

Graham v Her Majesty the Queen
Respondent's Factum

C.A. N^o C-312-15

COURT OF APPEAL FOR ONTARIO

BETWEEN:

WALTER GRAHAM

(Appellant)

- and -

HER MAJESTY THE QUEEN

(Respondent)

RESPONDENT'S FACTUM

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PART I:
INTRODUCTION

1. This case is about the validity of the arrest of Mr. Graham. On the grounds of a DVD that contained child pornography, Detective Chu of the BPD was issued a warrant which was used to obtain evidence that implicated Mr. Graham on the offences he was charged with. Mr. Graham argues that the way in which the DVD was obtained by the BDP infringed on his rights under s. 8 and s. 9 of the *Canadian Charter of Rights and Freedoms*. He argues that Mr. Wood, who provided the police with the DVD, was acting as an agent of the state and was performing a governmental function at the time he obtained the DVD and thus the *Charter* should apply as stated under s. 32. He also argues that because of this, the DVD and all other evidence subsequently found because of it be dismissed under s. 24(2) of the *Charter*.

PART II:
SUMMARY OF THE FACTS

2. Raymond Wood attended a seminar on “protecting your children from online predators” led by Ballyfield Police Department (BPD) Detective Marina Chu.

3. During the presentation, Wood developed an idea for a television show. He described his plan to Detective Chu. Wood would pose as a minor in an online chat room, initiating sexually-explicit conversations with adults and would suggest that the predators meet in person. Wood planned to video tape the confrontations with the suspected predator, which he hoped would create great television drama.

4. Detective Chu told Wood that to ensure that the facilitated contact would constitute a sexual offence, he should pose as a 12- or 13-year-old and seek out online predators who were over the age of majority. Detective Chu then gave Wood her e-mail address and offered further help. Later, she further advised Wood that to generate the most persuasive evidence, he should confront the predators with the chat logs during the interview and have them confess on camera that they intended to have sex with a minor. She suggested that the predators might bring items with them which would be solid evidence of their intention to have sex. Wood promised to hand over any evidence that he obtained to the BPD.

5. Wood set up a chat-room account with the screen name "lonelygirl13" and hired Simone Grande, a youthful-looking 19-year-old actress to pose as the account holder. The account described "lonelygirl13" as 13-year-old girl who was interested in making new friends and meeting someone special.

6. On September 3, 2013, Grande sent a private message to the accused, Walter Graham. Graham was 51 but used the screen name "older_man_31". Grande told him that she was attracted to older men but, was embarrassed by her lack of experience. Graham replied that he was 31, and would be happy to be her boyfriend. Grande eventually invited Graham to meet with her, telling him that she wanted him to be her first. Although he was reluctant, Grande told him that she would find another boyfriend and that he would not refuse to have sex if he truly loved her, and Graham agreed to meet.

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7. Grande gave Graham the address of a house that Wood had rented for the purpose of filming the show. Graham indicated in graphic detail the sexual acts that he intended to perform and mentioned that he would bring a video camera. The next afternoon.
8. On September 29, 2013, Graham arrived at the rented house, where he was confronted by Wood. Graham asked if he was going to go to jail, and Wood closed the door to the room, locked it, and replied, "Let's have a little talk first."
9. Wood confronted Graham with the chat logs and asked him whether he had come to the house intending to have sex with a 13-year-old girl. Graham refused to acknowledge any such intention and Wood read back to him the chat logs where he had expressed to Grande his intent to perform sexual acts on her.
10. Wood then asked whether Graham had brought condoms and a video camera with him. Graham refused to answer, saying, "I don't have to talk to you." Wood then asked whether Graham was aware that it was a crime for an adult to have sex with a 13-year-old, or to talk with one on the internet for that purpose. Graham did not answer the question but asked, "Are you going to book me now?" Wood replied with "Let's have a look inside your bag first," and held out his hand. Graham, believing that Wood was a police officer, handed over his backpack, inside of which Wood found condoms, lubricant, and a DVD.
11. Wood asked Graham one more time whether he had come to the house intending to

have sex with a 13-year-old. Graham begged to be let off with a warning and Wood told him that he was free to go. Graham ran out leaving the back pack behind.

