**SCC File No: 39133**

**IN THE SUPREME COURT OF CANADA**
**(ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA)**

BETWEEN:

**HER MAJESTY THE QUEEN**

**APPELLANT/**
**RESPONDENT ON CROSS-APPEAL**
(Respondent)

-and-

**J.J.**

**RESPONDENT/**
**APPELLANT ON CROSS-APPEAL**
(Applicant/Defendant)

-and-

**ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF NOVA SCOTIA, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF SASKATCHEWAN, and ATTORNEY GENERAL OF ALBERTA**

**INTERVENERS**

---

# FACTUM OF THE INTERVENER, ATTORNEY GENERAL OF SASKATCHEWAN
**(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)**

---


**ATTORNEY GENERAL FOR SASKATCHEWAN**
820-1874 Scarth Street
Regina, SK S4P 4B3

**Sharon H. Pratchler, Q.C.**
Telephone: (306) 787-5584
Fax: (306) 787-9111
Email: sharon.pratchler2@gov.sk.ca

Counsel for the Intervener, Attorney General of Saskatchewan

**GOWLING WLG (CANADA) LLP**
Barristers and Solicitors
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3

**D. Lynne Watt**
Telephone: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Saskatchewan

**ATTORNEY GENERAL OF BRITISH COLUMBIA**
3rd Floor, 940 Blanshard Street
Victoria, BC V8W 3E6

**Lesley A. Ruzicka**
Telephone: (778) 974-5156
Fax: (250) 387-4262
Email: lesley.ruzicka@gov.bc.ca

Counsel for the Appellant/Respondent On Cross-Appeal

**PECK AND COMPANY**
610-744 West Hastings Street
Vancouver, BC V6C 1A5

**Rebecca A McConchie**
**Megan Savard**
Telephone: (604) 669-0208
Fax: (604) 669-0616
Email: rmcconchie@peckandcompany.ca

Counsel for the Respondent/Appellant On Cross-Appeal

**DEPARTMENT OF JUSTICE CANADA**
Guy-Favreau Complex, East Tower, 9th Floor
200 René-Lévesque Boulevard West
Montréal, QC H2Z 1X4

**Marc Ribeiro**
Telephone: (514) 283-6386
Fax: (514) 496-7876
Email: marc.ribeiro@justice.gc.ca

Counsel for the Intervener, Attorney General of Canada

**ATTORNEY GENERAL OF ONTARIO**
Crown Law Office-Criminal
720 Bay Street, 10th Floor
Toronto, ON M5G 1J5

**Jill Witkin**
Telephone: (416) 314-0610
Fax: (416) 326-4600
Email: jill.witkin@ontario.ca

Counsel for the Intervener, Attorney General of Ontario

**GOWLING WLG (CANADA) LLP**
Barristers and Solicitors
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3

**Matthew Estabrooks**
Telephone: (613) 786-0211
Fax: (613) 788-3573
Email: matthew.estarbooks@gowlingwlg.com

Ottawa Agent for Counsel for the Appellant/ Respondent on Cross-Appeal

**GOWLING WLG (CANADA) LLP**
Barristers and Solicitors
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3

**Jeffrey W. Beedell**
Telephone: (613) 786-0171
Fax: (613) 788-3587
Email: jeff.beedell@gowlingwlg.com

Ottawa Agent for Counsel for the Respondent/Appellant On Cross-Appeal

**ATTORNEY GENERAL OF CANADA**
50 O'Connor Street, Suite 500, Room 556
Ottawa, ON K1P 6L2

**Robert J. Frater, Q.C.**
Telephone: (613) 670-6289
Fax: (613) 954-1920
Email: robert.frater@justice.gc.ca

Ottawa Agent for Counsel for the Intervener, Attorney General of Canada

**BORDEN LADNER GERVAIS LLP**
World Exchange Plaza
100 Queen Street, suite 1300
Ottawa, ON K1P 1J9

**Nadia Effendi**
Telephone: (613) 787-3562
Fax: (613) 230-8842
Email: neffendi@blg.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Ontario

**NOVA SCOTIA PUBLIC PROSECUTION SERVICE**
700 – 1625 Grafton Street
Halifax, NS B3J 0E8

**Erica Koresawa**
Telephone: (902) 424-8734
Fax: (902) 424-8440
Email: erica.koresawa@novascotia.ca

Counsel for the Intervener, Attorney General of Nova Scotia

**GOWLING WLG (CANADA) LLP**
Barristers and Solicitors
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3

**D. Lynne Watt**
Telephone: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Nova Scotia

**JUSTICE MANITOBA – PUBLIC PROSECUTION**
Justice Manitoba - Public Prosecution
510 - 405 Broadway
Winnipeg, MB R3C 3L6

**Jennifer Mann**
**Charles Murray**
Telephone: (204) 918-0459
Fax: (204) 945-1260
Email: jennifer.mann@gov.mb.ca

Counsel for the Intervener, Attorney General of Manitoba

**GOWLING WLG (CANADA) LLP**
Barristers and Solicitors
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3

**D. Lynne Watt**
Telephone: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Manitoba

**ATTORNEY GENERAL OF ALBERTA**
Alberta Crown Prosecution Service,
Appeals Branch
3rd Floor, 9833-109 Street
Edmonton, AB T5K 2E8

**Deborah J. Alford**
Telephone: (780) 427-5181
Fax: (780) 422-1106
Email: deborah.alford@gov.ab.ca

Counsel for the Intervener, Attorney General of Alberta

**GOWLING WLG (CANADA) LLP**
Barristers and Solicitors
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3

**D. Lynne Watt**
Telephone: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Alberta

# TABLE OF CONTENTS

## PART I – OVERVIEW

1. This appeal concerns the constitutionality of the admissibility regime that Parliament has created to deal with evidence that meets specific criteria: the record is in the possession or control of the accused; it contains the personal information of a complainant in a sexual offence proceeding; and the complainant has a reasonable expectation of privacy in that record.

2. The Attorney General for Saskatchewan's submission focuses on two aspects of that admissibility regime – the requirement that defence counsel provide advance notice of the application to adduce the evidence, and the participatory rights afforded to complainants in the process of considering use of the record at trial.

