IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. D.O.H., 2006 NSPC 43

Date: 20061017
Docket: 1482432; 1502222
Registry: Kentville

Between:

Her Majesty the Queen

v.

D.O.H.

Her Majesty the Queen

v

T.J.D.

Restriction on publication: s. 486(3) Name of complainant or information leading to identity (see attached)

Judge: The Honourable Judge Alan T. Tufts

Heard: April 18, 2006, in Windsor, Nova Scotia

Charge: s. 151 CC; s. 151(a) CC

Counsel: William N. Fergusson, Q.C. for the Crown
Karen Armour, for the defence

Publishers of this case please take note that Section 486(3) of the **Criminal Code** applies and may require editing of this judgment or its heading before publication. The subsection provides:

> (3) Subject to subsection (3.1), where an accused is charged with an offence under section 151, 152, 153, 155, 159, 160, 170, 171, 172, 173, 271, 272, 273, 346 or 347, the presiding judge or justice may make an order directing that the identity of the complainant or of a witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way.

By the Court:

INTRODUCTION

[1] The Crown applies pursuant to s. 490.012 of the **Criminal Code** to have two offenders ordered to comply with the requirements of the **Sex Offender Information Registration Act** (**SOIRA**). DOH and TJD both pled guilty to offences under s. 151 of the **Criminal Code** in two separate and unrelated incidences.

[2] Both offenders were scheduled for sentencing on the 26th day of July, 2005. Sentencing was adjourned to allow the Court to consider the decision of the Nova Scotia Court of Appeal in *R.* v. *Cross*, 2006 NSCA 30 which was not rendered until February of 2006. Each was sentenced on the 4th day of April, 2006. DOH received a suspended sentence together with six months probation and TJD received a suspended sentence with nine months probation.

[3] Section 490.012 requires the Court to make the order in the case of DOH for a period of ten years. In the case of TJD the order is required for life because at the time the application was made TJD was subject to a previous order under either s. 490.019 or s. 490.012 (1) or (2). Subsection 490.012(4) sets out the circumstances in which the Court is not required to make the order.

THE ISSUE

[4] The issue in these applications is what factors are to be considered by the Court in determining whether the impact of the order on the privacy and liberty of the offender would be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature. The Crown specifically argues that the circumstances of the offence and that of the offender should not be considered in determining what the public interest is in these circumstances. The Crown argues that the public interest in registering all “sex offenders” is to be assumed and should not be a function of the particular the circumstances surrounding the offence. The Crown argues that the Court should focus primarily on the impact that registration would have on these particular offenders.

[5] The defence argues to the contrary that the circumstances of the offence and that of the offender ought to be considered in determining the public interest in this context.

[6] The primary issue therefore is to determine whether the Court can take into account the circumstances of the offence and that of the offender in considering whether not to make the order under ss. (4).

[7] Further, of course, the Court must then apply the appropriate analysis to these particular offenders to determine whether in each case the offender should be ordered to comply with **SOIRA**.

THE FACTS

[8] In each case the offender plead guilty. There was no *viva voce* evidence called and the sentence hearing and these applications proceeded by way of submissions. Pre-sentence reports were filed in each case. Neither offender testified at the sentence hearing nor filed any affidavit evidence.

[9] In the case of *R.* v. *TJD*, the offender had been at a lounge with a female friend during the evening of July 3, 2004. The offender was invited back to the friend's house to "crash for the night". After the "friend" retired for the evening the offender went out and sat on the couch with the "friends" daughter and her friend, where the three watched television. The daughter and her friend were ages twelve or thirteen at the time. It is acknowledged that these girls were attracted to the offender and were flirting with him. While sitting on the couch the offender kissed the daughter. No other sexual contact was made. The police acknowledge that the complainant looked older and conceded that she could have gained entrance to a licensed lounge. It is also acknowledged that the defendant, while being twenty-four years of age at the time, presented closer in age to seventeen or eighteen.

[10] The offender TJD has an unrelated criminal record and has served two prior periods of probation.

[11] In the case of DOH, he was involved in a "girlfriend-boyfriend" relationship with the complainant when the offence occurred during May and June of 2002.

During this time the complainant was thirteen years of age and the offender was just eighteen years of age, having turned that age May 8, 2002. The offence consisted of kissing and petting on three separate occasions during a ten to fourteen day period.

