SCC File No. 39676

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

MUHAMMAD ABBAS JAFFER

Appellant
(Appellant)

-and-

HER MAJESTY THE QUEEN

Respondent
(Respondent)

-and-

DIRECTOR OF PUBLIC PROSECUTIONS
CRIMINAL LAWYER'S ASSOCIATION OF ONTARIO
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

RESPONDENT'S FACTUM

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

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

PART I: STATEMENT OF THE FACTS

A. OVERVIEW OF THE RESPONDENT'S POSITION

1. In October 2014, the appellant arranged to meet "Kathy," a person he believed to be a 15 year old girl, at a hotel in York Region. He had seen her ad in the escort section of Backpage.com ["Backpage"]. He agreed to pay "her" $100 in exchange for intercourse and indulging in his sock fetish. When the appellant arrived at the hotel room, he was met by the police and arrested. He was ultimately convicted after a five day jury trial of two offences: child luring, (section 172.1) and communication for the purpose of obtaining sexual services for consideration from a person under 18 years old, (now, section 286.1(2)).

2. At trial, the appellant testified and was adamant that although he believed "Kathy" was 15 years old, he never intended to follow through with their agreement for sex. As an experienced user of the escort services advertised on Backpage, he insisted that he believed that "she" revealed "her" age as a "cry for help" and that he only went to the hotel room to rescue "her". The jury rejected his explanation and convicted him on both counts. The appellant then brought an entrapment application, submitting that police were not acting pursuant to a *bona fide* investigation. He did not argue that he was improperly induced to commit an offence at trial. The trial judge dismissed the application. The appellant was sentenced only on count 1 on the indictment (the 172.1 offence) to 6 months incarceration, minus six weeks credit.

3. The appellant appealed his conviction and sentence to the Court of Appeal for Ontario ["Court of Appeal"]. His focus at the Court of Appeal remained on the first branch of entrapment. However, the appellant also submitted, for the first time, that he was induced into committing the offence. The Court of Appeal dismissed 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. The police were consequently entitled to offer the appellant, a person whom they encountered in that "place", the opportunity to commit a child prostitution offence. As for inducement, the Court of Appeal saw no basis to interfere with the trial judge's conclusion that the appellant knew that "Kathy" was underage and that he was nonetheless content to proceed.

4. This appeal should be dismissed. The appellant was not entrapped. The police had the requisite reasonable suspicion that the target criminal activity was occurring on Backpage. There was no evidence that the appellant was improperly induced to commit the offences. There is no basis to alter the carefully calibrated entrapment framework recently endorsed by this Court. The courts below made no error in their application of the entrapment doctrine. There is no reason for this Court to intervene.

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 involving underage prostitutes. The overall goal of Project Raphael was to reduce the demand for underage prostitution.[1]

[1] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF p. 31 at paras. 1-2; ***R. v. Jaffer Entrapment Ruling***, Appellant's Record Vol. I, Tab 1B, PDF p. 25 at paras. 9-11; pp. 27-28 at paras. 22-25; ***Evidence of Officer Truong***, Transcript: October 19, 2016, P.25, L.29 to P.26, L.15; P.61, L.26-28; P.72, L.31 to P.73, L.2, Appellant's Record Vol. III.

6. The architect of Project Raphael, Officer Truong, had extensive experience investigating juvenile prostitution. He testified that through prior training and investigative experience, law enforcement had determined that the escort section of Backpage was the "source" for individuals in Toronto and the GTA to purchase sex from both adult and juvenile prostitutes. Officer Truong testified that Backpage was "continually associated with prostituted children," as children were being "bought and sold on [the] site". The escort section of Backpage was known to the YRP as a place where men were able to purchase child prostitutes. While some men actively sought children on the escort section of Backpage, other men would realize in-person that the escort was a child and would nonetheless proceed to pay for sex with that child escort.[2]

7. Project Raphael involved undercover officers posting ads on Backpage with the listed age of 18 (the lowest the website allowed). The content of the ads 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 in a text message that "she" was younger than 18 and would specify "her" age (for example, 15). At that point, the prospective buyer would either cease communications, or continue to engage and arrange to meet.[3]

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[2] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF p. 35 at para. 15; ***R. v. Jaffer Entrapment Ruling***, Appellant's Record Vol. I, Tab 1B, PDF p. 23 at para. 4; pp. 27-28 at paras. 22-25; ***Evidence of Officer Truong***, Transcript: October 19, 2016, P.24, L.1 to P.27, L.12; P.74, L.25 to P.75, L.8; P.77, L.24 to P.78, L.21; P.80, L.1-22, P.84, L.7-11; P.90, L.20-26, Appellant's Record Vol. III; ***R. v. Ramelson***, 2021 ONCA 328, *Ramelson* Appellant Record Vol. I, Tab 5, PDF pp. 75-76 at para. 53; pp. 85-87 at paras. 77-81.

[3] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF pp. 31-32 at paras. 1-2, 5-6; ***R. v. Jaffer Entrapment Ruling***, Appellant's Record Vol. I, Tab 1B, PDF p. 25 at para. 9; ***Evidence of Officer Truong***, Transcript: October 19, 2016, P.36, L.1-20; P.42, L.9-16; P.53, L.13 to P.54, L.12; P.75, L.26 to P.76, L.7, Appellant's Record Vol. III; ***R. v. Ramelson***, 2021 ONCA 328, *Ramelson* Appellant Record Vol. I, Tab 5, PDF p. 57 at para. 2.

