SCC File No. 39516

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

B E T W E E N:

A.S.

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

-and-

SHANE REDDICK

Respondent

-and-

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Interveners

FACTUM OF THE INTERVENER, WOMEN'S LEGAL EDUCATION AND ACTION FUND INC. ("LEAF")

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PART I – OVERVIEW AND STATEMENT OF FACTS

1. Prior to the passage of Bill C-51 in December 2018, a patent inequality existed for women and girls who came forward to report sexual offences and whose alleged attackers happened to possess (lawfully or unlawfully) their private records: these complainants could be ambushed by the defence, on the witness stand in the midst of a public trial, with the presentation of highly intimate records such as medical and therapy records, immigration and refugee files, children's aid society documents, personal diaries, photographs and images, text messages, emails, and other records intruding upon the most private areas of their lives, including sexual matters. If the defence was in possession of such records, the judge ruled upon their admissibility in the absence of the complainant, without giving her notice or hearing her perspective. The vast majority of women and girls lacked meaningful access to counsel, such that they may never have learned or fully understood why and how their private records were sprung upon them in open court. This routine practice was manifestly unfair to this subset of complainants. It resulted in the inadequate protection of complainants' *Charter* rights to equality, privacy, dignity, and personal security,[1] and contributed to the underreporting of sexual crimes due to a legitimate fear of re-victimization by the criminal justice system. Society faced a palpable loss of confidence in a criminal justice process that would permit such unfairness in sexual offence trials.

2. Sections 278.92, 278.94(2), and 278.94(3) [the "records screening regime"] of the *Criminal Code* [the "*Code*"] seek to remedy this inequality, by requiring that a judge engage in a rights-based assessment of the admissibility of both sexual and non-sexual private records in the possession of the defence. Through an admissibility hearing, the judge must consider the rights of the accused and the complainant, along with other factors. In addition, Parliament has now legislated that complainants have the right to participate in these admissibility hearings, and to have facilitated access to independent counsel to assist them in this regard.

3. The amendments are an acknowledgement that complainants are undeniably directly and viscerally affected by decisions about the use of their private records in a criminal trial. Parliament's objectives in enacting the records screening regime are to enhance complainants' rights to equality, privacy, dignity, and personal security; to improve victim and community confidence in the criminal justice system; to protect the integrity of the trial process by ensuring

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[1] *Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982 c11, ss 7, 15 and 28 [*Charter*].

that misleading, myth-based and unacceptably prejudicial evidence is not admitted; and to strike a constitutional balance with the accused's right to make full answer and defence.[2]

4. LEAF intervenes to argue that the records screening regime is not only constitutional but *necessary* to give meaningful effect to the *Charter* rights of women and girls in Canada: equality, privacy, dignity, and personal security. The approach taken by the application judge hollows out these hard-won rights of complainants. It risks diluting those rights in other cases involving the balancing of "similarly deserving" *Charter* rights, which would ultimately deprive complainants of the full protection of the law.[3] As such, the decision in this appeal has profound implications for the substantive equality rights of women and girls.

PART II – POSITION WITH RESPECT TO APPELLANT'S QUESTIONS

5. The questions in this appeal are whether the records screening regime infringes ss. 7 and 11(d) of the *Charter*, and if so, whether this infringement can be justified under s. 1. LEAF submits that, in resolving these questions, this Court must give full consideration to the rights and interests of complainants that Parliament contemplated when enacting these provisions: equality, privacy, dignity, and personal security. When the object and operation of the provisions are properly understood, they are not overbroad and do not impair the ability of the accused to make full answer and defence.

PART III – STATEMENT OF ARGUMENT

6. The Bill C-51 amendments involve two categories of changes that are at issue in this appeal: (1) a statutory legal test with mandatory factors that an application judge must consider when ruling on the admissibility and use of the complainant's private records in the possession of the defence; and (2) procedural changes granting the complainant participatory rights in the admissibility hearing. LEAF submits that both sets of changes are necessary to adequately protect the equality, privacy, dignity, and personal security rights of complainants. This in turn supports society's interest in encouraging reporting of sexual offences.

