Melisa Onder

169024480

PO209 - Legal Writing

Jeff Boich

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Legal Memorandum

To: WLU LLP, Wilma Willwe, Senior Partner
From: Melisa Onder
RE: MEMORANDUM OF LAW

Overview

This legal memorandum was prepared with the purpose of analyzing the errors of law in the SCC's (Supreme Court of Canada) decision in *R v. Ndhlovu.* This is a criminal law case which examines the constitutionality of mandatory *Sex Offender Information Registration Act* (*SOIRA*) orders for those convicted of one or multiple designated offences. These provisions are specifically outlined in sections 490.012 and 490.013(2.1) of the *Criminal Code* (*R v. Ndhlovu,* 2022). This legislation was challenged as violating section 7 of the *Canadian Charter of Rights and Freedoms*, which outlines the right to life, liberty, and security of the person. These sections were also challenged as violating section 12 of the *Charter*, which protects the right not to be subjected to any cruel and unusual treatment or punishment (*R v. Ndhlovu,* 2016). This analysis will show that the Crown has grounds for appeal based on a failure to properly apply the relevant precedents, including *R v. Redhead, R v. Long,* and *R v. Dyck.*

Facts

In 2015, Mr. Ndhlovu pled guilty to two counts of sexual assault which had occurred at a party on March 12th, 2011. At the time of the incidents, Mr. Ndhlovu was 19 years old and attending a party hosted by Ms. RD, who had invited him personally and made arrangements for him to attend and stay the night despite his initial reluctance. The party was "advertised" on Ms. RD's Facebook page as a highly sexualized event, and over the course of the evening Mr. Ndhlovu, Ms. RD, and their mutual friend, Ms. CB, consumed alcohol together. As the night

progressed, both Ms. RD and Ms. CB reported multiple incidents of non-consensual sexual touching by Mr. Ndhlovu. Early the next morning, Ms. RD awoke to find Mr. Ndhlovu sexually assaulting her. He stopped and left the residence after she protested several times and pushed him away. Mr. Ndhlovu later pled guilty to one charge of sexual assault against Ms. RD and one charge of sexual assault against Ms. CB, despite claiming to police that he did not remember the whole night due to intoxication (*R v. Ndhlovu,* 2016).

During sentencing, the trial judge considered the circumstances of the offence, Mr. Ndhlovu's apparent remorse, and his lack of criminal history. Based on these factors, Mr. Ndhlovu received a sentence of six months imprisonment followed by three years of probation, with the judge concluding that he was unlikely to reoffend (*R v. Ndhlovu,* 2016).

Section 490.012 of the *Criminal Code* states that *Sex Offender Information Registration Act* (*SOIRA*) orders are mandatory for offenders convicted of designated offences including sexual assault, while section 490.013(2.1) mandates lifetime registration for individuals convicted of more than one designated offence (*R v. Ndhlovu,* 2016). Based on this legislation, Mr. Ndhlovu was subject to mandatory lifetime registration in the national sex offender registry without room for judicial discretion. This legislation is based on amendments that were made to *SOIRA* and the *Criminal Code* in 2011 under the *Protecting Victims from Sex Offenders Act* (Protecting Victims From Sex Offenders Act, SC 2010).

SOIRA was first introduced in 2004 to create a national registry of sex offenders, with the purpose of helping police investigate crimes of a sexual nature. This act outlines reporting requirements and sets out the procedure for registration. Initially, sentencing judges had discretion on whether or not to impose *SOIRA* orders and were able to refuse a *SOIRA* order if its effects on the offender's privacy or liberty were grossly disproportionate to the public interest in

protecting society. In addition, only authorized persons were permitted to consult the database "for the purpose of investigating a specific crime that there are reasonable grounds to suspect is of a sexual nature" (*R v. Ndhlovu,* 2016).