[12] DOH has a conviction for sexual assault in which he received a suspended sentence and fifteen months probation. He was sentenced with respect to that offence in May of 2004. The events surrounding that offence occurred after the subject offence. The subject offence was discovered during the investigation of the subsequent offence upon which he has already been sentenced. As a result of this conviction the offender was contacted and given notice under **SOIRA**. As a result of receiving the notice he appeared and consented to being subject to **SOIRA** in May of 2004 for a period of ten years.

LEGISLATION

[13] Section 490.012(2) provides that the Court shall make an order requiring an offender to comply with **SOIRA** for the applicable period set out in s. 490.013. Section 490.012(4) provides:

> (4) The Court is not required to make an order under this section if it is satisfied that the person has established that, if the order was made, the impact on them, including on their privacy or liberty, would be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature to be achieved by the registration of information relating to sex offenders under the Sex Offender Information Registry Act

[14] Section 2 of **SOIRA** sets out the purpose and principles of the legislation. It provides as follows:

> 2. (1) The purpose of this Act is to help police services investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders.
>
> Principles
> (2) This Act shall be carried out in recognition of, and in accordance with, the following principles:

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

(ii) access to the information, and use and disclosure of it, be restricted.

[15] Sections 4, 5 and 6 of **SOIRA** set out the reporting and information obligations of the offender under the Act. Those sections provide as follows:

4(1) A sex offender shall report, for the first time under this Act, in person to the registration centre that serves the area in which their main residence is located.

Reporting date
(2) A person who is subject to an order shall report within 15 days after
(a) the order is made, if they are convicted of the offence in connection with which the order is made but are not given a custodial sentence;
(b) they receive an absolute or conditional discharge under Part XX.1 of the Criminal Code, if they are found not criminally responsible on account of mental disorder for the offence in connection with which the order is made;
(c) they are released from custody pending the determination of an appeal relating to the offence in connection with which the order is made; or
(d) they are released from custody after serving the custodial portion of a sentence for the offence in connection with which the order is made.
Reporting date
(3) A person who is subject to an obligation under section 490.019 of the Criminal Code shall report,
(a) if they are not in custody on the day on which they become subject to the obligation, within 15 days after that day; or
(b) in any other case, within 15 days after

(i) they receive an absolute or conditional discharge under Part XX.1 of the Criminal Code,
(ii) they are released from custody pending the determination of an appeal, or
(iii) they are released from custody after serving the custodial portion of a sentence.

Compliance before leaving Canada

(4) A sex offender shall not leave Canada before they report under this section.

Subsequent obligation to report

4.1 A sex offender shall subsequently report to the registration centre that serves the area in which their main residence is located in person or in accordance with regulations made under paragraph 18(1)(a) or subsection 19(1),
(a) within 15 days after they change their main residence or any secondary residence;
(b) within 15 days after they change their given name or surname; and
(c) at any time between 11 months and one year after they last reported to a registration centre under this Act.

Obligation and order

4.2 (1) If a person who is subject to an obligation under section 490.019 of the Criminal Code becomes subject to an order, they shall report on the reporting dates established under the order only.

More than one order

(2) A person who is subject to more than one order shall report on the reporting dates established under the most recent order only.

Compliance if temporarily outside Canada

4.3 A sex offender who is outside Canada when they are required to report under section 4.1 shall report not later than 15 days after they return to Canada.

Obligation to provide information

5. (1) When a sex offender reports to a registration centre, they shall provide the following information to a person who collects information at the registration centre:
(a) their given name and surname, and every alias that they use;
(b) their date of birth and gender;
(c) the address of their main residence and every secondary residence or, if there is no such address, the location of that place;
(d) the address of every place at which they are employed or retained, or are engaged on a volunteer basis or, if there is no such address, the location of that place;
(e) the address of every educational institution at which they are enrolled or, if there is no such address, the location of that place;

(f) a telephone number at which they may be reached, if any, for every place referred to in paragraphs (c) and (d), and the number of every mobile telephone or pager in their possession; and
(g) their height and weight and a description of every physical distinguishing mark that they have.
Additional information