(i) The appellant's October 2014 messages with "Kathy" and his arrest

8. In October 2014, police created and posted Backpage ads offering the sexual services of "Kathy." The ad included pictures of "Kathy" and indicated that "she" was 18 years old. The ad posted by Officer Truong on October 24, 2014, read as follows:[4]

> **^^**BACK only TONIGHT – Tight Brand New girl in richmond hill today only – waiting ^^** - 18**
>
> ***Sexy, New & Hot***Hi guys I'm Kathy, and Im a girl who is sexy and young with a tight body looking for fun. Im only here today just visiting from out of town. In calls only. Don't miss this you'll be sorry!! Text or emails only :) 819-303-8846kathyblunt16@gmail.com
> Poster's age: 18
>
> - Location: York Region, RICHMOND HILL MARKHAM york region
> - Post ID: 22265539 toronto

Officer Truong chose words such as "tight" and "brand new" to indicate that the girl was young.[5]

9. The appellant replied to the ad and initiated contact with Officer Truong at 9:22 p.m. on October 24, 2014. At trial, identity was not in issue. The appellant conceded that he was the author of all text messages sent to Officer Truong from his phone. The text message conversation between the appellant and Officer Truong is reproduced here:[6]

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[4] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF p. 32 at para. 5; ***Exhibit 3, Backpage.com Ad***, Appellant's Record Vol. II, PDF pp. 22-23; ***Evidence of Officer Truong***, Transcript: October 19, 2016, P.41, L.24 to P.43, L.19, Appellant's Record Vol. III.

[5] ***Evidence of Officer Truong***, Transcript: October 19, 2016, P.42, L.9-16, Appellant's Record Vol. III; ***R. v. Ramelson***, 2021 ONCA 328, *Ramelson* Appellant Record Vol. I, Tab 5, PDF p. 57 at para. 2.

[6] ***Exhibit 2, Backpage PowerPoint***, Appellant's Record Vol. II, PDF pp. 2-21; ***Exhibit 4, Admissions***, Appellant's Record Vol. II, PDF pp. 24-25; ***Exhibit 5, Extraction Report***, Appellant's Record Vol. II, PDF pp. 26-30; ***Evidence of Officer Truong***, Transcript: October 19, 2016, P.49, L.18 to P.58, L.29, Appellant's Record Vol. III.

	Date	Time	Sent by	Received by	Content
1.	2016-10-24	9:22pm	Appellant	Officer Truong	Hey, was just wondering what your rates are. Also great job with your body, you look fit as hell :)
2.	2016-10-24	9:23pm	Officer Truong	Appellant	120 hh hun no greek[7]
3.	2016-10-24	10:38pm	Appellant	Officer Truong	Can I come for 100? That's all I can do with right now
4.	2016-10-24	10:41pm	Officer Truong	Appellant	Ok for 20 mins no bareback or anal ok
5.	2016-10-24	10:51pm	Appellant	Officer Truong	Ok I think I can come then..but I forgot to ask if you do foot fetish
6.	2016-10-24	10:51pm	Appellant	Officer Truong	If it helps I'm really for like you so you'll enjoy it ;)
7.	2016-10-24	10:54pm	Appellant	Officer Truong	oops meant to say ..I'm a bodybuilder like you * so you'll enjoy it
8.	2016-10-24	10:56pm	Officer Truong	Appellant	wow how old r u
9.	2016-10-24	10:57pm	Appellant	Officer Truong	22
10.	2016-10-24	10:57pm	Appellant	Officer Truong	I know you're probably asking why a bodybuilder like me doesn't have a gf..it's because I'm way too busy with my job. One day..
11.	2016-10-24	10:58pm	Appellant	Officer Truong	For now I've gotta have a sex release through escorts since it takes less time and no commitments
12.	2016-10-24	11:00pm	Officer Truong	Appellant	**lol ok…well im not quite 18 yet r u ok with that**
13.	2016-10-24	11:00pm	Appellant	Officer Truong	**So…do you do foot fetishes lol? I've got a thing for sweat (figures lol) so if u can wear your sweaty socks that's be even better**
14.	2016-10-24	11:00pm	Officer Truong	Appellant	**sure hun I can try**
15.	2016-10-24	11:00pm	Appellant	Officer Truong	**Yea I'm ok…but how much younger are u? 17?**
16.	2016-10-24	11:01pm	Officer Truong	Appellant	**im turning 16 on sunday but I look 18**
17.	2016-10-24	11:02pm	Appellant	Officer Truong	**Um…okay but how do I know you're not a cop?**
18.	2016-10-24	11:02pm	Appellant	Officer Truong	**I really don't want to get in trouble ya know**

[7] Officer Truong testified that "hh" meant half hour and "no greek" meant no anal sex. See ***Evidence of Officer Truong***, Transcript: October 19, 2016, P.50, L.20 to P.51, L.1, Appellant's Record Vol. III.

	Date	Time	Sent by	Received by	Content
19.	2016-10-24	11:03pm	Officer Truong	Appellant	lol r u crazy no im not a cop..i should be the one worried ur thr bodybuilder
20.	2016-10-24	11:03pm	Officer Truong	Appellant	and i definitely don't want trouble
21.	2016-10-24	11:03pm	Appellant	Officer Truong	**Ok can I ask why you're escorting if it's ok with u? Usually people your age don't know about this industry**
22.	2016-10-24	11:04pm	Appellant	Officer Truong	Just curios
23.	2016-10-24	11:04pm	Officer Truong	Appellant	**my friend got me into it…I just need the money i don't do this all the time its my second time honest i need the money :)**
24.	2016-10-24	11:05pm	Appellant	Officer Truong	**I see…I like that you're honest. I can trust u then :). So I'll come then but please please let's keep this between ourselves**
25.	2016-10-24	11:05pm	Officer Truong	Appellant	u better promise not to tell
26.	2016-10-24	11:06pm	Appellant	Officer Truong	Lol I'm a very nice guy and would never ever hurt a woman. Even though I'm Strong :D
27.	2016-10-24	11:06pm	Appellant	Officer Truong	So can you wear your sweaty socks then?
28.	2016-10-24	11:06pm	Officer Truong	Appellant	I promise
29.	2016-10-24	11:06pm	Officer Truong	Appellant	u want me to wear socks while u fuck me?
30.	2016-10-24	11:07pm	Appellant	Officer Truong	Sweaty ones yeah I love the smell of a sweating tough girl
31.	2016-10-24	11:07pm	Appellant	Officer Truong	Btw where are u located? Because I'm about to leave
32.	2016-10-24	11:08pm	Officer Truong	Appellant	lol ok but be gentle ok..and do you have a condom cause i only have one left
33.	2016-10-24	11:08pm	Appellant	Officer Truong	Shoot I think I have one or 2
34.	2016-10-24	11:09pm	Appellant	Officer Truong	But I already left te house so it'll be annoying toget back
35.	2016-10-24	11:09pm	Appellant	Officer Truong	Can we just use that one?
36.	2016-10-24	11:09pm	Officer Truong	Appellant	ok leslie n hwy 7 txt me when u get there n i will givr u hotel
37.	2016-10-24	11:10pm	Appellant	Officer Truong	Ok :)
38.	2016-10-24	11:10pm	Officer Truong	Appellant	how long hun
39.	2016-10-24	11:10pm	Appellant	Officer Truong	I'll probably be there in 10 min
40.	2016-10-24	11:11pm	Appellant	Officer Truong	I live close
41.	2016-10-24	11:11pm	Appellant	Officer Truong	Maybe 15 min

