

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

-and-

ADAM CASAWAY

MEMORANDUM OF JUDGMENT

[1] Mr. Casaway has been convicted, after his guilty plea, of sexual assault, a “designated offence” under s. 490.011(1)(a) of the *Criminal Code*, and sentenced to a term of incarceration of two years less a day and eighteen months’ probation.

[2] The Crown has applied under s. 490.012 (1) of the *Code* for an order requiring Mr. Casaway to comply with the *Sex Offender Information Registration Act*, R.S.C. 2004, c. 10 (the Act). Mr. Casaway’s counsel argues that the order sought should not be made. His argument is not put as a challenge to the legislation under the *Canadian Charter of Rights and Freedoms*. Instead, he urges me to decline to make the order by finding, under s. 490.012(4), that the impact on Mr. Casaway, including on his 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 Act.

[3] This is the second time that Mr. Casaway has been found guilty of sexual assault, the first having occurred some six years ago, when he was a youth. The facts of that offence are remarkably similar to the facts of the offence for which he has just been convicted. Both involve intercourse with a sleeping or passed out victim.

[4] Mr. Casaway left school at approximately age 13. His parents were alcoholics and there is some suggestion that he may suffer from Fetal Alcohol Spectrum Disorder, although no formal assessment has been done. He lives sometimes in Yellowknife, where his mother is, and sometimes in Lutselk'e, where he has filled in driving the water truck on occasion, a job which his counsel advises is still available to him. He helps support himself by hunting and trapping.

[5] Counsel for Mr. Casaway argues that being identified as a sex offender would be overly intrusive to Mr. Casaway's privacy, especially in a small place like Lutselk'e. He also argues that having to report and register under the sex offender registration provisions will be unduly onerous for someone with Mr. Casaway's lifestyle, which involves spending periods of time out on the land.

[6] As far as being identified as a sex offender to the community, it is clear that is not the purpose of the Act. The purpose is set out in s. 2(1): to help police services investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders. The Act recognizes a number of principles in s. 2(2), among them that

(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.

[7] The information to be collected under the Act relates to addresses of home and work, telephone numbers, height, weight and physical distinguishing marks. Record is also kept of the sexual offence or offences for which the registration order was

made, the age and gender of the victim or victims of each offence and the sex offender's relationship to each victim.

[8] There is no provision in the Act for the publication of information collected to the community at large. There are a number of provisions in the Act aimed at keeping the registration and information confidential and restricting the use of same. For example, when a copy of the s. 490.012 order is sent to the police service whose member charged the sex offender with the offence that gave rise to the order, under s. 8(1)(b) of the Act, the person who registers information for the police service shall ensure that registration is done in a manner and in circumstances that ensure its confidentiality. When a sex offender reports to a registration centre and information is collected from him, the person who collects the information must ensure that the sex offender's privacy is respected in a manner that is reasonable in the circumstances and that the information is provided and collected in a manner and in circumstances that ensure its confidentiality: s. 9. A person who registers the information collected is also required under s. 10 of the Act to ensure that registration of the information is done in a manner and in circumstances that ensure its confidentiality.

[9] Section 16 of the Act provides that only certain persons may consult information collected under the Act; these are mainly persons who would work in the collection, registration and maintenance of the information and police officers investigating sexual offences. There is some authority given to the Commissioner of the Royal Canadian Mounted Police to authorize access to the information for research or statistical purposes under certain conditions.

[10] There are also restrictions put on disclosure and use of information collected. Any contravention of the sections of the Act that provide for who may consult the information and by whom and for what purposes it may be disclosed or used is a summary conviction offence for which the person convicted is liable to a fine of not more than \$10,000.00 or to imprisonment for a term of not more than six months, or to both: s.17(2).

[11] I am satisfied on reviewing the Act that it does not have as a purpose the dissemination of information to the community at large and that its provisions indicate an intention to keep information collected confidential and for use only by those with a legitimate reason in keeping with the purposes of investigation of crime and protection of society.

