

**IN THE SUPREME COURT OF CANADA**  
[On Appeal from the Court of Appeal for British Columbia]

B E T W E E N:

**HER MAJESTY THE QUEEN**

APPELLANT  
(Appellant)

- and -

**RANDY WILLIAM DOWNES**

RESPONDENT  
(Respondent)

- and -

**SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST  
CLINIC**

INTERVENER

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**FACTUM OF THE INTERVENER, SAMUELSON-GLUSHKO CANADIAN INTERNET  
POLICY AND PUBLIC INTEREST CLINIC**

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

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## PART I – OVERVIEW

1. This appeal contests the interpretation of the place-based voyeurism provision in *Criminal Code* s. 162(1)(a). At issue is whether a change room in an athletic facility is “a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts”.
2. A change room is a quintessential example of a place protected by this provision as its main purpose is to provide a safe and private space for people to undress. Full and partial nudity is not merely common in change rooms, it is a fundamentally expected aspect of such spaces. As this Court noted in *R v Jarvis*, like bathrooms, change rooms are “the type of place contemplated in para. (a) of [s. 162\(1\)](#).”<sup>1</sup>
3. Demarcating change rooms as a bright line zone of safety and privacy assures those using these spaces that they will be free from non-consensual, surreptitious observation and recording while in them. This clear and consistent approach provides fair notice to everyone—including potential perpetrators—that in these spaces surreptitious recording in violation of people’s reasonable expectations of privacy is prohibited. This is the approach most consistent with this Court’s contextual, equality-focused sexual integrity analysis of sexual violence in cases such as *Jarvis* and *Friesen*.<sup>2</sup>
4. In contrast, the British Columbia Court of Appeal (BCCA) majority’s interpretation blurs this clear and consistent line by unnecessarily reading a non-existent temporal constraint into the provision, making it unclear exactly when a space that commonly includes nudity is safe or not. The majority’s temporal constraint narrows the protection offered by the provision for all people, and disproportionately undermines the equality, autonomy, and sexual integrity of the primary targets of voyeurism—women and children.<sup>3</sup> Further, this approach is likely to acutely affect those people who may not always fully disrobe in front of others in a change room, particularly vulnerable children, some people with disabilities, people of diverse gender identities and sexual orientations, and some members of certain religious groups, many of whom are already at greater risk of: (i) unwanted surveillance, scrutiny and violence; and (ii) the urgent problem of sexual violence and harassment in sports.<sup>4</sup>

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<sup>1</sup> *R v Jarvis*, 2019 SCC 10 (CanLII), [2019] 1 SCR 488, <<https://canlii.ca/t/hxj07>>.

<sup>2</sup> *R v Friesen*, 2020 SCC 9 (CanLII), <<https://canlii.ca/t/j64rn>>.

<sup>3</sup> Moira Aikenhead, “A ‘Reasonable’ Expectation of Sexual Privacy in a Digital Age” (2018) 41:2 *Dalhousie Law Journal* 274 at 279, online (pdf) <<https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=2101&context=dlj>> [Aikenhead].

<sup>4</sup> See Sandra L Kirby & Guylaine Demers, “Sexual Harassment and Abuse in Sport” in Roper, EA, eds, *Gender Relations in Sport* (Rotterdam: SensePublishers, 2013) 141 at 145-149 [Kirby, “Sexual Harassment and Abuse in Sport”]. See also Sandra L Kirby, Guylaine Demers & Sylvie Parent, “Vulnerability/prevention: Considering the

## PART II – POSITION ON APPELLANT’S QUESTION

5. CIPPIC submits that the phrase “a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts” in s. 162(1)(a) should be interpreted: (i) to give full effect to Parliament’s stated intention of protecting children and other vulnerable people from, among other things, sexual exploitation;<sup>5</sup> and (ii) in the manner that is most consistent with this Court’s contextual, equality-focused sexual integrity approach to sexual violence.

## PART III – THE FACTS

6. CIPPIC accepts and adopts the statement of facts as set out in the Appellant’s Factum.

## PART IV – STATEMENT OF ARGUMENT

7. The place-based protections of s. 162(1)(a) of the *Criminal Code* proscribe voyeurism in “a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts”. It does not require nudity or sexual activity at any exact moment or by any particular person in the place, nor does it require a sexual purpose. The other voyeurism provisions capture these concerns. It protects places where nudity can reasonably be expected to occur. A change room is a clear example of the type of protected space contemplated by Parliament in enacting this provision. Interpreting this provision as a bright line demarcation of change rooms as guaranteed zones of safety and privacy from surreptitious recording is consistent with this Court’s contextual, equality-focused sexual integrity approach to sexual violence. The BCCA majority decision’s temporally-constrained, conditional approach to the safety of such places is not.

### A. A CHANGE ROOM IS A QUINTESSENTIAL EXAMPLE OF THE TYPE OF PLACE CONTEMPLATED BY S. 162(1)(a)

8. Demarcating a bright line of protection around change rooms is consistent with this Court’s holding in *Jarvis* that the voyeurism provision should be interpreted “by reading the words of [s. 162\(1\)](#) ““in their entire context and in their grammatical and ordinary sense harmoniously with the

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needs of disabled and gay athletes in the context of sexual harassment and abuse" (2008) 6:4 Intl J Sport and Exercise Psychology 407 at 426

<[https://www.academia.edu/12385965/Vulnerability\\_prevention\\_Considering\\_the\\_needs\\_of\\_disabled\\_and\\_gay\\_athletes\\_in\\_the\\_context\\_of\\_sexual\\_harassment\\_and\\_abuse](https://www.academia.edu/12385965/Vulnerability_prevention_Considering_the_needs_of_disabled_and_gay_athletes_in_the_context_of_sexual_harassment_and_abuse)> [<https://perma.cc/ZKW2-FZF3>] [Kirby, “Vulnerability/Prevention”].

<sup>5</sup> *Jarvis*, *supra* note 1, para 51 citing Canada, Library of Parliament, *Bill C-2: An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act* (Legislative Summary), by Robin MacKay (Ottawa: Library of Parliament, 16 June 2005) at 1, quoting Department of Justice, *Media Advisory*, Ottawa, October 8, 2004, online (pdf): <<https://publications.gc.ca/collections/Collection-R/LoPBdP/LS/381/381-480E.pdf>> [<https://perma.cc/7BFK-YD8V>] [*Bill C-2 Legislative Summary*].

scheme of the Act, the object of the Act, and the intention of Parliament”<sup>6</sup>.