	Date	Time	Sent by	Received by	Content
42.	2016-10-24	11:13pm	Officer Truong	Appellant	ok hun just wanna make sure im ready for u
43.	2016-10-24	11:14pm	Appellant	Officer Truong	Thank you :) u sound sweet in a hot way
44.	2016-10-24	11:17pm	Appellant	Officer Truong	Ok so I'm just at leslie now and highway 7
45.	2016-10-24	11:19pm	Appellant	Officer Truong	Hello hello
46.	2016-10-24	11:21pm	Officer Truong	Appellant	sorry hun staybridge suites
47.	2016-10-24	11:21pm	Appellant	Officer Truong	Ok
48.	2016-10-24	11:21pm	Officer Truong	Appellant	335 south park rd
49.	2016-10-24	11:26pm	Appellant	Officer Truong	Ok I think I'm there
50.	2016-10-24	11:26pm	Appellant	Officer Truong	Yup this is it
51.	2016-10-24	11:26pm	Officer Truong	Appellant	rm 319 hun
52.	2016-10-24	11:27pm	Officer Truong	Appellant	come up hun
53.	2016-10-24	11:27pm	Appellant	Officer Truong	Sure thing :)

The appellant was arrested by members of YRP upon his arrival at room 319.[8]

(ii) The appellant's trial before Justice Mullins, sitting with a jury

10. The appellant was tried by Justice Mullins, sitting with a jury, in the Superior Court of Justice. The parties agreed that the only issue for the jury to determine was the purpose of the appellant's communications with "Kathy" on October 24, 2014.[9]

11. At his trial, the appellant testified that he had his first encounter with a Backpage escort in early 2014. This was the first time he held a woman's hand, and it was also his first sexual encounter. He never had a girlfriend or any physical relationship with a woman before. By

[8] ***Evidence of Officer Truong***, Transcript: October 19, 2016, P.58, L.3 to P.59, L.7, Appellant's Record Vol. III; ***Evidence of Officer Salhia***, Transcript: October 20, 2016, P.108, L.25 to P.111, L.15, Appellant's Record Vol. III.

[9] ***Closing Address by Counsel for the Appellant***, Transcript: October 24, 2016, P.95, L.25-32, Appellant's Record Vol. IV; ***Closing Address by Crown Counsel***, Transcript: October 24, 2016, P.135, L.21 to P.136, L.1, Appellant's Record Vol. IV; ***Charge to the Jury***, Transcript: October 25, 2016, P.233, L.8 to P.237, L.1, Appellant's Record Vol. IV; ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF pp. 33-34 at paras. 8-10.

October 24, 2014, the appellant testified that he had probably spoken to more than 30 escorts and regularly had sex with adult escorts. According to the appellant, there were a lot of women on Backpage to choose from and it was not difficult to find one whom he liked.[10]

12. On October 24, 2014, the appellant went on Backpage intending to hire an escort. He viewed 20 to 25 ads, clicking on the ones that he was "most attracted to". He spoke to several escorts, including "Kathy". All the ads that he clicked on had a listed age higher than 18, with most of them being over the age of 25, and some being even older than 30 and 35.[11]

13. The appellant testified that he initially wanted to have sex with "Kathy", but that his purpose changed when he learned "she" was underage. He continued the interaction intending to help "Kathy" and did not intend to have sex with "her". Although he subsequently sent messages asking "her" to wear sweaty socks for their sexual encounter, he testified that he did so for the purpose of making "Kathy" believe he was a prospective customer, so that he could get "her" hotel room number and call police.[12]

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[10] ***Evidence of the appellant***, Transcript: October 20, 2016, P.136, L.32 to P.138, L.8; P.139, L.31 to P.140, L.8; P.172, L.5-22; P.190, L.3-24, Appellant's Record Vol. III; Transcript: October 21, 2016, P.43, L.20-27; P.57, L.20-29, Appellant's Record Vol. IV; ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF pp. 37-38 at para. 20.

[11] ***Evidence of the appellant***, Transcript: October 20, 2016, P.138, L.9 to P.139, L.16; P.151, L.20 to P.152, L.25; P.165, L.25 to P.168, L.25; P.190, L.18 to P.191, L.6, Appellant's Record Vol. III; Transcript: October 21, 2016, P.35, L.7-L.25, Appellant's Record Vol. IV.

