

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

BEVIN KERRY DEGALE

Appellant
(Respondent)

-and-

HIS MAJESTY THE KING

Respondent
(Appellant)

-and-

ATTORNEY GENERAL OF BRITISH COLUMBIA
ATTORNEY GENERAL OF ALBERTA
VANCOUVER RAPE RELIEF SOCIETY
BARBARA SCHLIFER COMMUNITY CLINIC

Interveners

FACTUM OF THE INTERVENER

VANCOUVER RAPE RELIEF SOCIETY

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

JANINE BENEDET, K.C.
ISABEL GRANT

c/o Peter A. Allard School of Law
University of British Columbia
1822 East Mall
Vancouver BC V6T 1Z1

Tel: (604) 822 0637
Fax: (604) 822 8108
Email: benedet@allard.ubc.ca
grant@allard.ubc.ca

**Counsel for the Intervener
Vancouver Rape Relief Society**

ORIGINAL TO: THE REGISTRAR

COPIES TO:

Howard L. Krongold
Hanna Colbert

Bijon Roy

AGP LLP
116 Lisgar Street, Suite 200
Ottawa, Ontario
K2P 0C2

Champ and Associates
43 Florence Street
Ottawa, Ontario
K2P 0W6

Telephone: (613) 235-9779
FAX: (613) 235-8317
Email: howard@agpllp.ca

Telephone: (613) 237-4740
FAX: (613) 232-2680
Email: broy@champlaw.ca

**Counsel for the Appellant, Bevin Kerry
Degale**

Agent for the Appellant

Andreea Baiasu
Raouf Zamanifar

Attorney General of Ontario
720 Bay Street
10th Floor
Toronto, Ontario
M7A 2S9

Telephone: (416) 326-4600
FAX: (416) 326-4656
Email: andreea.baiasu@ontario.ca

**Counsel for the Respondent, His Majesty
the King**

Matthew W. Griener

Lea Desjardins

Alberta Crown Prosecution Service
516, John E. Brownlee Building
10365 97th Street NW
Edmonton, Alberta T5K 2E8

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

Telephone: (780) 422-5402
Fax: (780) 422-1106

Telephone: (613) 786-6106
Fax: (613) 563-9869

Email: matthew.griener@gov.ab.ca

**Counsel for the Intervener,
Attorney General of Alberta**

Mila Shah
Crystal Tomusiak

British Columbia Prosecution Service
940 Blanshard Street, 3rd Floor
Victoria, British Columbia V8W 3E6

Tel: (236) 888-6248
Fax: (604) 660-1133
Email: mila.shah@gov.bc.ca
crystal.tomusiak@gov.bc.ca

**Counsel for the Intervener,
Attorney General of British Columbia**

Neha Chugh
Anne-Marie McElroy
28 First Street West
Cornwall, Ontario K6J 1B9

Tel: (613) 938-0000
Fax: (613) 938-8556
Email: neha@chughlaw.ca
annemarie@mcelroylaw.ca

**Counsel for the Intervener,
Barbara Schlifer Commemorative Clinic**

Email: lea.desjardins@gowlingwlg.com

**Agent for the Intervener,
Attorney General of Alberta**

Lea Desjardins

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

Telephone: (613) 786-6106
Fax: (613) 563-9869
Email: lea.desjardins@gowlingwlg.com

**Agent for the Intervener,
Attorney General of British Columbia**

TABLE OF CONTENTS

PART I: OVERVIEW AND STATEMENT OF FACTS	1
A. Overview	1
B. The Intervener	2
C. Statement of Facts	2
PART II: POINTS IN ISSUE	2
PART III: ARGUMENT	3
A. The <i>mens rea</i> of sexual assault is the intent to apply force and knowledge or recklessness as to non-consent.	3
B. A denial of knowledge of non-consent is treated as a defence.	3
C. The reasonable steps provision modifies the fault requirement of the offence.	4
D. <i>R. v. Morrison</i> , 2019 SCC 15 should not be extended to other offences.....	6
E. The “little difficulty” instruction is unnecessary and undermines settled law.....	8
F. Nullifying the reasonable steps requirement will have a differential impact on marginalized survivors.	9
PART IV: COSTS	10
PART V: LIST OF AUTHORITIES	10