9. Unsurprisingly, this Court specifically noted in *Jarvis* that change rooms are “the type of place contemplated in para. (a) of [s. 162\(1\)](#).”<sup>7</sup> Change rooms easily fall within the grammatical and ordinary sense of the term “a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts” in s. 162(1)(a). Full and partial nudity are expected in such spaces, as it is their fundamental purpose.

10. Due to this expectation of full and partial nudity, change rooms in athletic facilities often have rules to ensure “changing areas are safe, inclusive and equitable environments for all players”<sup>8</sup> and to protect young athletes from sexual violence,<sup>9</sup> including prohibiting or limiting the use of cell phone cameras.<sup>10</sup>

11. Maintaining a bright line approach to privacy in change rooms provides certainty about safety in quintessentially private places like change rooms. This approach is consistent with this Court’s holding in *Jarvis* that s. 162 creates “*both* a sexual and a privacy-based offence ... an overarching purpose of which was to ‘protect children and other vulnerable persons from sexual exploitation, violence, abuse and neglect’”.<sup>11</sup> This protection is particularly important for women and children, who are the primary targets of voyeuristic exploitation while nude, semi-nude and fully clothed.<sup>12</sup>

12. Providing a guaranteed zone of safety free from surreptitious non-consensual recordings in

<sup>6</sup> *Jarvis*, *supra* note 1 at para 24, citing *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, quoting E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87.

<sup>7</sup> *Jarvis*, *supra* note 1 at para 46. See also *R v Hamilton*, 2009 BCPC 381 (CanLII), <<https://canlii.ca/t/27tgt>> at paras 30-31 finding it was “readily understandable” that locations such as bedrooms, bathrooms and fitting rooms built specifically for changing would fall within s. 162(1)(a); and excerpts from the Parliamentary record cited in *R v Downes*, 2019 BCSC 992 (CanLII), <<https://canlii.ca/t/j1345>> at paras 210, 212 [*Downes* BCSC].

<sup>8</sup> See, for example: Ontario Hockey Federation, Dressing Room Policy (7 September 2016), art 9.1, online (pdf): *Ontario Hockey Federation* <[https://alliancehockey.com/Public/Documents/Policies/DRP\\_2016-09-08\\_OHF\\_Dressing\\_Room\\_Policy\\_vf.pdf](https://alliancehockey.com/Public/Documents/Policies/DRP_2016-09-08_OHF_Dressing_Room_Policy_vf.pdf)> [https://perma.cc/R29M-U3WN] [OHF 2016].

<sup>9</sup> See, for example: BC Hockey Risk Management Bulletin, Issue # 2011-02-R (13 July 2011) at 1, available online (pdf): *BC Hockey* <[https://cdn1.sportngin.com/attachments/document/15d5-1852606/2011-02-R\\_Two\\_Deep\\_Method.pdf](https://cdn1.sportngin.com/attachments/document/15d5-1852606/2011-02-R_Two_Deep_Method.pdf)> [https://perma.cc/RJ3N-T53W] [BC Hockey]; Ontario Hockey Federation, Policy on Dressing Room Supervision (2014), online (pdf): *Ontario Hockey Federation* <[https://www.ohf.on.ca/media/4jule00y/ohf\\_policy\\_on\\_dressing\\_room\\_supervision.pdf](https://www.ohf.on.ca/media/4jule00y/ohf_policy_on_dressing_room_supervision.pdf)> [https://perma.cc/PFX6-3RF4] [OHF 2014].

<sup>10</sup> See, for example: Vancouver Minor Hockey Association, “Mandatory Processes: Safety and Risk Management” (2022) at 3, online (pdf): *Vancouver Minor Hockey Association* <[https://www.vmha.com/wp-content/uploads/sites/885/2017/10/VMHA\\_Safety\\_and\\_Risk\\_Management.pdf](https://www.vmha.com/wp-content/uploads/sites/885/2017/10/VMHA_Safety_and_Risk_Management.pdf)> [https://perma.cc/SH5R-UR4R] [VMHA].

<sup>11</sup> *Jarvis*, *supra* note 1 at para 51, in part citing *Bill C-2 Legislative Summary*.

<sup>12</sup> Aikenhead, *supra* note 3; *Jarvis*, *supra* note 1; *R v Rudiger*, 2011 BCSC 1397 (CanLII), <<https://canlii.ca/t/fnhr0>> [*Rudiger*].

change rooms is perfectly consistent with Parliament’s stated purpose. The expected full and partial nudity associated with change rooms directly engages “personal and informational privacy with respect to intimate parts of our bodies and information about our sexual selves” that this Court in *Jarvis* acknowledged to be “particularly sacrosanct” and “particularly worthy of respect”.<sup>13</sup>

13. Further, the certainty of a bright line approach properly protects the rights and interests of accused persons, since the interpretation of the “place” provision *only* arises after the Crown has proven beyond a reasonable doubt that: (i) the recordings were surreptitiously made; *and* (ii) they were made in circumstances giving rise to a reasonable expectation of privacy (a determination that this Court made clear in *Jarvis* requires a multi-faceted contextual consideration of surrounding circumstances including the location, manner, subject, and purpose of the recording).<sup>14</sup>

14. Under a grammatical and ordinary construction, and in accordance with this Court’s own conclusions in *Jarvis*, a change room is clearly the type of place referred to in s. 162(1)(a). Such an interpretation is also consistent with this Court’s contextual, equality-focused sexual integrity approach to sexual violence, whereas the BCCA majority’s temporally-constrained approach is not.

### **B. A BRIGHT LINE INTERPRETATION IS CONSISTENT WITH THIS COURT’S SEXUAL INTEGRITY APPROACH TO SEXUAL VIOLENCE**

15. Parliament’s over-arching purpose for enacting s. 162 was to protect children and other vulnerable persons from, among other things, sexual exploitation and abuse. In so doing, Parliament recognized voyeurism as a form of sexual violence disproportionately targeted at women and children. Thus, any interpretation of s. 162 should be consistent with the sexual integrity approach to sexual violence adopted by this Court in cases such as *Friesen*<sup>15</sup> and *Jarvis*,<sup>16</sup> and the equality and dignity rights of women and children recognized by this Court in *Brown*<sup>17</sup> and *Mabior*.<sup>18</sup>

16. Adopting a bright line approach to change rooms in interpreting s. 162(1)(a) demarcates a clear zone of safety from surreptitious recordings in settings and circumstances that expose the women and children who are disproportionately targeted by voyeurism to the potentially grave consequences of such recordings. In a digitally networked environment, non-consensual recordings are easy to make,

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<sup>13</sup> *Jarvis*, *ibid* at para 82.

