SCC Court File No: 40045

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)

MOTION RECORD OF SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC
(Motion for leave to intervene)

Pursuant to Rules 47 and 55 of the Rules of the Supreme Court of Canada

---

Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC)
University of Ottawa, Faculty of Law,
Common Law Section
57 Louis Pasteur Street
Ottawa, ON, K1N 6N5

David Fewer
Tel: (613) 562-5800 x 2558
Fax: (613) 562-5417
Email: dfewer@uottawa.ca

Jane Bailey
Tel: (613) 562-5800 x 2364
Tel: (613) 562-5124
Email: jbailey@uottawa.ca

Counsel for the Proposed Intervener

Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC)
University of Ottawa, Faculty of Law,
Common Law Section
57 Louis Pasteur Street
Ottawa, ON, K1N 6N5

David Fewer

Tel: (613) 562-5800 x 2558
Fax: (613) 562-5417
Email: dfewer@uottawa.ca

Agent for the Proposed Intervener

TO: **THE REGISTRAR**

COPY TO:

ATTORNEY GENERAL OF BRITISH COLUMBIA
Criminal Appeals and Special Prosecutions
3rd Floor—940 Blanshard Street
Victoria, British Columbia V8W 3E6

Micah B. Rankin
Telephone: (778) 974-3344
FAX: (250) 387-4262
Email: micah.rankin@gov.bc.ca

Counsel for the Appellant, Her Majesty the Queen

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

Matthew Estabrooks
Telephone: (613) 786-0211
Fax: (613) 788-3573
Email:
matthew.estabrooks@gowlingwlg.com

Agent for the Appellant, Her Majesty the Queen

AND TO:

DONALD J. SOROCHAN LAW CORPORATION
815 Hornby Street, Suite 500
Vancouver, British Columbia V6Z 2E6

Donald J. Sorochan, Q.C.
Telephone: (604) 488-4731
Fax: (604) 669-5180
Email: don@sorochanlaw.com

Counsel for the Respondent, Randy William Downes

MICHAEL J. SOBKIN
331 Somerset Street West
Ottawa, Ontario
K2P 0J8

Telephone: (613) 282-1712
Fax: (613) 288-2896
Email: msobkin@sympatico.ca

Agent for the respondent,
Randy William Downes

AND TO:

ATTORNEY GENERAL OF ALBERTA
Attorney General of Alberta
Alberta Crown Prosecution Service, Appeals Branch
3rd Floor—9833-109 Street
Edmonton, Alberta T5K 2E8

Deborah J. Alford
Telephone: (780) 427-5181
Fax: (780) 422-1106
Email: deborah.alford@gov.ab.ca

Counsel for the Intervener

GOWLING WLG (CANADA) LLP 160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

D. Lynne Watt
Telephone: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Intervener, Attorney General of Alberta

ATTORNEY GENERAL OF ONTARIO
Ministry of the Attorney General
McMurtry – Scott Building
Crown Law Office – Criminal

720 Bay Street—10th Floor
Toronto, Ontario M7A 2S9

Telephone: (416)-326-4600

Matthew Asma
Email: matthew.asma@ontario.ca

Lisa Henderson
Email: lisa.henderson@ontario.ca

Counsel for the Intervener

TABLE OF CONTENTS

SCC Court File No: 40045

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)

NOTICE OF MOTION
OF SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC
(Motion for leave to intervene)

Pursuant to Rules 47 and 55 of the Rules of the Supreme Court of Canada

---

TAKE NOTICE that the Proposed Intervener, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC), hereby applies to a Judge of the Court pursuant to Rules 47, 55 and 59(2) of the *Rules of the Supreme Court of Canada*, SOR 2002/156, as amended, for an order:

1. granting CIPPIC leave to intervene in this appeal;

2. permitting CIPPIC to file a factum of no greater length than 10 pages;

3. permitting CIPPIC to present oral arguments for 5 minutes at the hearing of this appeal; and

4. any further or other order as said Judge or this Honourable Court may deem appropriate.

AND FURTHER TAKE NOTICE that the following documentary evidence will be relied upon in support of this motion:

1. the affidavit of Tamir Israel, Staff Lawyer at CIPPIC, sworn April 28, 2022; and

2. such further and other material as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE THAT this motion shall be made on the following grounds:

1. CIPPIC has a direct and significant interest in this appeal, and will leverage its expertise to provide useful submissions different from those of other parties to the appeal:

   (i) CIPPIC is a legal clinic with a mandate to advocate for the public interest on legal and policy issues arising at the intersection of law and technology. Included in this mandate is the concern that the majority of the British Columbia Court of Appeal's interpretation of elements of s. 162(1) of the Criminal Code, namely a "reasonable expectation of privacy" and, in paragraph (a), "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, or to be engaged in explicit sexual activity", is insufficient to protect those who are disproportionately vulnerable to voyeurism, including Canadian young people, women, and members of other equality-seeking groups. This case raises distinct questions of statutory interpretation and rights to privacy and equality, and falls within CIPPIC's purview;

   (ii) since its founding in 2003, CIPPIC has participated in numerous legal and policy processes relating to digital privacy. This has included interventions before the courts, testimony before parliamentary committees, appearances in quasi-judicial processes, as well as participation in various international policy-making fora on related issues;

   (iii) the matters raised by this appeal have implications that extend beyond those of the immediate parties. CIPPIC has a special and direct interest in these broader implications, arising from its mandate. This case raises important issues about the right to a reasonable

expectation of privacy, what that right should entail, and how such rights will affect the privacy afforded to Canadian young people, women and members of other equality-seeking groups who are disproportionately vulnerable to sexual violence such as voyeurism;

(iv) if granted leave to intervene, CIPPIC will draw on its extensive institutional expertise in matters related to privacy, equality, technology-facilitated violence, surveillance and youth, in order to provide useful submissions that are different from those of other parties; and

