S.C.C. File No. 37833

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

RYAN JARVIS

Respondent

- and -

SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC, ONTARIO COLLEGE OF TEACHERS, CANADIAN CIVIL LIBERTIES ASSOCIATION, INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO, WOMEN'S LEGAL EDUCATION AND ACTION FUND INC. and CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)

Interveners

FACTUM OF THE INTERVENER, ONTARIO COLLEGE OF TEACHERS

(Pursuant to Rules 37 and 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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PART I—OVERVIEW

1. The need to maintain a safe learning environment informs the circumstances in which students and teachers may reasonably expect privacy. This appeal invites the Court to maintain the balance it has struck between privacy and safety in previous cases concerning privacy at school — namely, *R. v. M. (M.R.)*[1], *R. v. A.M.*,[2] and *R. v. Cole*.[3]

2. Neither the majority of the Court of Appeal nor Huscroft J.A. in dissent considered this jurisprudence in their respective reasons. That omission invites a patchwork approach to privacy in school. It stands to confound the expectations of students, teachers, and administrators. It also risks complicating the regulation of the teaching profession under provincial law. The Ontario College of Teachers (the "**College**") intervenes to propose a unified analytical framework for protecting privacy at school, one that reflects this Court's reasoning in previous cases.

3. When this Court assessed the limits of privacy in the school environment in *M. (M.R.)*, *A.M.*, and *Cole*, it did so with respect to s. 8 of the *Charter*. But the principles articulated in those judgments apply with equal force to the question of whether, for the purposes of s. 162(1) of the *Criminal Code*, a student at school has been observed or recorded in circumstances that give rise to a reasonable expectation of privacy. By applying those principles in this case, the Court can ensure that its interpretation of s. 162(1) furthers, rather than hinders, the College's ability to ensure student well-being by regulating the teaching profession, enforcing professional standards, and holding its members accountable for professional misconduct.

PART II—STATEMENT OF ARGUMENT

1. When Is It Reasonable To Expect Privacy in a Learning Environment?

4. The existence of a reasonable expectation of privacy — which is the threshold for engaging s. 8 of the *Charter* — is determined in "the totality of the circumstances".[4] Unlike s. 8, s. 162(1)

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[1] *R. v. M. (M.R.)*, [1998] 3 S.C.R. 393 ["***M (M.R.)***"].
[2] *R. v. A.M.*, 2008 SCC 19, [2008]1 S.C.R. 569 ["***A.M.***"].
[3] *R. v. Cole*, 2012 SCC 53, [2012] 3 S.C.R. 34 ["***Cole***"].
[4] *R. v. Edwards*, [1996] 1 S.C.R. 128, ¶¶ 31 and 45; see also *R. v. Marakah*, 2017 SCC 59, [2017] 2 S.C.R. 608 ["***Marakah***"], ¶ 10; *R. v. Patrick*, 2009 SCC 17, [2009] 1 S.C.R. 579, ¶¶ 28 and 41-45; *R. v. Spencer*, 2014 SCC 43, [2014] 2 S.C.R. 212 ["***Spencer***"], ¶¶ 43-45.

of the *Criminal Code* protects privacy against intrusion by individuals, not the state.[5] Still, Parliament's choice of words in s. 162(1) — "[e]very one commits an offence who, surreptitiously, observes … or makes a visual recording of a person who is in ***circumstances that give rise to a reasonable expectation of privacy***" — suggests that the totality-of-the-circumstances approach that applies under s. 8 of the *Charter* also applies under s. 162(1) of the *Criminal Code*.

5. As with the "standing" inquiry under s. 8 of the *Charter*, s. 162(1) of the *Criminal Code* does not require that the subject's privacy expectation be extensive, only that it exist and be reasonable. If these criteria are satisfied, then surreptitious observation or recording for a proscribed purpose will constitute voyeurism contrary to s. 162(1) of the *Criminal Code*.[6]

6. The question on which the College intervenes in this appeal is, what circumstances give rise to a reasonable expectation of privacy in a learning environment — and, specifically, inside a school? The Court's school-privacy jurisprudence emphasizes three lines of inquiry: (a) the place within the school where the alleged intrusion occurred; (b) the purpose of the intrusion, in light of the relationship between the intruder and the target of the intrusion; and (c) the extent of the intrusion in relation to the privacy interest.[7]