<sup>14</sup> *Jarvis*, *ibid* at para 29.

<sup>15</sup> *Friesen*, *supra* note 2 at para 54.

<sup>16</sup> *Jarvis*, *supra* note 1 at paras 48-9, 111, 121-4, 127.

<sup>17</sup> *R v Brown*, 2022 SCC 18 (CanLII), <<https://canlii.ca/t/jp648>> at para 10. [*Brown*]

<sup>18</sup> *R v Mabior*, 2012 SCC 47 (CanLII), [2012] 2 SCR 584 <<https://canlii.ca/t/ft1pq>> at para 45 [*Mabior*].



manipulate, and widely disseminate.<sup>19</sup> A bright line approach to s. 162(1)(a) promotes and protects the “equality and dignity interests of women and children who are vulnerable to” sexual and other forms of violence, which this Court recognized in *Brown* to be a “pressing and substantial social purpose”.<sup>20</sup>

### **C. THE MAJORITY’S TEMPORALLY-CONSTRAINED INTERPRETATION IS INCONSISTENT WITH THIS COURT’S APPROACH TO SEXUAL VIOLENCE**

17. Under the BCCA majority’s approach a change room would only be covered by s. 162(1)(a) if nudity could reasonably be expected “during the course of the *relevant use*”.<sup>21</sup> By reading in a temporal constraint, the majority blurs the line around the zone of safety and narrows the scope of protection s. 162(1)(a) affords. In addition to the obvious practical problems with this interpretation noted by the Appellant,<sup>22</sup> it also undermines the rights of women, children and members of other equality-seeking groups and flies in the face of this Court’s sexual integrity approach to sexual violence.

#### **(i) The Majority’s Interpretation is Inconsistent with Women’s and Children’s Equality Rights**

18. The BCCA majority’s temporally-constrained approach narrows the protection afforded by s. 162(1)(a), which disproportionately negatively affects women and children because they are the people most at risk of voyeurism.<sup>23</sup> In so doing, it undermines their right to the equal benefit and protection of the law against the potentially extensive and lasting consequences of such recordings in a digitally networked society.<sup>24</sup> As this Court recognized in *Jarvis*, “where a photo or video represents sexual exploitation of a person, that person may be harmed for years following its creation by the knowledge

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<sup>19</sup> For a discussion of the range of harms of non-consensual sexualized recordings inflict on victims and the growing range of technology-facilitated mechanisms for inflicting such harm, see: Danielle Keats Citron, “Sexual Privacy”, (2019) 128:7 Yale LJ 1870, online

<[https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2604&context=fac\\_pubs](https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2604&context=fac_pubs)>

[<https://perma.cc/24XJ-5ZPL>] [Citron]; Kristen Thomasen & Suzie Dunn, “Reasonable Expectations of Privacy in an Era of Drones and Deepfakes: Expanding the Supreme Court of Canada’s Decision in *R v Jarvis*” in Jane Bailey, Asher Flynn & Nicola Henry (eds) *The Emerald International Handbook on Technology-facilitated Violence and Abuse* (England: Emerald, 2021), available online: <https://www.emerald.com/insight/content/doi/10.1108/978-1-83982-848-520211040/full/pdf?title=reasonable-expectations-of-privacy-in-an-era-of-drones-and-deepfakes-expanding-the-supreme-court-of-canadas-decision-in-r-v-jarvis> [Thomasen & Dunn].

<sup>20</sup> *Brown*, *supra* note 17 at para 10; See also *Mabior*, *supra* note 18 at paras 22 and 44 stating the meaning of contested statutory language must be interpreted “harmoniously with the constitutional norms enshrined in the *Charter*”, and that where the sexual and bodily integrity of victims are at stake, *Charter* values of “equality, autonomy, liberty, privacy and human dignity” are particularly relevant.

<sup>21</sup> *R v Downes*, 2022 BCCA 8 (CanLII), <<https://canlii.ca/t/jlnmk>> [*Downes* CA] [emphasis added].

<sup>22</sup> *R v Downes*, SCC Court File No. 40045 (Factum of the Appellant at paras 90-94).

<sup>23</sup> Aikenhead, *supra* note 3 at 279.

<sup>24</sup> See: Citron, *supra* note 19; Thomasen & Dunn, *supra* note 19; and Aikenhead, *supra* note 3.

that it ‘may still exist, and may at any moment be being watched and enjoyed by someone’.”<sup>25</sup>

**(ii) The Majority’s Interpretation Exacerbates the Already-Urgent Problem of Sexual Abuse in Sports**

19. According to researchers Sandra Kirby and Guylaine Demers, “sexual exploitation is a significant problem in sport, the nature of which is not yet fully understood”, a problem that often involves an abuse of trust and authority by coaches.<sup>26</sup> Social science research indicates that the systemic discrimination and power imbalances that expose women and girls,<sup>27</sup> LGBTQ+ and disabled people to a particularly high risk of sexual violence also put athletes from these communities at increased risk of sexual violence in sports.<sup>28</sup> Further, a 2019 CBC investigation revealed that over 200 Canadian coaches had been convicted of sexual offences against over 600 minors between 1998 and 2018.<sup>29</sup> This record of convictions almost certainly underestimates the extent of the problem, since, as with sexual violence generally, research suggests that sexual violence in sports is significantly under-reported, especially when against male athletes.<sup>30</sup> Various local, provincial, national<sup>31</sup> and international<sup>32</sup> initiatives indicate growing concern for the problem of abuse of young people in sports. Examples of such initiatives include policies prohibiting or restricting cell phone use in change rooms,<sup>33</sup> and the “2-deep” method that ensures that more than one adult is always in the change room where young athletes are changing,<sup>34</sup> both of which were mentioned in the evidence in this case.<sup>35</sup>

<sup>25</sup> *Jarvis*, *supra* note 1 at para 63, citing *R v Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45, at para. 92, per McLachlin C.J.; see also *R v Sharpe* paras. 164, 189-90 and 241, per L’Heureux-Dubé, Gonthier and Bastarache JJ.

<sup>26</sup> Kirby, “Sexual Harassment and Abuse in Sport”, *supra* note 4 at 146, 150.