12. The pilot episode failed. On October 25, 2013 Wood visited Detective Chu at BPD. He brought the chat logs, a copy of the pilot, and Graham's abandoned backpack, with all its contents to Detective Chu. On the basis of Wood's account, including his description of the backpack's contents, Detective Chu sought and obtained a warrant to search Graham's backpack.

13. After watching the pilot for the show, she became concerned that Wood's method of interrogating Graham would be subject to *Charter* scrutiny and decided that she could not submit the video as evidence. After reading the chat logs between Graham and Grande, it also became obvious that Grande had initiated the sexual discussion and that the Crown would never succeed in obtaining a conviction for luring, as Grande's aggressive seduction tactics clearly constituted entrapment.

14. However, the DVD in Graham's backpack contained child pornography and on its basis, the BPD obtained a warrant to search Graham's home. They found DVDs containing thousands of hours of footage of child pornography, a studio in which Graham had produced some of the material himself, and accounting records indicating Graham's involvement in the purchase and sale of child pornography.

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15. Graham was charged with making child pornography, distribution of child pornography, possession of child pornography and accessing child pornography, contrary to sections 162.1(2),(3),(4), and (5) of the *Criminal Code*.

At trial, Graham was convicted on all counts.

16. Justice Wright found that Mr. Wood was a state agent in the detention and search of Mr. Graham. After applying the “but for” test from *R v Buhay* Justice Wright found that if Wood had not attended Detective Chu’s presentation he would not have created the pilot episode or have carried out his operation in the same manner he did with the advice from Detective Chu.

17. Justice Wright then found that although Mr. Wood’s interrogation of Mr. Graham did meet the criteria for detention as set in *R v Grant*, it was not arbitrary due to the fact that Mr. Wood only detained him after he had reasonable grounds to believe Mr. Graham was in possession of child pornography.

18. Justice Wright held that Mr. Graham did have a reasonable expectation of privacy in his backpack. However after applying the criteria in *R v Collins* Justice Wright found it met all the criteria and thus did not violate Mr. Graham’s s. 8 *Charter* rights.

19. Justice Wright did not need to consider if the evidence should be excluded under s. 24(2) of the *Charter* because Mr. Graham’s *Charter* rights were not meaningfully breached.

PART III

GROUND OF APPEAL

ISSUE ONE: SHOULD THE *CHARTER* APPLY TO MR. WOOD'S DETENTION AND SEARCH OF MR. GRAHAM?

20. The *Charter* should not apply to Mr. Wood's detention and search of Mr. Graham as he was not acting as a state agent.

21. The information Mr. Wood received from Detective Chu was very general information that could be accessed by anyone. Mr. Wood could have easily accessed that information from another source. As stated in *R v Buhay* general encouragements as the ones Detective Chu gave to Wood is not direct enough to trigger scrutiny under the *Charter*.

Volunteer participation in the detection of crime by private actors, or general encouragements by the police authorities to citizens to participate in the detection of crime, will not usually be sufficient direction by the police to trigger the application of the charter.

R. v. Buhay, [2003] 1 SCR 631, at para 30.

22. Furthermore, in *R v M(M.R.)* the SCC found that a vice principal who searched a student with a police officer present was not in violation of the *Charter*. Mr. Wood only received minimal direction from Detective Chu and like in *R v M(M.R.)* did not act as an agent of the state because of it.

R. v. M. (M.R.), [1998] 3 SCR 393, at para 28.

23. Mr. Wood did not act as an agent of the state. He never intended to hand over the evidence he obtained through his interactions with Mr. Graham. Mr. Wood only handed the evidence over to the police after the pilot for his T.V show failed. Had the show succeeded, he would have never handed the evidence over to police.

24. Mr. Wood detained Mr. Graham in such a way that cannot be held to scrutiny under s. 32 of the *Charter*. He followed the proper procedures laid out in section 494(1) of the *Criminal Code* which states:

494. (1) Any one may arrest without warrant

(a) a person whom he finds committing an indictable offence; or

(b) a person who, on reasonable grounds, he believes

(i) has committed a criminal offence, and

(ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.