However, in 2011 Parliament passed the *Protecting Victims from Sex Offenders Act* which amended both the *Criminal Code* and *SOIRA*. These amendments brought about significant changes: *SOIRA* orders became mandatory for designated offences, judicial discretion not to impose *SOIRA* orders was removed, additional reporting requirements were imposed on offenders, and the purpose of the registry was expanded to include crime prevention in addition to investigation. The amendment also made it possible for authorized persons to consult the database "for the purpose of preventing or investigating a crime of a sexual nature" (*R v. Ndhlovu,* 2016). The purpose of the *Protecting Victims from Sex Offenders Act* was "to enhance police investigation of crimes of a sexual nature and allow police services to use the national database proactively to prevent crimes of a sexual nature" (Protecting Victims From Sex Offenders Act, SC 2010).

Mr. Ndhlovu challenged sections 490.012 and 490.013(2.1) of the *Criminal Code* on constitutional grounds, arguing that the absence of judicial discretion to impose *SOIRA* orders for sexual offenders is contrary to section 7 and section 12 of the *Canadian Charter of Rights and Freedoms*. These sections guarantee the right to life, liberty and security of the person, as well as the right not to be subjected to any cruel and unusual treatment or punishment. Mr. Ndhlovu contends that the imposition of *SOIRA* orders on all sexual offenders is arbitrary, overboard and grossly disproportionate, and thus contrary to the principles of fundamental justice. Mr. Ndhlovu highlights the significant burdens imposed by *SOIRA* orders, including prolonged internal stigma and random police intrusions into his life at home, school or work. He argues that these impacts,

which can severely harm his personal relationships or employment, make requiring all offenders to register for life, including those who are not likely to reoffend, disproportionate to the goal of protecting the public (*R v. Ndhlovu,* 2016).

The Crown counters this, arguing that the National Registry is established on the assumption that all convicted sex offenders have an increased propensity to commit sex crimes. Thus, there is a clear connection between the purpose of *SOIRA*, which is collecting up-to-date information to facilitate police investigation and prevention of sex crimes, and the adverse effects of mandatory registration on offenders. Due to the risk of serious harm to potential future victims of sexual offences, and because it cannot be reliably determined which offenders will reoffend, it is not overly broad to require all sexual offenders to register. In addition, the Crown argues that the reporting requirements under *SOIRA* are minimal, as it does not prohibit any activities or restrain travel, and the information provided is subject to strict confidentiality rules. Finally, any stigma experienced by the offenders is as a result of the conviction itself, and not from the reporting requirements. Thus, the Crown concludes that mandatory *SOIRA* orders do not breach any of the principles of fundamental justice (*R v. Ndhlovu,* 2016).

Procedural history & holding

R v. Ndhlovu began at the Court of King's Bench of Alberta, then proceeded to the Court of Appeal of Alberta, and was ultimately adjudicated by the SCC in 2022.

Court of King's Bench of Alberta

The trial judge at the Court of King's Bench of Alberta, Madam Justice A.B. Moen, determined that Section 490.012 of the *Criminal Code* unjustifiably infringes section 7 of the *Canadian Charter of Rights and Freedoms.* This was based on her finding that mandatory *SOIRA* orders deprive offenders of their life, liberty or security of the person, and that the deprivation of

liberty is contrary to the principles of fundamental justice. Once the judge identified this section 7 breach, it was unnecessary to consider Mr. Ndhlovu's argument on section 12 of the *Charter*. Thus, section 490.012 of the *Criminal Code* was declared to be of no force or effect, and there was no *SOIRA* order made with respect to Mr. Ndhlovu (*R v. Ndhlovu,* 2016).

It was later determined at a 2018 hearing at the Court of King's Bench of Alberta that the infringements on Mr. Ndhlovu's section 7 rights could not be saved by section 1 of the *Charter* (*R v. Ndhlovu,* 2018).

