SCC File No. 39664

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

COREY DANIEL RAMELSON

Appellant
(Respondent)

-and-

HER MAJESTY THE QUEEN

Respondent
(Appellant)

-and-

DIRECTOR OF PUBLIC PROSECUTIONS

Intervener

RESPONDENT'S FACTUM

Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*

Ministry of the Attorney General of Ontario
Crown Law Office – Criminal
720 Bay Street, 10th Floor
Toronto, Ontario
M7A 2S9

Katie Doherty
Lisa Fineberg

Tel: (416) 326-4600
Fax: (416) 326-4656
E-mail: katie.doherty@ontario.ca
lisa.fineberg@ontario.ca

Counsel for the Respondent,
Her Majesty the Queen

HICKS ADAMS LLP
238 King Street
Toronto, ON
M5A 1K1

Richard Litkowski

Tel: (416) 975-1700
Fax: (416) 925-8882
E-mail: rlitkowski@hicksadams.ca

Counsel for the Appellant,
Corey Daniel Ramelson

Supreme Advocacy LLP
340 Gilmour St., Suite 100
Ottawa, Ontario
K2P 0R3

Thomas Slade

Tel: (613) 695-8855
Fax: (613) 695-8560
E-mail: tslade@supremeadvocacy.ca

Agent for the Appellant,
Corey Daniel Ramelson

Attorney General of Canada
7685 Hurontario Street, Suite 400
Toronto, Ontario
L6W 0B4

David Quayat

Tel: (416) 454-8279
Fax: (416) 454-2168
E-mail: david.quayat@ppsc-sppc.gc.ca

Counsel for the Intervener,
Director of Public Prosecutions

Director of Public Prosecutions Canada
160 Elgin Street, 12th Floor
Ottawa, Ontario
K1P 0H8

François Lacasse

Tel: (613) 957-4770
Fax: (613) 941-7865
E-mail: francois.lacasse@ppsc-sppc.gc.ca

Agent for the Intervener,
Director of Public Prosecutions

PART I: STATEMENT OF THE FACTS

A. OVERVIEW OF THE RESPONDENT'S POSITION

1. In March 2017, the appellant responded to an ad in the escort section of Backpage.com. The ad was posted by "Michelle." He texted the number provided and arranged over text to meet "her" and her friend for sexual services. When "Michelle" texted the appellant that she and her friend were both 14, the appellant responded "should be lots of fun." Throughout the conversation, the appellant was informed three times that "Michelle" was 14 years old. He still arranged to meet both "Michelle" and her young friend "Jamie" for sexual activity, including oral sex and intercourse in exchange for $150. When the appellant arrived at the hotel where he arranged to meet "Michelle," he was met not by two underage girls, but by the York Regional Police. He was arrested.

2. After the appellant was convicted of three child luring offences, he argued that he was entrapped. The trial judge ultimately agreed and stayed the proceedings. The Crown appealed. The Court of Appeal for Ontario ["Court of Appeal"] allowed the appeal. Applying this Court's decision in *R. v. Ahmad*, the Court of Appeal concluded that the police had the requisite reasonable suspicion that child prostitution offences were occurring in the escort section of Backpage.com. The police were consequently entitled to offer the appellant, a person who they came across in that "place" the opportunity to commit a child prostitution offence.

3. The appellant appeals to this Court as of right. He argues that the Court of Appeal got it wrong and the stay imposed by the trial judge should be restored.

4. The appeal should be dismissed. The jurisprudence of this Court, much of it recent, much of it applied by the Court of Appeal in this case, confirms the correctness of the result reached

below. Police conduct will not amount to entrapment where police have *either* a reasonable suspicion that the targeted individual is engaged in the criminal conduct under investigation *or* that the targeted criminal conduct is occurring at a specifically defined place. The Court of Appeal made no error in concluding that the police had the required reasonable suspicion about the escort section of Backpage.com that enabled the police to offer the appellant an opportunity to commit a child prostitution offence. He was not entrapped.

B. SUMMARY OF THE FACTS

5. Project Raphael was an undercover York Regional Police ("YRP") investigation that began in 2014. It targeted juvenile prostitution by conducting "sting" operations on prospective consumers who responded to online ads for underage prostitutes. The overall goal of Project Raphael was to reduce the demand for underage prostitution.[1]

6. The architect of Project Raphael, Officer Truong, had extensive experience investigating juvenile prostitution. He testified that through training and prior investigative experience, law enforcement had determined that the escort section of Backpage.com ["Backpage"] was a market leader for sex advertising, and with that, came a high demand for juvenile prostitution. The escort section of Backpage was known to the YRP as a place where men were able to purchase child prostitutes. Officer Truong testified that the volume of adult and juvenile prostitution on Backpage was so high that even if he devoted his entire team all day, every single day, he would still not

[1] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 57 at paras. 1-2; pp. 75-79 at paras. 50, 53, 55, 60; p. 83 at para. 71, pp. 85-87 at paras. 77-81, p. 94 at para. 99; ***Evidence of Inspector Truong***, Transcript: September 19, 2017 from *R. v. Haniffa*, P.7, L.24 to P.12, L.32; P.16, L.7 to P.18, L.21; P.21, L.20 to P.23, L.20; P.35, L.9 to P.37, L.4; P.44, L.1-7, Appellant's Record Vol. II, Tab 10A, PDF pp. 9-14, 16-18, 21-23, 35-37, 44.

have enough resources to deal with the amount of adult and juvenile prostitution that was occurring through the escort section of Backpage.[2]

7. Project Raphael involved undercover officers posting ads on Backpage with the listed age of 18 (the lowest the website allowed). The ads contained content that suggested that the advertised "girl" was young, inexperienced, new and/or fresh to the industry. When a prospective buyer responded to the ad, the undercover officer would indicate over text that "she" was younger than 18 and would specify her age (e.g. 14). At that point, the prospective buyer would either cease communications, or continue to engage and arrange to meet.[3]

(i) The appellant's March 2017 messages with "Michelle" & his subsequent arrest

8. In March 2017, police created and posted Backpage ads offering the sexual services of "Michelle." The ad included pictures of "Michelle," including one photo that depicted a female wearing a t-shirt bearing the name of a local high school. The age listed on the ad was 18. The ad posted on March 27, 2017 read as follows:[4]

---

[2] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF pp. 77-79 at paras. 55, 60; p. 83 at para. 71; pp. 85-87 at paras. 77-81; p. 94 at para. 99; ***Evidence of Inspector Truong***, Transcript: September 19, 2017 from *R. v. Haniffa*, P.16, L.7 to P.18, L.21, Appellant's Record Vol. II, Tab 10A, PDF pp. 16-18.