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[2] Factum of the Appellant, *R v JJ*, 2020 BCSC 29 (leave to appeal granted: 2020 CanLII 48929) at paras 3, 55, 146.
[3] *R v Mills*, [1999] 3 SCR 668 at para 61; *R v Barton*, 2019 SCC 33 at paras 200, 210.

A. The records screening regime is aimed at enhancing the substantive equality *Charter* rights of complainants

7. LEAF submits that the records screening regime is a natural step forward in the evolution of the law to give meaningful effect to complainants' equality rights in sexual offence trials. The amendments reflect the established principle that trial fairness must be interpreted from the perspective of the complainant and the community, not only the accused.[4] These changes advance substantive equality for women in a manner that constitutionally balances the accused's rights.

8. The records screening regime takes the admissibility concepts and legal tests that were found to be constitutional in the s. 276 'other sexual activity' and the s. 278.3 'third party records' regimes, and properly applies them to records in the possession of the accused.[5]

9. The Respondent Reddick asks this Court to accept that the policy rationales that make the ss. 276 and 278.3 regimes constitutional do not apply to the records screening regime because, in his submission, the nature of the evidence captured by the two regimes is very different. He submits that a statutory pre-screening mechanism is unjustified, because the records are neither presumptively irrelevant nor inherently prejudicial, and the common law standard in *Seaboyer* and *Shearing* suffices to address the admissibility of records in the possession of the accused.[6]

10. Respectfully, those submissions should be resoundingly rejected. The s. 278.92 legal test and statutory factors target the same objective of the ss. 276 and 278.3 regimes: the substantive equality of sexual offence complainants. Complainants are uniquely vulnerable participants in the justice system.[7] Complainant involvement in the criminal process must be understood in the context of: the intimate nature of sexual assault; a recognition of its gendered nature; the long history of discriminatory practices towards complainants; and the disproportionate impact on victims who experience intersecting systemic barriers due to factors such as Indigeneity, race,

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[4] *R v Mills*, [1999] 3 SCR 668 at para 72; *R v CC*, 2019 ONSC 6449 at para 71.
[5] *R v Mills*, [1999] 3 SCR 668; *R v Darrach*, [2000] 2 SCR 443.
[6] Factum of the Respondent Shane Reddick, *AS v Her Majesty the Queen, et al*, at paras 2, 3, 15 ["**Reddick Factum**"]. See also, Factum of the Respondent JJ, *R v JJ*, 2020 BCSC 29 (leave to appeal granted: 2020 CanLII 48929) paras 80, 84-85, and 112-121 ["JJ Factum"].
[7] Elaine Craig, *Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession* (Montreal, QUE & Kingston, ON: McGill-Queen's University Press, 2018), at 9-10, 135-137, 151-157 [**Craig, *Putting Trials on Trial***]; David M. Tanovich, "'Whack' No More: Infusing Equality into the Ethics of Defence Lawyering in Sexual Assault Cases" (2013) 45 Ottawa L Rev 495 at 502 [**Tanovich**].

disability and poverty, whose lives are more likely to have been heavily documented.[8] For these women, the equality interest is heightened, as the more records are in existence, the greater jeopardy to privacy, and therefore the greater barriers to reporting.[9]

11. In light of this reality, Parliament has recognized that complainants are profoundly impacted by decisions about the admissibility and use of their private records in the possession of the defence, in the same way that they are affected by decisions about the production of third party records and the use of sexual activity evidence. Evidence that intrudes upon a complainant's privacy, dignity, and personal security is inherently prejudicial, such that her rights and perspective must be considered in the analysis.

12. The definition of "record" at s. 278.1 therefore properly encompasses a wide spectrum of material in the hands of the accused containing personal information in which the complainant has a reasonable expectation of privacy. When the records contain sexual activity evidence, the presumptive irrelevance and inherent prejudice is obvious. Even when the records do not directly implicate sexual activity, complainants undeniably face incursions on their privacy, dignity, and personal security when their records, often with marginal probative value, are aired in open court.[10]

13. As well, the records screening regime rightly includes records lawfully produced to the defence following a third party records application. A complainant may be just as deeply impacted on the issue of admissibility (when records are sought to be aired and used to attack her in a public trial) as on pre-trial production of records to counsel.[11] As such, it is illogical and unfair to hear the complainant's perspective at the production but not the admissibility stage.

