COURT FILE NO. C64762

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

AND IN THE MATTER OF the *Criminal Code*, R.S.C. 1985, c. C-46

AND IN THE MATTER OF *Sex Offender Information Registration Act*, S.C. 2004, c. 10.

AND IN THE MATTER OF *Christopher's Law (Sex Offender Registry), 2000*, S.O. 2000, c. 1

B E T W E E N:

G

Applicant (Appellant)

- and -

ATTORNEY GENERAL FOR ONTARIO
and ATTORNEY GENERAL FOR CANADA

Respondents
(Respondents in Appeal)

- and -

CANADIAN CIVIL LIBERTIES ASSOCIATION,
CRIMINAL LAWYERS' ASSOCIATION, and EMPOWERMENT COUNCIL

Interveners

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PART I – OVERVIEW

1. This case requires the Court to consider the constitutionality of certain registration requirements set out in the provincial sex offender registry (*Christopher's Law*[1]) and the federal *Sex Offender Information Registration Act*[2] (*SOIRA*) (the "registries"). The Court is asked to consider whether requiring the registration of individuals found not criminally responsible by reason of mental disorder (NCR) who have been absolutely discharged offends the guarantees of sections 7 and 15(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter"*). The CCLA submits that it does. The impugned registration requirements restrict liberty in a manner that is arbitrary and overbroad and results in discrimination against NCR accused based on their mental illness.

2. Notwithstanding the broad public protection purpose of the registries, the inclusion of NCR accused who have been absolutely discharged by a Review Board is arbitrary and overbroad. There is an asymmetry in the registration requirements: an individual who has been found guilty and absolutely discharged under s. 730(1) of the *Criminal Code* will not be subject to registration. This safety valve does not exist for the absolutely discharged NCR accused, even though they had no criminal intent at the time of the offence and will have been found to present no significant threat to the public following an individualized assessment by an expert tribunal. The use of NCR status as a proxy for dangerousness is unnecessary, inappropriate, and restricts the liberty of the NCR accused in a manner that violates the principles of fundamental justice.

3. Similarly, the impugned registration requirements offend the substantive equality guarantee in s. 15(1) of the *Charter*. The requirements draw a distinction based on the enumerated

[1] *Christopher's Law (Sex Offender Registry),* 2000, S.O. 2000, c. 1 [*Christopher's Law*].
[2] S.C. 2004, c. 10 [*SOIRA*].

ground of mental disability. Their effect is to disadvantage NCR accused by treating them as legally guilty, perpetuating prejudice and stereotyping.

PART II – FACTS

4. The CCLA takes no position on any contested questions of fact.

PART III – ISSUES AND LAW

5. Requiring NCR accused who have been absolutely discharged to register as sex offenders is arbitrary, overbroad and discriminatory. The impugned registration requirements violate ss. 7 and 15(1) of the *Charter* in a manner that is not reasonable or justified.

A) Asymmetry of the registration requirements

6. Both the provincial and federal sex offender registries require registration by all individuals *convicted* of a designated offence *and* all those found NCR with respect to a designated offence.[3] There are thus two classes of individuals who may have physically committed a designated offence but are not convicted under the *Criminal Code* – (1) NCR accused; and (2) those who have been found guilty but conditionally or absolutely discharged under s. 730. While the former are required to register as "sex offenders" in both the provincial and federal registries, the latter are exempt from this requirement.[4]

7. Unlike the accused who has been found guilty and discharged, an NCR accused does not possess the intention or knowledge of wrongdoing that is a required element for an offence. An NCR accused is not guilty and has not been convicted. An NCR finding is also "not a finding of dangerousness. It is rather a finding that triggers a balanced assessment of the offender's possible

[3] *SOIRA* does allow for persons placed on the registry to apply for an exemption within a strict time period. See *Criminal Code*, RSC, 1985, c C-46, s. 490.023 [*Criminal Code*].
[4] *R. v. Jayswal*, 2011 ONCJ 33 and *R. v. H. (T.J.)*, 2012 BCPC 115.

dangerousness and of what treatment-associated measures are required to offset it."[5] Due to the "difficulty and context-specificity" of predicting whether an NCR accused will offend in the future, Parliament created a "flexible scheme that is capable of taking into account the specific circumstances of the individual NCR accused," including "a system of specialized Review Boards charged with sensitively evaluating all the relevant factors on an ongoing basis and making, as best it can, an assessment of whether the NCR accused poses a significant threat to the safety of the public."[6]

8. As the Supreme Court acknowledged in *Winko*, Parliament has determined that an individualized assessment of dangerousness is necessary both to justify any restrictions on the liberty of an NCR accused and to avoid the discriminatory assumption that an NCR accused is at risk of committing a future offence or should be treated the same as an individual who intentionally committed a criminal act.[7] The registries' inclusion of NCR accused who have been absolutely discharged fatally undermines this carefully-balanced scheme.