Criminal Code, RSC 1985, C-46 at section 494

25. Mr. Graham stated in the chat logs that he was going to be bringing a video camera to the sexual encounter which he believed he would be having with a minor. Through this statement, Mr. Wood had reasonable grounds to believe that Mr. Graham would be in possession of child pornography when he came to the house, which is a crime:

163.1 (4) Every person who possesses any child pornography is guilty of

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(a) an indictable offence and is liable to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

Supra Criminal Code at section 163.1

26. In *R v Skier* the court ruled that a security guard who arrested a person for shoplifting was not subject to scrutiny under the *Charter* because he was performing a citizen's arrest function. Similarly, in this case Wood's actions cannot be taken under scrutiny of the *Charter*.

R. v. Skeir, 2005 NSCA 86 at para 29

ISSUE TWO: IF SO, DID MR. WOOD'S DETENTION OF MR. GRAHAM CONTRAVENE SECTION 9 OF THE CHARTER?

27. The second (2) issue that is under debate in this case is about s. 9 of the *Charter of Rights and Freedoms*, which is the right to not be arbitrarily detained or imprisoned.

Mr. Graham's s. 9 of the *Charter* was not violated. However, if Mr. Wood's were to be found as a state agent or if his actions are subject to the *Charter* by performing a governmental function, the Respondent endorses that Graham's arrest of the Appellant was not in violation of s. 9 of the *Charter*.

28. S. 9 of the *Charter* protects against arbitrary detention or imprisonment. Wood's arrest

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of the Appellant did not violate s. 9 because it was sanctioned by law and the sanction was reasonable and lawful.

Charter, supra para 28 at s 9.

R v Grant, [2009] 2 SCR 353, 2009 SCC 32 at para 54.

A. Wood's arrest of the appellant was authorized by section 494(1)(a) of the *Criminal Code*

29. The *Criminal Code* states:

494.(1) Any one may arrest without warrant

(a) a person whom he finds committing an indictable offence; or

(b) a person who, on reasonable grounds, he believes:

(i) has committed a criminal offence, and

(ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.

supra Criminal Code at 494

30. Section 494(1)(a) authorized Wood's arrest of the Appellant. The *Criminal Code* allows an arrest without a warrant to be authorized by any citizen in Canada if there is rational evidence that the citizen had witnessed validating that the person has committed an indictable offence. The four offences that the appellant was charged with each fall under section 163.1 of the *Criminal Code* and are considered to be indictable offences.

R v Jones, [2005] NBQB 14 13 MVR (5th) 210 [Jones] at paras 7-12, .

31. Mr. Wood had seen the conversation between Graham and Grande, in which he clearly stated his thrill and distinctly described the acts he intended on performing on her. As well as the video camera to which Graham had intended to use for making of child pornography and the DVD which was found in his bag, it emerges as extremely evident that Graham is a guilty individual. It is very clear that Graham had mens rea, the guilty mind, the intent to have sexual activities with the minor. This gave Wood's to have reasonable grounds to believe that Graham was interested in sexual activities with minors and in this case, filming it under section 494(2)(b)(i) because it was clear that Graham was committing an indictable offence.

32. It is challenging to recognize and to grasp information that makes performing a citizen's arrest to be on reasonable grounds, but Mr. Wood was evidently capable of retaining enough information to perform a citizens arrest on reasonable grounds. Wood was thoroughly aware of what Graham had said in the chat room to Grande and knew what his intentions were during the visit. After witnessing that Graham had a video camera in his bag, it made it very clear that his intentions were to film sexual activities with Grande. Also seeing that the bag also contained a sexual DVD, Wood's reasoning to believe that Graham was also violating other aspects of section 494 of the *Criminal Code* are just and lawful.

B. Wood's arrest of the appellant was authorized in section 494(3) of the *Criminal Code*

33. Section 494(3) of the *Criminal Code* required Wood to deliver Graham to a police officer. But Canadian law has now issued that has allowed for an arrest to be lawful even if the person carrying out the arrest fails to comply with section 494(3).

Chopra v T. Eaton Co., 1999 ABQB 201 at paras 155-158, 240 AR 201 [Chopra].

34. Graham's s. 9 Charter Rights have not been infringed. Wood's had reasonable grounds to perform a citizen's arrest, Graham was not arbitrarily detained.

ISSUE THREE: DID MR. WOOD'S SEARCH OF MR. GRAHAM'S BACKPACK CONTRAVENE SECTION 8 OF THE *CHARTER*?

35. The third (3) issue that is under debate in this case is about s. 8 of the *Charter of Rights and Freedoms*, which is the right to be secure against unreasonable search or seizure. Although a search did take place it did not violate Mr. Graham's s. 8 of the *Charter*.