[12] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF pp. 32-34 at paras. 6-10; ***Evidence of the appellant***, Transcript: October 20, 2016, P.139, L.9 to P.140, L.27; P.149, L.32 to P.151, L.20; P.183, L.4-10; P.200, L.23 to P.202, L.28, Appellant's Record Vol. III; Transcript: October 21, 2016, P.17, L.9 to P.18, L.20; P.54, L.8 to P.55, L.31, Appellant's Record Vol. IV; ***Exhibit 5, Extraction Report***, Appellant's Record Vol. II, PDF pp. 26-30.

14. The appellant testified that he believed "Kathy" was 15 years old, and he thought this disclosure on "her" part was "very strange", "shocking", and "a cry for help". He thought "she" wanted "to be freed by someone". He testified he previously assisted the police by providing information about a pimp of an escort he found on Backpage. This was corroborated by Constable Kang's testimony ("Cst. Kang"). In his testimony about his previous encounter with the appellant, Cst. Kang was asked by the appellant's trial counsel whether he noticed anything strange about the appellant. Cst. Kang said that while the appellant was "cooperative and nice", it was "different" and "a bit off" that the appellant had a Quran to teach an escort at the same time that he was having sex with them. Cst. Kang provided the appellant with his business card. He told the appellant to contact him or the police if he had further information to provide.[13]

15. The appellant testified that on October 24, 2014, he did not contact the police when he learned "Kathy" was underage because he needed more information, namely, the exact room number, which he wanted to confirm by physically attending the room.[14]

16. In support of this testimony, the appellant gave evidence that he arranged to meet with an adult escort later that evening and that he only had enough cash to pay for a single escort. However, in cross-examination, the appellant acknowledged that in his statement to police, he said: "I don't

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[13] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF p. 33 at paras. 8-9; ***Evidence of the appellant***, Transcript: October 20, 2016, P.139, L.13 to P.141, L.24; P.147, L.10 to P.151, L.15; P.201, L.17 to P.202, L.27, Appellant's Record Vol. III; ***Evidence of Officer Kang***, Transcript: October 21, 2016, P.59, L.5 to P.62, L.4; P.66, L.1 to P.72, L.19, Appellant's Record Vol. IV.

[14] ***Evidence of the appellant***, Transcript: October 20, 2016, P.150, L.8 to P.153, L.5; P.164, L.6 to P.165, L.21; P.204, L.23 to P.205, L.11, Appellant's Record Vol. III; Transcript: October 21, 2016, P.5, L.25 to P.6, L.13; P.11, L.11 to P.16, L.11; P.27, L.21 to P.31, L.9, Appellant's Record Vol. IV.

just see one person. I see that person. I convince her and I usually do one more if I have time", "whoever I got a response from I set up an arrangement. This was one of them", and "I told someone else that I would see her next".[15]

17. The jury rejected the appellant's evidence about his claimed purpose in attending the hotel room and found him guilty of child luring and communicating to obtain for consideration the sexual services of a person under 18.[16]

18. The appellant then brought an entrapment application and sought a stay of proceedings. His trial counsel's submissions focused on opportunity-based entrapment. Trial counsel accepted that "[w]e know that minors are on Backpage's [*sic*] selling sexual services and we know that individuals are purchasing sexual services from them." However, trial counsel submitted that the investigation was not *bona fide* because the demand side was not being addressed as men were unknowingly purchasing sex from minors. Trial counsel also submitted that the undercover officer did not have individualized reasonable suspicion about the appellant when the officer revealed "her" age. As for inducement-based entrapment, the appellant led no evidence on this point before the trial judge. Trial counsel explicitly said that he *was not* arguing that the appellant was entrapped on this basis. Consequently, the Crown did not address the issue of inducement.[17]

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[15] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF p. 33 at para. 8; ***Evidence of the appellant***, Transcript: October 21, 2016, P.34, L.21 to P.35, L.30, Appellant's Record Vol. IV.

[16] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF p. 34 at para. 10; ***R. v. Jaffer Entrapment Ruling,*** Appellant's Record Vol. I, Tab 1B, PDF p. 25 at para. 10.

[17] ***Submissions on Entrapment***, Transcript: September 22, 2017, P.3, L.9 to P.14, L.2; P.16, L.15 to P.17, L.12; P.19, L.3 to P.21, L.8; P.14, L.1 to P.16, L.14; P.21, L.12 to P.24, L.24; P.26, L.15 to P.28, L.15; P.29, L.28 to P.30, L.32, P.53, L.3 to L.30, Appellant's Record Vol. V; ***R. v. Jaffer Entrapment Ruling,*** Appellant's Record Vol. I, Tab 1B, PDF p. 25-26 at paras. 13-17.

19. Justice Mullins dismissed the entrapment application. She accepted the evidence of Officer Truong that Backpage was "continually associated with the prostitution of children." Justice Mullins also accepted that Officer Truong was engaged in a *bona fide* investigation when he posted the ad on October 24, 2014. She further accepted that during their text conversations, Officer Truong formed a reasonable suspicion that the appellant was engaged in criminal activity. Although the inducement branch *was not* advanced by trial counsel, Justice Mullins still concluded that the police *did not* go beyond providing an opportunity and did not induce the commission of the offence. In so finding, she held that considering the entirety of the evidence, the appellant "was determined to purchase sexual services and gave specific consideration to the information as to the age of the purveyor before he acted on his choices".[18]

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

20. On appeal, the appellant argued that the trial judge erred by giving insufficient reasons in the entrapment analysis, improperly focusing on the harm caused by the offence, and misapprehending the evidence. He submitted that on a thorough review of the record, the trial judge ought to have concluded that Project Raphael was not a *bona fide* inquiry and that he was entrapped. The opportunity-based branch of entrapment was the central issue raised by the appellant at the Court of Appeal. While he also argued in oral submissions that he was induced into committing the crime, there was no evidence to support this complaint.

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[18] ***R. v. Jaffer Entrapment Ruling,*** Appellant's Record Vol. I, Tab 1B, PDF p. 23 at para. 4; pp. 27-29 at paras. 20-31.