(a) The Place Within the School Where the Alleged Intrusion Occurred

7. Physical location, while not necessarily determinative, will bear on whether the "circumstances … give rise to a reasonable expectation of privacy" for s. 162(1)'s purposes. Privacy expectations, wrote Binnie J. in *A.M.*, "may have to be modified depending on where [individuals] go, and what 'place' they find themselves in".[8]

8. Schools are a particular type of place. As the Court of Appeal majority noted in this case, "the areas of the school where students congregate and where classes are conducted are not areas where people have any expectation that they will not be observed or watched."[9] Many areas within

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[5] See *R. v. Rudiger*, 2011 BCSC 1397, 278 C.C.C. (3d) 524, ¶ 85; *R. v. Lebenfish*, 2014 ONCJ 130, ¶¶ 36-37.
[6] See *Marakah*, ¶ 106, per Moldaver J. (dissenting but not on this point).
[7] Cf. *R. v. Tessling*, 2004 SCC 67, [2004] 3 S.C.R. 432 ["***Tessling***"], ¶ 32.
[8] *A.M.*, ¶ 61; see also *Tessling*, ¶¶ 22 and 44; *R. v. Wong*, [1990] 3 S.C.R. 36, at p. 62, per Lamer C.J.
[9] *R. v. Jarvis*, 2017 ONCA 778 ["**C.A. reasons**"] ¶ 104, per Feldman J.A.

a school are similarly surveilled. This reflects the duty of school authorities "to maintain a safe school environment".[10] Ensuring student safety means that students and teachers cannot expect "to merge into the situational landscape" in school corridors, as they might on a public sidewalk.[11] Privacy in the school environment is "diluted".[12]

9. Still, as this Court has recognized since *M. (M.R.)*, expectations of privacy are not automatically extinguished the moment one walks into a school. *M. (M.R.)* concerned a search of a student's person, which revealed a bag of marijuana stuffed inside his sock.[13] Cory J., for the majority, concluded that a student maintained a reasonable expectation of privacy "with respect to his person and the items he carried on his person".[14] This expectation was, however, "significantly diminished"[15] in a learning environment. As Cory J. stated:

> [T]he reasonable expectation of privacy of a student in attendance at a school is certainly less than it would be in other circumstances. Students know that their teachers and other school authorities are ***responsible for providing a safe environment and maintaining order and discipline in the school. They must know that this may sometimes require searches of students and their personal effects and the seizure of prohibited items.*** It would not be reasonable for a student to expect to be free from such searches.[16]

10. As a function of policies and "rules of conduct" that must be enforced "[t]o ensure the safety of the students and to provide them with the orderly environment so necessary to encourage learning",[17] students enjoy "a lesser degree of privacy in a school environment".[18] But, the Court held in *M. (M.R.)*, their privacy is not extinguished altogether.

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[10] *Cole*, ¶ 62.
[11] Cf. *R. v. Wise*, [1992] 1 S.C.R. 527 ["***Wise***"], at p. 558, per La Forest J. (dissenting, but not on this point) (emphasis added).
[12] *Tessling*, ¶ 22.
[13] *M. (M.R.)*, ¶¶ 4-7.
[14] *M. (M.R.)*, ¶ 32.
[15] *M. (M.R.)*, ¶ 33.
[16] *M. (M.R.)*, ¶ 25; see also *Gillies v. Toronto District School Board*, 2015 ONSC 1038, 125 O.R. (3d) 17, ¶¶ 93 and 95.
[17] *M. (M.R.)*, ¶ 1.
[18] *M. (M.R.)*, ¶ 34.

11. Nor is it evenly diminished throughout the learning environment; not all places within a school are scrutinized equally. A student's privacy interest will be greater in a bathroom stall than in a classroom.[19] A student may expect to be observed while walking to the locker room before gym class, yet reasonably expect not to be observed while changing.

12. While the Court has recognized an overall diminution in privacy inside a school, it has also left space to acknowledge circumstances of heightened privacy therein.[20] Whether an alleged intrusion interfered with a reasonable expectation of privacy may turn, in part, on where within the school it took place.