[3] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 57 at para. 2.

[4] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 59-60 at paras. 9-10; ***Exhibit 2: The March 27, 2017 Ad Posted by Inspector Truong***, Appellant's Record Vol. I, Tab 9B, PDF pp. 130-132.

Back only for a few days – Tight Brand NEW girl in MARKHAM Richmond hill – Waiting for you – 18

Hi guys my name is Michelle and Im a girl who is sexy and YOUNG with a tight body looking for fun. Im only here for a few days just visiting from out of town.

I also have a YOUNG FRIEND if your interested too.

In calls only. Don't miss this you'll be sorry!!

9. Detective Cook ("Det. Cook") was tasked with responding to individuals who texted the phone number provided in "Michelle's" ad. He was contacted by multiple people as a result of the March 27, 2017 ad. The appellant initiated contact with Det. Cook at 4:01 p.m. on that day. At trial, identity was not in issue. The appellant conceded that he was the person (utilizing phone number 416-400-0480) who communicated with Det. Cook. The text message conversation[5] between the appellant and Det. Cook is reproduced here:[6]

[5] The last paragraph of the Agreed Statement of Facts indicated that the time stamps from the extraction report of the appellant's cellphone were four hours ahead of the actual time when the telecommunications took place. See ***Exhibit 7: Agreed Statement of Facts***, Appellant's Record Vol. I, Tab 9G, PDF p. 144, and see also ***Exhibit 8: Extraction Report***, Appellant's Record Vol. I, Tab 9H, PDF pp. 148-150.

[6] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF pp. 59-60 at para. 10; ***Evidence of Det. Cook***, Transcript: June 17, 2019, P.30, L.5-23, P.32, L.4-24, Appellant's Record Vol. IV, PDF p. 33, 35; ***Exhibit 7: Agreed Statement of Facts***, Appellant's Record Vol. I, Tab 9G, PDF pp. 144-145; ***Exhibit 3: Text Messages, Supplementary Report by PC Kinsman***, Appellant's Record Vol. I, Tab 9C, PDF pp. 133-137; ***Exhibit 8: Extraction Report***, Appellant's Record Vol. I, Tab 9H, PDF pp. 146-151.

	Date	Time	Sent by	Received by	Content
1.	2017-03-27	16:01	Appellant	Det. Cook	Hey hun are you available
2.	2017-03-27	16:02	Det. Cook	Appellant	Yep
3.	2017-03-27	16:02	Appellant	Det. Cook	Where are you located and what are your rates hun
4.	2017-03-27	16:14	Det. Cook	Appellant	Leslie and 7. 80 hh[7] for protected sex and bj.
5.	2017-03-27	16:15	Appellant	Det. Cook	Bbbj?[8]
6.	2017-03-27	16:16	Det. Cook	Appellant	Yep
7.	2017-03-27	16:16	Appellant	Det. Cook	You have a friend you mentioned in your ad
8.	2017-03-27	16:17	Det. Cook	Appellant	Yep Jamie she is on BP too. blonde
9.	2017-03-27	16:17	Det. Cook	Appellant	150hh
10.	2017-03-27	16:21	Appellant	Det. Cook	For both?
11.	2017-03-27	16:22	Det. Cook	Appellant	Yep
12.	2017-03-27	16:22	Appellant	Det. Cook	Can't find her ad
13.	2017-03-27	16:24	Det. Cook	Appellant	6474956233[9]
14.	2017-03-27	16:26	Appellant	Det. Cook	Ok yes I want to see you girls
15.	2017-03-27	16:26	Appellant	Det. Cook	When is best to come
16.	2017-03-27	16:28	Det. Cook	Appellant	**Just so you know we under 18. Some guys freak out and I don't want problems. We are small and it's obvious.**
17.	2017-03-27	16:29	Appellant	Det. Cook	**I'm cool with it. I'll be gentle as long as you're sexy and willing**
18.	2017-03-27	16:30	Appellant	Det. Cook	I'll start making my way to you now. Where are you staying?
19.	2017-03-27	16:31	Det. Cook	Appellant	**We are both willing. We're 14 but will both be turning 15 this year. That cool? We are buddies and very flexable??**
20.	2017-03-27	16:32	Appellant	Det. Cook	**Should be lots of fun**

[7] Det. Cook testified that "hh" means "half hour" and that "bj" means "blow job." See Transcript: June 17, 2019, P.33, L.9-16, Appellant's Record Vol. IV, PDF p. 36.

[8] Det. Cook testified that "bbbj" means "bare back blow job or oral sex without a condom". See Transcript: June 17, 2019, P.33, L. 18-21, Appellant's Record Vol. IV, PDF p. 36.

[9] Det. Yan was posing as a 14-year-old escort, named "Jamie" on a separate Backpage ad that same day. See Transcript: June 17, 2019, P.22, L.32 to P.23, L.3; P.29, L.7-27, Appellant's Record Vol. IV, PDF pp. 25-26, 29.

	Date	Time	Sent by	Received by	Content
21.	2017-03-27	16:32	Appellant	Det. Cook	**Are those read[10] photos from the ads. Those girls look a bit older**
22.	2017-03-27	16:36	Det. Cook	Appellant	**They are both of us.**
23.	2017-03-27	16:37	Appellant	Det. Cook	Ok. I'm going to leave now
24.	2017-03-27	16:37	Appellant	Det. Cook	Where are you located
25.	2017-03-27	16:39	Det. Cook	Appellant	Go to 7 and leslie and msg me. I tell you where to go then.
26.	2017-03-27	16:39	Appellant	Det. Cook	Ok. It's a hotel?
27.	2017-03-27	16:40	Det. Cook	Appellant	Yeah hotel. OK just so we know you want sex with both of us and a blow job? I don't need any surprises.
28.	2017-03-27	16:41	Appellant	Det. Cook	Yes sex with both and bbbj from both
29.	2017-03-27	16:42	Det. Cook	Appellant	OK that's fine thanks.
30.	2017-03-27	16:42	Appellant	Det. Cook	Can you girls dress up for me
31.	2017-03-27	16:44	Det. Cook	Appellant	Like what
32.	2017-03-27	16:44	Appellant	Det. Cook	Do you have a body suit
33.	2017-03-27	16:44	Det. Cook	Appellant	No
34.	2017-03-27	16:44	Appellant	Det. Cook	Leggings?
35.	2017-03-27	16:44	Det. Cook	Appellant	**I'm 14 I got regular clothed and my bra and underwear.**
36.	2017-03-27	16:45	Appellant	Det. Cook	**Ok. Dress is something cute and sexy**
37.	2017-03-27	16:45	Appellant	Det. Cook	**Same with Jamie**
38.	2017-03-27	16:46	Det. Cook	Appellant	**OK will do.**
39.	2017-03-27	16:46	Appellant	Det. Cook	**I like thongs if you have**
40.	2017-03-27	16:47	Det. Cook	Appellant	**I do.**
41.	2017-03-27	16:47	Appellant	Det. Cook	**Perfect**
42.	2017-03-27	16:47	Appellant	Det. Cook	Ok so I'll text when I'm there
43.	2017-03-27	16:49	Det. Cook	Appellant	Kk.
44.	2017-03-27	17:49	Det. Cook	Appellant	You coming
45.	2017-03-27	17:50	Appellant	Det. Cook	Yes just in some traffic
46.	2017-03-27	17:50	Appellant	Det. Cook	I'm on my way
47.	2017-03-27	17:51	Det. Cook	Appellant	How long so I can get ready
48.	2017-03-27	17:51	Appellant	Det. Cook	20
49.	2017-03-27	17:51	Det. Cook	Appellant	Ok
50.	2017-03-27	18:13	Appellant	Det. Cook	Which hotel
51.	2017-03-27	18:14	Det. Cook	Appellant	You at 7 and leslie area