B) Registration as a "sex offender" has a significant impact on liberty

9. The impact of the registries on an individual's liberty interest has been conceded by the Respondents,[8] and was accepted by this Court in *R. v. Long*.[9] Both in the Court below and in this Court's decision in *Long*, the impact of registration on the liberty interest was characterized as "modest"[10] or "moderate"[11]. CCLA submits that the effect of registration on an NCR accused is

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[5] *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625, para 43 [*Winko*].
[6] *Ibid.*, para 59.
[7] *Ibid.*, para 57. The majority in *Winko* stated clearly that if a "finding of significant risk cannot be made, there is no power in Part XX.1 to maintain restraints on the NCR accused's liberty."
[8] *G v. Attorney General for Ontario et al*, 2017 ONSC 6713, para 41 [*G v AG*].
[9] *R. v. Long*, 2018 ONCA 282, para 59.
[10] *Ibid.*, para 147.
[11] *G v. AG*, para 41.

qualitatively different than its impact on a convicted offender,[12] requiring consideration of both the evidentiary record in this case, and the unique circumstances of NCR accused described by the Supreme Court in *Winko*.[13]

C) The registration requirements are arbitrary and overbroad

10. The court below defined the purpose of the registries thus: "to protect the public from sexual offences by providing police with rapid access to information to locate known sexual offenders."[14] A restriction on a liberty interest is arbitrary where "it bears no relation to, or is inconsistent with, the objective that lies behind [it]".[15] As the Supreme Court noted in *Bedford*, the analysis in examining the principles of fundamental justice is qualitative; an "arbitrary effect on one person is sufficient to establish a breach of s. 7."[16] Even accepting the court's broad interpretation of the scheme's purpose,[17] its inclusion of absolutely discharged NCR accused renders it arbitrary.

11. This is evident upon considering certain statutory safety valves that serve to guard against the registration of individuals who need not and should not be registered as sex offenders. One

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[12] See Appellant's Factum, paras. 5, 6, 35, 36, and 39-45.
[13] *Winko*, paras. 30-43.
[14] *G v. AG*, para 92.
[15] *Chaoulii v. Quebec (Attorney General)*, 2005 SCC 35, para 130.
[16] *Canada (Attorney General) v. Bedford*, 2013 SCC 72, para 123.
[17] While this general purpose is relevant to the registries in broad terms, it is questionable whether this articulation of the purpose is appropriate in a case where the registration criteria are challenged on the basis of overbreadth. It may be more appropriate for the Court to consider the purpose of including NCR accused in the registries and assess overbreadth in relation to that purpose. As the Supreme Court held in *R. v. Moriarity*, 2015 SCC 55, para 28, articulating a legislative purpose in an overbreadth analysis requires a careful balance between the statement of an "animating social value" and a narrow articulation which could simply repeat the challenged provision. As the Court held at para. 32: "courts should be cautious to articulate the legislative objective in a way that is firmly anchored in the legislative text, considered in its full context, and to avoid statements of purpose that effectively predetermine the outcome of the overbreadth analysis without actually engaging in it."

such mechanism is the exclusion of those found guilty and absolutely (or conditionally) discharged. Although these individuals have committed sexual offences -- with the requisite criminal intent -- that would ordinarily qualify them for registration, they are not convicted and not to be registered under the scheme.[18] Accordingly, sentencing judges -- unlike a Review Board -- have the power and discretion to shield individuals from the liberty consequences of sex offender registration.[19]

12. While discharges in sexual offence cases are not common, there are cases where they may be appropriate and even necessary, particularly where a court indicates that an individual would be needlessly harmed by a criminal record or conviction, and no public interest would be served. In *R. v. Burton,* the Superior Court affirmed an absolute discharge where the accused pled guilty to sexual assault.[20] In affirming the discharge, the Court noted that the accused had "no criminal record," posed a "low-moderate risk" for re-offending and succumbed to a spontaneous impulsive act.[21] The Court noted that Parliament could have stipulated that absolute discharges are not available for sexual assaults but has not done so.[22] In the circumstances of this case, an individualized assessment resulted in a determination that a legally guilty man would be kept off the registries. However, given the impugned registration requirements, such a determination is simply not possible in the case of an NCR accused.