PART I: OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. This appeal addresses the fault requirement in a case of aggravated sexual assault where neither the complainant nor the accused testified, but where there was other evidence that proved the *actus reus* of the offence. The trial judge found that, while there was no air of reality to the elements of the defence of honest but mistaken belief in communicated consent, the Crown had failed to prove that the accused knew or was reckless as to the complainant's lack of communicated consent.¹ The Court of Appeal for Ontario found that the trial judge erred in this analysis, overturned the acquittal at trial, and entered a conviction.²

2. This appeal raises the issue of how the Crown's burden to prove the *mens rea* of the offence operates in relation to the defence of honest but mistaken belief in communicated consent, a defence that has been modified by statute to add a requirement that the accused take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant is consenting.³

3. The Intervener takes the position that an approach to fault that treats *mens rea* and honest belief in consent as watertight compartments is incorrect in law and will have particularly negative impacts on marginalized women. Where there is no air of reality to the defence of honest belief in communicated consent, either because there is no evidence that the accused took reasonable steps or because there is no evidence that consent was communicated, no further *mens rea* inquiry is necessary. Extending the reasoning in *R. v. Morrison*⁴ beyond police stings for internet luring to contexts such as aggravated sexual assault is unnecessary and nullifies the operation of the reasonable steps provision, contrary to Parliamentary intention and decades of law reform efforts in relation to sexual assault.

¹ *R. v. Degale*, [2023 ONCJ 346](#).

² *R. v. Degale*, [2024 ONCA 720](#), 98 C.R. (7th) 146.

³ *Criminal Code*, R.S.C. 1985, c. C-46, [s. 273.2\(b\)](#).

⁴ [2019 SCC 15](#), [2019] 2 S.C.R. 3.

4. Whether there is a further *mens rea* requirement, after the defence of honest but mistaken belief in consent has been rejected by the trier of fact, is squarely at issue in this appeal.⁵ The trial judge found no air of reality to the defence of mistaken belief, yet went on to make a further *mens rea* inquiry that ultimately led to the acquittal at trial. This appeal is premised on the assertion that this interpretation of the law was correct. The Intervener submits that it is incorrect, and to affirm it would undermine the equality of women and girls.

B. The Intervener

5. Founded in 1973, and incorporated in 1975, Vancouver Rape Relief Society, operating as Vancouver Rape Relief and Women's Shelter (VRRWS) is the oldest continually operating rape crisis centre in Canada. Since it opened in 1973, VRRWS has operated a 24-hour rape crisis support line. In 1981, VRRWS opened a transition house for women and their children seeking to escape male violence, including women marginalized by poverty, disability, and colonialism. The collective that operates VRRWS includes women who have experienced male violence, including sexual violence. VRRWS works on issues related to sexual violence against women in collaboration with other organizations, nationally and internationally, who seek to end male violence against women and promote women's equality.

C. Statement of Facts

6. VRRWS accepts and relies on the statement of facts set out by the parties to the appeal.

PART II: POINTS IN ISSUE

7. The trial judge erred in law in his interpretation and application of the fault requirement for aggravated sexual assault, in a case in which there was no air of reality to a claim of honest but mistaken belief in communicated consent, and in the absence of evidence of reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

⁵ Factum of the Appellant, at paras. 10-11.

PART III: ARGUMENT

A. The *mens rea* of sexual assault is the intent to apply force and knowledge or recklessness as to non-consent.

8. The *mens rea* of sexual assault is the general intention to apply force. Sexual assault is a crime of general intention. This is also true for level 2 (sexual assault with a weapon or causing bodily harm) and level 3 (aggravated sexual assault).⁶

9. This Court has also recognized that the *actus reus* circumstance of non-consent has an accompanying mental element: knowledge (including wilful blindness) or recklessness as to the complainant's lack of consent.⁷ The accused must know or be aware of a risk that the complainant has not affirmatively communicated consent, expressly through words or actively through conduct.⁸ As explained below, the accused will also be at fault where he failed to take reasonable steps, in the circumstances known to him at the time, to ascertain that the complainant was consenting.