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[8] *R v Mills*, [1999] 3 SCR 668 at paras 21, 61, 92; Elaine Craig, "Private Records, Sexual Activity Evidence, and the Charter of Rights and Freedoms" 2021 58:4 Alta Law Rev at 801-803 [**Craig, "Private Records"**]; Lise Gotell, "The Ideal Victim, the Hysterical Complainant, and the Disclosure of Confidential Records: The Implications of the Charter for Sexual Assault Law" (2002) 40 Osgoode Hall LJ 251-295 at 262 [Gotell].

[9] Craig, "Private Records" at 802-803.

[10] Craig, "Private Records" at 779, 801-803; *R v CC*, 2019 ONSC 6449 at paras 78-79; *R v FA*, 2019 ONCJ 391 at para 67; *R v Mills*, [1999] 3 SCR 668 at paras 119, 136; *R v Navaratnam*, 2021 ONCJ 272 at para 18; Senate, Standing Committee on Legal and Constitutional Affairs, 42nd Parl, 1st Sess, Issue No 47 (20 June 2018), at 18 ["Senate Standing Committee"].

[11] *R v JP*, 2019 ONCJ 871 at paras 24-26.

B. Substantive equality requires a broad and robust interpretation of complainants' rights in admissibility decisions

14. LEAF submits that complainants' rights and interests, reflected in the mandatory factors now incorporated in s. 278.92(3), are fundamental considerations that must inform the analysis of the constitutionality of the records screening regime. The application judge misapprehended the purposes of the records screening regime as being directed only at curtailing the use of myths and stereotypes, and failed to appreciate that Parliament expressly aimed to advance complainants' personal dignity, *right* of privacy, and *right* to personal security, as well as society's interest in encouraging reporting of sexual offences, and encouraging the obtaining of treatment by complainants.[12] These factors, long-established in the ss. 276 and 278.3 regimes, have now properly been expressly incorporated into the records screening regime.

15. Substantive equality is the animating principle of these complainant rights and must be preserved to the "maximum extent possible"[13] when considering the purpose and outcomes of the regime.[14] The legitimate goal of making the trial process fairer and more humane for complainants is the common thread running through the regime: it reflects Parliament's recognition "that in many sexual assault proceedings the complainant's autonomy, and thus humanity, is at stake."[15]

16. In this context, a broad and robust privacy right for complainants is appropriate in the records screening regime. Often there are structural power imbalances leading to the accused having control over the complainant's private records, causing women to fear coming forward lest shameful or personal aspects of their lives be exposed for the scrutiny of strangers and persons in authority.[16] This Court has recognized that all aspects of privacy "serve to foster the values of dignity, integrity and autonomy in our society" but that the connection between "personal privacy and human dignity is especially palpable."[17]

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[12] *Code*, ss. 278.92(3)(g) and 278.92(h).
[13] *R v Mills*, [1999] 3 SCR 668 at paras 21, 61, 90, 144; *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46 at paras 112, 115, *per* L'Heureux-Dubé J concurring; *R v Darrach*, [2000] 2 SCR 443 at para 70.
[14] *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 at 185: "The section 15(1) guarantee is the broadest of all guarantees. It applies to and supports all other rights guaranteed by the *Charter*."
[15] Craig, "Private Records" at 801.
[16] Craig, "Private Records" at 802-803; *R v CC*, 2019 ONSC 6449 at paras 78-79.
[17] *R v Jarvis*, 2019 SCC 10, at para 65 [emphasis added].

17. Similarly, a contextual analysis supports rigorous protection of complainants' dignity, which is encompassed in their ss. 7 and 15 *Charter* rights. As acknowledged by L'Heureux-Dubé J., "[v]iolence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights."[18] A safeguard for personal dignity addresses "interferences with the fundamental attributes of a human being which violate the respect to which every person is entitled."[19] In sexual offence trials, personal dignity requires that the right to make full answer and defence be constrained, in the interests of decency and the complainant's humanity, to that which is actually necessary and neither discriminatory nor abusive. Dignity is also concerned with autonomy and self-determination,[20] supporting the right to be heard.