Court of Appeal of Alberta

In 2020, *R v. Ndhlovu* was appealed to the Court of Appeal of Alberta. The appeal was allowed, as the Court of Appeal found that the sentencing judge erred in finding that Mr. Ndhlovu had established a deprivation of his section 7 Charter rights that was not in accordance with the principles of fundamental justice. Based on their finding that there was no section 7 breach, the Court of Appeal declined conducting a section 1 analysis. Thus, sections 490.012 and 490.013(2.1) of the *Criminal Code* were found to be constitutionally valid (*R v. Ndhlovu,* 2020).

Supreme Court of Canada

Finally, *R v. Ndhlovu* was appealed to the SCC in 2022. The appeal was allowed, and the SCC examined the following issues of law: (1) Do sections 490.012 and 490.013(2.1) of the *Criminal Code* breach section 7 of the *Charter*? (2) If so, are the breaches justified under section 1 of the *Charter*? (3) If they are not justified, what is the appropriate remedy? The SCC ruled that Sections 490.012 and 490.013(2.1) of the *Criminal Code* infringe section 7 of the *Charter*, and cannot be saved by section 1. Therefore, the provisions were declared to be of no force or effect under section 52(1) of the *Constitution Act* (*R v. Ndhlovu,* 2022).

Issue

The core issue on appeal is whether the SCC erred in its determination that sections 490.012 and 490.013(2.1) of the *Criminal Code* violate Section 7 of the *Charter* and are thus unconstitutional. The provisions, both in general and in their application to Mr. Ndhlovu's case, are neither arbitrary, overbroad nor grossly disproportionate. The relevant legislation is carefully designed to balance the offender's rights with public safety and law enforcement needs. Thus, the SCC's decision rests on a flawed interpretation of *SOIRA*'s purpose and the principles of fundamental justice. While mandatory *SOIRA* orders engage section 7 of the *Charter* by interfering with an offender's liberty, this deprivation of section 7 rights is consistent with the principles of fundamental justice. There is no reason to consider an analysis of section 1 of the *Charter* as section 7 of the *Charter* has not been breached.

Arbitrariness

Mandatory *SOIRA* orders are not arbitrary. Arbitrariness describes the absence of a rational connection between a law's purpose and its impugned effect on the individual (*R v. Ndhlovu,* 2020). There is a clear rational connection between being convicted of a designated sexual offence and being included on the National Registry for sex offenders. Having accurate and up-to-date information about persons more likely to commit sexual offences is directly connected to *SOIRA*'s purpose of investigating and preventing sexual crimes. Based on this reasoning, both the original sentencing judge and the judge at the Court of Appeal concluded that sections 490.012 and 490.013(2.1) of the *Criminal Code* were not arbitrary (*R v. Ndhlovu,* 2020).

Gross disproportionality

Gross proportionality is found where a law's effects on life, liberty, or security of the person are so grossly disproportionate to its purposes that they cannot rationally be supported (*R*

v. Ndhlovu, 2020). While the registration and reporting requirements under *SOIRA* imposes a burden on offenders, these requirements are not so burdensome that they can be disconnected from the legislation's purpose. As outlined in *R v. Long*, the purpose of SOIRA and the sex offender information provisions of the *Criminal Code* (ss. 490.011 to 490.032) is to ensure that the information on the National Registry is complete, current, and accurate, so that police are able to identify and locate a convicted sex offender when seeking to prevent or investigate a sex crime (*R v. Long,* 2015). The exclusion of any particular sex offender from the National Registry, whether or not they may be considered low risk, undermines the purpose of the legislation and the National Registry itself.