(b) The Purpose of the Intrusion, in Light of the Relationship Between the Intruder and the Target of the Intrusion

13. Anyone present in a school knows or ought to know that teachers and administrators have duties to ensure safety, order, and discipline.[21] In Ontario, these obligations are codified in the *Education Act*.[22] Where an individual ought to expect the presence of school authorities charged with investigating and diffusing threats to the learning environment, it will not be reasonable to expect privacy as against intrusions that would ordinarily accompany such investigations pursuant to lawful authority.[23] Conversely, where there are policies or regulations in place that would, or should, safeguard the target against the intrusion, the target's expectation of privacy is more likely to be objectively reasonable [24]

14. It follows that an intrusion's purpose may inform whether it interfered with a reasonable expectation of privacy. As this Court has held, "[e]xpectation of privacy is a normative rather than

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[19] C.A. reasons, ¶¶ 104 and 108, per Feldman J.A.
[20] See *M. (M.R.)*, ¶ 34; *A.M.*, ¶ 1, per LeBel J., and ¶¶ 35 and 67, per Binnie J.; C.A. reasons, ¶¶ 131, per Huscroft J.A. (dissenting).
[21] See *M. (M.R.)*, ¶ 33.
[22] *Education Act*, R.S.O. 1990 c. E.2, ss. 264(1)(e) and 265(1)(a); see also *R. v. G. (J.M.)* (1986) 56 O.R. (2d) 705, 29 C.C.C. (3d) 455 (C.A.), ¶¶ 9-10 (WL).
[23] See *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, at pp. 159-60; *R. v. Simmons*, [1988] 2 S.C.R. 495, at p. 528; see also *A.M.*, ¶¶ 135-36, per Deschamps J. (dissenting).
[24] See C.A. reasons, ¶ 9, per Feldman J.A., and ¶ 131, per Huscroft J.A. (dissenting).

a descriptive standard".[25] An observation or recording made inside a school in furtherance of a safety-related investigation may not intrude on a reasonable expectation of privacy, even if the same kind of surveillance done for a teacher's private purposes may. Where the impugned action has happened in a learning environment, courts must consider its purpose, in light of the relationship between the intruder and the target of the intrusion, in determining whether the target had a reasonable expectation of privacy in the circumstances.

15. In each of *M. (M.R.)*, *A.M.*, and *Cole*, the purpose behind the intrusion — to enforce anti-drug policies in *M. (M.R.)* and *A.M.*, and to maintain a school-owned laptop in *Cole* — was held to diminish the extent of the subject's reasonable expectation of privacy, albeit not quite to the vanishing point.[26] An expectation of privacy will yield to a reasonable intrusion whose purpose is to protect the learning environment and to assure its safety.[27]

16. The corollary is that, where the intrusion has no such purpose, or where it contravenes a policy or regulation, it is more likely to run afoul of a reasonable expectation of privacy. Just as workplace policies at school may diminish privacy expectations, so may they enhance them.[28] As the Court noted in *R. v. Quesnelle*, "[p]rivacy is not an all or nothing right"; one may reasonably expect the same information about oneself to remain private for one purpose, even if not for another.[29] In a school setting, it may be reasonable to expect privacy against an intrusion whose purpose is unrelated to protecting the learning environment — even if, in otherwise identical circumstances, one's expectation of privacy would be reduced or eliminated vis-à-vis the need to guarantee safety and security.

17. This line of inquiry can effectively distinguish conduct that may justify a conviction under s. 162(1) of the *Criminal Code* from legitimate investigative activities by school officials, the

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[25] *Tessling*, ¶ 42; see also *R. v. Quesnelle*, 2014 SCC 46, [2014] 2 S.C.R. 390 ["***Quesnelle***"], ¶ 44; *R. v. Gomboc*, 2010 SCC 55, [2010] 3 S.C.R. 211, ¶ 34; *Rudiger*, ¶¶ 89 and 101; *Lebenfish*, ¶¶ 18 and 35.
[26] See *M. (M.R.)*, ¶¶ 33-34 and 49-50; *A.M.*, ¶ 1, per LeBel J., and ¶¶ 44-47, per Binnie J.; *Cole*, ¶¶ 52, 58 and 60.
[27] See *M. (M.R.)*, ¶¶ 54-55 and 64; *A.M.*, ¶ 2, per LeBel J., and ¶¶ 90-91, per Binnie J.; *Cole*, ¶¶ 62-63.
[28] Cf. *Cole*, ¶ 58.
[29] *Quesnelle*, ¶ 2.

College, and others. The former, by definition, cannot have the purpose of protecting students and the learning environment. The latter, by definition, must.

(c) The Extent of the Intrusion in Relation to the Privacy Interest

18. *A.M.* involved a search of an entire school building using sniffer dogs. A police constable and his sniffer dog, Chief, came upon A.M.'s backpack in the school gymnasium. Chief "alerted" to the backpack, indicating that it contained drugs. He was right. A.M. was charged with drug-related offences. He challenged Chief's sniffing and the ensuing search inside his backpack as unreasonable and thus contrary to s. 8 of the *Charter*. A majority of the Court agreed that the school environment diminished A.M.'s privacy interest, but did not eliminate it.