(v) this Court has recognized CIPPIC's contributions to and expertise in this field by granting it intervener status on a number of prior occasions involving privacy issues including *R v Jarvis*, 2019 SCC 10, which addressed reasonable expectations of privacy, equality, and protecting young people from being targeted by voyeurism by persons in positions of trust; *Douez v Facebook Inc*, 2017 SCC 33, which addressed privacy concerns in a claim with respect to online content; *AB v Bragg Communications Inc*, 2012 SCC 46, which addressed the need to protect the privacy rights of a young victim of technology facilitated violence; and *R v Marakah*, 2017 SCC 59 and *R v Jones*, 2017 SCC 60, which addressed the expectation of privacy in personal text messages;

2. if granted leave, CIPPIC proposes to contextualize this case within rapidly evolving jurisprudence addressing privacy rights afforded to Canadians, especially those from equality-seeking groups who are disproportionately vulnerable to privacy violations;

3. CIPPIC will argue that the British Columbia Court of Appeal's understanding of s. 162(a) fails to follow this court's contextualized approach to privacy and sexual violence from *Jarvis* and its well-developed jurisprudence relating to the nature and harms of sexual violence more generally, resulting in an interpretation of the law that leaves children and members of other equality-seeking groups more vulnerable to voyeurism. As technologies that can be used to make and easily and widely share surreptitious recordings are becoming more widespread, voyeurism is a growing threat. The Court of Appeal's ruling could lead to

immediate harm. CIPPIC will consider the ruling's broader and more dangerous implications, such as that it:

(i) ironically robs those children who are more vulnerable and thus more afraid of removing their clothes and exposing their nude bodies in certain settings than adults of their bodily integrity and right to privacy;

(ii) discriminatorily affords lesser protection from sexual violence for members of certain equality-seeking communities for whom removing all of their clothing puts their physical safety, religious integrity, and physical dignity at risk but who should still be entitled to equal privacy protection in changerooms and not discriminated against on prohibited grounds such as gender identity, religion, and ability;

(iii) fails to protect young athletes from coaches who abuse their powers, such as their special access to spaces like changerooms, to groom and abuse athletes and engage in sexually predatory and/or other violent behaviours;

(iv) blurs the lines of what have been recognized as inherently private places, causing confusion and uncertainty about where a person is safe from surreptitious recordings; and

(v) suggests that for a person's sexual integrity to be violated in a non-consensual recording, their genitals must be exposed, which minimizes the impact that voyeurism can have on victims and ignores the reality that non-consensual but non-nude photos, especially of children, are often taken and distributed for sexually exploitative purposes;

4. the proposed intervention will not cause delay or prejudice to the parties;

5. CIPPIC does not seek costs and asks that it not be liable for costs to any other party in the event it is granted leave to intervene in this appeal;

6. Rules 47, 55, 57, 59 of the *Rules of the Supreme Court of Canada*, SOR/2002-156, *as amended*;

and

7. such further and other grounds as counsel may advise and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of April, 2022.

David Fewer
Jane Bailey

Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC)
University of Ottawa, Faculty of Law, Common Law Section
57 Louis Pasteur Street
Ottawa, ON K1N 6N5

Tel: (613) 562-5800 x 2558
Fax: (613) 562-5417
Email: dfewer@uottawa.ca

Tel: (613) 562-5800 x 2364
Tel: (613) 562-5124
Email: jbailey@uottawa.ca

Counsel for the Proposed Intervener

TO: **THE REGISTRAR**

COPY TO:

ATTORNEY GENERAL OF BRITISH COLUMBIA
Criminal Appeals and Special Prosecutions
3rd Floor—940 Blanshard Street
Victoria, British Columbia V8W 3E6

Micah B. Rankin
Telephone: (778) 974-3344
FAX: (250) 387-4262
Email: micah.rankin@gov.bc.ca

Counsel for the Appellant, Her Majesty the Queen

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

Matthew Estabrooks
Telephone: (613) 786-0211
Fax: (613) 788-3573
Email:
matthew.estabrooks@gowlingwlg.com

Agent for the Appellant, Her Majesty the Queen

AND TO: **DONALD J. SOROCHAN LAW CORPORATION**
815 Hornby Street, Suite 500
Vancouver, British Columbia V6Z 2E6

Donald J. Sorochan, Q.C.
Telephone: (604) 488-4731
Fax: (604) 669-5180
Email: don@sorochanlaw.com

Counsel for the Respondent, Randy William Downes

AND TO:

ATTORNEY GENERAL OF ALBERTA
Attorney General of Alberta
Alberta Crown Prosecution Service, Appeals Branch
3rd Floor, 9833-109 Street
Edmonton, Alberta T5K 2E8

Deborah J. Alford
Telephone: (780) 427-5181
Fax: (780) 422-1106
Email: deborah.alford@gov.ab.ca

Counsel for the Intervener, Attorney General of Alberta

ATTORNEY GENERAL OF ONTARIO
Ministry of the Attorney General
McMurtry – Scott Building
Crown Law Office – Criminal
720 Bay Street 10th Floor, Toronto, Ontario M7A 2S9

Telephone: (416)-326-4600

Matthew Asma
Email: matthew.asma@ontario.ca

Lisa Henderson
Email: lisa.henderson@ontario.ca

Counsel for the Intervener

GOWLING WLG (CANADA) LLP 160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

D. Lynne Watt
Telephone: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Intervener

NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

If the motion is served and filed with the supporting documents of the application for leave to appeal, then the Respondent may serve and file the response to the motion together with the response to the application for leave.

SCC Court File No: 40045

IN THE SUPREME COURT OF CANADA
[On Appeal from the Court of Appeal for Ontario]

B E T W E E N:

HER MAJESTY THE QUEEN

APPELLANT
(Appellant)

- and -

RANDY WILLIAM DOWNES

RESPONDENT
(Respondent)

AFFIDAVIT OF TAMIR ISRAEL

I, Tamir Israel, of the City of Ottawa, DO SOLEMNLY AFFIRM THAT:

I. INTRODUCTION

1. I am Staff Lawyer at the Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) based at the Centre for Law, Technology and Society (CLTS) at the University of Ottawa's Faculty of Law. This Affidavit is sworn in support of CIPPIC's motion for leave to intervene in this appeal.