13. There does exist a category of designated offences where the safety valve of a discharge

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[18] *Supra,* note 4.
[19] See *R. v. Troutlake*, 2002 CarswellOnt 3263 (Ont. C.J.) where the requirement to register under the sex offender registries was a significant factor in the trial judge's decision to sentence the accused to a conditional discharge.
[20] *R. v. Burton*, 2012 ONSC 5920, para 2.
[21] *Ibid*., para 4.
[22] *Ibid*., para 10.

has been eliminated by Parliament's imposition of a mandatory minimum sentence.[23] However, courts have repeatedly placed clear constitutional limits on Parliament's power to impose such sentences and remove judicial discretion in sentencing altogether.[24]

14. The arbitrariness of the scheme is further highlighted by the fact that NCR accused will undergo an individualized assessment by an expert tribunal to determine the threat they may pose to the public. This assessment is likely to be more robust than one conducted by a sentencing judge prior to granting a discharge. To act as if this former assessment did not exist and compel placement on the registries based solely on the index offence is not only inconsistent with the registries' purpose and effectiveness (by including individuals who pose no significant risk to society), but also inconsistent with the important purpose and role of the Review Board in cases of this nature -- a purpose and role which must include protecting against the unconstitutional presumption that NCR accused are inherently dangerous.[25]

15. The registries' inclusion of NCR accused who have been absolutely discharged is also overbroad, capturing more than is necessary to achieve the registries' goals. As the Supreme Court held in *Bedford*:

> Overbreadth allows courts to recognize that the law is rational in some cases, but that it

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[23] Although a number of sexual offences are now subject to mandatory minimums, it is worth noting that there were only two such offences when the registries were first enacted: sexual assault with a weapon (s. 272) and aggravated sexual assault (s. 273). These minimums were only triggered if the offence was committed with a firearm. See Bill C-68, *An Act respecting firearms and other weapons*, 1st Sess, 35th Parl, 1995, cls 145-146 and *Criminal Code*, as it appeared from 2004-03-31 to 2004-04-21.

[24] See especially *R. v. Nur*, 2015 SCC 15 and *R. v. Lloyd*, 2016 SCC 13. The jurisprudence includes several decisions, including one from this Court, striking down mandatory minimum sentences with respect to sexual offences, suggesting that the complete removal of an escape hatch by Parliament may not be constitutionally permissible. See, e.g., *R. v. Morrison*, 2017 ONCA 582, (leave to appeal to SCC granted, judgment reserved), paras. 131-137; *R. v. Hood*, 2018 NSCA 18, para 156; *R. v. H.L.*, 2018 ONSC 1026, para 48.

[25] *Winko*, para 35.

> overreaches in its effect in others...
>
> ...it may be helpful to think of overbreadth as a distinct principle of fundamental justice related to arbitrariness...Overbreadth simply allows the court to recognize that the lack of connection arises in a law that goes too far by sweeping conduct into its ambit that bears no relation to its objective.[26]

16. In *R. v. Safarzadeh-Markhali,*[27] the Supreme Court struck down a law that capped the credit an offender could receive for pre-trial custody if they were denied bail primarily because of a criminal record. The Court noted that denying bail for this reason is "an inexact proxy for the danger that an offender poses to public safety and security."[28]

17. Rather than treating findings of guilt as a proxy for the risk of a future sexual offence, the registries use *either* a conviction *or* an NCR finding as a proxy. With respect to an absolutely discharged NCR accused, not only is the proxy "inexact", there is simply no need for a proxy to establish dangerousness or risk to the public. The Review Board is charged precisely with making determinations of this nature. After a Review Board has decided that they pose no significant risk to the public, and despite the scheme's own recognition that it cannot or should not register all individuals who are not positively acquitted of an offence, the inclusion of NCR accused is the definition of overbreadth.

