

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

J(J).K.

REASONS FOR DECISION
of the
HONOURABLE JUDGE JEANNIE SCOTT

Heard at:	Yellowknife, Northwest Territories
Date of Oral Decision:	March 3, 2023
Date of Written Judgment:	June 1, 2023
Counsel for the Crown:	Brendan Green
Defence Counsel:	Peter Harte

[Application for exemption from registration under the
Sex Offender Information Registration Act]

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Restriction on Publication

Identification Ban – See the *Criminal Code*, s. 486.4.

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A. INTRODUCTION

[1] I delivered my decision orally in this application on March 3, 2023. The following are my written reasons which are an edited version of my oral reasons for the purpose of publication.

[2] J(J).K. applied for a remedy under s. 24(1) of the *Charter* to be exempt from the application of s. 490.012 of the *Criminal Code* (CC) and the associated registration under the *Sex Offender Information Registry Act (SOIRA)*. She made this application following her conviction earlier this year on a single count of sexual assault and considering the Supreme Court of Canada's judgment in *R. v. Ndhlovu*, 2022 SCC 38.

[3] Both parties agreed that following the majority decision in *Ndhlovu*, offenders can ask for personal remedy pursuant to s. 24(1) of the *Charter* to be exempted from registry under *SOIRA* if they demonstrate that *SOIRA*'s impacts on their liberty bears no relation or is grossly disproportionate to the objective of s. 490.012 CC. Specifically, the majority found that subjecting sex offenders who do not have an increased risk of reoffending sexually to the obligatory reporting requirements under *SOIRA* is not connected to Parliament's objective of capturing information that assists police prevent and investigate sex offences.

[4] For the reasons that follow, I found that J(J).K. is not at increased risk to commit a future sex offence. As a result, providing her personal information on the *SOIRA* registry will be of no assistance to law enforcement in preventing future sexual assault. J(J).K. met her evidentiary burden in demonstrating that *SOIRA*'s impacts on her liberty bear no relation to the objective of s. 490.12 CC and I exempted her from registration under *SOIRA*.

B. PROCEDURAL BACKGROUND

[5] J(J).K. plead guilty to a single count of sexual assault on November 1, 2022. The matter was adjourned to January 27, 2023 for sentencing.

[6] On January 27, 2023, following a joint submission by counsel, I sentenced J(J).K. to a 4-month conditional sentence order and 12-month probation order. No victim impact statements were filed on sentence.

[7] I then heard J(J).K.'s application with respect to the imposition of a *SOIRA* order, and adjourned my decision on that application to March 3, 2023.

C. EVIDENCE

[8] The facts of the offence briefly are that over the course of an evening work-related social function, J(J).K. engaged in three incidents of unwanted sexual touching on three separate female victims who were colleagues or acquaintances of J(J).K..

[9] The first incident occurred when J(J).K. was behind the first victim on the dance floor, said "watch this", and then reached around and grabbed the first victim on her breasts. During the second incident, J(J).K. came up behind the second victim on the dance floor, grabbed her breast and then ran away. In the third incident, J(J).K. repeatedly grabbed the third victim around the waist on the dancefloor, despite being asked not to do so, and grabbed the victim on her buttocks once. At another point in the evening, while they were seated next to

each other, J(J).K. touched the third victim's thigh several times. The touching was unwanted in each case.

[10] I find that the facts of this case – brief touching of acquaintances over their clothing – render the gravity of the offence on the low-end for sexual assault. In imposing the conditional sentence order, I was satisfied that J(J).K.'s serving of her sentence in the community would not endanger the community.

[11] J(J).K. testified on the *SOIRA* application explaining that she is 42 years old and has been employed with the Canadian Armed Forces for 20 years. She has no criminal record and has not had any disciplinary actions in her 20 years of service except for the one which flowed from this incident. She testified that because of that disciplinary proceeding, she was fined \$200 for being intoxicated at the mess and was restricted from participating in workplace physical and social activities.