18. Likewise, complainants' rights to personal security and to the full protection and benefit of the law are engaged by the risk to complainants of re-traumatization through the trial process.[21] As stated by Karen Bellehumeur, "equal benefit of the law must be applied to women victimized by sexual violence to enable them to engage the criminal justice system without having to risk their own harm. Without equal protection of the law women will be unable to achieve equality."[22]

C. Complainants' participatory rights in admissibility hearings are an essential extension of their substantive equality rights

19. LEAF submits that as a complainant's *Charter* rights are implicated in records admissibility questions, her meaningful participation in the hearing is essential to ensure the full operationalization of her rights. The records screening regime makes the criminal trial fairer for the complainant, by giving her a right to be heard on matters that will affect her autonomy and well-being.[23] This approach reflects the rule of natural justice *audi alteram partem*, which requires courts to "provide an opportunity to be heard to those who will be affected by the decisions."[24]

20. The respondent Reddick argues that these participatory rights are "unnecessary" as "robust

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[18] *R v Ewanchuk*, [1999] 1 SCR 330 at para 69, *per* L'Heureux-Dubé J; *R v Osolin*, [1993] 4 SCR 595 at 669.
[19] *Quebec (Public Curator) v Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 SCR 211 at para 105.
[20] *R v Morgentaler*, [1988] 1 SCR 30 at 166, *per* Wilson J; *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 at 1179, *per* Cory J.
[21] Senate Standing Committee at 9-10.
[22] Karen Bellehumeur, "A Former Crown's Vision for Empowering Survivors of Sexual Violence" (2020) 37 Windsor YB Access Just at 19-20 [**Bellehumeur**].
[23] *R v RS*, 2019 ONCJ 645 at para 81; Minister of Justice and Attorney General of Canada Jody Wilson-Raybould, *House of Commons Debates*, 42-1, Vol 148, No 366, at 1035.
[24] *LLA v AB*, [1995] 4 SCR 536 at para 27.

constitutional protections" already existed for complainants at common law and in the previous statutory regime.[25] The reality, however, is that the law prior to Bill C-51 failed to adequately protect complainants from inhumane, abusive, and discriminatory treatment in sexual assault trials, and denied them the right to be heard on the use of their private records.[26] Sexual assault continues to be a gendered crime, committed with near impunity, largely due to low reporting rates.[27] One cause of underreporting is a fear of revictimization as a result of the trial process; this fear is well-founded as numerous studies and this Court have concluded that testifying in a sexual assault trial can be harmful and traumatic.[28] Myths and stereotypes, as well as practices that include 'whacking the complainant', persist.[29] For many women and girls, the psychological and emotional cost of engaging in the criminal justice system is so high that it impedes reporting sexual offences.[30]

21. The respondent Reddick suggests that recognizing complainant trauma results in a "new myth" about the "fragile complainant."[31] Respectfully, Reddick fundamentally misapprehends the nature of complainant vulnerability. Vulnerability is not an individual failing; rather, it arises from "systemic gender discrimination and the social construction of sexual violence as private and personal...."[32] Also, complainants are disproportionately from racialized, disabled, Indigenous, and