<sup>27</sup> See Sandra Kirby, Lorraine Greaves & Olena Hankivsky, “Women Under the Dome: Sexual Abuse and Harassment of Female Athletes” (2002) 21:3 Canadian Woman Studies 132, online: <<https://cws.journals.yorku.ca/index.php/cws/article/view/6635/5823>>[<https://perma.cc/5X5B-L6NP>].

<sup>28</sup> See Kirby, “Sexual Harassment and Abuse in Sport” at 148, *supra* note 4. See also Kirby, “Vulnerability/Prevention”, *supra* note 4 at 410, 416.

<sup>29</sup> Lori Ward & Jamie Strashin. “More than 200 Canadian coaches convicted of sex offences against minors since 1998, investigation reveals | CBC sports”, (16 February 2019), online: *CBCnews* <https://www.cbc.ca/sports/amateur-sports-coaches-sexual-offences-minors-1.5006609> [<https://perma.cc/E7TS-ZV8W>]

<sup>30</sup> Kirby, “Sexual Harassment and Abuse in Sport”, *supra* note 4 at 145, 148.

<sup>31</sup> Devin Heroux & Lori Ward. “Ottawa establishing investigation unit, national toll-free helpline to address abuse in sport | CBC News”, (13 March 2019), online: *CBC* <<https://www.cbc.ca/news/federal-sport-minister-more-steps-eliminate-abuse-sport-1.5054426>> [<https://perma.cc/8ATA-WK3J>].

<sup>32</sup> Celia Brackenridge & Daniel Rhind. “Child Protection in Sport: Reflections on Thirty Years of Science and Activism” (2014) 3:3 Social Sciences 326 at 328-332, online: < <https://www.mdpi.com/2076-0760/3/3/326/htm>> [<https://perma.cc/RU2P-5QH6>].

<sup>33</sup> See, for example, VMHA, *supra* note 10 at 3.

<sup>34</sup> See, for example, BC Hockey and OHF 2014, *supra* note 9.

<sup>35</sup> *Downes BCSC*, *supra* note 7 at paras 166-175.

**(iii) The Majority’s Interpretation is Especially Problematic for Members of Already-Marginalized Equality-Seeking Communities**

20. The BCCA majority’s interpretation is likely to have a particularly negative effect on members of already-marginalized equality-seeking communities who, for reasons relating to age, ability, gender identity, sexual orientation, and/or religion, may be less likely to feel comfortable or safe to be fully nude in a change room, but are still entitled to equal protection of and respect for their privacy, and sexual and bodily integrity when using a change room. For members of these equality-seeking groups, the majority’s temporal constraint means that protection from non-consensual surreptitious recording is dependent upon being in a change room with individuals who, unlike them, may reasonably be expected to be fully nude or expose their genitals, anal region, or breasts. Included among this unprotected group are: (i) vulnerable children and teenagers who are anxious about removing all of their clothes in a change room;<sup>36</sup> (ii) people with certain disabilities who may be physically unable to or uncomfortable with removing all of their clothing in a change room because they are already subject to increased scrutiny, othering and unwanted attention that reflect the wider systemic problem of ableism;<sup>37</sup> (iii) people of diverse gender identities and sexual orientations for whom it is unsafe to completely remove their clothing in a change room because they already face increased surveillance, scrutiny, harassment and violence due to wider systemic issues of homophobia, transphobia and cissexism;<sup>38</sup> and (iv) some members of certain religious groups who are also disproportionately exposed to surveillance, scrutiny and violence due to systemic racism and sexism, and for whom embodied practices of modesty and privacy are crucial to performance of their faith.<sup>39</sup>

<sup>36</sup> Factum of the Appellant, *supra* note 22 at para 5, 94 and 96.

<sup>37</sup> Donna L Goodwin & E Jane Watkinson, “Inclusive Physical Education from the Perspective of Students with Physical Disabilities” (2000) 17 *Adapted Phys Activ Q* 144 at 156, online: <[https://www.researchgate.net/publication/261472343\\_Inclusive\\_Physical\\_Education\\_from\\_the\\_Perspective\\_of\\_Students\\_with\\_Physical\\_Disabilities](https://www.researchgate.net/publication/261472343_Inclusive_Physical_Education_from_the_Perspective_of_Students_with_Physical_Disabilities)>; Javier Monforte et al., “Environmental Barriers and Facilitators to Physical Activity among University Students with Physical Disability: A Qualitative Study in Spain” (2021) 18 *Int. J. Environ. Res. Public Health* 464 at 466-7, online: <<https://www.mdpi.com/1660-4601/18/2/464/htm>> [https://perma.cc/RN69-QDQ8]. See also Kirby, “Vulnerability/Prevention”, *supra* note 4 at 410.

<sup>38</sup> Shannon SC Herrick and Lindsay R Duncan, “Locker Room Experiences Among LGBTQ+ Adults” (2020) 42 *Journal of Sport and Exercise Psychology* 227, online <<https://journals.humankinetics.com/view/journals/jsep/42/3/article-p227.xml>> [https://perma.cc/TJ8P-YJR5]; Ali Durham Greay, “‘It’s Just Safer When I Don’t Go There’: Trans People’s Locker Room Membership and Participation in Physical Activity”, (2022) *Journal of Homosexuality* [Forthcoming in 2022]; Anniken Sorlie, “Transgender Children’s Right to Non-discrimination in Schools: The Case of Changing-room Facilities” (2020) 28(2) *International Journal of Children’s Rights* 221, online: <[https://hiof.brage.unit.no/hiof-xmlui/bitstream/handle/11250/2727892/S%C3%B8rlie\\_Transgender+childrens+right+to+non-discrimination+in+schools\\_International+journal+of+childrens+rights\\_ACCEPTED+VERSION.pdf?sequence=1](https://hiof.brage.unit.no/hiof-xmlui/bitstream/handle/11250/2727892/S%C3%B8rlie_Transgender+childrens+right+to+non-discrimination+in+schools_International+journal+of+childrens+rights_ACCEPTED+VERSION.pdf?sequence=1)> [https://perma.cc/98NW-TKRG]; José Devis-Devis et al, “Looking back into trans persons’ experiences in

**(iv) The Majority’s Interpretation Relies on an Outdated Approach to Sexual Violence**

21. *The Majority’s Approach is Inconsistent with This Court’s Sexual Integrity Analysis:* In *Jarvis* and *Friesen* this Court expressly adopted Professor Elaine Craig’s conception of sexual violence as an issue of sexual integrity and not of sexual propriety, noting that the shift to a sexual integrity analysis “enables greater emphasis on violations of trust, humiliation, objectification, exploitation, shame, and loss of self-esteem rather than simply, or only, on deprivations of honour, chastity, or bodily integrity”.<sup>40</sup> Under a sexual integrity analysis, what counts is “not simply the sexual motives, arousal, or body parts of the accused, or the community’s standard of sexual propriety, but also the perception, experience, and impact on the complainant”.<sup>41</sup> Thus, a sexual integrity analysis is both contextual and equality-enhancing.