3. The complainant's interest in the potential use of their personal information in criminal trials involving sexual offences has consistently been characterized by this Court using the language of *Charter* guarantees. This Court has held that the privacy, security of the person and equality interests of complainants are engaged. The lower courts have followed that approach.

4. Saskatchewan submits that since the interests of complainants have been recognized as constitutional in nature, then there must also be recognition of that status in the procedural rights afforded to protect those constitutional rights. The key to the analysis is what flows from that characterization, in terms of a procedural mechanism to fully protect those interests.

5. Given the nature of the interests of the complainant which are engaged, Saskatchewan submits that a process which does not include participatory rights and some form of advance notice does not provide a procedurally fair process for the complainant. Mere recognition of the complainant's interest, without more, is illusory in effect. The rights will be quickly negated without an effective means to protect them.

6. Ultimately, the records regime provides process rights to complainants, not outcome rights. This distinction is key and must not be conflated in the analysis. The regime does not dictate a particular outcome on admissibility. Rather, it ensures that the appropriate factors will be considered in the analysis, by expressly setting out the factors which a Judge must consider, while providing the complainant with an opportunity to be heard on matters that directly affect the complainant's privacy, security of the person and equality rights.

7. The legislated process ensures that complainants know that there is a particular process that will be followed to resolve issues involving their personal information, that there is an opportunity during that process for them to have a voice, and that there is autonomy built in to the process, through the provision for independent legal representation. While the complainant is not guaranteed any particular outcome, they are guaranteed a specific process.

8. This emphasis on process, rather than a particular outcome, is reflected in the regime's preservation of the discretion of the trial Judge to determine use of the record at trial – the regime does not prescribe a particular result. The trial Judge has discretion to abridge the advance notice that will be provided, within the circumstances of the particular case. The trial Judge also has discretion on the ultimate issue of admissibility, to be assessed taking into account the enumerated factors, within the factual matrix of the particular case, including assessments of relevancy.

9. Saskatchewan relies on seven principled bases to support the need for process rights to be afforded to complainants in the records screening regime:

(a) the *audi alteram partem* principle which necessitates an opportunity to be heard when an individual's interests are directly affected;

(b) the need to ensure that the opportunity to be heard is a meaningful one, with notice of the issue to be argued;

(c) the principle that rights without remedies, or without any means of practical implementation, are thereby rendered inconsequential or futile;

(d) the necessity that an assessment of privacy interests take place prior to any public disclosure of information, rather than mid-trial and mid-cross-examination, because privacy, once lost, can not be regained;

(e) the need for clear rules specifically outlining the conditions under which privacy can be infringed, if there is a societal interest;

(f) the personal nature of *Charter* rights, which generally do not lend themselves to representation by others, unless the tests established by standing are met;

(g) the general principle that there is no hierarchy among *Charter* protected rights and that no *Charter* right is absolute.

10. Saskatchewan's main point is that it is not sufficient to merely recognize the constitutional nature of the complainant's interests. Protection of those interests must be implemented in the evidentiary rules: Parliament has set out a process to screen records containing the personal information of complainants, and in which they have a reasonable expectation of privacy. Parliament has not dictated the ultimate outcome of that process.

## PART II – RESPONSE TO QUESTIONS IN ISSUE

11. There are two Constitutional Questions set for the Court's consideration:

(1) Did the trial judge err in concluding that the seven day notice requirement in s. 278.93(4) of the *Criminal Code*, R.S.C. 1985, c. C-46 infringes s. 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c. 11 and does not constitute a reasonable limit pursuant to s. 1?

(2) Does the "records screening regime" in ss. 278.92 to 278.94 of the *Criminal Code* violate ss. 7, 11(c), or 11(d) of the *Charter of Rights and Freedoms* in a manner that cannot be justified under s. 1 of the *Charter*?

12. Saskatchewan submits the answer to the first question is "yes", and the answer to the second question is "no". The impugned regime is wholly constitutional.

## PART III – ARGUMENT

### A. The Constitutional Nature of the Complainant's Interests – s. 7, 15, 28

13. This Court has recognized the constitutional nature of the interests of complainants which are engaged when the accused seeks to use personal information about the complainant in its defence of sexual offences.

14. This characterization was recognized early on by this Court and most expressly in *R v O'Connor*. In her decision, Justice L'Heureux-Dubé provided a detailed analysis of the nature of

the complainant's rights, which she expressly recognized as *Charter* rights. She referred to the necessary balancing that had to take place to deal with three competing constitutional rights in the context of third party record production. The three constitutional rights which she identified were the accused's right to full answer and defence and the complainant's right to privacy and right to equality without discrimination. (Although several sets of reasons were given, there was general agreement with the approach to privacy as a constitutional value, set out by L'Heureux-Dubé J.)[1]

15. Again in *R v Mills*, this Court described the complainant's rights as *Charter* rights:

> [18] This appeal presents an apparent conflict among the rights to full answer and defence, privacy, and equality, all of which are protected by the *Canadian Charter of Rights and Freedoms* (ss. 7 and 11(d), s. 8, and s. 15, respectively). […]
>
> [21] As this Court's decision in *Dagenais*, *supra*, makes clear, *Charter* rights must be examined in a contextual manner to resolve conflicts between them. Therefore, unlike s. 1 balancing, where societal interests are sometimes allowed to override *Charter* rights, under s. 7 rights must be defined so that they do not conflict with each other. The rights of full answer and defence, and privacy, must be defined in light of each other, and both must be defined in light of the equality provisions of s. 15.[2]

16. In the context of an application for third party records, the privacy interest of the complainant was identified under the s. 8 *Charter* guarantee, to be free from unreasonable search, because it was an application for production. However, in the context of an admissibility issue, where the records are already in the possession or control of the accused, Saskatchewan submits that the complainant's privacy interest is more appropriately identified as a s. 7 interest. Regardless of which *Charter* provision is applicable, the complainant's interest is constitutional in nature.

---

[1] *R v O'Connor*, [1995] 4 SCR 411 at paras 105-118 (per L'Heureux-Dubé J, La Forest and Gonthier JJ concurring); para 17 (Lamer CJC and Sopinka J dissenting, but not on this point); para 181 (Cory J., Iacobucci J concurring); para 191 (McLachlin J concurring). Major J. did not address the privacy issue.