2. Except as otherwise indicated, I have personal knowledge of the matters to which I depose in this Affidavit. Where I lack such personal knowledge, I have indicated the source of my information and I verily believe such information to be true. Where specific CIPPIC activities are referred to below in which I have had no personal participation, I have familiarized myself with the relevant files, and base my account thereof on this knowledge.

3. CIPPIC is a legal clinic founded at the University of Ottawa's Faculty of Law. It was

established in September 2003 with funding from the Ontario Research Network on Electronic Commerce and an Amazon.com *Cy Pres* fund. The purpose of CIPPIC's creation was to fill voids in public policy debates on technology law issues, ensuring balance in policy and law-making processes, and providing legal assistance to under-represented organizations and individuals on matters involving the intersection of law and technology. In 2007, CIPPIC received additional funding from the Samuelson-Glushko Foundation, enabling CIPPIC to continue fulfilling its mandate and to join the international network of Samuelson-Glushko technology law clinics.

4. CIPPIC operates with a Staff Lawyer – myself, a General Counsel – David Fewer, and a Director – Vivek Krishnamurthy. All of us have been called to the bar of Ontario and work for CIPPIC. CIPPIC also benefits from the expertise of an internal Advisory Committee composed of faculty members of the Centre for Law, Technology and Society.

5. CIPPIC's core mandate is to advocate in the public interest in debates arising at the intersection of law and technology. CIPPIC has the additional mandate of providing legal assistance to under-represented organizations and individuals on law and technology issues, and a tertiary education-based mandate that includes a teaching and public outreach component. In pursuit of these mandates, CIPPIC's activities regularly extend to provision of expert testimony to parliamentary committees, participation in regulatory and quasi-judicial proceedings and strategic interventions before the courts. CIPPIC is also deeply involved in research and advocacy on the nature and social impact of technological change, and the manner in which the evolving legal landscape interacts with the distinct challenges of a technology-driven world.

6. Some of CIPPIC's general expertise in internet policy issues is described below, with particular emphasis on activities relating to privacy, equality, surveillance, youth and technology-facilitated violence.

II. INSTITUTIONAL EXPERTISE

(a) The eQuality Project

7. CIPPIC is a partner in The eQuality Project, a 7-year Social Sciences and Humanities Research Council funded project examining young people's experiences of privacy and equality in a digitally networked environment. This project, among other things, examines young Canadians' privacy and equality rights, technology-facilitated violence and harassment experienced by young people, and the legal responses to these issues. The eQuality Project is a partnership of scholars, research and policy institutes, policy makers, educators and community organizers with expertise in the intersection of young people, technology and violence. One of its initiatives is an online database that provides an in-depth and organized overview of existing criminal case law involving technology-facilitated violence (including voyeurism) from across Canada. CIPPIC and some of the principals involved in The eQuality Project partnered in CIPPIC's intervention in *R v Jarvis*, 2019 SCC 10, noted below. Professor Jane Bailey, one of the co-leads of The eQuality Project, acted as co-counsel for CIPPIC in that intervention. Professor Bailey is also acting as CIPPIC co-counsel in the present proposed intervention.

8. I have discussed the activities of The eQuality Project with Professor Bailey and with CIPPIC's David Fewer. They inform me, and I believe that:

(i) The eQuality Project has been invited to share its expertise on technology policy issues, especially as they affect young people, with various governmental and non-governmental organizations. These include federal, provincial and territorial privacy commissioners, Global Affairs Canada, the Law Commission of Ontario, the British Law Commission, the Law Society of Ontario, and numerous community-based organizations concerned about technology-facilitated violence;

(ii) Scholars associated with The eQuality Project have published or presented over 100 academic papers, book chapters, policy submissions, op-eds, and reports on youth and technology

issues, including gender-based privacy issues, defamation, violence (including presentations and publications focused on voyeurism) and a 2021 co-edited collection on technology-facilitated violence featuring the work of over 40 multidisciplinary scholars, practitioners, advocates, survivors and technologists from 17 countries; and

(iii) the privacy and technology-facilitated violence work of scholars associated with The eQuality Project is referred to in the reports and findings of national and international bodies including the 2018 Report of the UN Special Rapporteur on violence against women and the 2016 report of the House of Commons Standing Committee on the Status of Women with respect to its study on violence against young women and girls in Canada, and was cited with approval by this court in *Ward v Quebec,* 2021 SCC 43 and *Sherman Estate v Donovan,* 2021 SCC 25.

(b) Judicial

9. CIPPIC has been granted leave to intervene by this Court on previous occasions, including:

(i) *R v Mills*, 2019 SCC 22, on privacy expectations in communications sent to a fake social media profile operated by an undercover police officer;

(ii) *R v Jarvis*, 2019 SCC 10, on students' reasonable expectations of privacy in the classroom in the context of the Criminal Code's voyeurism provision;

(iii) *R v Reeves*, 2018 SCC 56, addressing whether the state may rely upon the consent of a third-party co-resident to justify a warrantless search of a person's home and seize a computer located therein;

(iv) *British Columbia v. Philip Morris International, Inc.*, 2018 SCC 36, on balancing privacy values with rights of discovery in tobacco litigation;

(v) *Haaretz.com v. Goldhar*, 2018 SCC 28, on access to justice considerations arising in jurisdiction analysis;

(vi) *R v Jones*, 2017 SCC 60, on whether the *Charter* and Part VI of the *Criminal Code* apply to

text messages sought from their recipient's service provider by law enforcement;

(vii) *R v Marakah*, 2017 SCC 59, on the reasonable expectation of privacy in the text messages sent from the defendant's cell phone to another recipient;

(viii) *Douez v Facebook, Inc*, 2017 SCC 33, on protecting privacy rights implicit in the *Charter* from being overridden by non-negotiable forum selection clauses;

(ix) *Canadian Broadcasting Corporation v SODRAC 2003 Inc*, 2015 SCC 57, on the application of the technical neutrality principle where efficiencies gained from technological advancements impact on copyright laws;

(x) *R v Fearon*, 2014 SCC 77, on the expectations of privacy attracted by mobile devices such as cell phones, and the resulting need to include safeguards in the historical doctrine that permits law enforcement to search incident to arrest;