(2) When a sex offender provides the information referred to in subsection (1), the person who collects the information may ask them when and where they were convicted of, or found not criminally responsible on account of mental disorder for, an offence in connection with which an order was made or, if they are subject to an obligation under section 490.019 of the Criminal Code, a designated offence within the meaning of subsection 490.011(1) of that Act.
Additional information

(3) When a sex offender reports to a registration centre in person, the person who collects the information referred to in subsection (1) may record any observable characteristic that may assist in identification of the sex offender, including their eye colour and hair colour, and may require that their photograph be taken.
Notice about absence

6. (1) A sex offender shall notify a person who collects information at the registration centre that serves the area in which their main residence is located
(a) of every address or location at which they stay or intend to stay, and of their actual or estimated dates of departure from, and return to, their main residence or a secondary residence, not later than 15 days after departure if they are in Canada but are absent from their main residence and every secondary residence for a period of at least 15 consecutive days;
(b) of their actual or estimated date of departure from their main residence or a secondary residence, not later than 15 days after departure if they are outside Canada for a period of at least 15 consecutive days; and
(c) of their actual return to their main residence or a secondary residence after a departure referred to in paragraph (a) or (b), not later than 15 days after they return, unless they are required to report under section 4.1 or 4.3 within that period.

ANALYSIS

[16] Section 490.012(4) requires the Court to determine whether there has been established a gross disproportionality between:

a) the impact of the order on the offender including an impact on his privacy or liberty, and

b) the public interest in protecting society through the effective investigation of crimes of a sexual nature to be achieved by the registration of information relating to sex offenders under **SOIRA**.

The analysis necessarily requires the Court to consider:

a) the impact of registration on the offender;
b) the public interest in this context; and
c) whether the impact is grossly disproportionate to the public interest.

IMPACT ON THE OFFENDER

[17] In *R.* **v.** *Cross*, the Nova Scotia Court of Appeal describes the reporting requirements under **SOIRA** at paras. 13 to 17:

> ¶ 13 The obligations on a sex offender who is subject to a SOIRA order are set out in ss. 4 through 6 of the Act. Summarizing, the offender must report to a registration centre within 15 days of making the order or release from custody and not leave Canada until he has done so. On that reporting he must provide his full name and any alias(es) used; date of birth; gender; the address and telephone number of his main and any secondary residence; his employment address; if enrolled in an educational institution, that address; any mobile telephone number; his height, weight and any distinguishing marks.
>
> ¶ 14 Any change of name or residence must be updated within 15 days and, in any event, the offender must update all information, in person, annually.
>
> ¶ 15 If an offender will be away from his main or secondary residence for more than 15 consecutive days, but within Canada, he must advise the registration centre by registered mail (or in person) the locations where he will be staying and his estimated departure and return dates. This must be done not later than 15 days after departure. For a trip outside of Canada the requirements are the same, however, the intended addresses of his stay need not be provided. In either event

> the offender is to advise the registration centre of the actual date of his return to Canada within 15 days.
>
> ¶ 16 The person at the registration centre to whom the offender is reporting is entitled to record observable identifying characteristics and can require the offender to submit to a photograph.
>
> ¶ 17 Failure to comply with the above obligations is an offence punishable by a maximum fine of $10,000 or up to six months imprisonment for the first offence and a fine or an increased term of imprisonment for a subsequent offence (s. 490.031 Criminal Code).

[18] While the Appeal Court does summarize the reporting requirements and the information required to be provided it should also be noted that the offender is also required to provide the location and address for any places where he is a volunteer and is also required to submit to photographing during reporting periods.

[19] It is not necessary to call evidence of specific impact of the order on an offender, see *R.* v. *D.B.M.* 205 C.C.C. (3d) 161 (NSCA) and the Court may consider the presentence report, see *R.* v. *L.S.* [2005] B.C.J. No. 1801 or take judicial notice of relevant evidence, see *R.* v. *Redhead* [2006] A.J. No. 273 (AltaCA)

[20] In *R.* v. *Cross*, *supra*, the Nova Scotia Court of Appeal in considering whether the legislation constituted "punishment" within the meaning of s. 11(i) of the **Canadian Charter of Rights and Freedoms** - the Court was considering a constitutional challenge to the retroactive application of s. 490.012 - found that there were no traditional indicia of punishment in that there was no confinement other than a trivial interference with liberty and that there was no stigma attached nor a generally deterrent affect as a result of registration. The Court concluded that in an unusual case and due to the unique circumstances of the offender the impact in the order could constitute "severe handling" or "harsh treatment" characteristic of punishment then ss. (4) of s. 490.012 can provide relief. However the *Cross* decision was in the context of the constitutionality of the retroactive application of the legislation. While there is some suggestion that ss. (4) can provide protection in exceptional circumstances which constitute "severe handling" or "harsh

treatment", in my opinion this does not constitute the required test to be applied to this legislation in this context. It is not whether the legislative requirement constitutes "punishment" but what is the impact on offenders and on the subject offender.