D) Requiring NCR accused who have been absolutely discharged to register violates section 15(1)

18. The *Charter's* equality guarantee aims to prevent discrimination and the perpetuation of historical disadvantage based on stereotypes. The Supreme Court has held that "substantive equality" is s. 15's "animating norm".[29] Legislative schemes that provide for individual assessments and measures that consider the true needs, capacities and circumstances of individual

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[26] *Bedford*, paras. 113, 117.
[27] 2016 SCC 14.
[28] *Ibid.*, para 53.
[29] *Withler v. Canada (Attorney General)*, 2011 SCC 12, para 2.

claimants without regard to stereotypical assumptions are unlikely to be found contrary to s. 15(1). By contrast, where a scheme is based on prejudicial assumptions, or perpetuates historical stigma, a violation of s. 15(1) is likely.

19. The Supreme Court has affirmed a two-part test for establishing a violation of s. 15(1). First, the law must create a distinction based on an enumerated or analogous ground. Second, the distinction must create or perpetuate a disadvantage.[30] While a s. 15(1) analysis does not require a mirror comparator group,[31] CCLA submits that it is helpful to consider the circumstances of an NCR accused who has been absolutely discharged (in relation to a designated offence) alongside an individual who has been found guilty of a designated offence and absolutely discharged. The key distinction between these two non-convicted individuals is a mental disability – an enumerated ground under s. 15(1). In the circumstances, CCLA submits that the first part of the s. 15(1) test has been met.[32]

20. Despite their distinct purposes, the test for granting an absolute discharge under s. 730(1) of the *Criminal Code* and the test employed by a Review Board share a common core: both are

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[30] See *Quebec (Attorney General) v. A*, 2013 SCC 5, at para 323. Abella J. notes that the statement of the test as set out in *Withler*, which references prejudice and stereotyping, does not indicate that these are required to demonstrate discrimination. Rather, these may be indicia in determining whether the norm of substantive equality has been violated. The focus is on discriminatory conduct, not attitudes (see paras. 323-333).

[31] Although equality is a comparative concept, the Supreme Court has noted that it does not require a "formal comparison with a selected mirror comparator group, but an approach that looks at the full context, including the situation of the claimant group and whether the impact of the impugned law is to perpetuate disadvantage or negative stereotypes about that group." See *Withler*, para 40.

[32] In the Court below, Lederer J.'s approach to this aspect of the s. 15(1) test was focused on the fact that NCR accused are not eligible for pardons. He found that the first part of the s. 15(1) test was not met. While CCLA has proposed a different comparator for consideration, it is also submitted that Lederer J.'s approach, set out at paras. 137-150 of the decision in *G v. AG*, is inconsistent with the Supreme Court of Canada's direction that a section 15(1) analysis is contextual, not formalistic, and should be "grounded in the actual situation of the group and the potential of the impugned law to worsen their situation." See *Withler*, para 37.

concerned with balancing the best interests of the public and those of the offender/accused. Moreover, both forms of absolute discharge are intended to mark an end to the criminal law's authority over the offender/accused.

21. In the context of a s. 730(1) discharge, a court must find that such a disposition is in the best interests of the accused and is not contrary to the public interest.[33] In doing so, a court will consider whether the entry of a conviction will have "significant adverse repercussions" on the accused.[34] As with any sentence, the court must select the least restrictive sanction necessary to satisfy the objectives of sentencing.[35]

22. In selecting a disposition for an NCR accused, a Review Board must take into account "the safety of the public, which is a paramount consideration, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused."[36] The disposition must be the least onerous and least restrictive, and an absolute discharge should be granted in any case where the accused is not a significant threat to the public.

23. Further, an absolute discharge following a finding of guilt assumes a person of "good character", where deterrence and rehabilitation are not considered necessary.[37] The purpose of the provision is to allow a court to avoid ascribing a criminal record to an accused who pleads or is found guilty of an offence.[38] This is analogous to the situation of an individual found NCR where the Review Board has determined there is no risk of a significant threat to the public. The absence of moral blameworthiness or a criminal intention on the part of the NCR accused only magnifies

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[33] *R. v. Fallofield,* [1973] B.C.J. No. 559 (CA), para 21.
[34] *Ibid.*
[35] *Criminal Code,* s. 718.2.
[36] *Ibid.*, s. 672.54
[37] *Supra,* note 33.
[38] *R. v. McInnis,* [1973] O.J. No. 2124 (CA), para 5.

the unfairness of their inclusion on the registries, an inclusion which flows from their status as a person with a mental illness.