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[25] Reddick Factum at para 3.
[26] *R v Barton*, 2019 SCC 33 at para 1.
[27] Bellehumeur at 2-4; Craig, *Putting Trials on Trial*, at 3, 9, 219-222; Research and Statistics Division, "JustFacts: Sexual Assault" (April 2019), online: Department of Justice < https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/apr01.html> [**JustFacts**]; Statistics Canada, "From Arrest to Conviction", by Christine Rotenberg (October 2017), online: Statistics Canada <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54870-eng.htm> [Rotenberg]; Statistics Canada, "Self-reported sexual assault in Canada, 2014", by Shana Conroy & Adam Cotter (July 2017), online: Juristat <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14842-eng.htm> [**Conroy & Cotter**].
[28] Bellehumeur at 2-5; Conroy & Cotter; JustFacts; Rotenberg; Craig, *Putting Trials on Trial* at 4, 140-141, 219; Tanovich at 498-499; *R v RV*, 2019 SCC 41 at para 33. See also, *R v Osolin*, [1993] 4 SCR 595 at 628, *per* L'Heureux-Dubé J, dissenting; *R v Goldfinch*, 2019 SCC 38 at para 37; Senate Standing Committee at 9.
[29] *R v Barton*, 2019 SCC 33 at para 1; Tanovich at 495, 499; Craig, *Putting Trials on Trial*, at 42, 58, 61-99, 219-220.
[30] Craig, *Putting Trials on Trial*, at 4-11; Bellehumeur at 2, 4, 5, 19: As Bellehumeur notes at 19, there is an argument that s. 7 of the *Charter*, the right to security of the person, is violated when unrepresented victims of sexual violence are put at risk of re-victimization or re-traumatization by unfair treatment in the criminal justice system.
[31] Reddick Factum at paras 33-36.
[32] Craig, *Putting Trials on Trial*, at 9, 10, 135-136, 151-157.

low-socio economic status communities, further compounding the inequality they face.[33] It is this *structural* vulnerability that requires legislators and trial judges to be concerned with complainants' equality, privacy, dignity, and personal security rights.

22. Given this context, LEAF submits that the scope of the complainant's participatory rights must be interpreted contextually to give meaningful effect to her *Charter* rights.[34] When substantive equality principles are applied to elucidate the content of these rights, the scope of the meaningful participatory rights should ordinarily include: adequate notice of the application prior to trial; service of the application record; the right to attend the admissibility hearing; the right to make submissions; the right to cross-examine witnesses at the hearing or lead evidence, if necessary; and, the right to counsel to assist with the foregoing. The judge retains residual discretion to vary the procedure in the extraordinary cases where the usual scope of the complainant's participatory rights will deprive the accused of a fair trial.

i. A meaningful right to access counsel is integral to the scheme

23. LEAF submits that a meaningful right to independent counsel for complainants is a fundamental aspect of the records screening regime. Section 278.94(3) requires the judge to inform the complainant of her right to be represented by counsel. This provision creates a coherent and consistent procedure by which complainants' access to counsel will be given effect. While complainants always had the right to retain counsel, practical and structural barriers often precluded them from doing so: lack of awareness that retaining counsel was an option; incorrectly believing the Crown was their lawyer; living in remote communities with lack of access to counsel; language barriers; and/or poverty, trauma, mental health or disability challenges.[35]

24. With access to counsel, a complainant gains an advocate who owes her duties of undivided loyalty, confidentiality, and fearless client-instructed advocacy, within the proper confines of the law and in keeping with her lawyer's concurrent duties to the court and counsel. Access to counsel breathes life into complainants' ability to be informed, exercise autonomy, and experience the trial process as fair. This improves confidence in the justice system and reduces rates of attrition.[36]

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[33] Conroy & Cotter; Craig, *Putting Trials on Trial* at 21, 75.
[34] *R v Mills*, [1999] 3 SCR 668 at paras 61-64.
[35] Senate Standing Committee at 26-27; Craig, *Putting Trials on Trial* at 10.
[36] Bellehumeur at 7-11, 15-16, 20; Haley Clark, "What is the justice system willing to offer?" (2010) 85 Family Matters 28 at 29 to 36; Sir John Gillen, Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland (May 2019) at 173.

25. The application judge was troubled by the prospect that the complainant may take a different position from that of the Crown on the admissibility of records.[37] Respectfully, there is nothing problematic about such a scenario. While the Crown is well-placed to address many of the s. 278.92(3) factors, it is the complainant who will best be able to articulate how admission of the proposed evidence will impact her. Counsel may raise concerns about any discriminatory beliefs or bias; these could include the 'twin myths', but could also include other rape myths, or myths and stereotypes based on race, religion, sex, gender, disability, or mental health. A tripartite process ensures that her unique viewpoint assists the judge in coming to the right decision in each case. This is particularly so because Crown attorneys and trial judges cannot always be relied upon to adequately protect complainants' rights or advance their perspective.[38]

ii. The provision of counsel does not unconstitutionally deny the defence disclosure

26. The application judge found that, under the previous regime, the Crown would consult with complainants and disclose any comments or explanations, but the new provisions removed this "constitutional safeguard."[39] The Respondent Reddick argues that the complainant's access to counsel deprives the defence of disclosure of her initial reaction to the application.