[2] *R v Mills*, [1999] 3 SCR 668 at paras 18, 21 [emphasis added]. Also see *R v Darrach*, 2000 SCC 46 at para 28, [2000] 2 SCR 443.

17. In recent decisions regarding the application of the regime dealing with prior sexual activity of the complainant, an admissibility regime, the Court continues to use the language of *Charter* guarantees to describe the complainant's interests.[3]

18. The complainant's constitutional rights flow from the nature of the information in the records, not by the means the accused has obtained the records. The complainant's privacy rights should not vary depending on how the accused obtained the records. The complainant potentially has a privacy interest in records regardless whether they were provided to the accused by Crown disclosure or by an order for third party disclosure, or if the accused obtained the record independently of those processes. It is the content of the record which triggers the complainant's rights to privacy, security of the person and equality, not how the accused obtained the record.

19. Given that the complainant's interest is constitutional in nature, those rights must be protected by appropriate procedures that are responsive to those interests. A general evidential test from the common law needs to become more nuanced, more specific and more focused, to protect the constitutional rights of complainants in sexual offences.

20. Defence counsel challenging the legislation, and the court decisions finding unconstitutionality, assume that the screening mechanism will inevitably have the effect of excluding relevant, admissible evidence that assists the accused in making full answer and defence. Saskatchewan submits that the legislation sets out a process, expressly recognising the rights of both the accused and the complainant, and ensures that all factors are taken into consideration, including the accused's right to make full answer and defence. The ultimate decision is firmly grounded in the discretion of the trial Judge. The legislation guarantees a process, not an outcome.

21. In the screening and winnowing process involved in assessing admissibility, those factors are given consideration. Absent such an express codification in legislation, those other interests are not expressly recognized in the general test for admissibility set out in the common law. Absent the enumeration of those interests, the inevitability is not the exclusion of admissible evidence, but

---

[3] *R v Goldfinch*, 2019 SCC 38 at paras 43, 50 and 81, 435 DLR (4th) 1 (decision of Justice Moldaver and Justice Rowe); *R v R.V.*, 2019 SCC 41 at para 32, 436 DLR (4th) 265; *R v Barton*, 2019 SCC 33 at paras 58 and 212, 435 DLR (4th) 191.

rather the inevitability is the admission of the evidence without full consideration of those other interests.

**B. Parliament Can Enact Evidentiary Rules**

22. Saskatchewan has a particular concern with the way the trial courts in Saskatchewan have dealt with the legislation. The trial courts have held that the legislation is unconstitutional, and yet they have recognised the need for the protection of the privacy, equality and security of the person rights of complainants. The trial courts have instead implemented a common law regime for the protection of those rights.

23. This approach was set out in the first Queen's Bench decision which dealt with the constitutional issue, *R v Anderson*:

> [24] A complainant is not left without a remedy if these impugned sections of the *Criminal Code* are rendered unconstitutional. Any records that hold a high degree of privacy that somehow make their way into the accused's possession, as was the situation in *Shearing*, can be addressed in the same manner as outlined in *Shearing*. That is, the trial judge holds a voir dire, with the complainant and counsel present, to determine the admissibility of that record.
>
> [25] […] The common law protection provided to a complainant has been in effect since 2002. The *Shearing* procedure does not trample the accused's s. 7 and 11(d) *Charter* rights. It carefully balances the respective rights of both a complainant and an accused.[4]

24. The difficulty with this approach is that it asserts a judicial monopoly over the procedural mechanisms to protect the privacy and related rights of the complainants. That approach runs directly contrary to the ruling of this Court in *Mills*:

> [58] Courts do not hold a monopoly on the protection and promotion of rights and freedoms; Parliament also plays a role in this regard and is often able to act as a significant ally for vulnerable groups. This is especially important to recognize in the context of sexual violence. The history of the treatment of sexual assault complainants by our society and our legal system is an unfortunate one. Important change has occurred through legislation aimed at both recognizing the rights and interests of complainants in criminal proceedings, and debunking the stereotypes that have been so damaging to women and children, but the treatment of sexual assault complainants remains an ongoing problem. <u>If constitutional democracy is meant to ensure that due regard is given to the voices of those vulnerable to being</u>

[4] *R v Anderson,* 2019 SKQB 304 at paras 24, 25, 61 CR (7th) 376.

> overlooked by the majority, then this court has an obligation to consider respectfully Parliament's attempt to respond to such voices.[5]

25. Parliament plays a fundamental role in protecting those who are vulnerable in the context of sexual violence. Reliance on the common law of evidence, to the exclusion of efforts by Parliament to codify and prescribe evidential screening mechanisms and processes, ignores the valuable role that Parliament plays in protecting those who are vulnerable.

26. Secondly, as a practical matter, there is a need to ensure consistency of treatment of complainants across the country. The manner in which their constitutional rights are protected should be the same, regardless of which Province or Territory their complaint is tried in. Absent a legislated process, local variations in practice can easily occur. The extent of the variance will depend on whether the process and tests are codified, along with the degree of specificity and detail included in that process.

27. The common law approach does not address the same level of detail that is addressed in the legislation. As a practical matter, the greater the degree of detail of how the process will work, the greater the degree of protection to the complainants' constitutional rights.

28. For example, the legislation indicates that the accused must make the application. The common law process does not identify who or how the issue is to be identified or raised at trial. In *R v Shearing*,[6] it was the complainant who raised the issue during her cross-examination. There is no indication in *Shearing* that the Crown prosecutor raised the objection.

29. The protection of the complainant's constitutional rights should not vary depending on the personal strength or confidence of a complainant to raise the issue on their own initiative while under cross-examination. The protection of constitutional rights afforded in a court process should not vary depending on the personal characteristics of the complainant and their respective ability to assert those rights in an unfamiliar and to many, a hostile forum. It is not a reasonable expectation to place that obligation on a complainant in a sexual offence trial.

---

[5] *Mills*, at para 58 [emphasis added].

[6] *R v Shearing*, 2002 SCC 58, [2002] 3 SCR 33.