[10] The appellant acknowledged that this word should be "real", not "read". See Transcript: June 20, 2019, P.177, L.22-24, Appellant's Record Vol. IV, PDF p. 180.

	Date	Time	Sent by	Received by	Content
52.	2017-03-27	18:14	Appellant	Det. Cook	Yeah
53.	2017-03-27	18:14	Det. Cook	Appellant	Stay bridge suites on south park road
54.	2017-03-27	18:14	Det. Cook	Appellant	Msg when in the lot and I'll give you room number
55.	2017-03-27	18:14	Appellant	Det. Cook	Ok be there shortly
56.	2017-03-27	18:15	Det. Cook	Appellant	Ok
57.	2017-03-27	18:15	Det. Cook	Appellant	Can't wait
58.	2017-03-27	18:16	Appellant	Det. Cook	Both you girls ready looking cute
59.	2017-03-27	18:16	Det. Cook	Appellant	I would say we look hot
60.	2017-03-27	18:16	Det. Cook	Appellant	😊[11]
61.	2017-03-27	18:23	Appellant	Det. Cook	Good I'm here
62.	2017-03-27	18:23	Det. Cook	Appellant	Ok come up to 440

The appellant was arrested by members of YRP upon his arrival at room 440.[12]

(ii) The appellant's trial before Justice De Sa

10. The appellant was tried by Justice De Sa in a judge alone trial at the Superior Court of Justice. The appellant testified that he believed "Michelle" was at least 18 and that she was engaged in role-play as somebody younger. The trial judge rejected his evidence and found the appellant guilty on three counts of child luring.[13]

---

[11] Evidence at trial confirmed that what appeared as "??" in the messages from Det. Cook to the appellant at 18:16 was in fact an emoticon smiley face. See ***Exhibit 4: Text Messages, Smiley Face***, Appellant's Record Vol. I, Tab 9D, PDF pp. 138-139; ***Evidence of the Appellant***, Transcript: June 20, 2019, P.268, L.11 to P.269, L.15, Appellant's Record Vol. V, PDF pp. 71-72; ***Evidence of Det. Cook***, Transcript: June 17, 2019, P.41, L.30 to P.42, L.30, Appellant's Record Vol. IV, PDF pp. 44-45.

[12] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 60 at para. 11; ***Evidence of Constable Caruso***, Transcript: June 18, 2019, P.100, L.16 to P.106, L.30, Appellant's Record Vol. IV, PDF pp. 103-109.

[13] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF pp. 60-61 at para. 12; ***R. v. C.D.R.***, 2019 ONSC 4061, Appellant's Record Vol. I, Tab 2, PDF pp. 29-31 at paras. 59, 66-67, 69.

11. The appellant then brought an entrapment application and sought a stay of proceedings. The central issue was whether police were acting pursuant to a *bona fide* investigation when they offered the appellant the opportunity to arrange for the sexual services of an underage person.[14]

12. The trial judge initially dismissed the application. He concluded that police were acting pursuant to a *bona fide* investigation. As such, they were entitled to offer individuals the opportunity to commit the crime known to be taking place on Backpage; namely, purchasing sex from underage girls. The trial judge found that the "police had a reasonable basis to believe that individuals were routinely involved in the purchase of sexual services from juvenile prostitutes on Backpage". He found that "Backpage was well known for underage prostitution"; that "[v]irtually all of the investigations into underage prostitution in York Region were linked" to Backpage; and that it was "clear that individuals were actively purchasing sex from underage females through the website."[15]

13. As the appellant was still before the trial court when this Court released its decision in *R. v. Ahmad*, the trial judge invited further submissions about the impact of the decision on whether the appellant was entrapped. The appellant argued that police conduct in virtual spaces required heightened scrutiny, and that the "location" under investigation here was not defined with

---

[14] ***R. v. C.D.R.*****,** 2019 ONSC 6894, Appellant's Record Vol. I, Tab 3, PDF p. 33-44; ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 63 at para. 22, pp. 75-77 at paras. 52-56

[15] ***R. v. C.D.R.*****,** 2019 ONSC 6894, Appellant's Record Vol. I, Tab 3, PDF pp. 40-42 at paras. 45, 51-53; ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 58 at para. 4

sufficient precision to ground a reasonable suspicion about the purchase of sexual services from underage prostitutes.[16]

14. In a second decision, the trial judge concluded that the appellant had been entrapped and stayed the proceedings. Again, the trial judge found that the police had a reasonable basis to believe that individuals were involved in the purchase of sexual services from juvenile prostitutes on Backpage. He also found that the police were justified in investigating ongoing juvenile prostitution on Backpage given the information available to them. Nevertheless, the trial judge concluded that "[g]iven the clarifications made in *Ahmad*, I find the police actions here exceeded the standards of permissible state conduct" and that they had engaged in "random virtue testing" that amounted to entrapment.[17]

(iii) The crown's appeal to the Court of Appeal

15. The Crown appealed to the Court of Appeal. The appeal was heard alongside three defence appeals that alleged that Project Raphael amounted to entrapment: *R. v. Jaffer*, *R. v. Haniffa*, and *R. v. Dare*.[18] In *Ramelson*, the Crown argued that the trial judge erred in concluding that the police did not have the requisite reasonable suspicion to offer the appellant an opportunity to commit a child prostitution offence. The Court of Appeal allowed the Crown's appeal and overturned the

---

[16] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 58 at para. 4; ***Defence additional written submissions (Entrapment Application #2)***, Appellant's Record Vol. III, Tab 13, PDF pp. 60-69.