27. The idea that the accused has a constitutional right to surprise the complainant with records incorporates stereotypes about how an 'honest witness' ought to react when first confronted with information.[40] Ambush tactics have a disproportionately negative impact on the dignity and security of women who are survivors of trauma, experience mental illness or cognitive disabilities, or have cultural differences that impact their manner of response, with the result that their first reaction may be unfairly construed as evasive, obfuscatory, or overly passionate or dispassionate. Providing complainants with counsel and the opportunity to consider information before the trial reduces these impacts and enhances the reliability of their responses.[41] A complainant may well have an explanation for a record that appears on its face to be inconsistent with other evidence, but she may simply be unable to provide this explanation immediately upon being surprised with the record on the witness stand. If a complainant, upon consultation with counsel, has explanations to

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[37] *R v Reddick*, 2020 ONSC 7156 at para 103.
[38] See, *eg*, *R v Barton*, 2019 SCC 33; Craig, *Putting Trials on Trial* at 137-139, 167-174, 191-206, 219-220.
[39] *R v Reddick*, 2020 ONSC 7156 at para 100.
[40] Gotell at 260.
[41] *R v MS*, 2019 ONCJ 670 at paras 104-107; Craig, "Private Records" at 795-796.

offer, she may make the informed decision to provide a subsequent statement, which would then be disclosed to the defence.

28. Without access to counsel, complainants are placed in the precarious and unfair position of being conscripted to give evidence when consulting with the Crown respecting an admissibility application, even if the proposed evidence is ultimately ruled to be inadmissible.[42]

29. By treating complainants humanely throughout the admissibility hearing process, by providing them with information, a voice and agency, the records screening regime enhances the *Charter* rights of complainants, and the broader societal interest in encouraging reporting of sexual offenses, while maintaining a constitutional balance with the accused's rights.

PART IV - SUBMISSIONS RESPECTING COSTS

30. LEAF is a non-profit organization represented on this appeal by counsel acting *pro bono* or at reduced rates contingent on funding approval. LEAF does not seek costs and asks that no costs be ordered against it.

PART V - ORDER REQUESTED

31. LEAF requests that this appeal be determined in accordance with the above submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of September 2021.

for Kelley Bryan

Karen A. Steward

Counsel for the Intervener, Women's Legal Education and Action Fund

[42] For example, an accused may provide an affidavit seeking to admit records relating to contextual relationship evidence or after-the-fact sexual activity. A complainant reviewing this information with Crown counsel may make spontaneous utterances in response, without the benefit of independent legal advice. These utterances would then be disclosed to the accused. The proposed evidence may then ultimately be found not to meet the admissibility criteria, yet the complainant has unnecessarily provided a further statement, possibly in highly private areas, that does nothing to advance the truth-seeking function of the court but intrudes upon her dignity and privacy.

PART VI – TABLE OF AUTHORITIES

Jurisprudence

	Authority	**Paragraph Referenced**
1.	*Andrews v Law Society of British Columbia*, [1989] 1 SCR 143	15
2.	*Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130	17
3.	*LLA v AB*, [1995] 4 SCR 536	19
4.	*New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46	15
5.	*Quebec (Public Curator) v Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 SCR 211	17
6.	*R v Barton*, 2019 SCC 33	4, 20, 25
7.	*R v CC*, 2019 ONSC 6449	7, 12, 16
8.	*R v Darrach*, [2000] 2 SCR 443	8, 15
9.	*R v Ewanchuk*, [1999] 1 SCR 330	17
10.	*R v FA*, 2019 ONCJ 391	12
11.	*R v Goldfinch*, 2019 SCC 38	20
12.	*R v Jarvis*, 2019 SCC 10	16
13.	*R v JP*, 2019 ONCJ 871	13
14.	*R v Mills*, [1999] 3 SCR 668	4, 7, 8, 10, 12, 15, 22
15.	*R v Morgentaler*, [1988] 1 SCR 30	17
16.	*R v MS*, 2019 ONCJ 670	27
17.	*R v Navaratnam*, 2021 ONCJ 272	12
18.	*R v Osolin*, [1993] 4 SCR 595	17, 20
19.	*R v Reddick*, 2020 ONSC 7156	25, 26
20.	*R v RS*, 2019 ONCJ 645	19