19. The searches in *M. (M.R.)* and *A.M.* differed in the extent to which they intruded on a protected privacy interest. Though Binnie J. acknowledged that "a body search … is far more intrusive than a dog sniff",[30] he noted that the latter revealed "the concealed contents" of A.M.'s backpack.[31] This constituted significant interference with A.M.'s privacy interest — his ability to decide what information about himself would be shared with others.[32] It was reasonable, the majority held, for A.M. to expect not to be subject to such an extensive intrusion.

20. *Cole* stands for the same proposition. The question in that case was whether a teacher could reasonably expect privacy in personal information — in Mr. Cole's case, child pornography — stored on his school-issued laptop computer. Teachers were allowed to use their computers for their own purposes, but school policy permitted administrators and technicians to access the contents of Mr. Cole's laptop when it was connected to the school network. So it was that, in the course of routine maintenance, a technician discovered Mr. Cole's illicit cache. The technician notified the principal, who seized the laptop and provided its contents to police, who arrested and charged Mr. Cole, who brought a pre-trial motion to exclude the computer evidence pursuant to ss. 8 and 24(2) of the *Charter*.[33]

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[30] *A.M.*, ¶ 45, per Binnie J.
[31] *A.M.*, ¶ 49, per Binnie J.; cf. *ibid.*, ¶¶ 137-40, per Deschamps J. (dissenting).
[32] See *Marakah*, ¶ 39; *Spencer*, ¶ 40; *Tessling*, ¶¶ 52-53 and 55.
[33] *Cole*, ¶¶ 16-24, 50, and 54-56.

21. This Court concluded that Mr. Cole had a reasonable expectation of privacy in the computer's contents.[34] Fish J. held that, like a student's expectation of privacy in her person or in the concealed contents of her backpack, Mr. Cole's expectation of privacy was diminished by the particular characteristics of the school environment — in Mr. Cole's case, "the ownership of the laptop by the school board, the workplace policies and practices, and the technology in place at the school" — but it was not eliminated entirely.[35] Like the students in *M. (M.R.)* and *A.M.*, Mr. Cole could reasonably expect not to be deprived of agency with respect to "information that [was] meaningful, intimate, and organically connected to his biographical core".[36]

22. The extent of an intrusion on a student's or teacher's privacy interest — including in a more "exposed" location like a corridor, classroom, or gymnasium, or on a school-issued laptop — may inform whether their expectation of privacy was reasonable.[37] Students can retain a reasonable expectation of privacy in that which they conceal in their school lockers, for example, even when those lockers are shared between students, and even when school authorities keep the combinations to the locks.[38] Similarly, even if A.M. could not reasonably expect privacy with respect to the exterior of his backpack, he could maintain such an expectation against an intrusion so extensive that it revealed what he had hidden inside.[39]

23. The distinction between more extensive intrusions and less extensive intrusions runs consistently through the school-privacy case law. It is also firmly rooted in common sense. This is significant where, as here, a reasonable expectation of privacy is said to exist in a highly regulated environment. If an incursion on subject matter that a student or teacher has chosen to keep to themselves is more likely to attract a reasonable expectation of privacy, then regulators like the College can operate on the basis of a clear, intuitive limit on their investigative powers.[40] To ensure

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[34] *Cole*, ¶ 57, per Fish J., and ¶ 107, per Abella J. (dissenting but not on this point).
[35] *Cole*, ¶ 58.
[36] *Cole*, ¶ 58.
[37] See *A.M.*, ¶ 66; *R. v. Buhay*, 2003 SCC 30, [2003] 1 S.C.R. 631 ¶ 23.
[38] See *R. v. Z. (S. M.)*, 1998 MBCA 18, 131 C.C.C. (3d) 436, ¶¶ 21 and 23.
[39] *A.M.*, ¶ 49, per Binnie J.
[40] See *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, [2001] 1 S.C.R. 772, ¶ 28; see also *Trinity Western University v. The Law Society of British Columbia*, 2016 BCCA 423, 405 D.L.R. (4th) 16, ¶ 115; *Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518, 131 O.R. (3d) 113, ¶¶ 100-101; see also *Law Society of*

consistency and predictability, the extent of the intrusion in relation to the privacy interest should inform whether, for the purposes of s. 162(1) of the *Criminal Code*, the subject of surreptitious observation or recording inside a school was observed or recorded in circumstances that give rise to a reasonable expectation of privacy.