30. Because of the nature of the records at issue, they will be in the possession or control of the accused but will not have been provided to the prosecutor as a result of the investigation. Disclosure of personal information of the complainant would of necessity have to occur in the public trial, before a prosecutor could become aware of the issue. The common law process therefore allows for at least an initial public disclosure of the information, before any process is engaged to protect privacy.

31. Depending on the degree of detail contained in those initial questions asked by defence counsel, the damage may already be done. A subsequent ruling does not mitigate or eliminate the fact that there has been a public disclosure of private information about the complainant. In that respect, the impact on the complainant's dignity will already have occurred.

32. Privacy, once lost, can not be regained. As a result, the protection of that privacy and the dignity of the complainant requires a particular attention to detail regarding the process by which issues regarding disclosure in the public forum of a criminal trial will be dealt with. It requires an emphasis on the prevention of privacy breaches, rather than a remedial strategy after they occur. L'Heureux-Dubé J. made these points in *O'Connor*:

> [119] The essence of privacy, however, is that once invaded, it can seldom be regained. For this reason, it is all the more important for reasonable expectations of privacy to be protected at the point of disclosure. As La Forest J. observed in *Dyment, supra*, at p. 430:
>
> > ...if the privacy of the individual is to be protected, we cannot afford to wait to vindicate it only after it has been violated. This is inherent in the notion of being secure against unreasonable searches and seizures. Invasions of privacy must be prevented, and where privacy is outweighed by other societal claims, there must be clear rules setting forth the conditions in which it can be violated.[7]

33. While the discussion in *R v Dyment*[8] concerned the privacy interests of the accused, Saskatchewan submits two important concepts apply here:

---

[7] *O'Connor*, at para 119 [emphasis added by L'Heureux-Dubé J.].

[8] *R v Dyment*, [1988] 2 SCR 417.

(a) The approach must be preventative, to prevent invasions of privacy before a determination has been made on relevance and admissibility, rather than after some disclosure has already taken place; and

(b) Clear rules must be set forth to outline the conditions in which that privacy can be violated.

34. Saskatchewan submits that the impugned regime addresses both of these issues through its design. First of all, the regime contemplates advance notice if the accused intends to rely on records in their possession or control that contain the personal information of complainants in which there is a reasonable expectation of privacy. Secondly, the regime carefully outlines clear rules for when that privacy can be violated, and the specific factors which a trial Judge must take into account when applying those rules.

35. In *O'Connor*, L'Heureux-Dubé J. summarised the fundamental value of the reasonable expectation of privacy, making it clear that s. 7 protects the reasonable expectation of privacy:

> [119] […] In the same way that our constitution generally requires that a search be premised upon a pre-authorization which is of a nature and manner that is proportionate to the reasonable expectation of privacy at issue (*Hunter*, *supra*; *Thomson Newspapers*, *supra*), s. 7 of the *Charter* requires a reasonable system of "pre-authorization" to justify court-sanctioned intrusions into the private records of witnesses in legal proceedings. Although it may appear trite to say so, I underline that when a private document or record is revealed and the reasonable expectation of privacy therein is thereby displaced, the invasion is not with respect to the particular document or record in question. Rather, it is an invasion of the dignity and self-worth of the individual, who enjoys the right to privacy as an essential aspect of his or her liberty in a free and democratic society.[9]

36. A legislated process that incorporates and respects the s. 7 *Charter* rights of a complainant can not be a violation of the accused's *Charter* rights. It is important that the jurisprudence not create an unequal conception of privacy interests and the process used to protect them, when the rights-holder is a complainant in a sexual offence.

37. The legislated process contemplates that protection of the personal information of the complainant starts before there is any discussion of or questions asked about the personal information in the public forum of an open court proceeding. In contrast, the common law process would necessitate a question or questions to be asked first, followed by an objection to the question.

---

[9] *O'Connor*, at para 119 [emphasis added].

Those initial questions can themselves be a violation of the complainant's privacy, depending on what information is contained in the question. At best, the common law process provides protection after the issue is identified in open court. The extent of the incursion into the privacy of the complainant before a *voir dire* is even held will depend on the content of the question asked by defence counsel.

38. In other words, the common law process permits at least an initial invasion of privacy but then attempts to address the extent to which the invasion of privacy will continue by providing a process, only after an objection has been made. The common law process does not address the issue of holding the *voir dire in camera*. If stage two of the process is reached, the legislation directs that the hearing will be held *in camera*. There is no such direction or requirement in the common law process.

39. As a practical matter, the greater the degree of detail of how the process will work, the greater the degree of protection to the complainants' constitutional rights. Details of who initiates the application, how the complainant will be given an opportunity to be heard, and a guarantee that the information will be dealt with *in camera* and not made public unless and until a Court rules that it is admissible in the trial, are all important elements of protecting the complainants' interests, which are constitutional in nature.

40. There is also value in certainty. A detailed and thorough process that is known in advance respects the needs and interests of individuals involved in a criminal trial.

41. The screening regime at issue here bears the same hallmarks as were described by Justice Moldaver in relation to the s. 276 regime:

> [81] The s. 276 regime is sometimes viewed as a zero-sum game pitting the rights of the complainant against those of the accused. But in my respectful view, this is a mischaracterization. The s. 276 regime is designed to respect and preserve the rights of both complainants and accused persons by excluding evidence which would undermine the legitimacy of our criminal justice system and inhibit the search for truth, while allowing for the admission of evidence which would enhance the legitimacy of our criminal justice system and promote the search for truth. In this way, the regime seeks to promote the integrity of the trial process as a whole — a concept that is essential to the public's faith in the criminal justice system.

> [82] In pursuing this objective, the s. 276 regime operates in a step-by-step manner. From the accused's initial application under s. 276.1 to the final limiting instruction required by s. 276.4, the s. 276 regime establishes a rigorous, multistep process through which sexual activity evidence adduced by or on behalf of the accused must be carefully vetted and winnowed down to its essentials. To make its way into evidence at trial, such evidence must withstand careful scrutiny at each stage of the process.[10]

42. Saskatchewan submits that the nature of the legislative regime created by Parliament for documents in the possession of the accused should be given the same characterization as has been applied to the prior sexual activity regime in s. 276. It is an evidential screening mechanism, which has the effect of excluding irrelevant evidence that would impair the fairness of the trial process. In Saskatchewan's submission, dealing with different subject matter does not change the essential characterization of the scheme as a screening mechanism rather than an absolute bar to the Accused adducing the record.