10. Aggravated sexual assault has an additional *mens rea* component with respect to the consequence of wounding, maiming or endangering life, requiring proof of objective foresight of bodily harm.⁹

B. A denial of knowledge of non-consent is treated as a defence.

11. In the first decision of this Court to recognize the relevance of the accused's mental state in relation to consent in the offence of rape, *R. v. Pappajohn*, this Court made clear that while knowledge of non-consent is part of the *mens rea* of the offence, a denial of such knowledge is best dealt with as a defence of mistake of fact.¹⁰ This meant that the issue of honest belief in consent did not need to be put to the jury in every case, but only where the defence could point to

⁶ *R. v. Bernard*, [1988] 2 S.C.R. 833 at paras. 66-67.

⁷ *R. v. Ewanchuk*, [1999] 1 S.C.R. 330 at paras. 23, 42.

⁸ *R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579 at paras. 90-92; *Criminal Code*, s. 273.2(c).

⁹ *R. v. Williams*, 2003 SCC 41, [2003] 2 S.C.R. 134 at para. 22; *R. v. Godin*, [1994] 2 S.C.R. 484 at p. 485.

¹⁰ *R. v. Pappajohn*, [1980] 2 S.C.R. 120 at pp. 133-34; 148; *R. v. Osolin*, [1993] 4 S.C.R. 595 at pp. 676-686.

evidence giving an air of reality to the honest belief. The burden would then be on the Crown to disprove the defence beyond a reasonable doubt.

12. This Court applied the same reasoning to the offence of sexual assault in *R v. Robertson*.¹¹ Wilson J., for the Court, rejected the defence argument that the accused's knowledge of non-consent is an essential element of the offence on which the jury must be instructed in every case, regardless of whether the defence introduces any evidence on the issue, and that this element was a separate question from the defence of mistaken belief in consent. She noted the illogical result this would produce:

In other words, according to defence counsel, the issue of the accused's alleged honest but mistaken belief may come before the jury in two ways – as an element of the offence or as a defence. It is self-evident that if the accused's counsel is correct, [s. 265(4)] is rendered redundant. If the issue of honest but mistaken belief is always going to reach the jury as an element of the offence, what does it matter if sometimes it will also reach the jury as a defence? [...] Traditionally the Court has described this *mens rea* requirement as a defence of mistake of fact available to the accused.¹²

This Court confirmed that the air of reality threshold applied equally to the offence of sexual assault, and that it placed an evidentiary onus on the accused, with the persuasive burden remaining with the Crown.

C. The reasonable steps provision modifies the fault requirement of the offence.

13. The purely subjective nature of the mistake of fact/honest belief defence post-*Pappajohn* raised particular concerns about reliance on stereotypes in the context of sexual offences. It allowed the accused to rely on honest beliefs that were rooted in myths and stereotypes about women, for example the myth that women sometimes say no when they mean yes, or that a woman who does not want to engage in sexual activity will physically resist.¹³ It also meant that an accused who did not turn his mind at all to the question of consent (or age, where the complainant

¹¹ *R. v. Robertson*, [1987] 1 S.C.R. 918 at paras. 23-36.

¹² *Robertson*, *supra*, at paras. 23, 25.

¹³ Toni Pickard, "Culpable Mistakes and Rape: Harsh Words on *Pappajohn*" (1980) 30:4 *U.T.L.J.* 415; Elizabeth Sheehy, "Canadian Judges and the Law of Rape: Should the *Charter* Insulate Bias?" (1989) 21:1 *Ottawa L. Rev.* 741.

is under the age of consent) would be acquitted, because knowledge or recklessness requires subjective awareness.¹⁴

14. These concerns were addressed by Parliament in successive rounds of amendments to the *Criminal Code*. In 1983, the *Code* was amended to include a mandatory instruction that jurors consider the presence or absence of reasonable grounds for the belief in determining whether it was honestly held.¹⁵ This codified *Pappajohn* and did not modify the subjective nature of the belief.¹⁶