The burdens imposed by *SOIRA* are not grossly disproportionate; rather, they are minimal and reasonable compared to the significant objective of protecting society from recidivist sexual offenders. Access to the Registry is controlled and confidential, with information being strictly limited to police use for the prevention and investigation of sexual offences (*R v. Ndhlovu,* 2020). As outlined in *R v. Dyck*, the reporting requirements are limited in their informational scope and do not significantly limit lawful activities or dictate where offenders can go or whom they can associate with (*R v. Dyck,* 2005). Any stigma experienced by an offender from being labelled a sex offender stems from the convictions themselves, not registration. Finally, the duration of a *SOIRA* order is directly linked to the maximum term of imprisonment for that sexual offence, displaying that Parliament embedded proportionality into the legislation. Termination orders are available for offenders who can meet the high standard of demonstrating that there has been a truly disproportionate impact on their privacy or liberty (*R v. Ndhlovu,* 2022).

Overbreadth

A law is overbroad when it is so broad in scope that it includes some conduct that bears no rational connection to its purpose, making it arbitrary in part (*R v. Ndhlovu,* 2020). In addition to *SOIRA*'s explicitly stated purpose of aiding police services in investigating and preventing sexual crimes, extrinsic evidence indicates that Parliament amended *SOIRA* in 2011 to provide for automatic registration of sex offenders in response to concerns that National Registry's effectiveness was compromised due to the exercise of judicial discretion to exempt nearly half of all convicted sex offenders from registration (*R v. Ndhlovu,* 2022). Different judges may make different assessments about the seriousness of criminal conduct and an offender's risk to reoffend; this is exemplified by the judge at the Court of Appeal noting that in her view, there was nothing minor about the offences committed by Mr. Ndhlovu, despite the sentencing judge characterizing the offences as minor (*R v. Ndhlovu,* 2020). Thus, sections 490.012 and 490.013(2.1) are essential components to *SOIRA*'s statutory purpose of aiding police services in investigating and preventing sexual crimes.

Longstanding SCC jurisprudence endorses the rationality of Parliament's view that the consequences of all crimes of a sexual nature are inherently serious, regardless of the particulars of each circumstance (*R v. Ndhlovu,* 2020). As noted in *R v. Seaboyer; R v. Gayme*, sexual crimes against women and children are for the most part unreported, unlike other crimes of a violent nature (*R. v. Seaboyer; R. v. Gayme*, 1991). Conservative estimates indicate that at least one in five women in Canada will be sexually assaulted during her lifetime (*R v. Ndhlovu,* 2020). Additionally, one in two females will be the victim of unwanted sexual acts according to the Report of the *Committee on Sexual Offences Against Children and Youth* (*R v. Ndhlovu,* 2020). By all accounts, women are victimized at an alarming rate, with evidence suggesting that sexual assault rates are increasing. Perhaps more than any other crime, the fear and ongoing reality of

sexual assault affects how women navigate their lives and how they define their relationship with society as a whole (*R v. Ndhlovu,* 2020).

In addition, Parliament is entitled to cast a wide net in requiring registration for all sex offenders based on the shared characteristic that all sex offenders have a heightened risk of committing a future sexual offence (*R v. Ndhlovu,* 2022). Expert evidence suggests that persons convicted of a sexual offence are five to eight times more likely to reoffend than those convicted of a non-sexual offence, and even sexual offenders who are considered low risk pose a heightened risk to commit another sexual offence relative to the general criminal population (*R v. Ndhlovu,* 2022). Based on this shared characteristic, Parliament deliberately chose not to distinguish between more serious and less serious sexual offences or higher risk and lower risk offenders when enacting sections 490.012 and 490.013(2.1). These provisions are not overbroad and do not deprive an offender's section 7 rights in a manner that bears no connection to its objective; a prior conviction for a sex offence is a reliable indication of risk of committing a sexual offence, and is thus a proper method of assessing that risk. Thus, there is a rational connection between mandatory registration on the basis of a sex conviction and *SOIRA*'s purpose of protecting society from the harm posed by recidivist offenders (*R v. Ndhlovu,* 2020).