24. The Supreme Court's most fulsome consideration of discrimination based on mental illness comes from its consideration of Part XX.1 of the *Criminal Code* in *Winko*:

> The jurisprudence recognizes that discrimination may arise either from treating an individual differently on the basis of group affiliation, or from failing to treat the individual differently from others on the basis of group affiliation…
>
> ...Regardless of how the discrimination is brought about, the effect is the same -- to deny equal treatment on the basis of an unfounded assumption. It follows that different legal treatment reflecting the particular needs and circumstances of an individual or group may not only be justified, but may be required in order to fulfill s. 15(1)'s purpose of achieving substantive equality.[39]

25. Part XX.1 was found to further substantive equality by subjecting NCR accused to different treatment and considerations (as compared to a guilty offender) when they come into conflict with the criminal law. The registries' inclusion of NCR accused who have been found to present no significant threat to the public is the antithesis of the scheme in Part XX.1 that the Court upheld in *Winko.* It presumes dangerousness based on a mental illness, disadvantages the NCR accused by treating them as legally guilty, and perpetuates the prejudice and stereotyping which s. 15(1) seeks to displace.

PART IV – ORDER SOUGHT

26. The CCLA respectfully requests a declaration as set out at para. 106(d) of the Appellant's factum. The CCLA does not seek costs and asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

June 29, 2018

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Lawyers for the Intervener,
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[39] *Winko,* paras. 83-84.

SCHEDULE A – AUTHORITIES

CASES

1. *R. v. Jayswal*, 2011 ONCJ 33
2. *R. v. H. (T.J.)*, 2012 BCPC 115
3. *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625
4. *G v. Attorney General for Ontario et al*, 2017 ONSC 6713
5. *R. v. Long*, 2018 ONCA 282
6. *Chaoulii v. Quebec (Attorney General)*, 2005 SCC 35
7. *Canada (Attorney General) v. Bedford*, 2013 SCC 72
8. *R. v. Safarzadeh-Markhali*, 2016 SCC 14
9. *R. v. Moriarity*, 2015 SCC 55
10. *R. v. Troutlake*, 2002 CarswellOnt 3263 (CJ)
11. *R. v. Burton*, 2012 ONSC 5920
12. *R. v. Nur*, 2015 SCC 15
13. *R. v. Lloyd*, 2016 SCC 13
14. *R. v. Morrison*, 2017 ONCA 582
15. *R. v. Hood*, 2018 NSCA 18
16. *R. v. H.L.*, 2018 ONSC 1026
17. *Withler v. Canada (Attorney General)*, 2011 SCC 12
18. *Quebec (Attorney General) v. A*, 2013 SCC 5
19. *R. v. Fallofield*, [1973] B.C.J. No. 559 (CA)
20. *R. v. McInnis*, [1973] O.J. No. 2124 (CA)

SCHEDULE B – RELEVANT LEGISLATIVE PROVISIONS

Canadian Charter of Rights and Freedoms

Section 7

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 15(1)

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Sex Offender Information Registration Act, SC 2004, c 10

2 (1) The purpose of this Act is to help police services prevent and investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders.

(2) This Act shall be carried out in recognition of, and in accordance with, the following principles:

> (a) in the interest of protecting society through the effective prevention and investigation of crimes of a sexual nature, police services must have rapid access to certain information relating to sex offenders;
>
> (b) the collection and registration of accurate information on an ongoing basis is the most effective way of ensuring that such information is current and reliable; and
>
> (c) the privacy interests of sex offenders and the public interest in their rehabilitation and reintegration into the community as law-abiding citizens require that
>
> > (i) the information be collected only to enable police services to prevent or investigate crimes of a sexual nature, and
> >
> > (ii) access to the information, and use and disclosure of it, be restricted.