15. In 1992, the *Code* was amended to clarify that recklessness was sufficient fault, that self-induced intoxication did not negate *mens rea* and, borrowing from a similar requirement in relation to mistake of age introduced in 1987, added the requirement that the accused take reasonable steps, in the circumstances known to him at the time, to ascertain that the complainant was consenting.¹⁷ This provision modifies the fault requirement for sexual assault combining an objective component (reasonable steps) and a subjective component (in the circumstances known to the accused).¹⁸

16. After a period of some uncertainty on this point, this Court has since clarified in *R. v. Barton* that the reasonable steps provision forms part of the air of reality threshold with respect to both mistaken belief in age and mistaken belief in non-consent.¹⁹ This means that where there are no reasonable steps, there is no defence.

17. This Court has emphasized that since the relevant inquiry is whether the accused believes that the complainant has affirmatively communicated her consent, the defence should be renamed honest but mistaken belief in *communicated* consent.²⁰ This Court also noted that what amounts to reasonable steps is context-specific in respect of the acts and the people involved, and may be

¹⁴ *R. v. Zora*, [2020 SCC 14](#), [2020] 2 S.C.R. 3 at paras. [116-117](#); *R. v. Hason*, [2024 ONCA 369](#), 171 O.R. (3d) 225, at paras. [49-50](#).

¹⁵ *Criminal Code*, s. [265\(4\)](#).

¹⁶ *Robertson*, *supra* at para. [37](#).

¹⁷ *Criminal Code*, ss. [273.2 \(a\)](#), [\(b\)](#); s. [150.1\(4\)](#).

¹⁸ *R. v. Darrach*, [1998 CanLII 1648](#), [1998] CarswellOnt 684 (ONCA) *aff'd* on other grounds [2000 SCC 46](#), [2000] 2 S.C.R. 443; Rosemary Cairns Way, “Bill C-49 and the Politics of Constitutionalized Fault” (1993) [42 UNBLJ 325](#) at pp. 329-330.

¹⁹ *Barton*, *supra* at paras. [121-123](#); *R. v. Gagnon*, [2018 SCC 41](#), [2018] 3 S.C.R. 3.

²⁰ *Barton*, *supra* at paras. [91-93](#).

elevated when, for example, the sexual acts are particularly intrusive or the parties are strangers involved in a paid sex act.²¹

18. In 2018, Parliament amended the *Code* to reflect the requirement of communicated consent with the addition of s. 273.2(c), which requires that the defence is not available unless the belief is that consent was communicated expressly by words or actively by conduct.²² It also clarified that a belief in consent based on an incorrect understanding of consent (e.g. that “no” can mean “yes”) was a mistake of law and not a mistake of fact entitling the accused to a defence.²³

19. Taken together, these judicial developments and statutory amendments have modified the fault component with respect to the element of non-consent, both by refining the definition of consent, and by making a failure to consider consent at all a blameworthy mental state. The requirement that the belief relate to affirmatively communicated consent means that an accused whose belief in consent is based on a lack of resistance or objection by the complainant is at fault. The requirement that the accused have taken reasonable steps to ascertain consent means that the accused who does not turn his mind to consent is at fault. An unreasonable belief in consent is still a defence, so long as it is honestly held, preceded by reasonable steps and relates to communicated consent.

D. *R. v. Morrison* should not be extended to other offences.

20. The approach of the majority of this Court in *R. v. Morrison* should be limited to the unique context of a police sting for internet luring where there is no actual child victim involved. The *Morrison* majority required that, even after the Crown had negated reasonable steps beyond a reasonable doubt, the Crown had to prove the accused knew the victim was under 16 years of age.²⁴ The police sting context in *Morrison* was unique because the *Code* provision requires the Crown to prove actual belief (not recklessness) that the person the accused was talking to was under 16.

²¹ *Barton*, *supra* at para. 108.

²² *Criminal Code*, s. 273.2(c); *Ewanchuk*, *supra* at para. 51; Lucinda Vandervort, “Mistake of Law and Sexual Assault: Consent and *Mens Rea*” (1987-88) 2:2 C.J.W.L. 233.

²³ *Criminal Code*, s. 273.1(1.2).

²⁴ *Morrison*, *supra*.