### C. Basis Proposed by Justice L'Heureux-Dubé: *Audi alteram partem*

43. In *A.(L.L.) v B.(A.)*, L'Heureux-Dubé J. considered the applicability of the *audi alteram partem* principle in relation to providing a complainant with standing:

> [27] The one question that remains is whether both a complainant, a third party to the proceedings (whether or not an appellant, but here one of the appellants), and the Crown, a party to the proceedings, have standing in third party appeals. There is no doubt in my mind that they do. The *audi alteram partem* principle, which is a rule of natural justice and one of the tenets of our legal system, requires that courts provide an opportunity to be heard to those who will be affected by the decisions. The rules of natural justice or of procedural fairness are most often discussed in the context of judicial review of the decisions of administrative bodies, but they were originally developed in the criminal law context. In *Blackstone's Criminal Practice* (Murphy rev. 1993), the authors remark at p. 1529:
>
> > Traditionally, the rules of natural justice have been defined with a little more precision, and are said to involve two main principles - no man may be a judge in his own cause, and the tribunal must hear both sides of the case.
>
> See *Forsythe v. The Queen*, 1980 CanLII 15 (SCC), [1980] 2 S.C.R. 268; and *Attorney General of Quebec v. Cohen*, 1979 CanLII 223 (SCC), [1979] 2 S.C.R. 305.
>
> [28] Here, both the complainant and the Crown possess a direct and necessary interest in making representations. Both would be directly affected by a decision regarding the production of the complainant's private records. The decision is

[10] *Goldfinch*, at paras 81 and 82.

> susceptible of affecting the course of the criminal trial. Both, therefore, must be afforded an opportunity to be heard.[11]

44. The principle of *audi alteram partem* is a process right – it is not an outcome right. It gives an individual the right to make their case. It does not mean that the Judge will rule in their favour. The arguments which have been advanced by defence counsel in various challenges at times appear to equate having a process right with a particular outcome being guaranteed for the complainant.

45. One important point to consider is that *audi alteram* has two distinct components. The better-known component is the right to be heard by the decision-maker, to have the opportunity to make one's case. The lesser known component, but of equal importance, is that notice of the hearing be given, in sufficient time and substance, to enable the party to present their case on the issues to be decided.[12]

46. Ultimately, the records regime relies on the discretion of the trial Judge to make an assessment on the admissibility of the evidence. By providing participatory rights to the complainant and advance notice, the regime ensures that the complainant has an opportunity to be heard. The advance notice component ensures that the participation is meaningful.

**D. No Rights Without Remedies**

47. It is an ancient maxim of the common law: "No right without a remedy."[13] Saskatchewan submits that there certainly can be an issue whether a complainant has a reasonable expectation of privacy in a particular record. However, once it is found that there *is* a reasonable expectation of

---

[11] *A.(L.L.) v B.(A.)*, [1995] 4 SCR 536 at paras 27, 28 [emphasis added by L'Heureux-Dubé J].

[12] *Ontario (Provincial Police) v Mosher*, 2015 ONCA 722, 340 OAC 311, citing *Supermarchés Jean Labrecque Inc. v Flamand*, [1987] 2 SCR 219 at 234-35 and *Telecommunications Workers Union v Canada (Radio-Television and Telecommunications Commission)*, [1995] 2 SCR 781 at para 29.

[13] "[A]nd indeed it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal": *Ashby v White* (1703), 2 Ld Raym 938 at 953, 92 ER 126; quoted in *Seneca College v Bhadauria*, [1981] 2 SCR 181 at 191.

privacy in a particular case, there must be a procedural mechanism to protect that privacy, regardless of the way the accused has obtained the record.

48. The recognition of the complainants' constitutional rights in criminal trials is an abstract concept, unless there is a procedural mechanism by which those interests can be addressed and protected.

49. The procedural protection and remedial spectrum available may not perhaps be as extensive as in situations when the complainant is directly raising a constitutional issue as a moving party in an action, but nonetheless there must be a solid foundation, grounded in the principles of fundamental justice. For example, the amount of advance notice contemplated for applications under the regime is half of the notice period required for Notices of Constitutional Questions in Saskatchewan under *The Constitutional Questions Act, 2012*.[14]

50. The only remedy available to a complainant is procedural in nature, focusing on an opportunity to participate in the process, in a limited way, with very short notice of the issues to be addressed. Within that notice period, the complainant must both retain and instruct counsel to represent their interests.

51. And yet, if the limited participatory rights and very short advance notice is taken away, what are the remedial features that are left to address the complainants' rights? These procedural rights provide that remedy by giving the complainant a meaningful opportunity to participate in issues that directly affect them. Most importantly, the participatory rights provide agency and autonomy to the complainant, to allow them to act independently and make their own choices.

52. A related factor is this: if the complainant has no right to participate in the process, and yet has constitutionally protected privacy rights, who then exercises those rights, to protect the interests of the complainant? It is a basic principle of Canadian criminal procedure that the Crown Prosecutor acts for the public at large, and does not represent the complainant. The Crown does not take instructions from the complainant.

---

[14] *The Constitutional Questions Act, 2012*, SS 2012, c C-29.01.

53. Another way to consider this point is that government agents are bound by the *Charter*. Government agents cannot exercise *Charter* rights. Like other *Charter* rights, it is the rights-holder who is best-positioned to advance those rights, based on their own assessment of their personal needs and autonomy.

54. An animating value behind the guarantee in s. 7 is the protection of personal dignity and autonomy. The provision of independent legal representation directly addresses the need for autonomy. Complainants can instruct their own counsel.