	Authority	Paragraph Referenced
21.	*R v RV*, 2019 SCC 41	20
22.	*R v Seaboyer; R v Gayme*, [1991] 2 SCR 577	9
23.	*R v Shearing*, 2002 SCC 58	9

Parliamentary Record

	Source Document	Paragraph Referenced
1.	Minister of Justice and Attorney General of Canada Jody Wilson-Raybould, *House of Commons Debates*, 42-1, Vol 148, No 366	19

Secondary Sources

	Source Document	Paragraph Referenced
1.	Karen Bellehumeur, "A Former Crown's Vision for Empowering Survivors of Sexual Violence" (2020) 37 Windsor YB Access Just	18, 20, 24
2.	Haley Clark, "What is the justice system willing to offer?" (2010) 85 Family Matters 28	24
3.	Elaine Craig, "Private Records, Sexual Activity Evidence, and the Charter of Rights and Freedoms" 2021 58:4 Alta Law Rev	10, 12, 15, 16, 27
4.	Elaine Craig, *Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession* (Montreal, QUE & Kingston, ON: McGill-Queen's University Press, 2018)	10, 20, 21, 23, 25
5.	Sir John Gillen, Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland (May 2019)	24
6.	Lise Gotell, "The Ideal Victim, the Hysterical Complainant, and the Disclosure of Confidential Records: The Implications of the Charter for Sexual Assault Law" (2002) 40 Osgoode Hall LJ 251-295	10, 27

7.	David M. Tanovich, "'Whack' No More: Infusing Equality into the Ethics of Defence Lawyering in Sexual Assault Cases" (2013) 45 Ottawa L Rev 495	10, 20
	Source Document	**Paragraph Referenced**
8.	Research and Statistics Division, "JustFacts: Sexual Assault" (April 2019), online: Department of Justice < https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/apr01.html>	20
9.	Senate, Standing Committee on Legal and Constitutional Affairs, 42nd Parl, 1st Sess, Issue No 47 (June 2018)	12, 18, 20, 23
10.	Statistics Canada, "Self-reported sexual assault in Canada, 2014", by Shana Conroy & Adam Cotter (July 2017), online: Juristat <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14842-eng.htm>	20
11.	Statistics Canada, "From Arrest to Conviction: Court outcomes of police-reported sexual assaults in Canada, 2009 to 2014", by Christine Rotenberg (October 2017), online: Statistics Canada <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54870-eng.htm>	20

Statutes, Legislation, Rules, Etc.

	Statute, Legislation, Rule, Etc.	**Rule, Section**	**Paragraph Referenced**
1.	*Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11	Section 1 Section 7 Section 11(d) Section 15 Section 28	1, 4, 5, 17, 19, 20, 22, 29
	Loi constitutionnelle de 1982, Annexe B de la Loi de 1982 *sur le Canada* (R-U), 1982, c 11	Section 1 Section 7 Section 11(d) Section 15 Section 28	1, 4, 5, 17, 19, 20, 22, 29

	Statute, Legislation, Rule, Etc.	Rule, Section	Paragraph Referenced
2.	*Criminal Code*, R.S.C., 1985, c. C-46	Section 276 Section 278.1 Section 278.3 Section 278.92 Section 278.93 Section 278.94	2, 8, 9, 10, 12, 14, 23, 25
	Code criminel, L.R.C. (1985), ch. C-46	Section 276 Section 278.1 Section 278.3 Section 278.92 Section 278.93 Section 278.94	2, 8, 9, 10, 12, 14, 23, 25

PART VII – STATUTORY PROVISIONS

See Part VI above