2 to 5 years will receive a 10-year registration order, while those convicted of an offence with a maximum term of imprisonment of 10 to 14 years would receive a 20-year registration order (s. 490.013(2)).

[48] In addition, the SCC gave consideration in reinstating judicial discretion on this issue and commented on it by saying at paragraph 138 in *Ndhlovu*:

> The Crown submits that "[a] tailored remedy is not appropriate in this case" (R.F., at para. 175). Since the issue is the mandatory registration of all sex offenders, its unconstitutionality does not lend itself to such a remedy. As the Crown notes, reading down s. 490.012 so that it would simply not apply to offenders who are not at an increased risk of reoffending or who suffer grossly disproportionate impacts would, in practice, reinstate judicial discretion and contradict Parliament's clear intention to remove all judicial discretion to exempt offenders at the time of sentencing from the registry (*R. v. Boudreault*, 2018 SCC 58, [2018] 3 S.C.R. 599, at para. 100; *Schachter v. Canada*, [1992] 2 S.C.R. 679, at p. 718). We agree with the Crown that the appropriate remedy is a declaration of invalidity.

[49] In other words, it is the understanding of this court that the SCC made the decision to maintain in full, for one year, the application of the *Criminal Code* provisions, which include at the same time the *NDA* provisions, regarding the issuance of an order to comply with the *SOIRA*'s provisions, with an exception for the ones involving a conviction for more than one offence. Then, it is my conclusion that the *Ndhlovu*'s decision does not reinstate judicial discretion to determine anything on this issue to sentencing judges at trial level, except when an offender is convicted of more than one designated offence.

[50] As said by the Honourable Judge Gouge in *R.* v. *Zerbin*, 2023 BCPC 54, at paragraph 37:

> Ms. Wood says that Mr. Zerbin does not present an "… increased risk of reoffending …", and that the impact of registration would impose "… grossly disproportionate impacts …" upon him by restricting his business travel. For that reason, she says, the appropriate remedy, under section 24 of the Charter, for the breach of his Charter rights is to exempt him from the requirements of SOIRA. It seems to me that, if I were to do that, I would "… reinstate judicial discretion and contradict Parliament's clear intention to remove all judicial discretion to exempt offenders at the time of sentencing …". That would be exactly what the Court said I should not do: Ndhlovu at paragraph 138.

[51] Concerning the situation where an accused person is convicted for more than one designated offence, I understand that the SCC considered in *Ndhlovu* that a remedy could be considered under subsection 24(1) of the *Charter* for offenders who were subject, since 2011 and until the time the SCC decision in *Ndhlovu* was issued on 28 October 2022, to a court's decision to mandatory lifetime registration in the national sex offender registry after they were convicted.

[52] For those who would be subject to the exact same situation since the *Ndhlovu*'s decision, a court would not be able anymore to impose such lifetime order, and accordingly it is entitled to exercise its discretion concerning the necessity to impose one, and the length of it if applicable, as long as an application seeking a remedy pursuant to subsection 24(1) of the *Charter* is previously filed with the court.

[53] As said by the Court of Appeal of Ontario in *R. v. Rule*, 2023 ONCA 31, at paragraph 11:

> In *R. v. Ndhlovu*, 2022 SCC 38, 474 D.L.R. (4th) 389, the Supreme Court of Canada declared that ss. 490.012 and 490.013(2.1) were unconstitutional. The declaration in respect of the former was suspended for one year and applies prospectively; the declaration of invalidity regarding the latter was granted with immediate effect and applies retroactively: *Ndhlovu*, at para. 143. The Supreme Court suggested that the appropriate remedy for persons subjected to a mandatory lifetime order under s. 490.013(2.1) was to seek a s. 24(1) *Charter* remedy to change the length of their registration: *Ndhlovu*, at para. 142.

[54] This difference in the Canadian courts' understanding of the *Ndhlovu*'s decision is not surprising at all, as judges from some other courts in Canada experienced the exact same difficulty as the military judges in trying to interpret it. This Court had an opportunity to review several reported recent Canadian courts' decisions at trial level and some at the appeal level. Most of the reported decisions from the Quebec Provincial Court and the Ontario Superior Court of Justice, and some from Nunavut Court of Justice, the Provincial Court of British Columbia, the Alberta and the Saskatchewan Court of Appeal[1] appear to interpret and apply this Supreme Court of Canada decision in the same way as this Court does.