…

4 (1) A person who is subject to an order shall report to a registration centre referred to in section 7.1 within seven days — or, if they are required to report to a registration centre designated under the *National Defence Act*, within 15 days — after

(a) the order is made, if they are convicted of the offence in connection with which the order is made and

(i) they are not given a custodial sentence,

(ii) they are ordered to serve a sentence of imprisonment intermittently under subsection 732(1) of the *Criminal Code*, or

(iii) they are the subject of a conditional sentence order made under section 742.1 of the *Criminal Code*;

(b) they receive an absolute or conditional discharge under Part XX.1 of the *Criminal Code*, if they are found not criminally responsible on account of mental disorder for the offence in connection with which the order is made;

(b.1) they receive an absolute or conditional discharge or are released from custody under Division 7 of Part III of the *National Defence Act*, if they are found not criminally responsible on account of mental disorder for the offence in connection with which the order is made;

(b.2) the imprisonment or detention to which they are sentenced for the offence in connection with which the order is made is suspended under section 215 or 216 of the *National Defence Act*;

(c) they are released from custody pending the determination of an appeal relating to the offence in connection with which the order is made; or

(d) they are released from custody after serving the custodial portion of a sentence for the offence in connection with which the order is made.

***Christopher's Law (Sex Offender Registry), 2000*, SO 2000, c 1**

Preamble

The people of Ontario believe that there is a need to ensure the safety and security of all persons in Ontario and that police forces require access to information about the whereabouts of sex offenders in order to assist them in the important work of maintaining community safety. The people of Ontario further believe that a registry of sex offenders will provide the information and investigative tools that their police forces require in order to prevent and solve crimes of a sexual nature.

1 (1) In this Act,

"offender" means a person,

(a) who has been convicted of a sex offence, or

(b) who has been found not criminally responsible of a sex offence on account of mental disorder;

…

2 The ministry shall establish and maintain a registry containing the names, dates of birth and addresses of offenders, the sex offences for which, on or after the day section 3 comes into force, they are serving or have served a sentence or of which they have been convicted or found not criminally responsible on account of mental disorder and such additional information as may be prescribed.

***Criminal Code,* RSC, 1985, c C-46**

490.023 (1) A person who is not subject to an order under section 490.012 of this Act or section 227.01 of the *National Defence Act* may apply for an order exempting them from the obligation within one year after they are served with a notice under section 490.021 of this Act or section 227.08 of the *National Defence Act*.

The application shall be made to a court of criminal jurisdiction if

(a) it relates to an obligation under section 490.019 of this Act; or

(b) it relates to an obligation under section 227.06 of the *National Defence Act* and the Chief Military Judge does not have jurisdiction to receive the application under subsection 227.1(2) of that Act.

(2) The court shall make an exemption order if it is satisfied that the person has established that the impact of the obligation on them, including on their privacy or liberty, would be grossly disproportionate to the public interest in protecting society through the effective prevention or investigation of crimes of a sexual nature, to be achieved by the registration of information relating to sex offenders under the *Sex Offender Information Registration Act*.

(3) The court shall give reasons for its decision.

(4) If the court makes an exemption order, it shall also make an order requiring the Royal Canadian Mounted Police to permanently remove from the database all information that relates to the person that was registered in the database on receipt of the copy of the notice.

490.024 (1) The Attorney General or the person who applied for an exemption order may appeal from a decision of the court under subsection 490.023(2) on any ground of appeal that raises a question of law or of mixed law and fact. The appeal court may dismiss the appeal, or allow it and order a new hearing, quash the exemption order or make an order that may be made under that subsection.

(2) If the appeal court makes an exemption order, it shall also make an order requiring the Royal Canadian Mounted Police to permanently remove from the database all information that relates to the person that was registered in the database on receipt of the copy of the notice.

…

672.54 When a court or Review Board makes a disposition under subsection 672.45(2), section 672.47, subsection 672.64(3) or section 672.83 or 672.84, it shall, taking into account the safety of the public, which is the paramount consideration, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances:

(a) where a verdict of not criminally responsible on account of mental disorder has been rendered in respect of the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely;

(b) by order, direct that the accused be discharged subject to such conditions as the court or Review Board considers appropriate; or

(c) by order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considers appropriate.

672.5401 For the purposes of section 672.54, a significant threat to the safety of the public means a risk of serious physical or psychological harm to members of the public — including any victim of or witness to the offence, or any person under the age of 18 years — resulting from conduct that is criminal in nature but not necessarily violent.

…

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

> (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
>
> (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
>
> (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
>
> (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,

(v) evidence that the offence was a terrorism offence, or

(vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

Court File No.: C64762

G	and	**ATTORNEY GENERAL OF ONTARIO, et al.**
Appellant		Respondents

COURT OF APPEAL FOR ONTARIO

PROCEEDINGS COMMENCED AT TORONTO

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