[21] The expectation of privacy for those convicted of criminal offences is lower than for others. In this regard the impact of reporting and providing information is less than on other individuals. Further I acknowledge that any stigma attached to registration comes principally from the conviction of the offence rather than the registration.

[22] However at the same time the reporting does have an impact on the offender because of the information regarding his residence, employment and associations as well as the annual reporting and reporting of absenses or changes of address for the length of time prescribed and the potential for criminal liability for failure to provide that information or to report. In my opinion the impact on the offender's privacy and liberty is real for that reason. This particularly so for younger individuals who are not settled and likely required to relocate or travel for employment.

PUBLIC INTEREST

[23] The real issue in this proceeding is what factors the Court ought to consider in determining the public interest as it is referred to in ss. (4).

[24] The Crown relies principally on *R*. v. *Redhead*, *supra* The Crown argues as was held in *Redhead* that the circumstances surrounding the offence and that of the offender are not directly relevant to assessment of public interest. The Crown argues that the public interest ought to be assumed from the wording of the legislation. The Court in *Redhead* rejected the view found in *R*. v. *Have,* [2005] O.J. No. 388 that the purpose and value of the legislation is related to the investigation of predatory offenders with a propensity to commit similar offences in the future. In *Redhead* the Court found that the absence of specific limiting language reflects Parliament's recognition of the "predictable, repetitive behaviour of sex offenders and the inordinate consequences of sexual offences for victims of any age".

[25] The Crown therefore argues that the public interest is the same in every case and that the primary focus of the analysis under ss. (4) should be on the impact of the offender.

[26] With respect I cannot agree. In *R.* v. *D.B.M.*, *supra* the Nova Scotia Court of Appeal found guidance in its interpretation of s. 490.012(4) in the principles outlined in *R.* v. *Jordan*, [2001] N.S.J. No. 20 a decision concerning the application of s. 487.051(2) of the **Criminal Code** - whether an order should be made requiring a person to provide a sample of his or her DNA to the DNA databank. The decision in *Jordan* was relied upon by the Supreme Court of Canada in *R.* v. *R.C.* 2005 SCC 61 , where the Supreme Court of Canada concluded that the inquiry is a "highly contextual" one. At para. 9 of *D.B.M.*, *supra* the Court finds as follows:

> In view of the similarities in the two pieces of legislation one finds guidance in this Court's decision in R. v. Jordan (2002), 200 N.S.R. (2d) 371, [2002] N.S.J. No. 20 (QL), 162 C.C.C. (3d) 385 (C.A.), where Cromwell, J.A., writing for the Court, thoroughly canvassed the principles applicable to the granting of DNA orders. Indeed, the Supreme Court of Canada in the recent decision, R. v. R.C., [2005] S.C.J. No. 62 (QL), 201 C.C.C. (3d) 321, generally endorses this Court's approach in Jordan. In this regard I refer specifically to the following excerpts from the majority judgment in R.C., per Fish, J.:
>
> > Para. 29 The court must consider the impact of a DNA order on each of these interests to determine whether privacy and security of the person are affected in a grossly disproportionate manner. This inquiry is highly contextual, taking into account not only that the offence is a primary designated offence, but also the particular circumstances of the offence and the character and profile of the offender.
> >
> > Para. 30 Some of the factors that may be relevant to this inquiry are set out in s. 487.051(3): the criminal record of the offender, the nature of the offence and the circumstances surrounding its commission, and the impact such an order would have on the offender's privacy and security of the person (Jordan, at para. 62). [page165]

> Para. 31 This is by no means an exhaustive list. The inquiry is necessarily individualized and the trial judge must consider all the circumstances of the case. What is required is that the offender show that the public interest is clearly and substantially outweighed by the individual's privacy and security interests. (Emphasis added)

and, Fish, J. referred to Jordan again in R.C. as follows:

> Para. 65 Gass J. instructed herself impeccably in law on several occasions. She noted that the young person had been found guilty of a primary designated offence and that a DNA order could therefore be refused only if the conditions of s. 487.051(2) were met by R.W.C. The Nova Scotia Court of Appeal in Jordan, she noted, had held that "cases where an order that is properly sought under [s. 487.051(1)(a)] may be refused will be very rare indeed" (para. 5), and that "the young person ... bears the burden of persuading the court that he falls within that exception. That has to be established by evidence on the record (para. 21). (Emphasis added)

[27] In my opinion, the Nova Scotia Court of Appeal has determined in *R.* v. *D.B.M.* that the inquiry is a contextual one and that the Court ought to consider the circumstances surrounding the offence and that of the offender in determining the public interest as that term is used in s. 490.012(4). I am of course bound to follow the opinion of the Nova Scotia Court of Appeal expressed in that decision and to the extent that it differs from that in *R.* v. *Redhead, supra* and those cases which follow I am bound to prefer the decision of *R.* v. *D.B.M.*, *supra*.

[28] Beyond considering the particular circumstances of the offence and the character and profile of the offender the Court must consider the public interest in the context of the investigation of sexual offences. The public interest is also informed by the purpose and principles of the legislation set out in s.2. It is the protection of society through the effective investigation of crimes achieved by the registration of information that is the focus of the public interest. This necessarily requires the Court to consider how sexual offences can be effectively investigated and society protected through the registration of these offenders. The deterring aspect of registration is also a factor to consider in assessing the public interest in registering these offenders. The public interest is not necessarily served by

registration if the registration of a particular offender will not be effective for the investigation of sex offences. In *R* v. *Have*, *supra* the Court explains the purpose of the legislation at paragraphs 15 and 16:

> The purpose and value of the legislation is not limited to that statement but rather includes other purposes that are served by the scheme created by the Act. (see R. v. Jordan infra at para. 34). Those purposes are essentially the same as those served by Christopher's Law, so I think it is fair to borrow from the evidence heard in the Dyck case, paragraphs 27-29. There is an aspect of crime prevention in that registration in itself is thought to act as a deterrent to potential offenders. But the main purpose of registration is to further public safety by permitting police to keep track of sex offenders living or working in the local community. This information may be useful in the investigation of future sex related crimes by identifying individuals who, by reason of past convictions, may be considered suspect in such crimes. The model is the predatory stranger offender who "hunts" from areas close to his home or work. Registration is particularly valuable to enable quick response in cases of child abduction by a stranger, where time is of the essence to prevent murder.
>
> In summary, the assumption underlying the scheme is that a person who has committed this type of offence in the past may have a propensity to commit a similar offence in the future. Registration of such persons is valuable in cases of offences committed locally by strangers to the victim. The value of a registry to investigation of other types of sex related offences is less apparent.

[emphasis added]

[29] I might say that I do not necessarily agree with a later view contained in *R*. v. *Have, supra* that the Court ought to be concerned that the public interest may not be served by allowing the registry to be so inclusive and thereby dilute the resources and attention of the police. In my opinion management of the information and the reporting requirements is the responsibility of the police and not one that the Court ought to be concerned with. However whether the public interest in protecting society by the registering of certain offenders is a proper consideration for the Court.

GROSSLY DISPROPORTIONATE

[30] Clearly the standard of proportionality is high in that a mere disproportion is not sufficient. In *R*. v. *Redhead, supra* the Alberta Court of Appeal endorsed the term "marked and serious imbalance". At the same time however the subsection cannot be

so narrowly interpreted as to effectively make it mandatory and that the exception be meaningless. In *R.* v. *D.B.M.*, *supra*, the offender was the step-father of the victim. The offender entered the victim's bedroom while she lay naked in her bed having been sick previously. The offender rubbed the victim's body with a dampened cloth several times, told her that she was beautiful and began to kiss her buttocks. Subsequently he had performed oral sex on her. The Crown proceeded by indictment and the offender was sentenced to a nine month conditional sentence followed by fifteen months probation. The trial judge declined to make an order under s. 490.012 due to the circumstances of the offence, the nature of the order sought, which he concluded was highly intrusive and burdensome and found that the exemption should apply and that the order was not required. Our Court of Appeal upheld this decision.