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[1] *R. v. Orestil*, 2023 QCCQ 4; *R. v. D.S.*, 2023 QCCQ 5; *R. v. J.F.*, 2022 QCCQ 8119; *R. v. M.C.*, 2023 QCCQ 196; *Directeur des poursuites criminelles et pénales v. Gravel Lemarbre*, 2022 QCCQ 9328; *R. v. Olivier*, 2022 QCCQ 8403; *R. v. Brosseau*, 2023 QCCQ 296; *R. v. T.L.*, 2023 QCCQ 337; *Directeur des poursuites criminelles et pénales v. Alix*, 2023 QCCQ 1075 (CanLII); *R. v. Rule*, 2023 ONCA 31; *R. v. Valley*, 2023 ONSC 166; *R. v. M.S.A.*, 2022 ONSC 6818; *R. v. Kavanagh*, 2023 ONSC 283; *R. v. J.W.*, 2022 ONSC 6491; *R. v. Patel*, 2023 ONSC 890; *R. v. G.H.*, 2023 ONCA 89; *R. v. Fardshisheh*, 2023 ONSC 1334; *R. v Simailak*, 2022 NUCJ 39; *R. v. Zerbin*, 2023 BCPC 54; *R v McKnight*, 2023 ABCA 72; *R v Merasty*, 2023 SKCA 33 (CanLII).

[55] However, some other judges from these Quebec and Ontario courts, and few others from the Court of King's Bench of Alberta and Manitoba, from the Provincial Court of Saskatchewan and the Supreme Court of Prince Edward Island[2] adopted a very similar view, even identical, to the one taken by military judges Pelletier and Sukstorf regarding the question of reinstating trial judges' discretion to apply a constitutional remedy if the matter is raised by an offender. None of these latter convinced this Court to approach this specific issue differently then it does.

[56] As the Court stated at the beginning of its decision, Sergeant Kohlsmith was found guilty by this court martial on 14 October 2022 of one service offence punishable under paragraph 130(1)(a) of the *NDA* for sexual assault contrary to section 271 of the *Criminal Code*. As he was convicted of only one offence, then the *NDA* provisions regarding an order to comply with the *SOIRA* still apply in full, making unnecessary to consider a personal *Charter* remedy in the applicable legal context that I described before.

FOR ALL THESE REASONS, THE COURT:

[57] **DISMISSES** the application.

[58] **DECLARES** that the legal analysis and conclusions made by the Supreme Court of Canada in the *Ndhlovu*'s decision regarding the constitutional invalidity of subsection 490.012(1) shall be extended to subsection 227.01(1) of the NDA.

[59] **DECLARES** that the suspension for one year of the declaration of constitutional invalidity made by the Supreme Court of Canada in the *Ndhlovu's* decision shall be extended to subsection 227.01(1) of the *NDA* for the exact same period.

[60] **DECLARES** that there is no need to consider a personal remedy for the offender pursuant to subsection 24(1) of the *Charter*, as subsection 227.01(1) the *NDA* regarding an order to comply with the *SOIRA*'s provisions are still in force and shall be applied as is by this Court.

Counsel:

Captain C. Da Cruz, Defence Counsel Services, Counsel for the Applicant, Sergeant R.D. Kohlsmith

The Director of Military Prosecutions as represented by Major A. Dhillon, Counsel for the Respondent

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[2] *R. v. Gravel*, 2023 QCCQ 397; *R. v. Rochon*, 2023 QCCQ 295; *R. v. Cusick*, 2022 ONCJ 590; *R v. H.M.*, 2023 ONSC 1002; *R. v. J.D.*, 2023 ONSC 1088; *R. v. Shokouh*, 2023 ONSC 1848; *R. v. T.M.*, 2023 ONCJ 131; *R v TS*, 2023 ABKB 157; *R. v. J.S.*, 2023 MBKB 26; *R. v. O.R.*, 2023 MBKB 32; R. *v. Z. J. L. B.*, 2022 SKPC 45; *R. v. Fall*, 2022 PESC 42.