[17] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 58 at para. 4, pp. 78-79 at para. 60; ***R. v. C.D.R.***, 2020 ONSC 5030, Appellant's Record Vol. I, Tab 4, PDF p. 47 at para. 5; pp. 50-51 at paras. 21-23.

[18] The appellants Jaffer, Haniffa and Dare have all been granted leave to appeal to this Court. Their appeals are scheduled to be heard with this appeal. The Crown will file separate respondent's facta addressing the issues raised in the companion appeals.

stay of proceedings.[19] The Court of Appeal held that *Ahmad* did not change the law of entrapment. Instead, *Ahmad* merely highlighted that the *bona fide* inquiry analysis was necessarily multi-faceted. The Court of Appeal held:

> A bona fide inquiry requires the police to have the genuine purpose of investigating and repressing crime, that the police have objectively verifiable reasonable suspicion that people are engaged in the criminal activity within the space, that the space being investigated is sufficiently precise and narrow, and finally, that consideration of an open-ended list of factors enables the court to conclude that random virtue testing was avoided.[20]

16. The Court of Appeal rejected the argument that the police conduct in Project Raphael amounted to impermissible virtue testing. The Court held that police had the required reasonable suspicion that the criminal activity under investigation was taking place in the escort section of Backpage. In particular, the Court held that Officer Truong, the officer who created Project Raphael, had ample and extensive experience dealing with juvenile prostitution. Officer Truong testified that "there were men actively looking for prostituted children on Backpage". As such, the trial judge was entitled to rely on his testimony to find, "that the police had a reasonable basis to believe that individuals were involved in the purchase of sexual services from juvenile prostitutes on Backpage". This surpassed the threshold required (reasonable suspicion) to avoid an entrapment finding.[21]

17. The Court of Appeal also concluded that the escort section of Backpage was a precisely defined virtual space. The Court accepted that police had narrowed the scope of their investigation

---

[19] The Court dismissed the three defence appeals in *Jaffer, Haniffa* and *Dare*, substantially for the reasons provided in *Ramelson*.

[20] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF pp. 67-68 at para. 34, p. 69 at para. 36.

[21] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 84-87 at paras. 74-81.

only to users who clicked on the posted ad and then responded to the ad. The ad itself offered sexual services in York Region, emphasized the escort's youthfulness by stating their age to be 18, and described the escort in a manner that police intended to signal that the user could be purchasing the sexual services of a young girl or child. Only users who initiated contact could be offered the opportunity to purchase sexual services from someone underage. The Court accepted that customers who were indifferent that the person they were engaging may actually be an underage girl were legitimate targets of the police investigation. The Court held that police narrowed the scope of the investigation as much as the evidence warranted.[22]

18. As the Court of Appeal concluded that Project Raphael was a *bona fide* police inquiry, the police did not require reasonable suspicion that the specific person responding to the ad was seeking someone underage before offering an opportunity to commit an offence. The Court overturned the stay of proceedings and remitted the matter to the trial court for sentencing.[23]

---

[22] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 101 at para. 117, pp. 102-103 at paras. 119-120, pp. 104-105 at paras. 124, 126; ***R. v. C.D.R.*****,** 2019 ONSC 6894, Appellant's Record Vol. I, Tab 3, PDF p. 42 at para. 52

[23] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF pp. 59, para. 8, pp. 110-111 at paras. 146-148.

PART II: RESPONDENT'S POSITION ON THE APPELLANT'S QUESTIONS

19. The appellant raises several interrelated issues that can be condensed to the following:

ISSUE 1: Should the test for entrapment as set out in *R. v. Mack* and *R. v. Barnes*, reiterated in *R. v. Ahmad* be modified to require the police to show a reasonable suspicion that the individual they are interacting with has engaged in the criminal conduct under investigation?

NO. Since *R. v. Mack*, this Court has held that police conduct will not amount to entrapment where the police have a reasonable suspicion that *either* the targeted individual has engaged in the target criminal activity *or* that the criminal activity under investigation is occurring in the targeted area. The ability of the police to have the requisite reasonable suspicion in either the targeted person *or* place ensures that the entrapment doctrine continues to balance the competing objectives of the vital need for police to have substantial leeway in the techniques used to investigate criminal activity, with the important need to guard against unbounded police power.

ISSUE 2: Did the Court of Appeal err in concluding that the police had the requisite reasonable suspicion that the escort section of Backpage.com was being used for child prostitution?

NO. This Court in *R. v. Ahmad* provided guidance regarding the kinds of factors that courts should consider to evaluate if the police had the requisite reasonable suspicion to be able to offer an individual an opportunity to engage in the targeted criminal conduct. The Court of Appeal properly applied this Court's reasoning in *R. v. Ahmad* and concluded that the police had the requisite reasonable suspicion that child prostitution offences were being committed in the escort section of Backpage.com.

PART III: STATEMENT OF ARGUMENT

A. OVERVIEW OF THE LAW OF ENTRAPMENT

20. Some police practices are intolerable in a free and democratic society regardless of their effectiveness. The entrapment doctrine seeks to maintain a balance between effective and necessary policing efforts and policing methods that amount to nothing more than random virtue testing. The entrapment doctrine reflects judicial disapproval of intolerable police or prosecutorial conduct in the investigation and prosecution of crimes. It balances the competing objectives of the vital need for the police to have considerable latitude in the techniques used to investigate criminal activity, with the important need to guard against police power becoming so untrammeled as to permit random virtue testing. The accused bears the onus to show, on a balance of probabilities, that he was entrapped. This burden is not easily discharged. It requires a situation-specific analysis. Ultimately, entrapment can only be found in the clearest of cases — when state action "shocks the conscience" and offends our sense of "decency and fair play."[24]

21. This Court in *R. v. Mack* held that entrapment can arise in two situations:

(1) Where state authorities, acting without reasonable suspicion or for an improper purpose, provide a person with an opportunity to commit an offence; or,

(2) Even having reasonable suspicion or acting in the course of a good faith inquiry, the police go beyond providing an opportunity to commit a crime and actually induce the commission of an offence.[25]

---

[24] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 7, 125; ***R. v. Ahmad***, 2020 SCC 11 at paras. 15-23

[25] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 115, 126; ***R. v. Ahmad***, 2020 SCC 11 at paras. 15-18, 23, 88, 115; ***R. v. Barnes***, [1991] 1 S.C.R. 449 at paras. 21-24**;** ***R. v. Imoro***, 2010 ONCA 122 at paras. 8-10