21. For the reasons set out in *R. v. Ramelson*, the Court of Appeal rejected the opportunity-based entrapment argument.[19] The Court of Appeal held that *R. v. Ahmad* did not change the law of entrapment. Instead, *R. v. 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]

22. The Court of Appeal further found that police had the required reasonable suspicion that the criminal activity under investigation was taking place in the escort section of Backpage. The Court rejected the appellant's position that the police conduct amounted to impermissible virtue testing. 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 evidence to conclude that police had a reasonable suspicion that some users of Backpage were obtaining for consideration the sexual services of minors.[21]

23. The Court of Appeal also dismissed the appellant's inducement-based entrapment argument. The appellant claimed that the police went beyond providing an opportunity and

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[19] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF p. 35 at para. 16.

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

[21] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF p. 35 at paras. 15-16; ***R. v. Ramelson***, 2021 ONCA 328, *Ramelson* Appellant Record Vol. I, Tab 5, PDF pp. 82-87 at paras. 70-81; ***Evidence of Officer Truong***, Transcript: October 19, 2016, P.74, L.25 to P.75, L.8; P.80, L.1-22, Appellant's Record Vol. III.

induced the commission of the offence. Appellate counsel argued that the appellant's chat history and phone records showed that he was not looking for someone underage. Counsel argued that the appellant was "an odd and strange person", who lacked social relationships and could not form relationships with women. Finally, counsel referred to a clinical report obtained for the appellant's sentencing that diagnosed the appellant with depression, anxiety, and being on the autism spectrum. The Court of Appeal rejected the appellant's argument and upheld the trial judge's conclusion that he was not induced. In doing so, the Court of Appeal held that the text messages supported the trial judge's conclusion that the appellant "was determined to purchase sexual services and gave specific consideration to the information as to the age of the purveyor before he acted on his choices."[22]

[22] ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol. I, Tab 1C, PDF pp. 36-39 at paras. 17-23.

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

24. In addition to what was raised by the appellants Ramelson, Haniffa and Dare, this appellant focuses on two issues in his factum, stated by the appellant as follows:

ISSUE 1: On a correct interpretation of the reasonable suspicion standard, involving consideration of both the virtual space and the information obtained from the chat, the appellant was entrapped.

No, the appellant was not entrapped. 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: When, if ever, can individual vulnerabilities or relevant facts, unknown to the police at the time of the operation, support a finding that the accused was entrapped?

The current doctrine of entrapment properly focuses on impermissible state conduct in determining whether an accused was entrapped. Both the reasonable suspicion branch and the inducement branch of entrapment are governed by this Court's guidance in *R. v. Mack* and *R. v. Ahmad*. The Court of Appeal's reasons demonstrate that the application of the entrapment doctrine strikes the appropriate balance between restricting the manner in which the state can interact with its citizens, on the one hand, and providing police with appropriate latitude to investigate and protect society from crime, on the other hand.

PART III: STATEMENT OF ARGUMENT

A. OVERVIEW OF THE LAW OF ENTRAPMENT

25. It is well-settled that the entrapment doctrine balances and reconciles important public interests. Police must be allowed wide latitude to investigate crime while people must be protected against improper state conduct. The focus of the entrapment doctrine centres on police conduct and whether that conduct exceeded permissible limits. Courts are tasked with ensuring that unacceptable behaviour by the state is not condoned and that the integrity of the administration of justice is maintained. The accused bears the onus to show, on a balance of probabilities, that he was entrapped. A fact-driven inquiry is required. Only in the clearest of cases, where state actions would "shock" the community, will a stay of proceedings be entered.[23]

26. 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.[24]

27. 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.

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[23] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 15-17, 71, 78, 99-100, 102, 125, 148-149; ***R. v. Ahmad***, 2020 SCC 11 at paras. 1-2, 16-17.

[24] ***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.

Assuming that investigators are engaged in such a "*bona fide* inquiry," an offer to engage in criminal conduct will not amount to entrapment.[25]

28. 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 on "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 to commit an offence. 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 that the targeted 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.[26]

29. Regarding the second branch, even if the state possessed the requisite reasonable suspicion or were acting pursuant to a *bona fide* inquiry, the state conduct cannot go beyond providing an opportunity and induce the commission of the offence. The focus of the analysis *is not* on the

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

[26] ***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. Stairs***, 2022 SCC 11 at paras. 66-69; ***R. v. Ramelson***, 2021 ONCA 328, *Ramelson* Appellant Record Vol. I, PDF pp. 69-72, para. 37-42.

possible effect of the state's conduct on the accused person's state of mind. The analysis instead requires an objective assessment of the state's conduct in light of the totality of the circumstances. In *R. v. Mack*, this Court set out the following non-exhaustive factors to assist courts in determining whether police have used techniques which go beyond providing an opportunity to commit the offence and stated that no one factor is determinative:

- the type of crime being investigated and the availability of other techniques for the police detection of its commission;
- whether an average person, with both strengths and weaknesses, in the position of the accused would be induced into the commission of a crime;
- the persistence and number of attempts made by the police before the accused agreed to committing the offence;
- the type of inducement used by the police including: deceit, fraud, trickery or reward;
- the timing of the police conduct, in particular whether the police have instigated the offence or became involved in ongoing criminal activity;
- whether the police conduct involves an exploitation of human characteristics such as the emotions of compassion, sympathy and friendship;
- whether the police appear to have exploited a particular vulnerability of a person such as a mental handicap or a substance addiction;
- the proportionality between the police involvement, as compared to the accused, including an assessment of the degree of harm caused or risked by the police, as compared to the accused, and the commission of any illegal acts by the police themselves;
- the existence of any threats, implied or express, made to the accused by the police or their agents; and,
- whether the police conduct is directed at undermining other constitutional values.[27]

[27] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 116-118, 120-130, 132, 140.