[12] I find that J(J).K. has had stable employment over the last 20 years with the Canadian Armed Forces and that this employment stability is relevant to my assessment of J(J).K.'s low risk to re-offend sexually. I also find it compelling evidence that she had never been the subject of a disciplinary action during those 20 years of employment before this offence.

[13] She expressed regret for her actions and great remorse with respect to the hurt she caused her victims. She described being intoxicated on the evening of the offence and said that she used alcohol as a form of self-medication to deal with an anxiety disorder. She testified that she would not have acted as she did if she had been sober.

[14] I accept J(J).K.'s testimony with respect to her regret and remorse in relation to this offence. She plead guilty to this offence at a relatively early stage in the proceedings. She was emotional and sincere in her testimony on the application. It is clear to me that her regret over the harm that she caused to victims through her actions has had a profound impact on her emotionally and socially. I find that there is no evidence that J(J).K. holds any anger, hostility, or grievance towards the victims that might otherwise have impacted my assessment of her risk to re-offend. From the record before me, it appears that J(J).K. has accepted responsibility and has expressed total remorse for her actions from the earliest opportunity.

[15] J(J).K. testified that she has taken several steps in the last year following the incident to deal with her anxiety issues including seeing a psychologist which she continues to present day. She is now taking medication for anxiety, doing yoga

daily, swimming laps at the pool and walking outdoors. She described that she no longer drinks alcohol outside of her home and remains active in team sports.

[16] J(J).K. also adopted the information set out in paragraphs 32-38 in her Notice of Application which establishes that J(J).K. has been deployed several times overseas and within Canada by the military during her years of service, and that she expects to be deployed again in March of 2023. Each of these deployments lasts roughly 2 weeks and she resides in the community during the deployment. Her duties while deployed normally involve the use of motor vehicles, as do her duties in Yellowknife. Just prior to the offence, J(J).K. began seeking the assistance of a psychologist because she was diagnosed with ADHD and an anxiety disorder and found herself to be consuming what she considered to be excessive amounts of alcohol in order to be comfortable in social settings.

[17] A letter from J(J).K.'s psychologist was filed as evidence on this application. The letter dated December 1, 2022 confirms J(J).K.'s testimony that she has been under her care for several months. It sets out that the focus of the sessions have been *“to understand the previous diagnoses [ADHD and anxiety], their symptomology, its relation to the present events, and to develop strategies to better function in all aspects of her life”*. Importantly, the psychologist sets out that J(J).K. has been *“very committed to the therapeutic process and all that it encompasses”*, that she has *“accepted responsibility for her actions and continues to focus on skill development”*.

[18] I find that J(J).K. has taken and continues to take steps to manage her anxiety and related alcohol use, and that she has developed a keen self-awareness in that regard.

[19] I accept the evidence of her psychologist that J(J).K. is engaged in a therapeutic process and is committed to that process. I also accept J(J).K.'s testimony that the therapeutic process has been successful in assisting J(J).K. to manage her anxiety and that it was her anxiety and alcohol use that precipitated her offending behaviour.

[20] I am satisfied that J(J).K. is not at an increased risk to re-offend sexually. I make this finding on the whole of the evidence before the court – the facts and circumstances of the offence, the procedural history of this prosecution, J(J).K.'s testimony as to her personal circumstances, and the evidence from her psychologist tendered by way of a letter. I do not find it necessary to have expert evidence to assist me in making this determination in the particular circumstances of this case.

D. CONCLUSION

[21] Given my finding that J(J).K. is not at an increased risk to reoffend it follows that providing her personal information on the *SOIRA* registry will be of no assistance to law enforcement in preventing or investigating future sexual assaults.

[22] As a result, I conclude that J(J).K. has demonstrated that the impact of a *SOIRA* Order on her liberty bears no relation to the objectives of s. 490.012 which amounts to a breach of her s. 7 *Charter* rights. She is entitled in this case to a personal remedy under s. 24(1) of the *Charter* and an exemption from registration under *SOIRA*.

[23] The application is granted.

Jeannie Scott
Judge of the Territorial Court of the
Northwest Territories

Dated at Yellowknife, Northwest
Territories, this 1st day of June, 2023.

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