22. The BCCA majority’s reason for reading a temporal constraint into s. 162(1)(a) and the Respondent’s approach to the interpretation of that provision are inconsistent with this Court’s sexual integrity analysis and with Parliament’s express intention to protect children and other vulnerable people against, among other things, sexual exploitation. The majority expressed concern that without a temporal constraint, the provision could criminalize “conduct that was neither engaged in for the purpose of, nor resulted in, the observing or recording of nudity or sexual activity,” and noted that “[w]hile the appellant’s conduct was undoubtedly a breach of trust and invasive of privacy, that does not necessarily make it conduct that this section criminalizes as a sexual offence.”<sup>42</sup> Similarly, the Respondent points out that none of the impugned photos contained full nudity, none were found to

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heteronormative secondary physical education contexts” (2018) 23:1 *Physical Education and Sport Pedagogy* 103; HCMA, “Designing for Inclusivity: Strategies for Universal Washrooms and Change Rooms in Community and Recreation Facilities” (February 2018) 6 at 6, 10, online (pdf): <[https://hcma.ca/wp-content/uploads/2018/01/HCMA\\_Designing-for-Inclusivity\\_V1-1.pdf](https://hcma.ca/wp-content/uploads/2018/01/HCMA_Designing-for-Inclusivity_V1-1.pdf)> Environments that compromise trans people’s ability to maintain body intimacy can be particularly threatening given that images of and information about them can be used maliciously to disclose their birth sex to encourage transphobic harassment: Abigail Curlew & Jeffery Monaghan, “Stalking ‘Lolcows’ and ‘Ratkins’: DIY Gender Policing, Far-right Digilantes, and Anti-Transgender Violence” in Joseph McQuade, Tiffany Kwok, & James Cho, eds, *Disinformation and Digital Democracies in the 21<sup>st</sup> Century* (Toronto: NATO Association of Canada, 2019) at 24, online: <<https://natoassociation.ca/wp-content/uploads/2019/10/NATO-publication-.pdf>> [<https://perma.cc/2X7V-289Q>].<sup>39</sup> Derek X Seward & Shaza Khan, “Towards an Understanding of Muslim American Adolescent High School Experiences” (2016) 38:1 *Int J Adv Counselling* 11, online: <[https://www.researchgate.net/publication/287419939\\_Towards\\_An\\_Understanding\\_of\\_Muslim\\_American\\_Adolescent\\_High\\_School\\_Experiences](https://www.researchgate.net/publication/287419939_Towards_An_Understanding_of_Muslim_American_Adolescent_High_School_Experiences)>; Claire Miles & Tansin Benn, “A case study on the experiences of university-based Muslim women in physical activity during their studies at one UK higher education institution” (2016) 21:5 *Sport, Education and Society* 723.

<sup>40</sup> *Friesen*, *supra* note 2 at para 55; *Jarvis*, *supra* note 1 at para 127; both citing Elaine Craig, *Troubling Sex: Towards a Legal Theory of Sexual Integrity* (Vancouver: University of British Columbia Press, 2011) at 68 [Craig].

<sup>41</sup> Craig *ibid* at 75.

<sup>42</sup> *Downes CA*, *supra* note 21 at para 54.

constitute child pornography, and that no sexual purpose was proven.<sup>43</sup> Section 162(1)(a) does not require proof of a sexual purpose (in contrast with s. 162(1)(c)). Reading in such a requirement, whether implicitly or explicitly would negate the distinctions among the subsections of s. 162, contrary to this Court’s clear delineation in *Jarvis*.<sup>44</sup> In any event, the majority and Respondent’s approach takes an unduly circumscribed view of sexual violence more akin to the historic sexual propriety approach than to this Court’s equality-focused sexual integrity analysis.

23. *The Majority’s Interpretation Fails to Adequately Address the Impact that Non-Consensual Non-Nude Images Can Have on Children’s and Women’s Equality, Privacy, Sexual Integrity and Safety:* Under a sexual integrity approach, the subjective experience of the victim must be considered, and the focus of inquiry is “more on power, relationships, and context than on sexual motives, genitals, and sexual gratification”.<sup>45</sup>

24. Sexual integrity is clearly engaged in a situation where a trusted adult, such as a coach, surreptitiously records images of their young athletes in various states of undress in a sports dressing room. Such violations of trust objectify those targeted by reducing them to body parts, creating images that in a digital environment can be easily replicated, cropped and manipulated in ways and for uses that disregard their right to control their own bodies. These violating images hinder subjects from developing their sexuality as they see fit, while also potentially exposing them to the shame and humiliation that often results from instantaneous and widespread dissemination.<sup>46</sup>

25. It can also strip the subjects of the images of their sense of safety in a space where they typically expose parts of their bodies while changing. The harms of such violations are not dependent upon whether the victim is or could reasonably be expected to be fully nude or engaged in sexual activity when they are recorded. The potentially sexually exploitative nature of non-nude imagery has led to criminal convictions for child pornography,<sup>47</sup> and for voyeurism against child and adult victims.<sup>48</sup>

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<sup>43</sup> *R v Downes*, SCC Court File No. 40045 (Factum of the Respondent at paras 21, 34, 35).

<sup>44</sup> *Jarvis*, *supra* note 1 at para 46.

<sup>45</sup> *Craig*, *supra* note 40 at 68-69.

<sup>46</sup> *Jarvis*, *supra* note 1 at para 63; *Citron*, *supra* note 19; *Thomasen & Dunn*, *supra* note 19; *Aikenhead*, *supra* note 3.

<sup>47</sup> *R v Jones*, 2019 ONCJ 805, <<https://canlii.ca/t/j37zd>>.

<sup>48</sup> For example: *Jarvis*, *supra* note 1 (recordings made in public areas of a school); *Rudiger*, *supra* note 12 (recordings made in a public park of children and babies in diapers and bathing suits); CTV Calgary Staff, “Operator of ‘Canada Creep’ Twitter account sentenced on voyeurism and child porn convictions”, CTV News, (6 September 2018), online: CTV News <<https://calgary.ctvnews.ca/operator-of-canada-creep-twitter-account-sentenced-on-voyeurism-and-child-porn-convictions-1.4083586>> [https://perma.cc/ZYW5-EXXS].