B. THE APPELLANT WAS NOT ENTRAPPED UNDER EITHER BRANCH OF THE DOCTRINE

(i) Entrapment was not made out under the first branch

- **Police had the required reasonable suspicion**

30. The Court of Appeal correctly focused its analysis on the reasonable suspicion that the police had regarding the escort section of Backpage. Based on the evidence of Officer Truong, the trial judge accepted that "…the website Backpage.com was continually associated with the prostitution of children". The trial judge accepted that the officer was engaged in a *bona fide* investigation when he posted the advertisement to which the appellant responded. Accordingly, police had the required grounds to engage someone who responded to their Backpage ad regarding a child prostitute. As police already had the requisite reasonable suspicion *before* any individual chat was initiated by the accused person, police did not need to acquire any further information during a specific chat with a particular person who was present in that defined virtual space. The timing of when the police communicated that the person(s) offered was underage was immaterial to the grounds that the police already had regarding the escort section of Backpage. [28]

31. The respondent relies on its written submissions in *R. v. Ramelson* (SCC File No. 39664) and *R. v. Haniffa* (SCC File No. 39803) to fulsomely address why police already had reasonable suspicion in the circumstances of this case before providing the appellant with an opportunity to commit the child luring offence. In sum, the appellant's submission that the police lacked the required reasonable suspicion should be rejected. [29]

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[28] ***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; ***R. v. Jaffer Entrapment Ruling,*** Appellant's Record Vol. I, Tab 1B, PDF p. 23 at para. 4; PDF pp. 27-29 at paras. 20-29.

[29] See the Respondent's Factum for *R. v. Ramelson* (39664) at paras. 24-58 and for *R. v. Haniffa* (39803) at paras. 22-43.

- **Subjective features of the appellant should not be considered in determining whether state conduct amounted to random virtue testing**

32. The appellant also submits that his personal vulnerabilities and features should be factored into the analysis under the first branch of the entrapment doctrine in order to show that he was subject to random virtue testing. This argument must be rejected. The appellant's argument is contrary to the well-settled principles regarding the standard the police must meet to offer an individual an opportunity to commit an offence.

33. The entrapment framework balances and reconciles important public interests. In *R. v. Mack*, this Court declined to place the focus of the analysis on the accused person's state of mind as the doctrine of entrapment is not concerned with culpability. Instead, this Court affirmed that the concern is "…with law enforcement techniques that involve conduct that the citizenry cannot tolerate". In *R. v. Ahmad*, more than 30 years after *R. v. Mack*, this Court reaffirmed "… that the purpose and rationale for the entrapment doctrine lies in a court's inherent jurisdiction to prevent an abuse of its own process." This Court upheld the measured balance carefully struck by the existing framework and saw no principled reason to depart from it after decades of the doctrine proving workable in many contexts, including child luring.[30]

34. Entrapment requires judicial oversight of police conduct and requires an objective assessment of what police knew about *either* the target person *or* the target place at the time the opportunity was provided. The appellant's position suggests that individualized suspicion is paramount in the analysis. It is not. The various features listed by the appellant at paragraph 41 of his factum do not assist a court in determining what the police knew about the particular place

[30] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 18, 99, 106-109, 128, 140; ***R. v. Ahmad***, 2020 SCC 11 at paras. 17-23.

(for example, Backpage) at the time the opportunity was provided. The fact that the appellant may have been a relatively youthful and otherwise contributing member of his community does not preclude the police from conducting a legitimate investigation into a circumscribed virtual space known for child prostitution. The appellant's position runs counter to well-settled principles and should be rejected.[31]

(ii) Entrapment was not made out on the second branch

- **There was no evidence that the appellant was induced**

35. The appellant specifically disavowed any inducement argument at trial. Nevertheless, he asserted in the Court of Appeal and again in this Court that he was improperly induced by the police. In particular, he argues that his asserted social difficulties and rigid compliance with rules were vulnerabilities that were unintentionally exploited by the police leading to his entrapment. This submission is not supported by the record in this case. In fact, various aspects of the trial and sentencing record undermine the suggestion that the appellant's personal characteristics left him uniquely unable to resist the opportunity offered:

- *The text message exchange with Officer Truong*

  The text messages exchanged between the appellant and Officer Truong show no improper police conduct. There is nothing in the exchange itself to suggest Officer Truong was

[31] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 126, 129; ***R. v. Barnes***, [1991] 1 S.C.R. 449 at para. 23; ***R. v. Ahmad***, 2020 SCC 11 at paras. 34-36, 40-43; Appellant's Factum, P.19, para. 41 where the appellant lists ten factors that he cites as features that suggest he was subject to random virtue testing. Included among these factors was that the ad indicated that "Kathy" was of legal age; that the appellant had family support and strong community ties; and, that he had trouble forming relationships and as a result needed to use escorts.

persistent, acted improperly, or did anything that went beyond providing an opportunity to commit the offence. The appellant could have disengaged at any time, including after he learned that "Kathy" was underage, but chose not to do so.[32]

The text messages also reveal the appellant's ability to direct the conversation to address his own concerns and to satisfy himself that it was in his interest to proceed. This includes asking "Kathy" to agree to sexual services for less money than "she" originally demanded; convincing "her" to indulge his sweaty sock fetish; confronting "her" about "her" age and why "she" was in the industry; his statement that he preferred to use the one condom that "she" had left, rather than turning back to get more because that would be "annoying"; and his decision that he will come and see "her", but that she "please please" keep this between the two of them. The conversation shows that the appellant was a willing and directing participant who "…was determined to purchase sexual services and gave specific consideration to the information as to the age of the purveyor before he acted on his choices."[33]

- *The appellant's evidence at trial*

  The narrow issue at trial for the jury to determine was the purpose of the appellant's communications with "Kathy". A fulsome reading of the appellant's testimony contradicts his position before this Court that his asserted vulnerabilities compelled him to continue his conversation with "Kathy" to fulfill a police directive. The appellant testified about his

[32] ***R. v. Faroughi***, 2020 ONSC 407 at paras. 23-34; ***R. v. Duplessis***, 2018 ONCJ 911 at paras. 41-48.