**E. Close Connection between Use of Personal Information and Myths and Stereotypes**

55. The greatest risk that myths and stereotypes will be used in criminal trials involving sexual offences is when there is cross-examination based on the personal and private information of the complainant. The rigour that is introduced by an enumerated and detailed process is important to ensure that myths and stereotypes about complainants are not introduced. Saskatchewan submits it is critical to note here as well that myths and stereotypes relating to the complainant in sexual offences are not limited to the subject matter of prior sexual activity nor are they limited to the twin myths expressly set out in s. 276(1). Rather, the potential for myths and stereotypes to be infused into the trial particularly arise when personal information of the complainant is proposed to be adduced as relevant or probative to an issue in a trial involving a sexual offence.

56. Saskatchewan submits that prior sexual activity is one type of personal information in which the complainant has a reasonable expectation of privacy. However, it is not the only type of personal information in which the complainant has such an interest. It is also not the only area of cross-examination of complainants where the use of myths and stereotypes is a danger. A detailed discussion of the nature of myths and stereotypes in the context of sexual assault trials was undertaken by Justice Martin (then on the Alberta Queen's Bench):

> [60] Broadly speaking, myths and stereotypes rest on untested and unstated assumptions about how the world works or how certain people behave in particular situations. They often involve an idealized standard of conduct against which particular individuals are measured. Sometimes general, assumed or attributed characteristics are applied to a particular individual or circumstance, often without an analysis of whether there is any merit in the general assumption or whether it truly applies in a particular situation. It was said in *R v Seaboyer; R v Gayme*, 1991 CanLII 76 (SCC), [1991] 2 SCR 577 at 654:

> Like most stereotypes, they operate as a way, however flawed, of understanding the world and, like most such constructs, operate at a level of consciousness that makes it difficult to root them out and confront them directly.
>
> This mythology... influences a judge or juror's perception of guilt or innocence of the accused and the "goodness" or "badness" of the victim, and finally has carved out a niche in both the evidentiary and substantive law governing the trial of the matter.
>
> [63] Discredited myths and stereotypes can be invoked to determine the presence or absence of consent, and/or employed when assessing the complainant's credibility, both generally and when deciding whether the circumstances were as she described. In the case at bar, consent is not in issue, but credibility played a central role. [15]

57. Saskatchewan submits that when personal information of a complainant is proposed to be used in cross-examination, there is a heightened risk that myths and stereotypes can be resorted to.

58. *Goldfinch* describes the interplay between using personal information, and the potential for use of generalizations and propensity reasoning that might result from that use:

> [31] A person's general character and past behaviour provide context for understanding specific events (*R. v. Handy*, 2002 SCC 56, [2002] 2 S.C.R. 908, at para. 39). However, such evidence often draws on pejorative or judgmental generalizations (D. M. Paciocco and L. Stuesser, *The Law of Evidence* (7th ed. 2015), at p. 54). This is problematic because "bad character is not an offence known to law" (*Handy*, at para. 72). Our legal system neither punishes nor protects people on the basis of lifestyle, character or reputation. To protect against propensity reasoning, trial judges must balance the probative value of such evidence against its prejudicial effects. [16]

59. The scope of cross-examination has never been defined for constitutional purposes as unlimited. The principles of fundamental justice include the ability to make full answer and defence, which includes the right to cross-examine. However, the constitutional protection accorded to cross-examination under both ss. 7 and 11(d) of the *Charter* has never been interpreted to provide for an absolute right to ask any question of a complainant, without limit. There is no constitutional right to an unconstrained or unencumbered cross-examination.

---

[15] *R v C.M.G.*, 2016 ABQB 368 at paras 60, 63, 41 Alta LR (6th) 374.

[16] *Goldfinch*, at para 31 [emphasis added].

60. As described by Justice Karakatsanis in *R.V.*:

> [39] Generally, a key element of the right to make full answer and defence is the right to cross-examine the Crown's witnesses without significant and unwarranted restraint: *R. v. Lyttle*, 2004 SCC 5, [2004] 1 S.C.R. 193, at paras. 1 and 41; *Osolin*, at pp. 664-65; *Seaboyer*, at p. 608. The right to cross-examine is protected by both ss. 7 and 11(d) of the *Charter*. In certain circumstances, cross-examination may be the only way to get at the truth…
>
> [40] However, the right to cross-examine is not unlimited. As a general rule, cross-examination questions must be relevant and their prejudicial effect must not outweigh their probative value: *Lyttle*, at paras. 44-45. In sexual assault cases, s. 276 specifically restricts the defence's ability to ask questions about the complainant's sexual history. By virtue of s. 276(3), full answer and defence is only one of the factors to be considered by the trial judge; it must be balanced against the danger to the other interests protected by s. 276(3). These additional limits are necessary to protect the complainant's dignity, privacy and equality interests: *Osolin*, at page 669; see also *R. v. Mills*, [1999] 3 S.C.R. 668, at paras. 61-68. They also aim to achieve important societal objectives, including encouraging the reporting of sexual assault offences: s. 276(3)(b).
>
> [41] Thus, the fact that the accused's ability to make full answer and defence requires that the complainant be cross-examined is not the end of the analysis. The scope of the permissible questioning must also be balanced with the danger to the other interests protected by s. 276(3), including the dignity and privacy interests of the complainant.[17]

## F. Reconciling *Charter* Rights versus Hierarchical Exercise

61. Once it is recognised that the complainant's reasonable expectation of privacy is protected by the *Charter*, it follows that those rights must be balanced against the accused's rights. This Court has already recognised this point, in *Darrach*[18] and also in *Mills*. As noted in *Mills:*

> [21] […] [U]nder s. 7 rights must be defined so that they do not conflict with each other. The rights of full answer and defence, and privacy, must be defined in light of each other, and both must be defined in light of the equality provisions of s. 15.[19]

62. When the complainant has a reasonable expectation of privacy in documents in the possession of the accused, the interests engaged are not only the accused's interest in making full answer and defence but also the complainant's security of the person, privacy and equality interests, which are also constitutional in nature. Saskatchewan therefore urges this Court not to

---

[17] *R.V.*, at paras 39-41 [emphasis added].

[18] *Darrach*, at paras 28 to 31.