The majority in *Morrison* was explicit in limiting its reasons to internet luring in a police sting context stating that this “to be clear, is the specific context to which these reasons are restricted.”²⁵

21. The majority in *Morrison* included two paragraphs in *obiter* interpreting this Court’s decision in *R. v. George* which have contributed to the confusion in lower courts.²⁶ *George* was explicit that for the offences of sexual interference and sexual assault, once the Crown negated reasonable steps with respect to age beyond a reasonable doubt, there is no further *mens rea* inquiry.²⁷ Any suggestion in *Morrison* that this was not the finding in *George*, or that *George* was wrong on this point, should be rejected by this Court.²⁸

22. Despite acknowledging that *Morrison* was limited to the sting context, the Court of Appeal for Ontario has relied on these *obiter* statements about *George* to effectively nullify reasonable steps provisions in the context of both age and non-consent, undermining Parliamentary intent. In *R. v. Carbone*²⁹ the Court of Appeal held that even where the Crown has negated reasonable steps, it must go on to prove knowledge or recklessness with respect to the complainant’s age. This approach dictates that the question of fault will always turn on the presence or absence of knowledge, making reasonable steps irrelevant.

23. The Court of Appeal extended the reasoning in *Carbone* to the reasonable steps provision in the context of sexual assault in *R. v. HW*.³⁰ The Court of Appeal held that, even if there was no air of reality to the defence of honest but mistaken belief in communicated consent, the Crown must go on to prove knowledge, willful blindness or recklessness, beyond a reasonable doubt.³¹

24. Ostensibly to avoid rendering the defence of mistaken belief irrelevant, the “little difficulty” instruction from *HW* requires a trier of fact to artificially separate evidence going to mistaken belief in consent from evidence going to whether the accused knew or was reckless that

²⁵ *Morrison*, *supra* at para. 55. See also paras. 81, 84-85, 95 and 101.

²⁶ *Morrison*, *supra* at paras 86-87, citing *R. v. George*, 2017 SCC 38, [2017] 1 S.C.R. 1021 at para. 8.

²⁷ *Supra*, at para. 8.

²⁸ *R. v. Jerace*, 2021 BCCA 94 at para. 37 held that the language in *George*, unlike that in *Morrison*, was clear and binding.

²⁹ 2020 ONCA 394, 150 O.R. (3d) 758.

³⁰ 2022 ONCA 15, 160 O.R. (3d) 81 following *R. v. MacIntyre*, 2019 CMAC 3.

³¹ *H.W.*, *supra* at para. 8.

the complainant was not consenting, as if these are two distinct beliefs.³² According to that instruction, where there is no air of reality to an honest mistaken belief defence, the judge should tell the jury that “it should not be difficult for them to find that the accused knew that the complainant was not consenting, or was reckless or wilfully blind to the absence of consent”.³³ The trier of fact is to be told that in making such a determination, it should disregard evidence that goes to mistaken belief.³⁴

25. This approach leaves no meaningful role for reasonable steps provisions, which were enacted to make blameworthy a failure to turn one’s mind to consent (or age) before engaging in sexual activity. The “little difficulty” instruction allows for such an accused to be acquitted because he lacks knowledge or recklessness. The instruction to disregard evidence going to mistake serves only to confuse juries by suggesting that *mens rea* and mistaken belief are distinct inquiries.

26. The reasoning of the Court of Appeal for British Columbia in *R. v. Angel*, which limits *Morrison* to internet luring in the police sting context, is more consistent with decades of sexual assault law reform and should be adopted by this Court.³⁵ British Columbia declined to follow the Ontario approach in *Carbone* and held that once the Crown has negated reasonable steps as to age beyond a reasonable doubt, that is sufficient to show reckless indifference regarding age.³⁶ The *H.W.* instruction has thus not been extended to sexual assault in British Columbia. The Manitoba Court of Appeal has followed the British Columbia approach, declining to extend *Morrison* to cases involving an actual child victim.³⁷ The British Columbia approach upholds the role of the reasonable steps provisions for both age and non-consent.

³² *H.W.*, *supra* at para. 13.

³³ *H.W.*, *supra* at para. 98.