[33] ***Extraction Report***, ***Exhibit 5,*** Appellant's Record Vol. II, PDF pp. 14-20; ***R. v. Jaffer Entrapment Ruling,*** Appellant's Record Vol. I, Tab 1B, PDF p. 29 at paras. 28-29; ***R. v. Jaffer***, 2021 ONCA 325, Appellant's Record Vol I, Tab 1C, PDF pp. 38-39 at paras. 22-23.

motivations in communicating with "Kathy". His evidence was *not* that he was induced or forced to engage in the communications. On the contrary, his evidence detailed that his communications with "Kathy", and the steps he took to meet "her", were his decisions and his decisions alone. The appellant testified that he contacted "Kathy" for the purpose of having sex, but that his purpose changed when he learned that "she" was underage. An experienced user of Backpage, he believed that "her" revelation was a "cry for help". He had to "think quickly" about what he could do to get "her" help. The appellant explained that he decided to "play it up" and make "her" believe that he was going to see "her" and that he needed the room number before contacting police. The appellant testified that after he confirmed the room number, saw "her" in person and called police, he planned to leave to see a different escort at a different hotel. Although he left Cst. Kang's card at home, the appellant denied doing so on purpose and denied that his real intention was to have sex with a minor. The appellant stated that he wanted to be a "hero and save her myself" and wanted police to "applaud" him. This account does not support a finding that the appellant's criminal conduct was a result of an improper police inducement.[34]

- *The information about the appellant provided on sentencing*

  The information that the appellant presented about himself during the sentencing proceedings further undermines the assertion that he had any particular vulnerabilities that were improperly exploited by the police. The evidence that was led at sentencing portrayed the appellant as "eminently personable", "vivacious", "a commanding force within the

[34] ***Evidence of the appellant***, Transcript: October 20, 2016, P.139, L.5 to P.140, L.24; P.150, L.7 to P.153, L.5; P.165, L.16 to P.166, L.21; P.170, L.28 to P.174, L.15; P.195, L.1 to P.196, L3, Appellant's Record Vol. III; Transcript: October 21, 2016, P.8, L.13 to P.9, L.8; P.12, L,12 to P.13, L.19; P.29, L.3 to P.36, L.6; P.38, L.26 to P.47, L.31; P.55, L.8-31, Appellant's Record Vol. IV.

classroom", and as an individual with "social skills" that allowed him to "professionally and effectively" interact with others. [35]

- *The evidence regarding the appellant's past interaction with Cst. Kang*

  The appellant's assertion that any "vulnerability" he had could have been uncovered by police in a face-to-face meeting is undermined by the evidence of Cst. Kang. Cst. Kang testified that he previously encountered the appellant at a hotel roughly eight months prior to his arrest. The officer was on general patrol in the hotel and started a conversation with the appellant. The appellant told the officer that he was there to see an escort. Cst. Kang testified that he advised the appellant to avoid engaging the services of escorts as it was a "dirty industry", separate and apart from whether the appellant's conduct was illegal. The officer testified that while the appellant acknowledged a lot of that, he directed the conversation back to his dislike of pimps. Cst. Kang confirmed that the appellant was worried about an escort who had an abusive pimp. Cst. Kang provided the appellant with his business card so he could contact him with any further information. Despite their conversation and despite their rapport, Cst. Kang did not hear from the appellant until March 2015, over four months after the appellant's arrest.[36]

  Cst. Kang described the rapport that he had with the appellant as "very good". He stated that while he thought it was "a bit off" that the appellant was teaching escorts the Quran while also engaging their sexual services, he described the appellant overall as "cooperative

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[35] ***Evidence of the appellant***, Transcript: October 20, 2016, P.134, L.20 to P.136, L.2, Appellant's Record Vol. III; ***Exhibit 1 for constitutional challenge against mandatory minimum sentence***, Appellant's Record Vol. II, PDF pp. 244-261.

[36] ***Evidence of Officer Kang***, Transcript: October 21, 2016, P.59, L.5 to P.62, L.4; P.66, L. 1 to P.71, L.5; P.71, L.25 to P.72, L.18, Appellant's Record Vol. IV.

> and nice". This interaction does not support the appellant's submission that face-to-face encounters with police enable vulnerabilities to be detected or would have enabled the appellant's specific vulnerabilities to be detected.[37]

Considering the totality of the evidence, the appellant's vulnerabilities played no role in his decision to agree to purchase sex from a minor. There is no evidentiary basis for this Court to interfere with the trial judge or Court of Appeal's conclusion that the appellant was not induced into the commission of this offence. [38]

- **The inducement analysis should not be revised in the manner requested by the appellant**

36. The appellant also argues that the *Mack* inducement framework should be significantly overhauled. The standard set by this Court in *R. v. Mack* should not be disturbed. The current framework properly safeguards against intolerable police conduct that goes beyond providing an individual an opportunity. As articulated in *R. v. Mack*, reviewing courts are expected to scrutinize whether the actions of police exploited a particular vulnerability, among other factors, on a case-by-case basis. The balance within the current framework is that police are not held to a standard of inadvertent conduct based on its effect on the accused person, but instead, are held to an objective standard that determines whether in all of the circumstances, their conduct was impermissible and would bring the administration of justice into disrepute. The current framework continues to strike the balance needed to continue to protect the community from state misconduct while also allowing the state to have room to develop techniques to assist in its investigation of

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[37] ***Evidence of Officer Kang***, Transcript: October 21, 2016, P.66, L. 1-30; P.70, L.1-3; P.71, L.3 to P.72, L.18, Appellant's Record Vol. IV.

