



Case in Brief: **R. v. Morrison**

Judgment of March 15, 2019 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2019 SCC 15

Part of the Criminal Code section dealing with child luring is unconstitutional because it violates the presumption of innocence, the Supreme Court has unanimously ruled.

It's a crime to talk to an underage person online (or using a cellphone) to try to take advantage of them sexually. It's also a crime if you *believe* they're underage, even if they're actually not. This is called "child luring."

Mr. Morrison posted an ad online. Part of the ad's title was "Daddy looking for his little girl." A police officer pretending to be a 14-year-old girl named "Mia" responded. Mr. Morrison and "Mia" had sexual conversations online for over two months. He asked "Mia" to touch herself sexually. He also said she should skip school so they could meet and engage in sexual acts. He was charged with child luring.

During his trial, Mr. Morrison said he thought he was talking to an adult woman who was just pretending to be 14. He also argued that three important points in the child luring section of the *Criminal Code* violated his rights under the *Canadian Charter of Rights and Freedoms*. (The *Charter* is part of Canada's constitution.)

First, the *Criminal Code* said that if someone told someone else they were underage, the law presumed the person believed it. The only exception was if there was evidence that the person *didn't* believe it. Mr. Morrison said this violated his right to be presumed innocent. Before anyone can be found guilty of a crime, a judge or jury has to believe that the person is guilty beyond a reasonable doubt. The right to be presumed innocent is violated whenever a law lets someone be found guilty even though there is a reasonable doubt. The law presumed Mr. Morrison believed "Mia" when she said she was 14, even though there could be other explanations.

Second, the *Criminal Code* said a person *wouldn't* be found guilty if they honestly believed that the other person was of legal age, even if that belief was wrong. But they could only use this as a defence if they took "reasonable steps" to find out how old the other person really was. Mr. Morrison said this violated basic principles of justice. This was because he could be found guilty simply for not taking "reasonable steps" to find out "Mia's" real age.

Third, for the most serious cases, the *Criminal Code* set out a "mandatory minimum sentence" of one year. The judge couldn't lower it, even if it would be too harsh in the circumstances. Mr. Morrison said this violated his right to be free from cruel and unusual punishment.

The trial judge agreed that the first point violated Mr. Morrison's right to be presumed innocent. But he found Mr. Morrison guilty anyway, because he didn't take reasonable steps to find out how old "Mia" really was. He agreed, though, that the mandatory minimum sentence violated the *Charter*, and ordered a shorter sentence. The Court of Appeal agreed.

All the judges at the Supreme Court agreed that the first point violated the right to be presumed innocent. Just because someone is told something online doesn't mean they believe it. People don't always tell the truth. Yet the law's presumption meant that someone could be found guilty even if the judge or jury had a reasonable doubt about whether they believed the other person was underage. This violated the presumption of innocence.

Most of the judges agreed that the "reasonable steps" requirement didn't violate the *Charter*. But they said the lower courts misinterpreted it. Mr. Morrison could try to defend himself by saying he honestly believed "Mia" was of legal age. To succeed, though, he had to show evidence that he took reasonable steps to find out how old she really was. But simply proving Mr. Morrison didn't take reasonable steps wasn't, on its own, enough to find him guilty. The Crown (the prosecution) still had to prove beyond a reasonable doubt that Mr. Morrison *believed* "Mia" was underage.

The majority didn't decide either way whether the mandatory minimum sentence violated the *Charter*. The lower courts misunderstood how the law worked, and this misunderstanding wasn't a good basis to decide this.

Most of the judges agreed there should be a new trial because of the trial judge's mistakes.

Two previous Supreme Court cases dealt with the child luring section of the *Criminal Code*. But this was the first time the Court looked at whether it violated the *Charter*.

Breakdown of the Decision: *Majority:* Justice Michael [Moldaver](#) dismissed the appeal and cross-appeal in part (Chief Justice [Wagner](#) and Justices [Gascon](#), [Côté](#), [Brown](#), [Rowe](#), and [Martin](#) agreed) | *Concurring:* Justice Andromache [Karakatsanis](#) agreed with the majority on the presumption of innocence and reasonable steps, but went further and said the mandatory minimum sentence was unconstitutional | *Dissenting in part:* Justice Rosalie Silberman [Abella](#) agreed with the majority about the presumption of innocence, but said the reasonable steps requirement and the mandatory minimum sentence were unconstitutional

More information (case # 37687): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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