Further, researchers Taylor, Holland and Quayle report that surreptitiously taken non-nude images of children are a type of image regularly found in pedophile picture collections, a type which they suggest represents “a very serious example of sexual victimisation through photography”, especially where the recordings are made in environments that are understood to be safe and secure for children.<sup>49</sup> In addition, research by Anne Burns found that many voyeurs interested in creepshots (surreptitious photos of clothed adults) sexually exploit women by collecting and labelling these images in sexual, sexist, and objectifying ways on public internet forums.<sup>50</sup>

26. The sexual integrity and equality of women and children who are disproportionately victimized by voyeurism, and of members of other marginalized communities disproportionately targeted by unwanted surveillance and sexual violence, militates against the majority’s temporally-constrained interpretation of s. 162(1)(a), an interpretation grounded in an outdated approach to sexual violence.

#### **PART V – CONCLUSION**

27. This Court in *Jarvis* offered an important equality-enhancing approach to the growing problem of technology-facilitated sexualized privacy invasions by making it clear that the women and children whose sexual integrity is disproportionately targeted by voyeurism can reasonably expect privacy in *public* places.<sup>51</sup> The BCCA majority’s temporally-constrained interpretation of s. 162(1)(a) in this case threatens to undo that progress by reverting to a sexual propriety approach that would, ironically, defeat reasonable expectations of privacy in change rooms—spaces that are widely understood to be both private *and* to engage the sexual integrity of those who use them. For these reasons, this Court should adopt an equality-enhancing bright line approach to change rooms in interpreting s. 162(1)(a) and reject the majority’s temporally-constrained approach.

#### **PART VI – COSTS**

28. CIPPIC will not seek costs in this matter and asks that costs not be awarded against it.

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<sup>49</sup> Max Taylor, Gemma Holland & Ethel Quayle, "Typology of Paedophile Picture Collections" (2001) 74:2 Police J 97 at 99-104.

<sup>50</sup> Anne Burns, “Creepshots and Power: Covert Sexualised Photography, Online Communities and the Maintenance of Gender Inequality“ at 27-40, in Marco Bohr & Basia Sliwinska, eds, *The Evolution of the Image: Political Action and the Digital Self* (2018: Routledge, New York).

<sup>51</sup> Jane Bailey, “Implicitly Feminist?: The Supreme Court of Canada’s Reasons in *R v Jarvis*” (2020) 32(1) CJWL 196.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of July, 2022.



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## PART VII – TABLE OF AUTHORITIES

<i>Authority</i>	<i>Paragraph Ref.</i>
<b><u>Case Law</u></b>	
1. <i>R v Brown</i> , 2022 SCC 18 (CanLII), < <a href="https://canlii.ca/t/jp648">https://canlii.ca/t/jp648</a> >.	15, 16
2. <i>R v Downes</i> , 2022 BCCA 8 (CanLII), < <a href="https://canlii.ca/t/jlnmk">https://canlii.ca/t/jlnmk</a> >.	17, 22
3. <i>R v Downes</i> , 2019 BCSC 992 (CanLII), < <a href="https://canlii.ca/t/j1345">https://canlii.ca/t/j1345</a> >	9, 19
4. <i>R v Friesen</i> , 2020 SCC 9 (CanLII), < <a href="https://canlii.ca/t/j64rn">https://canlii.ca/t/j64rn</a> >.	3, 15, 21
5. <i>R v Hamilton</i> , 2009 BCPC 381 (CanLII), < <a href="https://canlii.ca/t/27tgt">https://canlii.ca/t/27tgt</a> >.	9
6. <i>R v Jarvis</i> , 2019 SCC 10 (CanLII), [2019] 1 SCR 488, < <a href="https://canlii.ca/t/hxj07">https://canlii.ca/t/hxj07</a> >.	2, 3, 5, 8, 9, 11, 12, 13, 14, 15, 18, 21, 22, 24, 25, 27
7. <i>R v Jones</i> , 2019 ONCJ 805, < <a href="https://canlii.ca/t/j37zd">https://canlii.ca/t/j37zd</a> >.	25
8. <i>R v Mabior</i> , 2012 SCC 47 (CanLII), [2012] 2 SCR 584 < <a href="https://canlii.ca/t/ft1pq">https://canlii.ca/t/ft1pq</a> >.	15, 16
9. <i>R v Rudiger</i> , 2011 BCSC 1397 (CanLII), < <a href="https://canlii.ca/t/fnhr0">https://canlii.ca/t/fnhr0</a> >.	11, 25
10. <i>R v Sharpe</i> , 2001 SCC 2, [2001] 1 SCR 45, < <a href="https://canlii.ca/t/523f">https://canlii.ca/t/523f</a> >.	18
<b><u>Secondary Sources</u></b>	
1. Aikenhead, Moira, “A ‘Reasonable’ Expectation of Sexual Privacy in a Digital Age” (2018) 41:2 Dalhousie Law Journal 274 at 279, online (pdf): < <a href="https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=2101&amp;context=dlj">https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=2101&amp;context=dlj</a> >.	4, 11, 18, 24
2. Bailey, Jane, “Implicitly Feminist?: The Supreme Court of Canada’s Reasons in <i>R v Jarvis</i> ” (2020) 32(1) CJWL 196.	27
3. BC Hockey Risk Management Bulletin, Issue # 2011-02-R (13 July 2011) at 1, available online (pdf): <i>BC Hockey</i> < <a href="https://cdn1.sportngin.com/attachments/document/15d5-1852606/2011-02-R_Two_Deep_Method.pdf">https://cdn1.sportngin.com/attachments/document/15d5-1852606/2011-02-R_Two_Deep_Method.pdf</a> > [https://perma.cc/RJ3N-T53W]	10, 19
4. Brackenridge, Celia & Daniel Rhind. "Child Protection in Sport: Reflections on Thirty Years of Science and Activism" (2014) 3:3 Social	19