(xi) *R v Chehil*, 2013 SCC 49 and *R v MacKenzie*, 2013 SCC 50, addressing the parameters of the reasonable suspicion standard in the context of the common law power to conduct a privacy-invasive search through the deployment of a drug detection dog;

(xii) *R v TELUS Communications Co*, 2013 SCC 16, on the need to adopt a flexible, purposive approach when applying Criminal Code protections intended to safeguard against the interception of private communications to technologically advanced communications delivery methods in the context of SMS text messaging;

(xiii) *AB v Bragg Communications Inc*, 2012 SCC 46, on the need to ensure privacy rights are protected in the context of the open court principle, particularly in light of the greater risk to privacy posed by the online publication of judicial decisions and the heightened privacy interests of youth;

(xiv) *Crookes v Newton*, 2011 SCC 47, wherein CIPPIC intervened to argue that more robust

action than the mere posting of a hyperlink must occur before a hyperlink can be held to have published defamatory statements in the linked content; and

(xv) *Dell Computer Corp v Union des consommateurs*, 2007 SCC 34, wherein CIPPIC intervened to address the appropriate adaptation of consumer contract law principles to an online environment so as to take into account unique internet issues, such as whether additional terms referenced through a hyperlink were 'external' to the contract.

10. CIPPIC has also been active in the courts as counsel to primary parties in proceedings implicating law and technology, privacy and/or violence more broadly, including:

(i) *Bell Canada v Amtelecom*, 2015 FCA 126, on the retrospective application of elements of the CRTC's Wireless Consumer Protection Code to pre-existing contractual relationships, in the context of a consumer protection regime imposed onto Wireless Service Provider contracts;

(ii) *Authors Guild v Google, Inc,* No. 05-Civ-8136 (DC) (S.D.N.Y. March 22, 2011), wherein CIPPIC acted on behalf of a group of independent Canadian authors and for the Canadian Association of University Teachers (CAUT) in opposing the proposed US-based class action settlement agreement that would have established an intermediary, Google, as a centralized hub for digital books, affecting the rights of international copyright holders, including Canadian authors, as well as the privacy rights of Canadians; and

(iii) *Lawson v Accusearch*, 2007 FC 125, wherein CIPPIC sought judicial review of the Office of the Privacy Commissioner's decision to refuse, on jurisdictional grounds, to exercise its investigatory mandate against a United States-based company collecting, using and disclosing the personal information of Canadians. CIPPIC argued that in an online world, territorial location cannot immunize an organization from the privacy protections guaranteed to Canadians by PIPEDA.

(b) Parliamentary Committees and Governmental Consultations

11. CIPPIC has had many opportunities to provide expert testimony to Parliamentary Committees and other governmental processes regarding the challenges posed by online environments, privacy and digital technologies for Canadians, a sampling of which includes:

(i) testimony before the House of Commons Standing Committee on Industry, Science and Technology (INDU) on the affordability and accessibility of telecommunications services (December 2020);

(ii) testimony before the House of Commons Standing Committee on Access to Information, Privacy & Ethics (ETHI), "Study: Personal Information Protection and Electronic Documents Act" (March 23, 2017);

(iii) testimony before the House of Commons Standing Committee on Access to Information, Privacy & Ethics (ETHI), "Bill C-51: Security of Canada Information Sharing Act (SCISA)" (November 22, 2016);

(iv) testimony before the House of Commons Standing Committee on Access to Information, Privacy & Ethics (ETHI), "Canada's Ageing *Privacy Act*: The Need for Modernization", (September 20, 2016); Report of the Standing Committee on Access to Information, Privacy & Ethics, "Protecting the Privacy of Canadians: Review of the *Privacy Act*", (December 2016), Fourth Report, 42nd Parliament, 1st Session;

(v) testimony before the Legislative Assembly of British Columbia Special Committee to Review the *Freedom of Information and Protection of Privacy Act*, on the implications of recent trade agreements for legislative provisions aimed at protecting the privacy of government-held Canadian data in cross-border contexts (November 18, 2015);

(vi) testimony before the House of Commons Standing Committee on Industry, Science and Technology (INDU), on Bill S-4: the Digital Privacy Act, addressing the need for strong and

enforceable privacy rights and on the dangers of an overly permissive cyber security information-sharing regime (February 19, 2015);

(vii) testimony before the House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI) on the evolving privacy implications of social media (Study: Privacy and Social Media, June 19, 2012); and

(viii) testimony before the House of Commons Standing Committee on Industry, Science and Technology (INDU), on Bill C-27: Electronic Commerce Protection Act, addressing the regulation of unsolicited electronic messages and the unauthorized installation of computer programs (September 28, 2009).

(c) Quasi-Judicial Tribunals

12. CIPPIC has participated in various activities before quasi-judicial administrative tribunals in pursuit of its objectives. A representative sample of CIPPIC's advocacy in this field includes:

(i) Compliance & Enforcement and Telecom Notice of Consultation CRTC 2021-9, a regulatory proceeding assessing the privacy and other implications of imposing cybersecurity obligations onto Internet Service Providers;

(ii) representation of the Open Media Engagement Network in *In re: An Applicant and the Vancouver Police Department*, BC OIPC File No: F15-63155, a written inquiry before the Information & Privacy Commissioner of British Columbia examining the refusal of the Vancouver Police Department to respond to an access to information demand requesting records relating to a surreptitious surveillance tool;

(iii) an intervention in *Application Regarding Vidéotron's Unlimited Music Zero Rating Service, CRTC File Nos: 8661*-P8-201510199 & 8622-V42-20150735 (September 1, 2015), regarding the potential impact on online innovation that would arise from a digital music platform operated by a mobile service provider;

(iv) PIPEDA Case Summary 2009-010, a regulatory complaint regarding an Internet Service Provider's installation o*f privacy-invasive and surreptitious 'Deep Packet Inspection' technol*ogy in its network; and

(v) a complaint and ongoing intervention in *CIPPIC v Facebook*, PIPEDA Case Summary #2009-008, applying Canadian privacy laws, norms and principles to the new and emerging medium of online social networking.