[19] *Mills*, at para 21.

follow the approach taken by the Saskatchewan courts, which adopted a hierarchical approach, always favouring the accused's *Charter* rights over those of the complainant's rights, as stated in *Anderson*:

> [20] […] But, when the appropriateness of the balance is assessed between a complainant's privacy rights and the defence's ability to cross-examine the complainant using records that are in the accused's control as defined in s. 278.92(2)(b) of the *Criminal Code*, the complainant's privacy rights must give way to the accused's *Charter* rights. […]
>
> [22] […] The complainant's privacy rights associated with records in the accused's possession must give way to the accused's rights under ss. 7 and 11(d) of the *Charter*, that is, an unencumbered cross-examination. The balance is incontrovertibly in the accused's favour.[20]

63. By contrast to that approach, in a civil context, Professor Jena McGill has provided a helpful summary of four general principles applicable to reconciling the tension between *Charter* rights.[21]

> First, the "golden rule" is an unwavering commitment to the principle that there can be no hierarchy of *Charter* rights. Courts must "give the fullest possible expression to all relevant *Charter* rights, having regard to the broader factual context and to the other constitutional values at stake."
>
> Secondly, and closely related, no *Charter* right is absolute. An individual's rights are "inherently limited by the rights and freedoms of others," and reconciliation requires "that no one right be regarded as inherently superior to another."… This means that a claimant's rights may not actually extend as far as he or she alleges, and it will be up to the court to determine, as a threshold issue under the reconciling framework, whether the alleged infringement in fact properly falls within the ambit of a protected *Charter* right.
>
> Third, where rights are in tension, the resolution must have careful regard to the full context of the case, including the relevant facts and *Charter* principles. This means that rights contests cannot be resolved in the abstract. The "collision between rights must be approached on the contextual facts of actual conflicts" because the meaning and content of *Charter* rights "are not defined in abstraction, but rather in the particular factual matrix in which they arise."
>
> Fourth and finally, in a competing rights scenario, a court must, in the reconciliation exercise, have regard to the extent or severity of the interference with each right. This principle is a natural extension of the importance placed on context in the

---

[20] *Anderson*, at paras 20, 22.

[21] Jena McGill, "'Now it's My Rights Versus Yours': Equality in Tension with Religious Freedoms," (2016) 53:3 Alberta Law Review 583 at 589-591, online: SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3024124>.

> rights reconciliation exercise – it is only with full regard to the facts, including the seriousness of the interference with each right in the circumstances at hand, that true reconciliation can take place. This means that where the conduct at issue "is at the 'periphery' of a right, it is more likely to be required to give way to a right whose core values are engaged.

64. Saskatchewan submits that these principles have been applied specifically in the context of sexual offences through the following interpretations. First, the principles of fundamental justice and fair trial contained in ss. 7 and 11(d) must be analyzed from a broader perspective than that of just the accused. An assessment of the fairness of the trial process must be done not only from the perspective of the accused but also from the perspective of the community and the complainant. The fair trial protected by s. 11(d) is one that does justice to all the parties.[22] The focus must not be solely on the rights of the accused. These additional rights are necessary to protect the complainant's dignity, privacy and equality interests. A spectrum of interests is involved in assessing a fair trial process.[23]

65. Secondly, the use of myths and stereotypes undermine a fair trial and there is no right to distort the integrity of the trial process through their use.[24]

> The Supreme Court has also said that myths and stereotypes undermine a fair trial: which means a trial, which is fair to the accused, the complainant and the public. See *R. v. Harrer*, 1995 CanLII 70 (SCC), [1995] 3 SCR 562 and *R. v. Lyons*, 19878 CanLII 25 (SCC), [1987] 2 SCR 309. The use of myths and stereotypes also threatens the complainants' constitutional rights and engages their rights to life, liberty and security of their person, as well as their sex equality rights: sections 7, 15 and 28 of the *Canadian Charter of Rights and Freedoms*.[25]

66. Thirdly, the right to cross-examination is not unlimited.[26] The scope of the permissible cross-examination must be assessed in relation to the dangers it poses to the complainant's privacy, equality and security of the person interests. As noted in *Osolin*:

---

[22] *Darrach*, at paras 24, 70.

[23] *R v Osolin*, [1993] 4 SCR 595 at 669; *R v Seaboyer; R v Gayme*, [1991] 2 SCR 577 at 603-604; *R.V.*, at para 1. See also *Mills*, at paras 61-68.

[24] *Darrach*, at para 24.

[25] *C.M.G.*, at para 62.

[26] *R.V.*, at para 40.

> Despite its importance the right to cross-examine has never been unlimited… In the context of sexual assaults, this limitation on cross-examination has been recognized to prevent its use for improper purposes.[27]

67. Fourthly, fundamental justice requires a fair trial, not the most advantageous procedures for the accused. [28] "The right to make full answer and defence does not include the right to defend by ambush."[29] "Nor is the accused entitled to have procedures crafted that take only his interests into account."[30]

68. Saskatchewan submits that a conclusion that finds the accused's right to full answer and defence is always paramount, without a contextual analysis within the circumstances of the particular case, negates the complainant's constitutional rights. The balancing cannot be done in the abstract or the general, but must be done within the specific facts of the particular case.

69. The legislative framework which identifies the specific factors to be assessed in undertaking the reconciling exercise, and the establishment of a process to guide the analysis, ensures that both sets of *Charter* rights are given full consideration. It also ensures that to the greatest extent possible, both sets of *Charter* rights are protected. As noted by Justice Iacobucci:

> The key to rights reconciliation, in my view, lies in a fundamental appreciation for *context*. Charter rights are not defined in abstraction, but rather in the particular factual matrix in which they arise. When understood in this way, the exercise of reconciling competing Charter rights becomes a less onerous and daunting task.[31]

70. Saskatchewan submits that a notice and screening mechanism which enumerates the factors that must be reconciled, while also providing discretion to the trial Judge as to how the factors will be reconciled in the particular circumstances of the trial, is the very type of mechanism needed when dealing with rights that are constitutional in nature and in tension with each other.

---

[27] *Osolin*, at 666.

[28] *R.V.*, at para 67; *R v Quesnelle*, 2014 SCC 46 at para 64, [2014] 2 SCR 390; *Darrach*, at para 24; *Mills*, at para 75; *Goldfinch*, at para 30.