22. Regarding the first branch, police may present an individual with an opportunity to commit a crime upon forming reasonable suspicion that ***either*** (a) that specific person is engaged in criminal activity ***or*** (b) people are carrying out the criminal activity at a specific location. Assuming that investigators are engaged in such a "*bona fide* inquiry," an offer to engage in criminal conduct will not amount to entrapment.[26]

23. The "place" over which the police may form reasonable suspicion is not limited to physical spaces. Virtual spaces, such as phone numbers or websites may constitute "places" over which investigators can form a reasonable suspicion. The same reasonable suspicion standard applies no matter what kind of "place" is under investigation. A reasonable suspicion requires only the possibility, rather than the probability of criminal activity. The investigators' suspicion must be focused, precise, reasonable and based in "objective facts that stand up to independent scrutiny." On an entrapment application, the Court must consider all of the circumstances and determine whether the police had the requisite reasonable suspicion *before* offering the accused an opportunity. In *R. v. Ahmad*, this Court identified several non-exhaustive considerations that may assist in evaluating whether police have sufficiently identified the specific space where they reasonably suspect the target criminal conduct is occurring, including: the seriousness of the crime, the circumstances of the activity, the level of privacy expected in an area or space, the importance of the virtual space to freedom of expression and the availability of less invasive investigative techniques.[27]

---

[26] ***R. v. Ahmad***, 2020 SCC 11 at paras. 19-21

[27] ***R. v. Ahmad***, 2020 SCC 11 at paras. 4, 25-32, 41, 45, 46; ***R. v. Chehil***, 2013 SCC 49 at paras. 3, 21, 26, 27, 58; ***R. v. MacKenzie***, 2013 SCC 50 at paras. 41, 74; ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF pp. 69-72, para. 37-42.

B. THE APPELLANT WAS NOT ENTRAPPED

24. The Court of Appeal's entrapment analysis turned on whether the police were engaged in a *bona fide* inquiry when the appellant was offered the opportunity to commit the child luring offences. The focus of this analysis was on the escort section of Backpage and whether it was a sufficiently defined virtual "space" over which the police had the required reasonable suspicion that the targeted criminal activity was occurring. The Court of Appeal concluded it was a sufficiently defined virtual space, that the police had the requisite reasonable suspicion that the targeted criminal conduct was occurring in that place, and consequently that the appellant was not entrapped. Neither the Court's approach, nor its ultimate conclusion that the appellant was not entrapped disclose any reversible error.

(i) The basis for the reasonable suspicion about the escort section of Backpage

25. The trial judge concluded that the police had a reasonable basis to believe that individuals were involved in the purchase of sexual services from underage persons on Backpage. He further concluded that the investigation of Backpage was a legitimate police initiative.[28]

26. The appellant argues that the police lacked a sufficient evidentiary foundation to suspect that child prostitution was occurring on Backpage. He further argues that the police impermissibly "upped the ante" during their chat with the appellant. He argues that the police did not have a reasonable suspicion that the appellant was looking for anything more than an adult prostitute. Consequently, the police did not have the required reasonable suspicion to offer the appellant an opportunity to commit a child prostitution offence.

---

[28] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF pp. 94-95 at para. 99.

27. These arguments must be rejected. The Court of Appeal correctly focused its analysis on the reasonable suspicion that the police had regarding the escort section of Backpage (not regarding any specific user they interacted with). Based on the evidence of Officer Truong, the trial judge accepted that "[v]irtually all of the online investigations involving juveniles had been linked to Backpage." He further concluded that based on Officer Truong's "ample and extensive experience" that "the police had a **reasonable basis to believe** that individuals were involved in the purchase of sexual services from juvenile prostitutes on Backpage."[29]

28. Accordingly, it was not the situation where the police did not have the required grounds to engage someone who responded to their Backpage ad regarding a child prostitute until some further information was gathered during a specific chat with a particular target. The police had the requisite reasonable suspicion before any individual chat started. The timing of when the police communicated that the person(s) on offer was underage was immaterial to the grounds the police already had regarding the escort section of Backpage.

(ii) The Court of Appeal followed the *Ahmad* approach to determine if the police had the required reasonable suspicion

29. In assessing whether the police had the requisite reasonable suspicion, the Court of Appeal followed the approach this Court set out in *Ahmad* for how to evaluate whether the police conduct at issue amounts to a *bona fide* inquiry into a defined virtual space. The approach is multifaceted and context specific. The totality of the circumstances must be considered. No one factor is determinative. Ultimately, the reviewing court must be satisfied "that the police have the genuine

---

[29] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 83 at para. 71, pp. 85-87 at paras. 77-81.

purpose of investigating and repressing crime, that the police have objectively verifiable reasonable suspicion that people are engaged in the criminal activity within the space, that the space being investigated is sufficiently precise and narrow, and finally, that consideration of an opened-ended list of factors enables the court to conclude that random virtue testing was avoided".[30]

30. The appellant focuses on the fact that the police lacked a reasonable suspicion that **he** was interested in committing a child prostitution offence and that their conduct therefore amounted to entrapment. However, the police were not required to have an individualized suspicion regarding the appellant. Pursuant to *Mack, Barnes* and *Ahmad,* when police have the requisite reasonable suspicion regarding a particular place, it is unnecessary for them to have any additional suspicion regarding any specific individual associated to that defined place. As this Court clarified in *R. v. Barnes*,

> The basic rule articulated in *Mack* is that the police may only present the opportunity to commit a particular crime to an individual who arouses a suspicion that he or she is already engaged in the particular criminal activity. An exception to this rule arises when the police undertake a *bona fide* investigation directed at an area where it is reasonably suspected that criminal activity is occurring. When such a location is defined with sufficient precision, **the police may present any person associated with the area with the opportunity to commit the particular offence**. Such randomness is permissible within the scope of *a bona fide* inquiry.[31]

31. To the extent that the appellant's arguments can be taken to favour the creation of a requirement that the police must have *both* a reasonable suspicion that a kind of criminal conduct

---

[30] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 69, para. 36; p. 70-74, paras. 39-48.