(d) Academic Research & Public Education

13. CIPPIC has participated in research and advocacy initiatives that leveraged its expertise relating to technology-facilitated violence and privacy matters faced by youth and women, including:

(i) CIPPIC sat on the Advisory Group of a multi-year project of the Law Commission of Ontario on "Defamation in the Age of the Internet";

(ii) As noted in paragraph 7 above, CIPPIC is an active participant in The eQuality Project, a 7-year project examining young people's privacy and equality rights in a digitally networked world;

(iii) CIPPIC contributed to a submission to the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences in response to a call for submissions on technology facilitated violence against women (November 2, 2017);

(iv) CIPPIC's participation in SafetyNet Canada in collaboration with the British Columbia Society of Transition Houses (BCSTH) included contributions to a guide on privacy and security considerations for violence against women programs ("*Privacy, Security, Confidentiality Social Media Considerations for Violence Against Women Programs*, SafetyNet Canada/BC Society of Transition Houses, 2013);

14. Through these activities, CIPPIC has had substantial impact to date on the development of privacy law and policy in Canada. CIPPIC expertise is further supplemented by its faculty advisors

and, more generally, its access to the University of Ottawa's Faculty of Law and Centre for Law, Technology and Society.

III. CIPPIC'S INTEREST IN THIS APPEAL

15. CIPPIC's historical concern regarding public policy issues arising at the intersection of law and technology places this appeal squarely within its mandate. Its enduring interest in protecting individuals' privacy rights (including those from equality-seeking communities), engaging with security surveillance stakeholders, and understanding newly developing technologies that allow individuals to collect and store personal data, is best reflected in CIPPIC's extensive contributions to policy and legal discussions around such matters. The British Columbia Court of Appeal's interpretations of a "reasonable expectation of privacy" and "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, or to be engaged in explicit sexual activity" raise broad implications for the general public, youth and members of other equality-seeking communities who are at risk for being targets of voyeurism, extending beyond those of the parties to this appeal.#

16. CIPPIC, both independently and as a partner in The eQuality Project, has a particular interest in this case and unique expertise relating to it. CIPPIC is distinctly placed to lend assistance and insight to the court in *R v Downes* – a voyeurism case raising issues at the intersections of law, technology, and children's rights because of their experience and expertise in these areas, including:

(i) Intervening in the SCC's first interpretation of the voyeurism provision in *R v Jarvis*, 2019 SCC 10;

(ii) CIPPIC's long history of assisting courts and other tribunals in cases where law and technology overlap, with special expertise on issues of privacy;

(iii) The eQuality Project's research expertise and focus on the rights of children and other equality-seeking groups in a digitally networked environment, the intersections between privacy and equality, and their relationship to myriad forms of technology-facilitated violence,

including voyeurism; and

(iv) both CIPPIC and The eQuality Project's well-established history of engagement in local, national and international policy making processes focused on related topics.

IV. POSITION AND PROPOSED SUBMISSIONS

17. If granted leave, CIPPIC will argue that:

(i) voyeurism is a gendered offence, with the vast majority of perpetrators being men and the vast majority of targets being women and children. The interpretation of the voyeurism offence, therefore, has profound implications for the privacy and equality rights of women and children;

(ii) the "place" referenced in s. 162(1)(a) - a sports dressing room, in the present case - raises particular implications for young people involved in sports in an era of increasing recognition of the sexually abusive behaviour of some coaches. While one would expect the voyeurism offence to be a tool available to combat such conduct, the majority's approach stands to exacerbate the risk of such abuse by blurring otherwise clear lines on what constitutes safe space for dressing and undressing free from surreptitious non-consensual observation and recording;

(iii) furthermore, the British Columbia Court of Appeal majority's temporally-constrained interpretive approach could lead to lesser protection from sexual violence for members of certain equality-seeking communities for whom removing all of their clothing puts their physical safety, religious integrity, and physical dignity at risk but who should still be entitled to equal privacy protection in changerooms and not discriminated against on prohibited grounds such as gender identity, religion, and ability;

(iv) s. 162(1)(a) ought to be interpreted by framing it within the broader context of the privacy and equality rights of voyeurism targets, including women, children and members of other

equality-seeking communities. This contextualized approach will assist the Court in developing an interpretation that:

(a) does not inadvertently rob women, children and members of other equality-seeking communities of their rights to privacy, bodily integrity and self-determination. The British Columbia Court of Appeal majority's interpretation of "a place where a person can reasonably be expected to be nude" undermines the right of children, as well as members of other equality-seeking communities to equal benefit and protection of the law, with potentially devastating effects on their rights to full participation in private and public life. For example, the majority's temporally-constrained approach ironically deprives young children and members of certain equality-seeking communities who are not safe or comfortable removing all of their clothing in a change room of protection from surreptitious recordings, while adults who are safe and comfortable doing so are protected;

(b) properly takes into account the reality of violence (particularly sexual violence), and abuse of trust committed by coaches against young athletes. While one would expect the voyeurism offence to be a tool available to combat such conduct, the majority's approach stands to exacerbate the risk of such abuse by blurring otherwise clear lines on what constitutes safe space for dressing and undressing free from surreptitious non-consensual observation and recording;

(c) maintains and builds upon the equality-affirming potential of this Court's approach to sexual violence in *Jarvis* and in jurisprudence more generally. This court in *Jarvis* acknowledged protection of "sexual integrity" as one of the key objectives of the voyeurism provision. The shift toward a sexual integrity analysis represented a positive movement away from understandings of sexual offences such as voyeurism as being about sexual propriety and shame, toward a focus centring targets' rights to self-determination and dignity. The majority's approach erodes that equality-affirming shift.