[29] *Darrach*, at para 55.

[30] *Darrach*, at para 24.

[31] Frank Iaccobucci, "“Reconciling Rights” the Supreme Court of Canada's Approach To Competing Charter Rights" (2002) 20 SCLR (2d) 138 at 140, online: Osgood Digital Commons <http://digitalcommons.osgoode.yorku.ca/sclr/vol20/iss1/6>.

71. Where common law rules of evidence do not respect or recognize the existence of *Charter* rights that are in tension with each other, a reformulation of the common law rule is needed. As noted by Lamer, CJ in *Dagenais* in the context of reformulating the test for publication bans at common law, where the *Charter* rights engaged were the accused's right to fair trial under s. 11(d) and the right to free expression interests under s. 2(b) of those covered by publication bans:

> The pre-*Charter* common law rule governing publication bans emphasized the right to a fair trial over the free expression interests of those affected by the ban. In my view, the balance this rule strikes is inconsistent with the principles of the *Charter*, and in particular, the equal status given by the *Charter* to ss. 2(*b*) and 11(*d*). It would be inappropriate for the courts to continue to apply a common law rule that automatically favoured the rights protected by s. 11 (*d*) over those protected by s. 2 (*b*). A hierarchical approach to rights, which places some over others, must be avoided, both when interpreting the *Charter* and when developing the common law. When the protected rights of two individuals come into conflict, as can occur in the case of publication bans, *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.[32]

72. Saskatchewan therefore urges this Court not to adopt the approach taken by the Saskatchewan trial courts, which have done exactly what this Court said should not be done, when the protected rights of two individuals come into conflict. The Saskatchewan courts have held, as a general principle, that the complainant's rights must give way to the accused's rights without regard to the circumstances of the case, the nature of the evidence involved, the degree or nature of privacy in the evidence, and the purpose for which the evidence was going to be used in the circumstances of the case. This approach means that the accused's *Charter* rights automatically trump those of the complainant, without regard to the circumstances. Saskatchewan submits that approach is erroneous and should not be followed.

## PART IV – COSTS

73. Saskatchewan does not seek costs and submits it is not liable for costs.

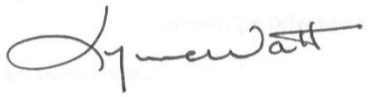
## PART V – ORAL ARGUMENT

74. Saskatchewan requests 10 minutes of oral argument.

---

[32] *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835 at p. 877 [emphasis added].

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of January, 2021.



*for:*

_____

**SHARON H. PRATCHLER, Q.C.**
Counsel for the Intervener, Attorney General of Saskatchewan

## PART VII – TABLE OF AUTHORITIES & LEGISLATION

| **Case Law:** | **Paragraph References** |
|---|---|
| *A.(L.L.) v B.(A.)*, [1995] 4 SCR 536. | 43 |
| *Ashby v White* (1703), 2 Ld Raym 938, 92 ER 126. | 47 |
| *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835. | 71 |
| *Ontario (Provincial Police) v Mosher*, 2015 ONCA 722, 340 OAC 311. | 45 |
| *R v Anderson*, 2019 SKQB 304, 61 CR (7th) 376. | 23, 62 |
| *R v Barton*, 2019 SCC 33, 435 DLR (4th) 191. | 17 |
| *R v C.M.G.*, 2016 ABQB 368, 41 Alta LR (6th) 374. | 56, 65 |
| *R v Darrach*, 2000 SCC 46, [2000] 2 SCR 443 | 15, 61, 64, 65, 67 |
| *R v Dyment*, [1988] 2 SCR 417. | 33 |
| *R v Goldfinch*, 2019 SCC 38, 435 DLR (4th) 1. | 17, 41, 58, 67 |
| *R v Mills*, [1999] 3 SCR 668. | 15, 24, 61, 64, 67 |
| *R v O'Connor*, [1995] 4 SCR 411. | 14, 32, 35 |
| *R v Osolin*, [1993] 4 SCR 595 | 64, 66 |
| *R v R.V.*, 2019 SCC 41, 436 DLR (4th) 265. | 17, 60, 64, 66, 67 |
| *R v Seaboyer; R v Gayme*, [1991] 2 SCR 577 | 64 |
| *R v Shearing*, 2002 SCC 58, [2002] 3 SCR 33. | 28 |
| *R v Quesnelle*, 2014 SCC 46, [2014] 2 SCR 390. | 67 |
| *Seneca College v Bhadauria*, [1981] 2 SCR 181. | 47 |
| *Supermarchés Jean Labrecque Inc. v Flamand*, [1987] 2 SCR 219. | 45 |
| *Telecommunications Workers Union v Canada (Radio-Television and Telecommunications Commission)*, [1995] 2 SCR 781. | 45 |

| **Secondary Sources:** | **Paragraph References** |
|---|---|
| Iacobucci, Frank. ""Reconciling Rights" the Supreme Court of Canada's Approach To Competing Charter Rights" (2002) 20 SCLR (2d) 138, online: Osgood Digital Commons <http://digitalcommons.osgoode.yorku.ca/sclr/vol20/iss1/6>. | 69 |
| McGill, Jena. "'Now it's My Rights Versus Yours': Equality in Tension with Religious Freedoms," (2016) 53:3 Alberta Law Review 583, online: SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3024124> | 63 |

| **Statutes, Regulations, Legislation:** | |
|---|---|
| *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.<br>(FR: *Charte canadienne des droits et libertés*)<br><br>**EN: Sections 1, 7, 8, 15 and 28.**<br>**FR: Sections 1, 7, 8, 15 et 28.** | 12, 14, 15, 16, 17, 35, 36, 53, 54, 59, 61, 62, 63, 64, 69, 71, 72 |
| *Criminal Code*, RSC 1985, c C-46.<br>(FR : *Code criminel*)<br><br>**EN: Sections 276 and 278.92 to 278.94**<br>**FR: Sections 276 et 278.92 à 278.94.** | 12, 41, 42, 55, 67 |
| *The Constitutional Questions Act, 2012*, SS 2012, c C-29.01.<br>(FR : *Loi de 2012 sur les questions constitutionnelles*) | 49 |