³⁴ *H.W.*, *supra* at paras. 86-93.

³⁵ *R. v. Angel*, [2019 BCCA 449](#), 59 CR (7th) 243 at para. 51 leave to appeal ref’d, [\[2020\] SCCA No 35](#).

³⁶ *Angel*, *supra* at para. 49; *Jerace*, *supra*, at paras. 37, 38, leave to appeal ref’d, [\[2021\] SCCA No 132](#) and *R. v. Seangio*, [2024 BCCA 143](#) at para. 92, leave to appeal ref’d, [\[2024\] SCCA No 254](#).

³⁷ *R. v. Gratton*, [2023 MBCA 29](#). Trial courts in Alberta were also following this approach (see *R. v. Sobers*, [2024 ABKB 323](#)), but a recent decision of the Alberta Court of Appeal has followed the Ontario instruction: *R v Bilinski*, [2025 ABCA 270](#), notice of appeal to S.C.C. filed 16 September 2025, S.C.C. [File No. 42030](#).

E. The “little difficulty” instruction is unnecessary and undermines settled law.

27. It is not necessary to routinely instruct the jury to consider the possibility that the Crown may have failed to prove *mens rea* in circumstances where there is no air of reality to one or both elements of the defence of mistaken belief in communicated consent. The Appellant is incorrect that this is required to account for a situation where intent may be negated by circumstances other than a belief in consent, such as the accused’s intoxication.

28. Voluntary, self-induced intoxication is not a defence to sexual assault, does not negate the knowledge/recklessness of non-consent element, and does not negate the general intent to apply force.³⁸ Extreme intoxication akin to automatism may be an affirmative defence, but it requires proof by the accused on a balance of probabilities using expert evidence.³⁹

29. As for involuntary intoxication of the accused, the legal effect depends on the degree of intoxication. A person involuntarily intoxicated to the point where their conduct is involuntary lacks the *actus reus* of the offence, resulting in an acquittal, although the onus is on the defence to raise a reasonable doubt that consumption was involuntary.⁴⁰ A person who is involuntarily intoxicated to a lesser degree that does not render their conduct involuntary will still have the *mens rea* of a general intent offence.⁴¹ Disproving intoxication, whatever its source, is never part of the Crown’s initial *mens rea* burden.

30. None of the cases that have considered this issue have identified any other circumstance in which the Crown might fail to prove *mens rea* with respect to non-consent in the absence of an air of reality to each of the two components of honest belief in communicated consent. This is because none exist; the defence and the denial of *mens rea* are synonymous.

F. Nullifying the reasonable steps requirement will have a differential impact on marginalized survivors.

31. The effect of the decisions below is that an accused will be acquitted in many cases where the complainant does not take the stand and testify that she did not say “yes” to the accused through

³⁸ *Bernard*, *supra* at paras. 66-68; *R. v. Daviault*, [1994] 3 S.C.R. 63.

³⁹ *R. v. Brown*, 2022 SCC 18, [2022] 1 S.C.R. 374; *Criminal Code*, s. 33.1.

⁴⁰ *R. v. King*, [1962] S.C.R. 746 at pp. 749-750, 1962 CarswellOnt 18 at paras. 8-9.

⁴¹ *R. v. McGrath*, 2013 ONCJ 528 at paras. 9-10.

her words or actions. This is true even where, as in this case, a woman meets the now-discredited former requirements of corroboration (serious injuries requiring medical treatment) and recent complaint (in distress, immediately reports that she was sexually assaulted), and where the trial judge has no doubt that she did not consent to the sexual activity.

32. The facts of this case highlight which complainants would bear the brunt of an approach to *mens rea* that effectively removes the reasonable steps provision from the fault requirement. Some of the most marginalized survivors are likely to be among those who do not testify in court. This includes women who are without stable accommodation, previously criminalized women who do not trust the justice system, women under the control of pimps or other abusive men, and women who lack the capacity to testify, such as those with dementia. It also includes women such as the victim in *Barton*, who die as a result of the injuries inflicted on them during sexual activity.