It does so by, among other things, introducing a non-existent sexual purpose requirement into s. 162(1)(a) and by assuming that sexual integrity is only affected where genitals are exposed. This approach erodes the equality-affirming impacts of this Court's analysis of "sexual integrity" in *Jarvis* and departs from its jurisprudence emphasizing the equality impacts of sexual violence by prioritizing a perpetrator-focused sexual gratification perspective over the lived effects of voyeuristic behaviours on targets' rights. And it does so in a way that decontextualizes images of children in their underwear and non-consensually photographed from behind from the reality of widespread sexually-exploitative non-nude images of children; and

(d) maintains the capacity of the voyeurism offence to respond to epidemics of voyeuristic offences facilitated by emerging technologies and techniques both now and in the future. Increasingly miniaturized technologies and products for facilitating voyeuristic violence are rapidly evolving in a wide variety of circumstances including in schools, motels, and short-term rental properties. And the proliferation of digital communications networks and devices facilitates the sharing and distribution of voyeuristic recordings created in places where privacy can reasonably be expected with historically unprecedented speed and scope, with particularly devastating effects for targets. The British Columbia Court of Appeal majority's approach compromises the capacity of Canadian criminal law to respond meaningfully to these developments both now and in the future by introducing a complicated temporally-constrained calculus for determining whether nudity can reasonably be expected in any particular room at any particular time. If one's reasonable expectations of privacy against surreptitious observations and recordings impinging on sexual integrity are not protected in places where privacy interests are universally acknowledged, such as change rooms, in what other reasonably expected safe zones are one's rights to bodily integrity and self-determination now up for grabs?

18. I believe that CIPPIC's submissions will be of assistance to the Court in deciding the

important issues raised by this appeal. CIPPIC's submissions will be distinct in that they will derive from its public interest mandate.

19. CIPPIC will not seek costs and asks that it not have costs awarded against it in the event that leave to intervene is granted.

20. I make this Affidavit in support of CIPPIC's Motion for Leave to Intervene in this appeal and for no improper purpose.

Affirmed remotely by David A. Fewer of the City of Ottawa in the Province of Ontario before me at the City of Ottawa in the Province of Ontario this 28th day of April, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.)

Tamir Israel

David A. Fewer, Commissioner for Taking Oaths

SCC Court File No: 40045

IN THE SUPREME COURT OF CANADA
[On Appeal from the Court of Appeal for Ontario]

B E T W E E N:

HER MAJESTY THE QUEEN

APPELLANT
(Appellant)

- and -

RANDY WILLIAM DOWNES

RESPONDENT
(Respondent)

MEMORANDUM OF ARGUMENT
OF SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC
(Motion for leave to intervene)

Pursuant to Rules 47 and 55 of the Rules of the Supreme Court of Canada

---

Part I – FACTS

A. OVERVIEW

1. The Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic ("CIPPIC") seeks an Order granting it leave to intervene in this appeal. This appeal raises issues with broad public policy implications for privacy, equality, and bodily autonomy in an atmosphere of increasingly ubiquitous technology-facilitated surveillance and harassment. Its determination will affect the law's ability to protect Canadians from sexual surveillance and harassment, especially in the context of fiduciary relationships, such as those between coaches and athletes. The case before the court has vital implications for the bodily and sexual integrity of women and young people, because they are disproportionately likely to be targets of voyeurism, and for members of other equality-seeking communities who are increasingly subjected to privacy violating forms of technology-facilitated violence.

2. In this case, CIPPIC is particularly well-positioned to discuss the broader implications of the British Columbia Court of Appeal's decision. Both our individual work and our collaboration with The eQuality project will help us provide insight into how the Court of Appeal's ruling would have a disproportionately negative impact on potential victims of voyeurism, who are mostly women and children. For example, we will use our unique perspective from our previous intervention in *Jarvis* to develop a framework for understanding the concept of "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, or to be engaged in explicit sexual activity" that respects the privacy, bodily autonomy, and sexual integrity of children and members of other equality-seeking groups. #

3. As such, by means of its proposed intervention, CIPPIC offers to assist the Court in its consideration of internet policy and public interest issues by offering useful submissions different from those of the parties. In formulating these submissions, CIPPIC will draw on the unique and multi-faceted knowledge and expertise it has developed through its specialized activities in this area of law.

B. THE PROPOSED INTERVENER - CIPPIC

4. CIPPIC is a legal clinic based at the University of Ottawa's Centre for Law, Technology and Society. Its mandate is to advocate in the public interest where the law intersects with technology in ways that may detrimentally impact individuals and/or society as a whole. CIPPIC's advocacy and public outreach activities have extensively engaged matters relating to privacy rights (in both criminal and civil contexts), including with respect to young people's privacy and equality, technology-facilitated gender-based violence, and ubiquitous surveillance.

> **Affidavit of Tamir Israel, "Israel Affidavit", sworn April 28th 2022, Motion Record, Tab 2, para 3 and 5**

5. Courts have regularly recognized CIPPIC's capacity to assist on questions relating to privacy, equality, free expression, and the public interest. In particular, CIPPIC has participated in a number

of judicial proceedings in which privacy intersects with equality and free expression. These include: *R v Jarvis*, 2019 SCC 10, which was heavily cited by the courts below and concerned reasonable expectations of privacy and respecting young people's rights to freedom from violence by persons in positions of trust; *AB v Bragg,* 2012 SCC 46, which addressed the importance of balancing privacy and free expression in order to facilitate access to justice for young victims of sexualized cyberbullying; *Warman v Fournier,* 2010 ONSC 2126, on the need to protect online identity in judicial processes in order to protect free expression; *R v Fearon,* 2014 SCC 77, on reasonable expectations of privacy in cell phone content; *Douez v Facebook Inc*, 2017 SCC 33, on privacy concerns relating to digital content; and *R v Marakah*, 2017 SCC 59, on the reasonable expectation of privacy in text messages. With respect to equality, CIPPIC participated in *Haaretz.com v Goldhar,* 2018 SCC 28, highlighting that the test for determining the assumption of jurisdiction in cases of online defamation could have important access to justice consequences for victims of violence who wish to seek legal redress.