Finally, the mandatory inclusion of all sex offenders on the National Registry is justified due to the uncertainty in predicting which offenders will reoffend (*R v. Ndhlovu,* 2020). Experts agree that recidivism risk cannot be determined with certainty at sentencing, and observed recidivism rates often underestimate true reoffending rates. Given that a risk assessment cannot guarantee whether any individual will reoffend, it is dangerous to use a risk-based assessment to determine which offenders should be registered; any exclusion of convicted sex offenders necessarily results in police not having information on some offenders who do, in fact, reoffend.

Thus, Parliament's approach to include all convicted sex offenders in the National Registry ensures the law is appropriately tailored to its purpose, prioritizing public safety and addressing the inherent uncertainty for prosecutors and judges in predicting individual recidivism (*R v. Ndhlovu,* 2022).

Analysis

In analyzing the issue of law with the SCC's decision in *R v. Ndhlovu*, there are a number of precedents which illustrate how the SCC erred in its ruling. These cases emphasize the broader purpose of *SOIRA* to protect society over the rights of sexual offenders.

R v. Redhead, 2006 ABCA 84

The respondent, Mr. Redhead, sexually assaulted a 28 year old complainant who has the mental capacity of a 7 year old. Mr. Redhead caught the complainant as she was trying to run away, bit her, and forced her to have sexual intercourse with him twice. The respondent was intoxicated at the time of the assault. Mr. Redhead pled guilty to sexual assault and was sentenced to 30 months in custody, however, the trial judge refused to grant a *SOIRA* order under section 490.012 of the *Criminal Code*. The Crown appealed this decision, alleging that the trial judge erred in (1) Applying the wrong standard in deciding whether to grant a *SOIRA* order; (2) Finding the respondent had established the criteria under section 490.012(4) for refusal of the *SOIRA* order in the absence of any relevant evidence; and (3) Considering irrelevant factors in deciding to refuse the *SOIRA* order, namely: the respondent was intoxicated at the time of the offense, he had no related criminal record, and the complainant was not a child (*R v. Redhead*, 2006).

Upon conducting its analysis, the Court of Appeal of Alberta allowed the Crown's appeal given that the trial judge erred in finding the respondent had met the criteria for refusal of the *SOIRA* order. Mr. Redhead was thus required to comply with the *SOIRA* for a period of 20 years (*R v. Redhead*, 2006).

Although the constitutionality of *SOIRA* or of any of its provisions was not argued in the *R v. Redhead*, this case outlined important stare decisis in terms of exemption from the National Registry. While previously in *R v. Have* the court found that the purpose of *SOIRA* was to investigate predatory offences, particularly those involving children, *R v. Redhead* provides valuable clarification of *SOIRA*'s legislative purpose. The Court of Appeal found that the language of section 490.012 did not suggest its application was so limited; rather, the legislation's purpose is to protect society as a whole, not just a particular sub-category of society. The Court rejected the argument that an offender's lack of criminal history or low risk of reoffending excluded them from *SOIRA*'s scope. The wording of section 490.012 after the 2011 amendments to *SOIRA* and the *Criminal Code* continues to reflect "Parliament's recognition of predictable repetitive behaviour of sexual offenders, and the inordinate consequences of sexual offences for victims of any age." Therefore, to exclude Mr. Ndhlovu from the registry simply due to the influence of alcohol, his lack of a criminal record, and his low risk of reoffending would be directly contrary to both the clear wording of *SOIRA*'s legislative purpose and the findings made in *R v. Redhead* (*R v. Redhead*, 2006).

Furthermore, the Court in *R v. Redhead* found that Parliament has established a public interest in including all persons who commit designated sexual offences on the National Registry. Had Parliament intended for courts to decide on a case-by-case basis whether there is a public interest in registering an offender, considering all individual circumstances surrounding