[31] ***R. v. Barnes***, [1991] 1 S.C.R. 449 at para. 23; ***R. v. Ahmad***, 2020 SCC 11 at paras. 34-36, 40-43

is occurring in a particular place, *and* that the specific individual that the police found in the targeted place is engaged in the target criminal conduct - it should be rejected. First, as set out above such a requirement would run counter to this Court's prior jurisprudence. As this Court noted in *Mack,* "it is clearly permissible to provide opportunities to people associated with the location under suspicion, even if these people are not themselves under suspicion." To hold the contrary in this case would be akin to the overhaul of the *Mack* and *Barnes* framework that this Court rejected in *Ahmad*.[32]

32. Second, such a change would frustrate to the foundational principles that animate the entrapment doctrine. At the heart of the entrapment doctrine lies the need to balance the requirement that police have the necessary latitude to investigate serious crimes that may for any number of reasons be resistant to more traditional investigative methods, with the rights and freedoms of all Canadians. Altering the settled test for what police conduct can constitute entrapment upsets this delicate balance. Such a change would run contrary to the public interest in allowing police the flexibility to develop effective, proactive law-enforcement measures to suppress crime that are targeted at specific, defined areas where they reasonably suspect particular criminal conduct is occurring.[33]

33. Third, no such modification from the status quo is necessary. The present entrapment framework does not permit police to randomly virtue test as they see fit. It only permits police to offer an opportunity to commit an offence when investigators have a reasonable suspicion. It also

---

[32] ***R. v. Mack***, [1988] 2 S.C.R. 903 at para. 109; ***R. v. Ahmad***, 2020 SCC 11 at paras. 3, 22-23.

[33] ***R. v. Ahmad***, 2020 SCC 11 at paras. 18, 34-43

recognizes the reality that police may come to suspect not only that a specific individual is engaged in criminal conduct, but that a specific kind of criminal conduct is occurring in a specific place – be it physical or virtual. The reasonable suspicion generated by a particular location may, and often will have nothing to do with the specific interactions that investigators have with any one person that they come to interact with once they are situated in that specific place. After all, the focus in the entrapment analysis is on what the police knew at the time they offered an individual an opportunity, not on any information that flowed from that opportunity being provided.[34]

(iii) The Court of Appeal correctly concluded that the escort section of Backpage was a sufficiently defined virtual space over which the police had the required reasonable suspicion

34. The Court of Appeal's analysis focused on the escort section of Backpage. It analyzed whether the police had a reasonable suspicion that the targeted criminal conduct was occurring in that place that, per *Mack, Barnes* and *Ahmad,* would permit officers to offer an opportunity to anyone they came across in that place to commit the targeted offences. This focus distinguishes this case from dial-a-dope cases like *Ahmad* and *Williams*. In *Ahmad* and *Williams*, the police had not met the reasonable suspicion standard *before* engaging in conversation with the targeted phone numbers. Accordingly, the entrapment analysis turned on whether the police formed the requisite reasonable suspicion *during* the conversation that would permit officers to offer the individual an opportunity to commit the targeted drug offence. This assessment required, in the particular circumstances of those cases, a close reading of the specific chat that the officers engaged in with respect to each accused. That type of chat assessment is not engaged when the police have the required reasonable suspicion *before* they engaged in any direct communication with any individual.

---

[34] ***R. v. Mack***, [1988] 2 S.C.R. 903 at para. 99; ***R. v. Ahmad***, 2020 SCC 11 at para. 22.

35. The appellant argues that the escort section of Backpage was not a sufficiently narrow place. The respondent disagrees. The Court of Appeal heeded this Court's direction that the targeted location on a *bona fide* inquiry must be carefully tailored. The Court of Appeal's conclusion that the escort section of Backpage was a sufficiently narrowed "space" discloses no error. The escort section was expressly for those interested in purchasing sexual services (as opposed to a classified for any other item or service). The ad itself included further limiting information to narrow the group of potential people who would respond to the ad: it provided a specific geographic region, it provided a young age (18) and included additional language to suggest that the poster was a young girl. The totality of the circumstances served to tailor the potential group of people who may respond to the ad.[35]

36. The appellant's submission that the police could have more explicitly advertised an underage person in the ad should be rejected. This submission runs contrary to the evidence called at trial. The Backpage website required that anyone posting an ad claim a minimum age of 18. The site would not permit an ad to be posted that listed an age of under 18.[36]

---

[35] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 102-103; ***R. v. Chiang***, 2012 BCCA 85 at para. 21; ***R. v. Brown***, 2021 NLCA 27 at para. 17; ***R. v. Sinnappillai***, 2020 ONSC 1989 at para. 75.

[36] ***Exhibit 10A on Entrapment Application #1, Evidence of Inspector Truong***, Transcript: September 19, 2017 from *R. v. Haniffa*: P.43, L.19 to L.29, Appellant's Record Vol. II, Tab 10A, PDF p. 43; ***Evidence of Det. Cook***, Transcript: June 17, 2019, P. 27, L.24 to L.32, Appellant's Record Vol. IV, PDF p. 27.

37. The Court of Appeal further evaluated the non-exhaustive list of factors this Court outlined in *Ahmad* to determine whether random virtue testing had been avoided by the police technique here:

- The seriousness of the criminal activity under investigation

38. The societal ills associated with the scourge of child sexual exploitation cannot be overstated. These are violent crimes that "wrongfully exploit children's vulnerability and cause profound harm to children, families and communities." In *Friesen*, this Court recently reviewed the multifaceted and enduring negative impacts that flow both for individual victims and society at large when adults pray on children to satisfy their deviant sexual urges.[37]

39. Project Raphael was "aimed at reducing the demand for sexual services from juveniles in York Region." Officer Truong's evidence outlined the various vulnerabilities that characterized the juveniles who were sold on Backpage. Many were from broken homes. Many were assaulted, exploited and threatened both by pimps and customers. All were victims of some form of exploitation.[38]

40. The Court of Appeal concluded that this consideration weighed heavily in favour of finding that Project Raphael did not amount to random virtue testing.[39]

---

[37] ***R. v. D.D.*** (2002), 58 O.R. (3d) 788 (C.A.) at paras. 10-13, 34-38, 44-45; ***R. v. Friesen***, 2020 SCC 9 at paras. 1, 5, 42-45, 50-73; ***R. v. Woodward***, 2011 ONCA 610; ***R. v. Rafiq***, 2015 ONCA 768.

[38] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 95-96, at paras. 100-101.

[39] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 110 at para. 147.