[12] Under s. 490.012 (4) of the *Criminal Code*, the onus is on Mr. Casaway to satisfy me that if the order is made, the impact on his privacy would be grossly disproportionate to the public interest in society's protection by effective investigation of sexual crimes by means of the Act. While registration will certainly have some impact on his privacy, I have to balance that against the purpose of the legislation and its confidentiality requirements. I also take into account that Mr. Casaway has now been convicted of sexual assault twice. The standard of "grossly disproportionate" is very high, more than just disproportionate. I find that Mr. Casaway has not met the onus.

[13] Mr. Casaway also has the onus of satisfying me that the order sought would have a grossly disproportionate impact on his liberty.

[14] The Act requires that a person subject to a s. 490.012 order shall make their first report in person to a registration centre serving the area in which their main residence is located. In Mr. Casaway's case, as he is serving a term of imprisonment, he is obliged under s. 4(2)(d) of the Act to report within 15 days of his release. Thereafter, under s. 4.1, he must report within 15 days after he changes his main residence or any secondary residence; within 15 days after he changes his given name or surname; and at any time between 11 months and one year after he last reported to a registration centre under the Act. The latter requirement means yearly reporting.

[15] The s. 4.1 reporting is to be made in person or in accordance with regulations made under ss. 18(1)(a) or 19(1) of the Act. The *Northwest Territories Sex Offender Information Registration Regulations* (SOR 2005-1) provide in s. 2(1), that the change of main or secondary residence and the change of name reporting can be done by telephone. The yearly reporting must be done in person to the registration centre that serves the area of the offender's main residence. Each R.C.M.P. detachment in the Northwest Territories is designated as a registration centre and serves the same area as the detachment does for policing purposes. A registration centre is also located in Yellowknife, serving the entire Northwest Territories: s. 5 of the Regulations.

[16] The Act, in s. 3(1), defines "main residence" as the place in Canada where a person lives most often or, if there is no such place, the place in Canada where they may be found most often. It defines "secondary residence" as a place in Canada, other than a main residence, where a person regularly lives. I do not have sufficient information to know which of Yellowknife and Lutselk'e is Mr. Casaway's main

residence and which his secondary residence, but it would appear from the Regulations that he will be able to do his yearly reporting, if Lutselk'e is his main residence, at either the Lutselk'e registration centre or the Yellowknife registration centre. He also has a one month window within which to do the yearly reporting under s. 4.1(c) since the reporting is to be anytime between 11 months and one year since his last reporting.

[17] Under s. 490.013(2)(b) of the *Code*, since sexual assault is an offence for which the maximum term of imprisonment is 10 years, if an order is made, it must be for 20 years. Mr. Casaway would be required to report for 20 years, which is a substantial period of time.

[18] An order may also have some impact on Mr. Casaway when he wishes to go out on the land hunting. Section 5(1)(c) of the Act requires that part of the information a sex offender must report to a registration centre is the address of their main residence and every secondary residence or, if there is no such address, the location of that place. The Act clearly contemplates that a person may have more than one secondary address as the definition of secondary residence, which I have set out above, refers to "a place in Canada", whereas the definition of main residence refers to "the place in Canada". I would think that a hunting camp or location where a person regularly lives for periods of time could qualify as a secondary residence. If so, the requirements of s. 6 of the Act for giving notice about absences from main and secondary residences might not apply. I do not have sufficient evidence about Mr. Casaway's hunting routines to decide whether s.6 would apply to him or not when he goes hunting for a period of at least 15 consecutive days. I note that the Regulations [s.2(1)] do provide that reporting under s. 6 can be done by telephone.

[19] A requirement to report for 20 years is not to be regarded lightly. However, the burden is lessened somewhat by the various options for the location and method of reporting provided by the Act and the Regulations. In all the circumstances, I find that Mr. Casaway has not met the onus of establishing that the impact of an order on his liberty would be grossly disproportionate to the public interest in protecting society through the effective investigation of sex crimes through the registration scheme under the Act.

[20] Since I have decided that the exception in s. 490.012(4) does not apply in this case, the order requested by the Crown is granted for a period of 20 years.

V.A. Schuler  
J.S.C.

Dated at Yellowknife, NT  
this 19th day of April, 2005.

Counsel for the Crown: Noel Sinclair  
Counsel for Adam Casaway: James D. Brydon