33. Such an approach to *mens rea* will also harm marginalized girls, including those who have been previously sexually exploited and are street-involved. Cases involving these girls may prompt arguments relating to both belief of age and belief in consent. The approach to fault taken by the Ontario courts leaves such girls doubly disadvantaged.

PART IV: ORDER AND COSTS

34. The Intervener Vancouver Rape Relief intervenes purely on the interpretation of the law at issue in this case and takes no position on the outcome of the appeal. The Intervener does not seek costs and respectfully asks not to have costs ordered against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF JANUARY, 2026



JANINE BENEDET, K.C.



ISABEL GRANT

Counsel for the Intervener, Vancouver Rape Relief

PART V: TABLE OF AUTHORITIES

Case Authority	Paragraph Cited
<i>R. v. Angel</i> , 2019 BCCA 449	26
<i>R. v. Barton</i> , 2019 SCC 33	9, 16, 17, 31
<i>R. v. Bernard</i> , [1988] 2 S.C.R. 833	8, 28
<i>R. v. Bilinski</i> , 2025 ABCA 270	26
<i>R. v. Brown</i> , 2022 SCC 18	28
<i>R. v. Carbone</i> , 2020 ONCA 394	22, 23, 26
<i>R. v. Darrach</i> , 1998 CanLII 1648 (ONCA)	15
<i>R. v. Daviault</i> , [1994] 3 S.C.R. 63	28
<i>R. v. Degale</i> , 2023 ONCJ 346	1
<i>R. v. Degale</i> , 2024 ONCA 720	1
<i>R. v. Ewanchuk</i> , [1999] 1 S.C.R. 330	9, 18
<i>R. v. Gagnon</i> , 2018 SCC 41	16
<i>R. v. George</i> , 2017 SCC 38	21, 22
<i>R. v. Godin</i> , [1994] 2 S.C.R. 484	10
<i>R. v. Gratton</i> , 2023 MBCA 29	26
<i>R. v. H.W.</i> , 2022 ONCA 15	23, 24, 26
<i>R. v. Hason</i> , 2024 ONCA 369	13
<i>R. v. Jerace</i> , 2021 BCCA 94	21, 26
<i>R. v. King</i> , [1962] S.C.R. 746	29
<i>R. v. MacIntyre</i> , 2019 CMAc 3	23

<i>R. v. McGrath</i> , 2013 ONCJ 528	29
<i>R. v. Morrison</i> , 2019 SCC 15	3, 20, 21, 22, 26
<i>R. v. Osolin</i> , [1993] 4 S.C.R. 595	11
<i>R. v. Pappajohn</i> , [1980] 2 S.C.R. 120	11, 13, 14
<i>R. v. Robertson</i> , [1987] 1 S.C.R. 918	12, 14
<i>R. v. Seangio</i> , 2024 BCCA 143	26
<i>R. v. Sobers</i> , 2024 ABKB 323	26
<i>R. v. Williams</i> , 2003 SCC 41	10
<i>R. v. Zora</i> , 2020 SCC 14	14

Legislation	Paragraph Cited
<i>Criminal Code</i>, R.S.C. 1985, c. C-46	
s. 33.1	28
s. 150.1	15
s. 265(4)	14
s. 273.1	18
s. 273.2	2, 9, 15, 18
<i>Code criminel</i>, L.R.C. 1985, c. C-46	
art. 33.1	28
art. 150.1	15
art. 265(4)	14
art. 273.1	18
art. 273.2	2, 9, 15, 18

Secondary Sources	Paragraph Cited
Elizabeth Sheehy, “Canadian Judges and the Law of Rape: Should the <i>Charter</i> Insulate Bias?” (1989) 21:1 Ottawa L. Rev. 741	13
Lucinda Vandervort, “Mistake of Law and Sexual Assault: Consent and <i>Mens Rea</i> ” (1987-88) 2:2 C.J.W.L. 233	18
Rosemary Cairns Way, “Bill C-49 and the Politics of Constitutionalized Fault” (1993) 42 UNBLJ 325	15
Toni Pickard, “Culpable Mistakes and Rape: Harsh Words on <i>Pappajohn</i> ” (1980) 30:4 U.T.L.J. 415	13