2. Protection of Students Through Professional Regulation of the Teaching Profession

24. In adopting the foregoing approach, this Court can not only provide guidance to lower courts on the scope of s. 162(1), but it can also confirm and clarify the appropriate framework for assessing the reasonableness of privacy expectations in a learning environment more generally. This would not only affect how the College investigates misconduct by its members, as described above,[41] but it would also define the circumstances in which teachers may be disciplined for interfering with their students' privacy. In this regard, the College's role as Ontario's regulator of the teaching profession is an important element of context in the interpretation of s. 162(1).

25. In his dissenting reasons, Huscroft J.A. asserted that, if one concludes that the students whom the Respondent recorded did not have a reasonable expectation of privacy, then the result "is the opposite of what one would expect: surreptitious visual recording of high school students for a sexual purpose, while they are at high school, is not illegal".[42] In a similar vein, the Appellant submits that "[t]he situation at bar raises the same kind of harms Parliament intended to protect" in enacting s. 162(1) of the *Criminal Code*, and so "[t]he majority's interpretation which concludes that the Respondent's conduct was 'morally repugnant' but not illegal fails to adequately protect children … [and] does not give maximum effect to Parliament's intention".[43]

26. Parliament's goal, in enacting s. 162(1) of the *Criminal Code*, was "to protect children and other vulnerable persons from sexual exploitation, violence, abuse and neglect".[44] In cases in

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Alberta v. Sidhu, 2017 ABCA 224, ¶¶ 16-18; see also *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757, ¶¶ 60-62; *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627, at pp. 647-48.

[41] See *supra* note 40 and accompanying text.

[42] C.A. reasons, ¶ 134, per Huscroft J.A. (dissenting).

[43] Appellant's Factum, ¶ 38.

[44] R. MacKay, "Bill C-2: An Act To Amend the *Criminal Code* (Protection of Children and Other Vulnerable Persons) and the *Canada Evidence Act*" (Oct. 13, 2004), *available at* https://lop.parl.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=C2&Parl=38&Ses=1&Language=E#2txt (quotation marks omitted).

which s. 162(1) intercedes between students and their teachers, the scope of Parliament's intent cannot properly be ascertained without reference to provincial laws that govern the teaching profession. In Ontario, the *Ontario College of Teachers Act* (the "***OCT Act***")[45] empowers the College to discipline members whom its Discipline Committee determines to be "guilty of professional misconduct".[46] Professional misconduct is defined by regulation as including "[a]busing a student sexually", "[f]ailing to maintain the standards of the profession", "[a]n act or omission that … would reasonably be regarded … as disgraceful, dishonourable or unprofessional", "[c]onduct unbecoming a member", as well as "[c]ontravening a law" if the contravention is either "relevant to the member's suitability to hold a certificate of qualification and registration" or "has caused or may cause a student who is under the member's professional supervision to be put at or to remain at risk".[47]

27. Where students may reasonably expect privacy, teachers are professionally obligated to respect that privacy, and are subject to discipline pursuant to the *OCT Act* if they do not. The College's regulatory authority is not limited by s. 162(1) of the *Criminal Code*. Even absent circumstances that give rise to a reasonable expectation of privacy, a teacher who surreptitiously records his student for private purposes may be subject to discipline for professional misconduct.[48] In this way, the provincial law that governs the College's discipline process forms part of the broader statutory environment in which s. 162(1) was enacted. To the extent that s. 162(1) applies to interactions between teachers and students, the provision should be interpreted in a manner consistent with the College's role in protecting student privacy by regulating the teaching profession in the public interest.

28. An Ontario teacher who surreptitiously records his students for private purposes may be subject to professional discipline, even if he is not convicted of voyeurism under s. 162(1) of the *Criminal Code*. This is because, as a matter of ***provincial*** law, a student has the right not to be surreptitiously recorded by a teacher for the teacher's own private purposes — even if, as a matter

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[45] *Ontario College of Teachers Act, 1996*, S.O. 1996, c. 12 [the "***OCT Act***"].
[46] *OCT Act*, s. 30(2).
[47] *Professional Misconduct*, O. Reg. 437/97 ["***Misconduct Regulation***"], s. 1; see also *Education Act*, s. 264(1)(c); *Ontario College of Teachers v. Jack*, 2013 ONOCT 52 ["***Jack***"].
[48] *OCT Act*, s. 30(2); *Misconduct Regulation*, s. 1; see also *Education Act*, s. 264(1)(c); *Jack*.

of ***federal*** criminal law, the surreptitious recording has not undermined the student's reasonable expectation of privacy. Because of this complementarity of provincial and federal law, in other words, students in Ontario have a right not to be covertly recorded by their teachers for those teachers' private purposes, even in circumstances that do not give rise to a reasonable expectation of privacy.