36. A search only constitutes a search when police actions intrude on an individual's reasonable expectation of privacy. A person will only be protected by the charter when it is established that they have a reasonable expectation of privacy and the police breached that privacy. To determine if a person has a reasonable expectation of privacy one must look at the criteria set out in *R v Edwards (1996)*

i. Was present at the time of the search;

- ii. Had possession or control of the property or place that was searched;
- iii. Owned the property or place searched;
- iv. Had historically used the property or item;
- v. Had the ability to control or regulate access to that property or place, including the right to admit or exclude others from it;
- vi. Had a subjective expectation of privacy;and
- vii. Had an expectation of privacy that was objectively reasonable.

(i) Presence at the time of the search;

37. Graham was present at the time of the search that took place in Mr.Wood's rented house.

(ii) Possession or control of the property or place searched;

38. Graham had control of the backpack prior to the search then willingly handed it over to Wood for the search to take place.

(iii) Ownership of the property or place;

39. Graham had ownership over the backpack and its contents.

(iv) Historical use of the property or item;

40. As the backpack was Graham's property it is assumed he had historical use of the backpack and its contents.

(v) The ability to regulate access, including the right to admit or exclude others from the place;

41. Graham had possession to the backpack prior to the search and had the opportunity to refuse the search however he chose to willingly hand over the backpack to Wood for the search.

(vi) The existence of a subjective expectation of privacy; and

42. As Graham was committing an offence in another person's house and not his own he would not have a high expectation of privacy in this situation.

(vii) The objective reasonableness of the expectation.

43. Wood did not use excessive force or coercion and did not have a past of excessive force.

R. v. Edwards, [1996] 1 SCR 128, 1996 255 (SCC) at p.45

See United States v. Gomez, 16 F.3d 254 (8th Cir. 1994), at p. 256.

44. Graham would not have a reasonable expectation of privacy as he was in Wood's rented house and released his control over the backpack as he handed it over to Wood. Graham was aware he could refuse the search as shown in the case while he refused questions posed by Wood to him with this in mind he still chose to hand the bag over willingly.

45. Where it is unreasonable for police to obtain prior authorization exigent circumstances have been held to justify warrantless searches. Therefore Wood did not violate s. 8 of the charter as exigent circumstances can be applied to this case.

Exigent circumstances will generally be held to exist if there is an imminent danger of the loss, removal or destruction or disappearance of the evidence if the search or seizure is delayed.

Regina v. Grant (1993), 84 C.C.C. (3d) 173 (S.C.C.)

If Wood had not searched and seized the backpack at the time that he did Graham could have easily taken the backpack and destroyed all the evidence.

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46. In *R v Kelsy* the court found that law enforcers could search a backpack if they faced exigent circumstances and it would not violate s. 8 of the *charter*.

R. v. Kelsy, 2008 (ON SC) at p. 32

47. In the case of *R v Edwards* the court found that the accused did not have a reasonable expectation of privacy in his girlfriends house as he did not live or contribute to the building. like wise Graham would not have a reasonable expectation of privacy in the house rented by Wood.

Supra R v Edwards at para 50

48. In *Hunter v Southam Inc* the SCC established that a search by police without a warrant will be presumed to be unreasonable unless the crown can prove otherwise factors to prove legal authorization is set out in *R v Collins* in this case the search did not violate Grahams s. 8 *Charter Right* as it meets the criteria in *R v Collins* and therefore authorizes the search.

Hunter v. Southam Inc., [1984] 2 SCR 145, 11 DLR (4th) 641 SCC

1. The search was authorized by law
2. The law itself was reasonable
3. The search was carried out in a reasonable manner

R v Collins, [1987] 1 SCR 265 at para 23, 56 CR (3d) 193 [*Collins*].

1. **The search was authorized by law**

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49. S. 494(1)(a) of the *Criminal Code* authorizes Wood to carry out a search of Grahams backpack. Due to Grahams plan to bring a video camera along with his language towards Grande it was reasonable for woods to suspect Graham of being in possession of child pornography.

50. The common law authorizes an incidental search when three conditions are met

- A. The arrest must be lawful;
- B. The search must have been conducted as an incident to lawful arrest;
- C. The manner in which the search is carried out must have been reasonable

R v Stillman, [1997] 1 SCR 607, 5 CR (5th) 1 at para 27.