[38] ***R. v. Charity***, 2022 ONCA 226 at paras. 28-35; ***R. v. Warsing***, [1998] 3 S.C.R. 579 at paras. 16-19; ***R. v. Ahmad***, 2020 SCC 11 at para. 23.

crime. The changes proposed by the appellant would alter the balanced approach that currently exists to determine whether police conduct has induced the commission of the crime and would unduly curtail the state's ability to develop and employ techniques to assist in its investigation of crime. [39]

- **The focus of the entrapment doctrine is on the conduct of the state**

37. The purpose of the entrapment doctrine is to restrain police conduct and eliminate what we as a society find to be intolerable police actions. A standard, such as that advocated by the appellant, that would depend on an assessment of the specific characteristics of an accused person that come to light long after the police conduct at issue occurred, does not serve this control function. In *R. v. Mack*, this Court considered and rejected an analysis that focused on the possible effect of police misconduct on an accused person's state of mind. Instead, the focus of the inducement analysis centers on the police conduct itself and involves an objective assessment as to whether "…the conduct of the police would have induced the average person in the position of the accused, i.e., a person with both strengths and weaknesses, into committing the crime."[40]

38. The non-exhaustive factors provided in *Mack* already preclude police from exploiting particular weaknesses or vulnerabilities, including a mental disorder, and effectively protects the administration of justice from disrepute. This focus makes sense. The entrapment doctrine is not concerned with excusing or explaining an accused person's conduct based on any of his or her particular characteristics. Entrapment is not a defence. The blameworthiness of an accused

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[39] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 15-17, 128-130, 147, ***R. v. Ahmad***, 2020 SCC 11 at paras. 18, 23, ***R. v. Charity***, 2022 ONCA 226 at paras. 28-35, ***R. v. Warsing***, [1998] 3 S.C.R. 579 at paras. 16-19, ***R. v. Ghotra***, 2020 ONCA 373 at paras. 19-31, aff'd 2021 SCC 12.

[40] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 71, 74-75, 78, 99, 102, 106-109, 116, 118, 128-130.

person's conduct is not at issue in this analysis. The entrapment doctrine reflects societal condemnation of intolerable police conduct. It is inconsistent with this purpose to assess the police conduct against information or a standard that the police cannot, and likely could not, assess or determine at the time when they engage in the conduct at issue. [41]

39. This is particularly so when officers cannot necessarily take what they are told at face value. Even assuming that the individual himself or herself had an awareness of their own specific vulnerabilities, an additional layer of interference arises from the online nature of the interactions at issue in a case like this. Deceptions, misrepresentations and untruths are the stock and trade of the internet. The appellant's case is no exception. Throughout his testimony, he repeatedly confirmed that he was lying to "Kathy" either because he did not want to appear like a "loser" or because he wanted to keep the conversation going for the purpose of gathering information to supply to police so that he could rescue "her". It would place an insurmountable burden on police to first decrypt whether someone's representations are falsehoods in order to satisfy themselves that their tactics are not inadvertently inducing the person into the commission of the offence. Such a position further overlooks the consensus that people may choose to mask any aspect of their lives, including vulnerabilities and true intentions, when communicating with others online.[42]

- **The location of an interaction cannot play a determinative role in the inducement analysis**

40. The appellant further argues that a heightened burden should be imposed on the police when they interact with someone online to ensure no inducement has occurred. This bright-line

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[41] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 74, 82, 98, 106, 110, 120; ***R. v. Faroughi***, 2020 ONSC 407 at paras. 12-13.

[42] ***R. v. Morrison***, [2019] 2 S.C.R. 3 at para. 58-59.

approach should be rejected. First, it conflicts with this Court's emphasis from *Mack* and *Ahmad* regarding the need for a fact-specific inquiry assessing all of the evidence to determine entrapment in a given case. Second, the actual impact that the particular location of an interaction may have in the entrapment analysis may vary from case to case. The particular location, be it virtual or physical, may have no significance in a particular interaction. Its selection may speak to an impermissible motivation on the part of the police in another. It depends on the circumstances. This variability undermines the appellant's submission that the location of the interaction should universally be singled out for prominent consideration. Finally, for the reasons highlighted above, such a standard would place an unworkable burden on the police and eliminate their ability to effectively investigate crime occurring online.[43]

- **Conclusion**

41. The arguments that the inducement branch of the entrapment analysis should be changed to distinguish between virtual and in person interactions and to focus uniquely on the potential subjective vulnerabilities of an accused person must be rejected. The analytical framework from *Mack* has endured because it is solidly crafted. The analytical focus on the objective assessment of the police conduct to determine if an improper inducement occurred targets intolerable police conduct, while leaving room for legitimate investigative activities. Project Raphael gave effect to the intent of the child sexual offence provisions of the *Criminal Code* to protect children from sexual exploitation. The severe and lasting consequences that befall child sexual exploitation victims and society as a whole require that police not be limited to techniques that allow them to intervene only after the harm has already occurred. Further, the inducement branch has no

[43] ***R. v. Mack***, [1988] 2 S.C.R. 903 at paras. 125, 128-130; ***R. v. Ahmad***, 2020 SCC 11 at paras. 16-23; ***R. v. Legare***, 2009 SCC 56 at para. 26.

application to the appellant's case. There is no connection between any of his vulnerabilities and his decision to agree to purchase sex from a minor.

PART IV: SUBMISSIONS ON COSTS

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

PART V: ORDER REQUESTED

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

PART VI: RESTRICTIONS TO ACCESS OR PUBLICATION OF INFORMATION

44. 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 Lisa Fineberg & Katie Doherty
Counsel for the respondent

DATED AT TORONTO this 14th day of April, 2022

PART VII: AUTHORITIES CITED

Cases:	**Paragraph No.:**
R. v. Ahmad, 2020 SCC 11	3, 21, 25, 26, 27, 28, 33, 34, 35, 36, 40
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