each offender and their offence, it would have explicitly stated this in the legislation's wording. The Court in *R v. Redhead* emphasized that, unless there are special circumstances extending far beyond those experienced by any offender subject to a *SOIRA* order, even the lowest risk sex offenders are required to register. The law has remained unchanged in this regard since the 2011 amendments. Thus, the judicial exemption previously set out in section 490.012(4) was not designed to exclude lower risk offenders, or make exemptions based on the individual circumstances of a sexual offence such as the lack of a criminal record or the influence of alcohol. Rather, the exemption was meant only for grossly disproportionate impacts that went far beyond those experienced by any offender (*R v. Redhead*, 2006). In the context of *R v. Ndhlovu*, these legal principles established in *R v. Redhead* highlight that mandatory registration under *SOIRA* is not subject to judicial discretion based on an offender's individual circumstances. Therefore, even if Mr. Ndhlovu's offences were viewed as less severe or committed under mitigating conditions, the law mandates his inclusion on the National Registry registry unless the consequences are grossly disproportionate, which was not established in his case.

R v. Long, 2015 ONSC

The respondent, Mr. Long, was convicted of three counts of sexual assault on August 22, 2013. The complainant, a 29-year-old with a learning disability, was employed as a part-time office assistant at the Mr. Long's health food store. Over the course of one workday, December 1, 2011, Mr. Long kissed the complainant, touched her breasts over and under her clothing, and licked her breast. The complainant testified that she did not consent to any of these actions. Though Mr. Long claimed the interactions were consensual and denied that the third event took place, the trial judge rejected this and convicted him of all three counts of sexual assault. On November 15, 2013, Mr. Long was sentenced to a 90-day intermittent sentence, two years of

probation, and a 10-year *SOIRA* order. Mr. Long served the custodial sentence, and the Crown subsequently applied to amend the *SOIRA* order to lifetime registration pursuant to section 490.013(2.1) of the *Criminal Code*, as Mr. Long had been convicted of more than one designated offence. In response, Mr. Long brought a constitutional challenge under section 7 of the *Charter* arguing that section 490.013(2.1) was arbitrary, overbroad and grossly disproportionate. Mr. Long appealed this matter to the Ontario Superior Court (*R v. Long*, 2015).

Upon conducting its analysis, the Ontario Superior Court ruled that there had been no breach of section 7 of the *Charter*, and the appellant's appeal was therefore dismissed (*R v. Long*, 2015).

R v. Long is a valuable precedent in appealing *R. v. Ndhlovu*. *R v. Long* was decided in 2015, meaning its analysis took into account the 2011 amendments to *SOIRA* and the Criminal Code. In addition, *R v. Long* specifically provides reasoning for why sections 490.012 and 490.013(2.1) of the *Criminal Code* are not overbroad in a manner that is contrary to section 7 *Charter* rights.

Similar to the conclusion reached in *R v. Redhead*, *R v. Long* rejects the argument that an individual assessment of each offender's potential risk is required for sex offender registries to operate within the principles of fundamental justice. *R v. Long* asserts that and that a prior conviction of a sexual offence is a "reasonable proxy" for a risk of re-offending. Thus even if an offender is said to be of low risk to reoffend, this does not mean this risk is absent altogether. The premise underlying the National Registry is that all sex offenders present a greater risk of committing a future sexual offence compared to the rest of the population. This supports the fact that mandatory *SOIRA* orders are not overbroad just because they encompass "low-risk"

offenders, which counters the main argument of the SCC in its ruling in *R v. Ndhlovu* (*R v. Long*, 2015).

R v. Long also directly addresses the purpose of section 490.013(2.1), which mandates lifetime registration for individuals convicted of more than one designated offence. The purpose of this provision is to ensure societal protection by subjecting sex offenders who are at enhanced risk of recidivism to longer periods of registration. Parliament is entitled to apply this provision based on the fact that sex offenders convicted of multiple offences are at an increased risk of re-offending. The Court in *R v. Long* states that "in the absence of evidence to the contrary, the second sexual assault can reasonably be regarded as demonstrating the offender's persistence and impulsiveness, and therefore his enhanced risk of re-offending". Given this rational basis for imposing a longer period of registration for offenders with an added likelihood of reoffending, section 490.013(2.1) is not overbroad (*R v. Long*, 2015). This reasoning can be applied to *R v. Ndhlovu*, with the added consideration that Mr. Ndhlovu's repeated sexual assaults, including the digital penetration of a sleeping victim after being explicitly told by that victim and a separate victim not not to touch her, clearly demonstrate the pattern of persistence and impulsiveness described in *R v. Long* (*R v. Ndhlovu*, 2020). This emphasizes Mr. Ndhlovu's enhanced risk of reoffending, further justifying a longer period of registration under section 490.013(2.1) due to the heightened danger he poses to society.