A. The arrest was lawful

51. The arrest was lawful under s. 494(1)(a) of the *Criminal Code* as Wood has reasonable grounds to believe Graham was in possession of child pornography.

B. The search was conducted as an incident to the lawful arrest

52. Graham had said he would be bringing a video camera with him which led Wood to believe he would be in possession of child pornography. Wood checked the backpack because it was apparent that there would be incriminating evidence against Graham in it. After retrieving the evidence it was reasonable for Wood to believe that Graham would later hide or destroy the evidence found in the backpack as Graham could easily do so. Therefore Wood had to seize the evidence to ensure it would not be destroyed. Thus conducting a search as an incident to the lawful arrest.

C. The search was carried out in a reasonable manner

53. Mr. Wood carried out the search in a reasonable manner as he did not use excessive force or coercion and treated Mr. Graham with dignity and respect.

2. The law itself was reasonable

54. The law under s. 494(1)(a) of the *Criminal Code* which allows Wood to search the backpack is reasonable. This law gives citizens authority to prevent or stop criminal activity when police are not present or available at the scene of the crime.

3. The search was carried out in a reasonable manner

55. As submitted in paragraph 53, the manner of the search carried out by Wood was reasonable.

56. The search is found to be authorized by law as it fits the criteria provided and therefore the search did not violate s. 8 of the charter.

ISSUE FOUR: IF ANY *CHARTER* BREACH HAS BEEN FOUND, SHOULD THE EVIDENCE OBTAINED DURING THE POLICE SEARCH BE EXCLUDED PURSUANT TO SECTION 24(2) OF THE *CHARTER*?

57. If the court finds that a *Charter* breach has occurred, the evidence should not be excluded pursuant to section 24(2) of the *Charter*.

58. The test set out in *R v. Grant* favours submission of the evidence found in the backpack. The Grant test is a three-factor test in determining whether to exclude evidence as pursuant to section 24(2) of the *Charter*. According to the test set out in Grant, the court

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must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to:

1. Seriousness of the *Charter*-infringing state conduct;
2. Impact on the *Charter*-protected interests of the accused, and
3. Society's interest in the adjudication of the case on its merits.

Supra R v Grant at para 71

59. Two of the factors presented in *Grant* support not excluding the evidence obtained through Wood's search of Graham. Firstly, the *Charter*-infringing state conduct was not serious. Secondly, society is very interested in the adjudication of the case on its merits.

1. Seriousness of the *Charter*-infringing state conduct

60. The *Charter*-infringing state conduct was not serious as Wood did not act on ill intent when conducting the search of the backpack. Wood did not know he was acting as an agent of the state. He was ignorant of Graham's *Charter* rights and it would not be reasonable to assume that Wood knew he was acting in ways that infringed on Graham's rights under section 8 and section 9 of the *Charter*. Had Wood known that he was doing this, Wood would have acted and proceeded in a different manner.

61. Since Wood was ignorant of Graham's rights, he had no intent to act in bad faith. All Wood was concerned with in asking for and opening Graham's bag was to obtain evidence and proof for a conviction.

62. Wood acted in good faith. Unaware of the effect his presence was having on Graham,

Wood asked Graham if he could look into the backpack and stuck his hand out. Not realizing Graham interpreted this as a command, Wood took Graham handing over the bag as consent and opened it in Graham`s presence.

63. The *Charter*-infringing state conduct was not serious because Chu was not aware of Wood's behaviour at his encounter with Graham. She is shown to have respected the *Charter rights* of the accused when she considered and dismissed the chat logs and TV pilot. From all Chu knew, Wood had asked for and obtained the backpack from Graham. Her behaviour in opening the backpack and obtaining a warrant was completely reasonable and justifiable given the circumstances.

3. Society's interest in the adjudication of the case on its merits

64. Society is very interested in the adjudication of the case on its merits. The evidence that Wood obtained from the backpack and the evidence that Chu obtained from the apartment are very credible and show that Graham possessed, produced, accessed, and distributed child pornography. If he is not convicted, the courts will be sending a message to child predators everywhere that this conduct is fine and will put the safety of many children and families at risk.

