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February 3, 2021

Registrar

Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

Via email: registry-greffe@scc-csc.ca

Dear Mr. Registrar:

Re: Eugene Ndhlovu v Her Majesty the Queen - SCC# 39360

Please accept this letter as the Applicant's reply to the response filed by the Respondent.

The Applicant notes that the trial judge heard extensive evidence over four days from both the Applicant and Crown expert witnesses and found that there was substantial intrusion on the Applicant's s.7 liberty interest, which intrusion was not saved by s. 1 of the Charter. A Justice of the Court of Appeal in dissent agreed with the trial judge.

In *R v Long*, 2018 ONCA 282, *R v Ndhlovu* was specifically referred to by the Ontario Court of Appeal, which stated at paragraph 123, that the Ndhlovu case does not deal with the issue before the court in *Long*. The case noted that *R v Ndhlovu* did not have to deal with the mandatory requirement that SOIRA orders be imposed on offenders convicted of a designated offence. *Long* was only concerned with the constitutionality of s. 490.013(2.1), which required a lifetime order where there are multiple convictions, not s.490.012 which requires a mandatory order.

Furthermore, the majority in *Ontario (Attorney General) v G*, 2020 SCC 38, explicitly avoided endorsing the correctness of *Long* at paragraph 78. Therefore, it is respectfully submitted that the prior denial of leave in *Long* should not weigh against the granting of leave in the case at bar.

Parliament in 2004 realized that an Order under SOIRA could be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature through registration under SOIRA, and gave Courts the discretion to not make an Order where it would be grossly disproportionate to the public interest. The amendments made to s. 490 of the Criminal Code in 2011, which amendments are challenged in this case, did away with prosecutorial and judicial discretion in requesting and making an Order under SOIRA, thereby leaving an offender who prior to the amendments would not have been subject to a SOIRA

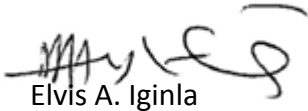
Order because it would have been grossly disproportionate to the public interest, with no recourse.

For these reasons, and for the reasons set out in the leave application, it is respectfully submitted that it is of national interest that leave to appeal be granted in this case.

Respectfully,

IGINLA & COMPANY

Per:

A handwritten signature in black ink, appearing to read 'Elvis A. Iginla', with a horizontal line above the signature.

CC: Jason Russell, Counsel for the Respondent
D. Lynne Watt, Ottawa Agent for the Respondent
Moira Dillon, Ottawa Agent for the Applicant