[31] In *R.* v. *Putrus* [2006] A.J. No. 492 the offender committed a sexual assault while he was fitting a female customer for designer jeans. The offender was a tailor and had licked the genital area of the female customer. The Alberta Court of Queen's Bench concluded that there was a disproportionate impact on the offender relative to the public interest. The Court considered the fact that the offender had no criminal record and that the circumstances of the offence indicated only a momentary contact with the complainant. He immediately apologized. The Court declined to make the order notwithstanding the decision in *Redhead* - see also *R.* v. *L.T.* [2006] M.J. No. 292, where the circumstances of the offence was considered.

APPLICATIONS TO CASES AT BAR

[32] It is difficult to conclude that the impact on these offenders, while real, is greatly different from other offenders. Although, each is relatively younger, unsettled and likely to relocate in the future, there is no other unique impact being suggested relative to either of these offenders. Accordingly the focus primarily here surrounds the public interest in the registration of these offenders. This necessarily requires a consideration of the circumstances of each offence and of each offender and how it relates to the public interest described above.

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[33] Here, the offence involved the offender kissing a twelve or thirteen-year-old girl. There was no other sexual contact. There was no gratuitous violence and while consent is not an issue in the offence the victim had consented to the activity. While the difference in ages (the offender being twenty-four and the complainant twelve or thirteen) is aggravating, it is somewhat mitigated by their apparent levels of maturity. I can only conclude that this offence would be on the lower end of the continuum of sexual offences. In my opinion it is less serious than the circumstances described in *R.* v. *D.B.M.*, *supra*.

[34] While the offender does have a criminal record it is unrelated. There is no suggestion that he has a propensity for this type of behaviour. The offence is not "predatory" in nature nor is the offender at any risk to offend in this way in the future. In my opinion this offender does not meet the "model" intended by the legislation, see *R.* v. *Have, supra.* Accordingly, there is minimal public interest in protecting society through the investigation of sexual offences by registering this offender with the sex offender registry. Certainly, in my opinion, any public interest in entering this offender on the registry is outweighed by the impact that registration would have on his privacy and liberty. In my opinion the impact is grossly disproportionate to the public interest. Accordingly, I am satisfied that the offender has met the requirements of s. 490.012(4) and that the order should not be made,

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[35] Here the offender was involved in a dating relationship with the victim who was thirteen years old at the time. He had just turned eighteen years of age. The offence consisted of consensual kissing and petting which occurred on three occasions during a ten to fourteen day period. There were no gratuitous acts of violence. The offender was considerably younger than the offender TJD and closer in age to the victim. Again, in my opinion, this offence is on the lower range of the continuum of sexual offences. Certainly the circumstances outlined in *R.* v. *D.B.M.*, *supra* are more serious than those in this particular case.

[36] In this case the offender is already subject to the **Sex Offender Information Registration Act** and is required to report for a period of ten years commencing in May of 2004. If he is required to be subject to the registry pursuant to this offence the

order will continue for life. He is however able to apply for early termination after twenty years, see s. 490.015(1)(c).

[37] The other offence to which the offender pled guilty occurred after this offence. That offence also involved a dating relationship with a young girl being different than the victim in this case. Both offences came to light at the same time. There was no explanation of why this matter was not dealt with earlier.

[38] In my opinion this offender is not at a high risk to re-offend in the future. I say this notwithstanding the presence of the other offence. In my opinion, this offender who is now twenty-one years of age is not a risk to commit further sexual offences based on the circumstances of this offence and his profile as described in the pre-sentence report. He has no other criminal record. Again, this offender does not meet the "model" intended by the legislation, see *R*. v. *Have*, *supra*.

[39] As in the case of *R*. v. *TJD*, the public interest in registering this offender for the purposes of effective investigation of sexual crimes is minimal. In my opinion the impact on the offender is grossly disproportionate to the public interest. I make this conclusion notwithstanding that he is already subject to registration. However given that reality and that the affect of any order now proposed would result in him being required to be registered for life, the impact would be even more significant on this offender for that reason.

[40] Accordingly I am satisfied that the offender has established the requirements set out in s. 490.012(4) of the **Criminal Code** and that the order is not required.

ALAN T. TUFTS, J.P.C.