65. In *R v Sharpe* the Supreme Court stated:

The link between the production of child pornography and harm to children is very strong. The abuse is broad in extent and devastating in impact. The child may be traumatized by being used as a sexual object in the course of making the

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pornography. The child may be sexually abused and degraded. The trauma and violation of dignity may stay with the child as long as he or she lives.

R v Sharpe, [2001] 1 SCR 45, 2001 SCC 2 at para 92

The evidence presented to the court clearly shows that Graham was involved in producing child pornography. If he is not convicted here, Graham will surely continue this perverted hobby and risk causing physical and psychological problems for many children in the future.

66. The evidence presented to the court should not be excluded. The test presented in *R v Grant* clearly finds in favour of not dismissing the evidence. The seriousness of the *Charter*-infringing state conduct was not substantial. Wood and Chu acted in good faith and had no intent to infringe on Mr. Graham's rights. Society is also very interested in the adjudication of the case on its merits. The protection of children from predators is of great interest to society as the first step of keeping society safe is to keep its children safe. Society's interest in the adjudication of this case outweighs the seriousness of the infringement of Mr. Graham's rights. Excluding this evidence would do far more damage to the repute of the justice system than including it would.

Supra R v Grant at para 71

APPLICATION TO THIS CASE

67. The appeal of Mr. Graham should not be permitted. Mr. Wood did not act as an agent of the state as he was following the citizen's arrest procedures laid out in section 494 of the *Criminal Code*. Even if he was acting as an agent of the state, Mr. Wood lawfully detained Mr. Graham in such a way that did not infringe on his rights under s. 9 of the *Charter*. If Mr. Wood

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was acting as an agent of the state, his search of Mr. Graham's bag; and subsequently Detective Chu's search of the bag, was done in a reasonable and justifiable manner and did not infringe on Mr. Graham's rights under s. 8 of the *Charter*. Even if it was found that Mr. Graham's rights were infringed, society's interest in the adjudication of this case outweighs the seriousness of the *Charter*-infringing state conduct. Not excluding the evidence would be far less damaging to the repute of the justice system than excluding the evidence and allowing a guilty man to walk free would be.

PART IV
ORDER REQUESTED

It is respectfully requested that the appeal of Mr. Graham not be allowed and the convictions against him stay in place.

ALL OF WHICH is respectfully submitted by

Wendy Weir
Emily Goode
Phoenix Wright
Of Counsel for the Respondent

DATED AT Walkerton this 24th Day of April, 2015

APPENDIX A

AUTHORITIES TO BE CITED

<u>Cases</u>	<u>Paragraphs</u>
<i>R. v. Buhay</i> , [2003] 1 SCR 631	21
<i>R. v. M. (M.R.)</i> , [1998] 3 SCR 393	22
<i>R. v. Skeir</i> , 2005 NSCA 86	26
<i>R v Grant</i> , [2009] 2 SCR 353, 2009 SCC 32	28,58,66
<i>R v Jones</i> , [2005] NBQB 14 13 MVR (5th) 210 [Jones]	30
<i>Chopra v T. Eaton Co.</i> , 1999 ABQB 201	33
<i>R. v. Edwards</i> , [1996] 1 SCR 128, 1996 255 (SCC)	43,47
<i>United States v. Gomez</i> , 16 F.3d 254 (8th Cir. 1994)	43
<i>Regina v. Grant</i> (1993), 84 C.C.C. (3d) 173 (S.C.C.)	45
<i>R. v. Kelsy</i> , 2008 (ON SC)	46
<i>Hunter v. Southam Inc.</i> , [1984] 2 SCR 145, 11 DLR (4th) 641 SCC	48
<i>R v Collins</i> , [1987] 1 SCR 265 at para 23, 56 CR (3d) 193	48
<i>R v Stillman</i> , [1997] 1 SCR 607, 5 CR (5th) 1	50
<i>R v Sharpe</i> , [2001] 1 SCR 45, 2001 SCC 2	65

Legislation

Criminal Code, RSC 1985, C-46.

Relevant

Sections:

Possession of child pornography (4) Every person who possesses any child pornography is guilty of

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(a) an indictable offence and is liable to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

Arrest without warrant by any person 494.

(1) Any one may arrest without warrant

(a) a person whom he finds committing an indictable offence; or

(b) a person who, on reasonable grounds, he believes

(i) has committed a criminal offence, and

(ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person