Sciences 326, online: < <a href="https://www.mdpi.com/2076-0760/3/3/326/htm">https://www.mdpi.com/2076-0760/3/3/326/htm</a> > [https://perma.cc/RU2P-5QH6].	
5. Burns, Anne, “Creepshots and Power: Covert Sexualised Photography, Online Communities and the Maintenance of Gender Inequality” at 27-40, in Marco Bohr & Basia Sliwinska, eds, <i>The Evolution of the Image: Political Action and the Digital Self</i> (2018: Routledge, New York).	25
6. Canada, Library of Parliament, <i>Bill C-2: An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act</i> (Legislative Summary), by Robin MacKay (Ottawa: Library of Parliament, 16 June 2005), online (pdf): < <a href="https://publications.gc.ca/collections/Collection-R/LoPBdP/LS/381/381-480E.pdf">https://publications.gc.ca/collections/Collection-R/LoPBdP/LS/381/381-480E.pdf</a> > [https://perma.cc/7BFK-YD8V].	5, 11
7. Citron, Danielle Keats, “Sexual Privacy”, (2019) 128:7 Yale LJ 1870, online (pdf): < <a href="https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2604&amp;context=fac_pubs">https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2604&amp;context=fac_pubs</a> > [https://perma.cc/24XJ-5ZPL].	16, 18, 24
8. Craig, Elaine, <i>Troubling Sex: Towards a Legal Theory of Sexual Integrity</i> (Vancouver: University of British Columbia Press, 2011).	21, 23
9. CTV Calgary Staff, “Operator of ‘Canada Creep’ Twitter account sentenced on voyeurism and child porn convictions”, CTV News, (6 September 2018), online: <i>CTV News</i> < <a href="https://calgary.ctvnews.ca/operator-of-canada-creep-twitter-account-sentenced-on-voyeurism-and-child-porn-convictions-1.4083586">https://calgary.ctvnews.ca/operator-of-canada-creep-twitter-account-sentenced-on-voyeurism-and-child-porn-convictions-1.4083586</a> > [https://perma.cc/ZYW5-EXXS].	25
10. Curlew, Abigail & Jeffery Monaghan, “Stalking ‘Lolcows’ and ‘Ratlings’: DIY Gender Policing, Far-right Digilantes, and Anti-Transgender Violence” in Joseph McQuade, Tiffany Kwok, & James Cho, eds, <i>Disinformation and Digital Democracies in the 21st Century</i> (Toronto: NATO Association of Canada, 2019) at 24, online (pdf): < <a href="https://natoassociation.ca/wp-content/uploads/2019/10/NATO-publication-.pdf">https://natoassociation.ca/wp-content/uploads/2019/10/NATO-publication-.pdf</a> > [https://perma.cc/2X7V-289Q].	20
11. Devís-Devís, José et al, “Looking back into trans persons’ experiences in heteronormative secondary physical education contexts” (2018) 23:1 <i>Physical Education and Sport Pedagogy</i> 103.	20
12. Goodwin, Donna L & E Jane Watkinson, “Inclusive Physical Education from the Perspective of Students with Physical Disabilities” (2000) 17 <i>Adapted Phys Activ Q</i> 144, online: < <a href="https://www.researchgate.net/publication/261472343_Inclusive_Physical_Education_from_the_Perspective_of_Students_with_Physical_Disabilities">https://www.researchgate.net/publication/261472343_Inclusive_Physical_Education_from_the_Perspective_of_Students_with_Physical_Disabilities</a> >.	20

13. Greey, Ali Durham “‘It’s Just Safer When I Don’t Go There’: Trans People’s Locker Room Membership and Participation in Physical Activity”, <i>Journal of Homosexuality</i> [Forthcoming in 2022].	20
14. HCMA, “Designing for Inclusivity: Strategies for Universal Washrooms and Change Rooms in Community and Recreation Facilities” (February 2018) 6 at 6, 10, online (pdf): < <a href="https://hcma.ca/wp-content/uploads/2018/01/HCMA_Designing-for-Inclusivity_V1-1.pdf">https://hcma.ca/wp-content/uploads/2018/01/HCMA_Designing-for-Inclusivity_V1-1.pdf</a> >	20
15. Heroux, Devin & Lori Ward. "Ottawa establishing investigation unit, national toll-free helpline to address abuse in sport   CBC News", (13 March 2019), online: <i>CBC</i> < <a href="https://www.cbc.ca/news/federal-sport-minister-more-steps-eliminate-abuse-sport-1.5054426">https://www.cbc.ca/news/federal-sport-minister-more-steps-eliminate-abuse-sport-1.5054426</a> > [ <a href="https://perma.cc/8ATA-WK3J">https://perma.cc/8ATA-WK3J</a> ].	19
16. Herrick, Shannon SC & Lindsay R Duncan, “Locker Room Experiences Among LGBTQ+ Adults” (2020) 42 <i>Journal of Sport and Exercise Psychology</i> 227, online: < <a href="https://journals.humankinetics.com/view/journals/jsep/42/3/article-p227.xml">https://journals.humankinetics.com/view/journals/jsep/42/3/article-p227.xml</a> > [ <a href="https://perma.cc/TJ8P-YJR5">https://perma.cc/TJ8P-YJR5</a> ].	20
17. Kirby, Sandra & Guylaine Demers , “Sexual Harassment and Abuse in Sport” in Roper, EA, eds, <i>Gender Relations in Sport</i> (Rotterdam: SensePublishers, 2013) 141.	4, 19
18. Kirby, Sandra, Guylaine Demers & Sylvie Parent, "Vulnerability/prevention: Considering the needs of disabled and gay athletes in the context of sexual harassment and abuse" (2008) 6:4 <i>Intl J Sport and Exercise Psychology</i> 407, online: < <a href="https://www.academia.edu/12385965/Vulnerability_prevention_Considering_the_needs_of_disabled_and_gay_athletes_in_the_context_of_sexual_harassment_and_abuse">https://www.academia.edu/12385965/Vulnerability_prevention_Considering_the_needs_of_disabled_and_gay_athletes_in_the_context_of_sexual_harassment_and_abuse</a> > [ <a href="https://perma.cc/ZKW2-FZF3">https://perma.cc/ZKW2-FZF3</a> ].	4, 19, 20
19. Kirby, Sandra, Lorraine Greaves & Olena Hankivsky, "Women Under the Dome: Sexual Abuse and Harassment of Female Athletes" (2002) 21:3 <i>Canadian Woman Studies</i> 132, online: < <a href="https://cws.journals.yorku.ca/index.php/cws/article/view/6635/5823">https://cws.journals.yorku.ca/index.php/cws/article/view/6635/5823</a> > [ <a href="https://perma.cc/5X5B-L6NP">https://perma.cc/5X5B-L6NP</a> ].	19
20. Miles, Claire & Tansin Benn, “A case study on the experiences of university-based Muslim women in physical activity during their studies at one UK higher education institution” (2016) 21:5 <i>Sport, Education and Society</i> 723.	20
21. Monforte, Javier et al., “Environmental Barriers and Facilitators to Physical Activity among University Students with Physical Disability— A Qualitative Study in Spain” (2021) 18 <i>Int. J. Environ. Res. Public Health</i> 464, online: < <a href="https://www.mdpi.com/1660-4601/18/2/464/htm">https://www.mdpi.com/1660-4601/18/2/464/htm</a> >	20