- The difficulty in investigating the criminal activity under investigation

41. This Court in *Ahmad* determined that "the availability of other, less invasive investigative techniques" was relevant to the determination of whether a virtual space was sufficiently tailored to support a reasonable suspicion that the targeted criminal conduct was occurring in that location.[40]

42. Officer Truong canvassed the multifaceted challenges that investigations into juveniles selling sexual services face. For instance, the activity generally took place outside the public eye in hotel rooms or other private spaces. Further, the juveniles involved typically did not report offences to the police, or otherwise cooperate with police investigations out of fear of repercussions.[41]

43. Officer Truong further testified that alternative techniques (e.g. "vice probes" or strategies that focused on attempts to rescue juveniles through focusing on the pimps) did not "stop the demand for child sex." In light of this factual backdrop, the Court of Appeal concluded that there were no less intrusive investigative techniques that targeted the criminal conduct at issue.[42]

44. The Court of Appeal determined that this factor was deserving of weight in evaluating whether the police had the required reasonable suspicion. The Court noted,

> In *Ahmad*, at para. 35, the court observes "that technology aids in the commission of crime" and so "in order to investigate and detect those crimes, police must also make use of technology."[43]

---

[40] ***R. v. Ahmad***, 2020 SCC 11 at para. 41; ***R. v. Chiang***, 2012 BCCA 85 at paras. 19-20.

[41] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 97 at para. 104.

[42] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 97-99 at paras. 104-111.

[43] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 100 at para. 113.

45. This is particularly apt considering the nature of the offences investigated here. The legislative regime provided in the *Criminal Code* for sexual offences against children aims to protect children from wrongful exploitation and harm. Offences such as the luring offences were specifically designed by Parliament to "close the cyberspace door" on online predators before they committed an offence in relation to an actual child. To further this goal, Parliament provided for police to do exactly as they did in this case: to utilize the anonymity of the internet against those who would lurk in the shadows of the internet to prey on young children. As this Court recently noted in *R. v. Friesen*,

> **93** […]In particular, the offence of child luring is often prosecuted through sting operations: an undercover officer poses online as a child and waits for an offender to initiate communication with a sexual purpose (see, e.g., *R. v. Levigne*, 2010 SCC 25, [2010] 2 S.C.R. 3, at para. 7; *Morrison*, at para. 4). […]
>
> **94** Moreover, it must be recognized that with the advent of social media, "sexual offenders have been given unprecedented access to potential victims and avenues to facilitate sexual offending," especially through child luring (*K.R.J.*, at paras. 102 and 104). Parliament designed the child luring offence to enable the police to use sting operations to "close the cyberspace door" by apprehending offenders before they can successfully target and harm children (*Levigne*, at para. 27, quoting *R. v. Legare*, 2009 SCC 56, [2009] 3 S.C.R. 551, at para. 25; see also *Levigne*, at paras. 24-29). Sting operations conducted by the police have become an important tool -- if not the most important tool -- available to the police in detecting offenders who target children and preventing them from doing actual harm to children (see *R. v. Alicandro*, 2009 ONCA 133, 95 O.R. (3d) 173, at para. 38). As Abella J. stated, "These sting operations are crucial in the enforcement of child luring laws since, as Doherty J.A. cogently put it, 'Children cannot be expected to police the Internet'" (*Morrison*, at para. 202, quoting *Alicandro*, at para. 38). And courts should bear this in mind when sentencing offenders who have been outed by police undercover operations. To be clear, child luring should never be viewed as a victimless crime.[44]

- <u>The scope of the group potentially captured in the targeted location</u>

---

[44] ***R. v. Ramelson*****,** 2021 ONCA 328, <u>Appellant's Record Vol. I, Tab 5</u>, PDF p. 100 at para. 113; ***R. v. Friesen***, 2020 SCC 9 at paras. 42, 47, 93-94; ***R. v. Morrison****,* 2019 SCC 15 at paras. 2-3; ***R. v. Alicandro***, 2009 ONCA 133 at paras. 36-38; ***R. v. Karadics***, 2022 ABQB 121 at paras. 83-87, 96-99.

46. The Court of Appeal did not find the scope of people potentially targeted by Project Raphael to be overly broad. Both the trial judge and Court of Appeal noted that "the overwhelming majority of ads and traffic" in the escort section of Backpage did not relate to men seeking sexual services of underage girls. However, as outlined above, the ad itself narrowed the scope of the investigation to users who responded to the police ad advertising the sexual services of a young person (by stating the lowest permissible age and using language to suggest that the girl was young) in their particular geographic region.

47. The Court of Appeal rejected the proposition that the scope of the defined space was overly broad in that the police were required, once contacted by someone responding to the ad, to take further steps to ensure that the person they were interacting with was interested in a child prostitute *before* clarifying the age of the person on offer. The Court of Appeal noted:

> … [c]ustomers who are merely indifferent that the 18-year-old they seek to engage may actually be an underage person are legitimate targets of the police investigation. Their indifference exhibited in responding to police offers would manifest itself equally in real life encounters. These indifferent persons add to the social evil of child prostitution by contributing to the market for it. I agree with the trial judge's finding in his first entrapment decision that "the demand for juvenile prostitutes was driven not only by those who were specifically looking for underage girls, but also by those who were open and willing to obtain sexual services from juvenile prostitutes.[45]

- The activities affected by the investigative technique

48. The Court of Appeal considered the scope of potential activities that could be impacted by the police technique used here. The Court of Appeal noted that the scope of potential activities that persons who interacted with the ad would be engaging in was necessarily limited to criminal conduct. Anyone who responded to the ad was committing an offence pursuant to s. 286.1 of the

[45] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 104 at para. 124.

Code. The scope of potential implicated activities differentiated these facts from a situation like *Barnes*. In *Barnes*, any number of individuals could have been at the mall or come to interact with the police for any number of prosocial reasons that did not in and of themselves amount to any kind of criminal conduct. This limitation in the potential activities affected by the police technique led the Court of Appeal to note that "society has little interest in shielding the criminal activity of engaging a prostitute from state intrusion."[46]

49. The appellant would define the affected activities more broadly to include the activities of other individuals who posted ads in the escort section of Backpage (who themselves were not necessarily engaged in criminal conduct). However, the police conduct in posting their own ad did not impact or limit the activities of other posters on the site. The Court of Appeal properly defined the scope of affected activities in relation to those who would potentially respond to the police ad.

- The nature and level of privacy expected in the place under investigation

50. The Court of Appeal focused on any privacy expectation that existed before the officer informed the appellant "she" was underage.[47] The Court of Appeal found that the police technique intruded on an "intensely personal privacy interest."[48]

- The importance of the virtual space at issue to freedom of expression

51. The Court of Appeal concluded that the escorts section of Backpage had little importance to freedom of expression. The Court of Appeal found that the virtual space the police intruded

---

[46] ***R. v. Ramelson***, 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 105 at para. 129.
[47] ***R. v. Mills***, 2019 SCC 22 at para. 23.