Israel Affidavit, sworn April 28th, 2022, Motion Record, Tab 2, para 9

6. Some of CIPPIC's general expertise on privacy and equality issues is described below, with particular emphasis on activities relating to young people's privacy and equality, technology-facilitated gender-based violence, and ubiquitous surveillance. Specific CIPPIC experience on these issues includes interventions before courts on the reasonable expectation of privacy afforded to Canadians in both civil and criminal contexts, including in relation to young people (e.g. *R v Jarvis*, *AB v Bragg*). CIPPIC also participated in important national and international initiatives relating to technology-facilitated and gender-based violence, including collaborating with SafetyNet Canada to produce *Privacy, Security, Confidentiality Social Media Considerations for Violence Against Women Programs*, contributing to submissions filed in response to the call for submissions on violence against women and girls issued by the United Nations Special Rapporteur on Violence Against Women in 2017.

Israel Affidavit, sworn April 28th, 2022, Motion Record, Tab 2, paras 7, 9, 11, 12, 13, 14, 15.

7. Of particular significance, CIPPIC is a partner within The eQuality Project, a 7-year Social Sciences and Humanities Research Council funded project, which is co-led by members of the University of Ottawa's Centre for Law, Technology and Society, of which CIPPIC is also a part. The eQuality Project is focused on young people's privacy and equality in networked spaces and its work has included interviews, articles, book chapters and advocacy examining privacy interests, technology-facilitated violence and harassment experienced by young people, and the legal responses to their digital issues. The eQuality Project is a partnership of scholars, research and policy institutes, policy makers, education and community organizations with expertise in the intersections of young people's rights and technology.

Israel Affidavit, sworn April 28th, 2022, Motion Record, Tab 2, paras 7, 8, 13.

Part II – STATEMENT OF QUESTIONS AT ISSUE

8. The only issue before the Court in this motion is whether CIPPIC should be granted leave to intervene in this matter of public interest.#

Part III - ARGUMENT

9. An applicant seeking leave to intervene before this Court must address two issues:

(i) whether the applicant has an interest in the issues raised by the parties to the appeal; and

(ii) whether the applicant's submissions will be useful to the Court and different from those of the other parties.

***Reference re Workers' Compensation Act, 1983 (Nfld)*, [1989] 2 SCR 335, para 8; *R v. Finta*, [1993] 1 SCR 1138, para 6; *Rules of the Supreme Court of Canada*, SO/2002-156, ss 55, 57(2)**

A. CIPPIC'S INTEREST IN THIS APPEAL

10. The British Columbia Court of Appeal's interpretation of s. 162(1)(a) of the *Criminal Code*

shows a narrow understanding of the nature of surveillance—particularly sexualized surveillance—in places where privacy can reasonably be expected. It fails to consider how the production of non-consensual recordings in settings where people are often expected to be nude can cause great harm to a victim's sense of bodily autonomy and sexual integrity, even if they themself are partially clothed. This interpretation of the law could potentially endanger children, women and members of other equality-seeking groups, who are more likely to be targeted by sexual violence, such as predatory behaviours like voyeurism. This matter is of central importance to CIPPIC's mandate, which includes the advancement of privacy and technology law in the public interest. The resolution of this Appeal directly and seriously implicates this aspect of CIPPIC's work and mandate.

B. USEFUL AND DIFFERENT SUBMISSIONS

11. An applicant seeking leave to intervene before this Court must demonstrate that its proposed intervention will provide "useful and different submissions". This criterion is satisfied by an applicant who has a history of involvement in the issues raised by the appeal, giving the applicant expertise that can shed fresh light or provide new information on the matter.

***Reference re Workers' Compensation Act, 1983 (Nfld)*, [1989] 2 SCR 335, para 12**

12. CIPPIC, both independently and as a partner in The eQuality Project, is uniquely placed to lend assistance and insight to the Court in *R v Downes* – a voyeurism case raising issues at the intersections of law, technology, and children's rights – because of its experience and expertise in these areas, including:

(i) intervening in the SCC's first interpretation of the voyeurism provision in *R v Jarvis*;

(ii) CIPPIC's long history of assisting courts and other tribunals in cases where law and technology overlap, with special expertise on issues of privacy;

(iii) The eQuality Project's research expertise and focus on the rights of children and other equality-seeking groups in a digitally networked environment, and the intersections

between privacy and equality and their relationship to myriad forms of technology-facilitated violence, including voyeurism; and

(iv) both CIPPIC and The eQuality Project's well-established history of engagement in local, national and international policy making processes focused on related topics.

13. CIPPIC's submissions will be useful because CIPPIC brings to these proceedings the experience of a legal clinic that has worked with various stakeholders in multi-faceted policy and law-making processes on matters concerning privacy rights (in both criminal and civil contexts), including with respect to: young people's privacy and equality, and technology-facilitated gender-based violence, and ubiquitous surveillance. CIPPIC can therefore offer the Court a useful, public interest-oriented perspective on the issues raised in this Appeal.

Israel Affidavit, April 28th 2022, Motion Record, Tab 2, para 5, 7, 9, 10, 11, 12, 13, 14, 15

14. CIPPIC's submissions will be different from those of the other parties. Should it be granted leave to intervene, it will confer with any other parties granted intervener status to ensure there is no duplication in submissions. CIPPIC's submissions will be informed by its extensive experience in law and policy relating to privacy and equality with particular emphasis on activities relating to young people's privacy and equality, technology-facilitated gender-based violence, and ubiquitous surveillance. CIPPIC is eminently capable of assisting the Court by providing thoughtful submissions relating to reasonable expectations of privacy and place in the context of voyeurism. Further, it is also uniquely placed to offer a robust and equality-informed analysis of privacy, an analysis that is certainly not consistent with the immediate interests of the respondent accused and could conflict with the long-term interests of the appellant crown with respect to law enforcement powers.

15. Finally, CIPPIC's proposed intervention does not raise any concerns that have traditionally led this Court to refuse intervention. CIPPIC does not intend to expand the issues under appeal beyond those raised by the existing parties. We outline our proposed intervention in the following

paragraphs.