<p>[<a href="https://web.archive.org/web/20220628003407/https://www.mdpi.com/1660-4601/18/2/464/htm">https://web.archive.org/web/20220628003407/https://www.mdpi.com/1660-4601/18/2/464/htm</a>].</p>	
<p>22. Ontario Hockey Federation, Policy on Dressing Room Supervision (2014), online (pdf): Ontario Hockey <i>Federation</i>  <a href="https://www.ohf.on.ca/media/4jule00y/ohf_policy_on_dressing_room_supervision.pdf">https://www.ohf.on.ca/media/4jule00y/ohf_policy_on_dressing_room_supervision.pdf</a> &gt; [<a href="https://perma.cc/PFX6-3RF4">https://perma.cc/PFX6-3RF4</a>]</p>	10, 19
<p>23. Ontario Hockey Federation, Dressing Room Policy (7 September 2016), art 9.1, online (pdf): Ontario Hockey Federation  <a href="https://alliancehockey.com/Public/Documents/Policies/DRP_2016-09-08_OHF_Dressing_Room_Policy_vf.pdf">https://alliancehockey.com/Public/Documents/Policies/DRP_2016-09-08_OHF_Dressing_Room_Policy_vf.pdf</a> &gt; [<a href="https://perma.cc/R29M-U3WN">https://perma.cc/R29M-U3WN</a>].</p>	10
<p>24. Seward, Derek X &amp; Shaza Khan, “Towards an Understanding of Muslim American Adolescent High School Experiences” (2016) 38:1 Int J Adv Counselling 11, online:  <a href="https://www.researchgate.net/publication/287419939_Towards_An_Understanding_of_Muslim_American_Adolescent_High_School_Experiences">https://www.researchgate.net/publication/287419939_Towards_An_Understanding_of_Muslim_American_Adolescent_High_School_Experiences</a> &gt;</p>	20
<p>25. Sorlie, Anniken, “Transgender Children’s Right to Non-discrimination in Schools: The Case of Changing-room Facilities” (2020) 28(2) International Journal of Children's Rights 221, online:  <a href="https://hiof.brage.unit.no/hiof-xmlui/bitstream/handle/11250/2727892/S%C3%B8rlie_Transgender+childrens+right+to+non-discrimination+in+schools_International+journal+of+childrens+rights_ACCEPTED+VERSION.pdf?sequence=1">https://hiof.brage.unit.no/hiof-xmlui/bitstream/handle/11250/2727892/S%C3%B8rlie_Transgender+childrens+right+to+non-discrimination+in+schools_International+journal+of+childrens+rights_ACCEPTED+VERSION.pdf?sequence=1</a> &gt; [<a href="https://perma.cc/98NW-TKRG">https://perma.cc/98NW-TKRG</a>].</p>	20
<p>26. Taylor, Max, Gemma Holland &amp; Ethel Quayle, "Typology of Paedophile Picture Collections" (2001) 74:2 Police J 97, online:  <a href="https://www.academia.edu/18264489/Typology_of_paedophile_picture_collections">https://www.academia.edu/18264489/Typology_of_paedophile_picture_collections</a> &gt;, [<a href="https://web.archive.org/web/20220628004042/https://www.academia.edu/18264489/Typology_of_paedophile_picture_collections">https://web.archive.org/web/20220628004042/https://www.academia.edu/18264489/Typology_of_paedophile_picture_collections</a>].</p>	25
<p>27. Thomasen, Kristen &amp; Suzie Dunn, “Reasonable Expectations of Privacy in an Era of Drones and Deepfakes: Expanding the Supreme Court of Canada’s Decision in R v Jarvis” in Jane Bailey, Asher Flynn &amp; Nicola Henry (eds) <i>The Emerald International Handbook on Technology-facilitated Violence and Abuse</i> (England: Emerald, 2021), online:  <a href="https://www.emerald.com/insight/content/doi/10.1108/978-1-83982-848-520211040/full/pdf?title=reasonable-expectations-of-privacy-in-an-era-of-drones-and-deepfakes-expanding-the-supreme-court-of-canadas-decision-in-r-v-jarvis">https://www.emerald.com/insight/content/doi/10.1108/978-1-83982-848-520211040/full/pdf?title=reasonable-expectations-of-privacy-in-an-era-of-drones-and-deepfakes-expanding-the-supreme-court-of-canadas-decision-in-r-v-jarvis</a> &gt;</p>	16, 18, 24
<p>28. Vancouver Minor Hockey Association, “Mandatory Processes – Safety and Risk Management” (2022), online (pdf): Vancouver Minor Hockey</p>	10, 19

<p>Association &lt; <a href="https://www.vmha.com/wp-content/uploads/sites/885/2017/10/VMHA_Safety_and_Risk_Management.pdf">https://www.vmha.com/wp-content/uploads/sites/885/2017/10/VMHA_Safety_and_Risk_Management.pdf</a> &gt; [<a href="https://perma.cc/SH5R-UR4R">https://perma.cc/SH5R-UR4R</a>].</p>	
<p>29. Ward, Lori &amp; Jamie Strashin. “More than 200 Canadian coaches convicted of sex offences against minors since 1998, investigation reveals   CBC sports”, (16 February 2019), online: <i>CBCnews</i> &lt;<a href="https://www.cbc.ca/sports/amateur-sports-coaches-sexual-offences-minors-1.5006609">https://www.cbc.ca/sports/amateur-sports-coaches-sexual-offences-minors-1.5006609</a> &gt; [<a href="https://perma.cc/E7TS-ZV8W">https://perma.cc/E7TS-ZV8W</a>].</p>	19
<p><b><u>Legislation</u></b></p>	
<p>1. <i><u>Criminal Code</u></i>, RSC 1985, c C-46</p>	1, 2, 5, 7, 8, 9, 11, 15, 14, 16, 17, 18, 22, 26, 27