[48] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 106 at para. 135; ***R. v. Mills***, 2019 SCC 22 at para. 23.

upon was "comprised of advertisements for sexual services and text messages from would-be customers … devoted to specifying sexual services and negotiating their cost and where they would be performed." The Court of Appeal further noted that these communications in and of themselves amounted to a criminal offence. Ultimately, the Court of Appeal concluded that such expression does "not fall into the traditional categories of expression valued in a democratic state, such as political speech, social commentary or religious opinion."[49]

52. The appellant argues that the Court of Appeal undervalued this factor as lofty types of communications valued in a democratic state are unlikely to occur in this type of setting. However, that is exactly the point. The scope of expression that can be reasonably expected in the context of the escort section of Backpage is limited in scope to communications with strangers surrounding the sale of sexual services. This is a way in which the targeted location is limited.

- The use of racial profiling, stereotyping or reliance on vulnerabilities

53. There was no indication that the police technique relied on racial profiling, stereotyping or reliance on vulnerabilities.[50]

- The number of persons who might be affected

54. The Court did consider the number of people who could have potentially come within the defined scope as a "significant" and "important" factor in the analysis. However, the Court did not see this factor as attracting any special weight amongst the various considerations. This is a fair

[49] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 107, para. 136; ***R. v. Brown****,* 2021 NLCA 27 at para. 17l; ***R. c. Brodeur***, 2021 QCCS 2401 at para. 37.
[50] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 107, at para. 139

reading of this Court's analysis in *Ahmad*. The weight afforded to a specific feature of the reasonable suspicion analysis must be relative to all the factors engaged in a particular situation.[51]

55. The appellant argues that the number of people potentially captured by the police technique should have garnered further weight. He argues that the Court of Appeal's reliance on *Barnes* was misplaced as in *Barnes*, the evidence disclosed a potential for interference with thousands of people who found themselves at the target mall. Whereas the evidence in these cases disclosed that the police had actually been in contact with numerous people, and had the potential to have contacted many, many more. This factual difference does not undermine the Court of Appeal's reliance on *Barnes*. First, whether or not the police had the required reasonable suspicion must be judged at the time an opportunity was offered to the individual. Not based on what, if anything happened after. The adequacy of the police grounds cannot be assessed based on the ultimate results of the deployment of the police technique.[52]

56. Second, the fact that a defined space may capture many people does not in and of itself mean that the police technique amounts to random virtue testing. As the Court of Appeal recognized,[53] a broad scope may be cause for scrutiny regarding whether a police technique is in fact a *bona fide* inquiry. However, the ultimate result turns on the multifaceted assessment of the

---

[51] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 107-108, at para. 140; p. 109, at para. 145

[52] ***R. v. Mack***, [1988] 2 S.C.R. 903 at para. 99

[53] ***R. v. Ramelson*****,** 2021 ONCA 328, Appellant's Record Vol. I, Tab 5, PDF p. 72, para. 43; ***R. v. Barnes***, [1991] 1 S.C.R. 449 at para. 20

totality of the circumstances – not just on the mathematics regarding the number of people who were, or could have been contacted by police within the target area.

- Overall consideration of the applicable factors

57. The Court of Appeal did what it was supposed to do. Pursuant to *Ahmad*, it considered all of the circumstances. It did not take any one factor (e.g. the importance of the virtual space to freedom of speech) as determinative. It considered the constellation of factors together and ultimately determined that Project Raphael did not amount to random virtue testing. It was a *bona fide* police inquiry and the appellant was not entrapped. This conclusion discloses no reversible error.

(iv) Conclusion

58. The Court of Appeal applied the framework set out in *Ahmad*. The Court of Appeal concluded that the escort section of Backpage was a sufficiently tailored location to support the police's reasonable suspicion that child prostitution offences were taking place on that section of the site. The police conduct here did not cross the line into impermissible random virtue testing. Project Raphael gave effect to the goal of the *Criminal Code* child sexual offences to protect children from the ills of sexual exploitation. The severe and lasting consequences that befall child sexual exploitation victims and society as a whole requires that the police be afforded room to investigate offences that precede hands on sexual offending with a child. The police cannot be limited to techniques that only allow them to intervene once the harm they are tasked with preventing has occurred. Permitting the police to target specific locations where they reasonably suspect child sexual offences are being arranged, before such activities take place, strikes the proper balance between the need for the police to have considerable leeway in the techniques used

to investigate this criminal activity with the important need to guard against untrammeled police power that would permit random virtue testing.

PART IV: SUBMISSIONS ON COSTS

59. The respondent does not seek any order for costs.

PART V: ORDER REQUESTED

60. The respondent respectfully requests that this Appeal be dismissed.

PART VI: RESTRICTIONS TO ACCESS OR PUBLICATION OF INFORMATION

61. There are no restrictions to access or publication in this matter that could impact this Court's reasons.

ALL OF WHICH is respectfully submitted by

for Katie Doherty & Lisa Fineberg
Counsel for the respondent

DATED AT TORONTO this 28th day of February, 2022

PART VII: AUTHORITIES CITED

Cases:	**Paragraph No.:**
R. c. Brodeur, 2021 QCCS 2401	51
R. v. Ahmad, 2020 SCC 11	13, 15, 19, 20, 21, 22, 23, 30, 31 32, 33, 41
R. v. Alicandro, 2009 ONCA 133	45
R. v. Barnes, [1991] 1 S.C.R. 449	19, 21, 30, 55, 56
R. v. Brown, 2021 NLCA 27	35, 51
R. v. C.D.R., 2019 ONSC 4061	10, 11, 12, 14, 17
R. v. Chehil, 2013 SCC 49	23
R. v. Chiang, 2012 BCCA 85	35, 41
R. v. D.D. (2002), 58 O.R. (3d) 788 (C.A.)	38
R. v. Friesen, 2020 SCC 9	38, 45
R. v. Imoro, 2010 ONCA 122	21
R. v. Karadics, 2022 ABQB 121	45
R. v. Mack, [1988] 2 S.C.R. 903	19, 20, 21, 30, 31, 33, 55
R. v. MacKenzie, 2013 SCC 50	23
R. v. Mills, 2019 SCC 22	50
R. v. Morrison, 2019 SCC 15	45
R. v. Rafiq, 2015 ONCA 768	38
R. v. Ramelson, 2021 ONCA 328	5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 25, 27, 29, 35, 39, 40, 42, 43, 44, 45, 47, 48, 50, 51, 53, 54, 56
R. v. Sinnappillai, 2020 ONSC 1989	35
R. v. Woodward, 2011 ONCA 610	38

Statutory Provisions or Regulations:	**Paragraph No.:**
Criminal Code, R.S.C., 1985, c. C-46, s. 286.1 *Code criminel*, L.R.C. (1985), ch. C-46, art. 286.1	