R v. Dyck, 2008 ONCA

The accused, Mr. Dyck, was convicted of a sexual offence before *Christopher's Law* came into effect. *Christopher's Law* established the National Registry for sex offenders. This legislation was enacted after an eleven year old boy named Christopher Stevenson was brutally murdered in 1998 by Joseph Fredericks, a convicted sexual offender who was on parole at the

time of the murder (Christopher's Law, 2000). *Christopher's Law* requires anyone convicted of a designated sex offence to register with the police as a designated sex offender for a ten year period or for life (*R v. Dyck*, 2008). Mr. Dyck was charged in 2022 with failing to report under *Christopher's Law*, and in response, Mr. Dyck challenged the validity of the statute on federalism grounds and under the *Charter.* The trial judge ruled that *Christopher's Law* did not violate sections 11, 12, or 15(1) of the *Charter* but found it violated section 7 for being overbroad and declared it to be of no force or effect. The Crown appealed this decision, the appeal was allowed, and the summary conviction appeal court affirmed the constitutionality of *Christopher's Law*. Mr. Dyck appealed this decision, and based on its analysis, the Ontario Court of Appeal dismissed the appeal (*R v. Dyck*, 2008).

R v. Dyck provides a valuable precedent in regards to its reasoning around why mandatory *SOIRA* orders do not infringe on section 7 *Charter* rights, most specifically around gross disproportionality. The court in *R v. Dyck* points out that the reporting requirements under *Christopher's Law* are limited in their informational scope, do not prohibit the offender from going anywhere or doing anything, are no more intrusive than other state-imposed registration requirements, impose minimal stigma on the offender and are not publicly known. The Court also points out that the reporting obligations imposed by *Christopher's Law* are similar to those routinely undertaken by citizens in their day-to-day lives. The Court goes on to list several examples in its reasoning: Individuals seeking employment must register with the Employment Insurance Commission, where they are assigned a Social Insurance Number which is then used to track their employment history; providing basic contact information is necessary when applying for or renewing a driver's license, passport, health card, license plate validation tag, or when registering to vote; and Canadians are required to register their annual earnings by filing

income tax forms. These are just some examples of the "registration" and recordkeeping that is already mandated by the State. The Court asserts that neither the informational nor physical duties imposed by SOIRA can be fairly described as so onerous as to be grossly incompatible with the protection of society from recidivist sexual offenders (*R v. Dyck*, 2008).

The information on proportionality in *R v. Dyck* is key in appealing the SCC's decision in *R v. Ndhlovu*, as the provisions of *Christopher's Law* that were analyzed in this case mirror several features of *SOIRA*'s National Registry. This supports the conclusion that *SOIRA*'s registration and reporting conditions are not grossly disproportionate, and thus do not violate the rights to life, liberty, and security of the person as outlined in section 7 of the *Charter*.

Conclusion

Overall, the analysis demonstrates that sections 490.012 and 490.013(2.1) of the Criminal Code, mandating automatic registration for all sec offenders, align with the principles of fundamental justice and do not violate section 7 of the Canadian Charter of Rights and Freedoms. The p recedent cases including *R v. Redhead, R v. Long,* and *R v. Dyck* provide ample evidence that the SCC erred in its ruling in *R v. Ndhlovu,* giving rise to grounds for appeal.

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