3. Conclusion

29. This appeal requires the Court to decide how s. 162(1) of the *Criminal Code* applies to conduct by a teacher involving students at school. The same conduct is regulated by provincial law, which the College administers under the *OCT Act*. By adopting and applying the Court's own framework for assessing privacy expectations in a learning environment — as developed with respect to s. 8 of the *Charter* in *M. (M.R.)*, *A.M.*, and *Cole* — and by interpreting s. 162(1) in its entire context, the Court can give full force to Parliament's intent and ensure that the College can effectively protect students through its regulation of Ontario's teaching profession.

30. Though its implications will undoubtedly extend beyond Canada's schools, this appeal turns on when it is reasonable to expect privacy within them. This is familiar jurisprudential terrain. This Court should return to and build on it.

PART III—SUBMISSIONS ON COSTS

31. The College asks that no costs be awarded either for or against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of April, 2018.

FOR **McCarthy Tétrault LLP**
Caroline R. Zayid
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PART IV—TABLE OF AUTHORITIES

		Paragraph(s) Reference in Memorandum of Argument
	Case Law	
1.	*Gillies v. Toronto District School Board*, 2015 ONSC 1038, 125 O.R. (3d) 17	9
2.	*Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145	13
3.	*Law Society of Alberta v. Sidhu*, 2017 ABCA 224	23
4.	*Ontario College of Teachers v. Jack*, 2013 ONOCT 52	26, 27
5.	*R. v. A.M.*, 2008 SCC 19, [2008]1 S.C.R. 569	1, 7, 10, 11, 12 12, 13, 15, 19, 22
6.	*R. v. Buhay*, 2003 SCC 30, [2003] 1 S.C.R. 631	22
7.	*R. v. Cole*, 2012 SCC 53, [2012] 3 S.C.R. 34	1, 8, 13, 15, 16, 20, 21
8.	*R. v. Edwards*, [1996] 1 S.C.R. 128	4
9.	*R. v. G. (J.M.)* (1986), 56 O.R. (2d) 705, 29 C.C.C. (3d) 455 (C.A.)	13
10.	*R. v. Gomboc*, 2010 SCC 55, [2010] 3 S.C.R. 211	14
11.	*R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757	23
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15.	*R. v. Marakah*, 2017 SCC 59, [2017] 2 S.C.R. 608	4, 5, 19
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19.	*R. v. Rudiger*, 2011 BCSC 1397, 278 C.C.C. (3d) 524	4, 14
20.	*R. v. Simmons*, [1988] 2 S.C.R. 495	13
21.	*R. v. Spencer*, 2014 SCC 43, [2014] 2 S.C.R. 212	4, 19
22.	*R. v. Tessling*, 2004 SCC 67, [2004] 3 S.C.R. 432	6, 7, 8, 14, 19
23.	*R. v. Wise*, [1992] 1 S.C.R. 527	8

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24.	*R. v. Wong*, [1990] 3 S.C.R. 36	7
25.	*R. v. Z. (S. M.)*, 1998 MBCA 18, 131 C.C.C. (3d) 436	22
26.	*Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, [2001] 1 S.C.R. 772	23
27.	*Trinity Western University v. The Law Society of British Columbia*, 2016 BCCA 423, 405 D.L.R. (4th) 16	23
28.	*Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518, 131 O.R. (3d) 113	23
	Secondary Sources	
29.	R. MacKay, "Bill C-2: An Act To Amend the *Criminal Code* (Protection of Children and Other Vulnerable Persons) and the *Canada Evidence Act*" (Oct. 13, 2004), *available at* https://lop.parl.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=C2&Parl=38&Ses=1&Language=E#2txt	26

PART V—LEGISLATION RELIED UPON

Acts / Regulations	**Paragraph(s) Reference in Memorandum of Argument**
1. *Education Act*, R.S.O. 1990 c. E.2, ss. 264(1)(c) and (e), 265(1)(a)	13, 26, 27
2. *Ontario College of Teachers Act, 1996*, S.O. 1996, c. 12, ss. 30(2)	26, 27
3. *Professional Misconduct*, O. Reg. 437/97, s. 1	26, 27