Israel Affidavit, sworn April 28th 2022, Motion Record, Tab 2, para 17, 18, 19, 20, 21, 22

C. CIPPIC'S PROPOSED SUBMISSIONS

16. If granted leave, CIPPIC will argue that:

(i) voyeurism is a gendered offence, with the vast majority of perpetrators being men and the vast majority of targets being women and children. The interpretation of the voyeurism offence, therefore, has profound implications for the privacy and equality rights of women and children;

(ii) the "place" referenced in s. 162(1)(a) - a sports dressing room, in the present case - raises particular implications for young people involved in sports in an era of increasing recognition of the sexually abusive behaviour of some coaches. While one would expect the voyeurism offence to be a tool available to combat such conduct, the majority's approach stands to exacerbate the risk of such abuse by blurring otherwise clear lines on what constitutes safe space for dressing and undressing free from surreptitious non-consensual observation and recording;

(iii) furthermore, the British Columbia Court of Appeal majority's temporally-constrained interpretive approach could lead to lesser protection from sexual violence for members of certain equality-seeking communities for whom removing all of their clothing puts their physical safety, religious integrity, and physical dignity at risk but who should still be entitled to equal privacy protection in changerooms and not discriminated against on prohibited grounds such as gender identity, religion, and ability;

(iv) s. 162(1)(a) ought to be interpreted by framing it within the broader context of the privacy and equality rights of voyeurism targets, including women, children and members of other equality-seeking communities. This contextualized approach will

assist the Court in developing an interpretation that:

(a) does not inadvertently rob women, children and members of other equality-seeking communities of their rights to privacy, bodily integrity and self-determination. The British Columbia Court of Appeal majority's interpretation of "a place where a person can reasonably be expected to be nude" undermines the right of children, as well as members of other equality-seeking communities to equal benefit and protection of the law, with potentially devastating effects on their rights to full participation in private and public life. For example, the majority's temporally-constrained approach ironically deprives young children and members of certain equality-seeking communities who are not safe or comfortable removing all of their clothing in a change room of protection from surreptitious recordings, while adults who are safe and comfortable doing so are protected;

(b) properly takes into account the reality of violence (particularly sexual violence), and abuse of trust committed by coaches against young athletes. While one would expect the voyeurism offence to be a tool available to combat such conduct, the majority's approach stands to exacerbate the risk of such abuse by blurring otherwise clear lines on what constitutes safe space for dressing and undressing free from surreptitious non-consensual observation and recording;

(c) maintains and builds upon the equality-affirming potential of this Court's approach to sexual violence in *Jarvis* and in jurisprudence more generally. This court in *Jarvis* acknowledged protection of "sexual integrity" as one of the key objectives of the voyeurism provision. The shift toward a sexual integrity analysis represented a positive movement away from understandings of sexual offences such as voyeurism as being about sexual propriety and shame, toward a focus centring targets' rights to self-determination and dignity. The majority's approach erodes that equality-affirming shift. It does so by, among other things, introducing a non-

existent sexual purpose requirement into s. 162(1)(a) and by assuming that sexual integrity is only affected where genitals are exposed. This approach erodes the equality-affirming impacts of this Court's analysis of "sexual integrity" in *Jarvis* and departs from its jurisprudence emphasizing the equality impacts of sexual violence by prioritizing a perpetrator-focused sexual gratification perspective over the lived effects of voyeuristic behaviours on targets' rights. And it does so in a way that decontextualizes images of children in their underwear and non-consensually photographed from behind from the reality of widespread sexually-exploitative non-nude images of children; and

(d) maintains the capacity of the voyeurism offence to respond to epidemics of voyeuristic offences facilitated by emerging technologies and techniques both now and in the future. Increasingly miniaturized technologies and products for facilitating voyeuristic violence are rapidly evolving in a wide variety of circumstances including in schools, motels, and short-term rental properties. And the proliferation of digital communications networks and devices facilitates the sharing and distribution of voyeuristic recordings created in places where privacy can reasonably be expected with historically unprecedented speed and scope, with particularly devastating effects for targets. The British Columbia Court of Appeal majority's approach compromises the capacity of Canadian criminal law to respond meaningfully to these developments both now and in the future by introducing a complicated temporally-constrained calculus for determining whether nudity can reasonably be expected in any particular room at any particular time. If one's reasonable expectations of privacy against surreptitious observations and recordings impinging on sexual integrity are not protected in places where privacy interests are universally acknowledged, such as change rooms, in what other reasonably expected safe zones are one's rights to bodily integrity and self-determination now up for grabs?

PART IV– COSTS

17. CIPPIC will not seek costs in this matter and asks that costs not be awarded against it in this motion or in the appeal if leave to intervene is granted.

PART V– ORDER SOUGHT

18. CIPPIC respectfully requests an Order from this Court:

(i) granting CIPPIC leave to intervene in this appeal;

(ii) permitting CIPPIC to file a factum of no greater length than 10 pages;

(iii) permitting CIPPIC to present 5 minutes of oral argument at the hearing of this appeal; and

(iv) such further or other Order as deemed appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of April, 2022.

David Fewer
Jane Bailey

Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC)
University of Ottawa, Faculty of Law, Common Law Section
57 Louis Pasteur Street
Ottawa, ON K1N 6N5

Tel: (613) 562-5800 x 2558
Fax: (613) 562-5417
Email: dfewer@uottawa.ca

Tel: (613) 562-5800 x 2364
Tel: (613) 562-5124
Email: Jane.Bailey@uottawa.ca

Counsel for the Proposed Intervener

PART VI– TABLE OF AUTHORITIES

	Authority	***Reference in Argument***
	Cases	
1	*R. v. Jarvis*, 2019 SCC 10 (CanLII), [2019] 1 SCR 488, <https://canlii.ca/t/hxj07>	12, 16
2	*Reference re Workers' Compensation Act, 1983 (Nfld.) (Application to intervene)*, [1989] 2 SCR 335, 1989 CanLII 23 (SCC), <http://canlii.ca/t/1ft35>	9, 11
3	*R. v. Finta,* [1993] 1 SCR 1138, 1993 CanLII 132 (SCC), <http://canlii.ca/t/1fs3t>	9
	Legislation	
4	*Criminal Code*, RSC 1985, c C-46, s 162(1)(a) <https://www.laws-lois.justice.gc.ca/eng/acts/C-46/page-23.html>	10, 16
5	*Rules of the Supreme Court of Canada*, SOR/2002-156, ss 55, 57(2) <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-156/page-9.html#h-69>	9