

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Parker*, 2023 NSPC 38

**Date:** 20230626

**Docket:** 8463804

**Registry:** Dartmouth

**Between:**

His Majesty the King

v.

Stuart Parker

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**LIBRARY HEADING**

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**Judge:** The Honourable Chief Judge Pamela S. Williams

**Heard:** In Dartmouth, Nova Scotia

**Decision:** June 26, 2023

**Subject:** Exemption from Suspension of Invalidation of *SOIRA* Registration

**Summary:** Following trial, Stuart Parker is found guilty of momentarily grabbing and squeezing the breast of a female co-worker after she tells him he cannot touch her. A suspended sentence and two-year probation order is imposed.

**Issue:** Has Mr. Parker satisfied the Court there is a marked and serious imbalance between the objectives of the legislation and the significant infringements on Mr. Parker's liberty interests such that he should be exempted from the suspension of invalidity of the requirements under *SOIRA*?

**Result:**

Mr. Parker is not at risk to reoffend and mandatory registration, in all the circumstances of his case, is grossly disproportionate to the objective of s. 490.012 which is to help police prevent and investigate crimes of a sexual nature. A remedy under section 24(1) of the *Charter* is granted such that Mr. Parker is exempt from the suspension of invalidity, and section 490.012 of the *Criminal Code* shall not apply, in his individual circumstances.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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**DECISION ON SENTENCING**

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**Judge:** The Honourable Chief Judge Pamela S. Williams

**Heard:** May 29, 2023, in Provincial Court, Dartmouth, Nova Scotia

**Decision:** June 26, 2023

**Charges:** Section 271 of the *Criminal Code of Canada*

**Counsel:** Tiffany Thorne, for the Crown  
Bruce Muir, for the Defence

**By the Court:**

**Background and Timelines:**

[1] On January 16, 2023, Stuart Parker is found guilty after trial of sexually assaulting a co-worker on December 17, 2019 (by momentarily grabbing/squeezing her left breast) after having been told not to.

[2] A sentencing hearing is set for April 17, 2023. A pre-sentence report is ordered.

[3] On February 24, 2023, counsel for Mr. Parker file a Notice of *Charter* Application seeking to have the Court exempt Mr. Parker from registering under s. 490.012 the *Sex Offender Information and Registration Act (SOIRA)*. Notice is served on the Attorney General of Canada pursuant to the *Constitution Act, 1982*. They have chosen not to appear.

**Issues:**

[4] 1. Has Mr. Parker satisfied the Court he should be granted a conditional discharge?

2. If not, should Mr. Parker be exempt from the imposition of a *SOIRA* order?

**Should a Conditional Discharge be Imposed?**

[5] Crown and Defense agree that should Mr. Parker be granted a conditional discharge, *SOIRA* does not apply because there is no reporting obligation for those who receive a discharge under s. 730 of the *Criminal Code*, as s. 730(3) deems those individuals not to have been convicted of an offence: *Ontario (Attorney General) v. G* 2020 SCC 38.

[6] The parties characterize the offence as being on the lower end of the spectrum of sexual assaults. They also agree Mr. Stuart's pre-sentence report is positive.

Crown Position

[7] The Crown recommends a suspended sentence and two-year probation order with reporting, to have no contact with the victim, to undergo counselling and to report back to the court in one year for a status update.

Defence Position

[8] The Defence seeks a conditional discharge with a three-year probationary term, including community service.

Circumstances of the Offence:

[9] There is a brief encounter between Mr. Parker and C.W. (his longstanding co-worker) while both are sitting across the table from each other in their work 'breakroom'. No one else is present. Mr. Parker asks if he can "grab [her] tit" to which she responds, "Of course not". Mr. Parker says, "Give me a break; I am single and horny" and in a "split second" proceeds to grab/squeeze her left breast. C.W. is shocked.

**Circumstances of the Offender:**

[10] Mr. Parker is 55 years old and has never been in trouble with the law. He has multiple supportive people in his life and is employed once again; having lost his long-term previous employment due to this offence.

**Principles of Sentencing:**

[11] The general principles and factors to be considered in deciding a fit and just sentence are set out in ss. 718, 718.1 and 718.2 of the *Criminal Code*.

[12] Section 718 clearly states that the fundamental purpose of sentencing is to protect society, to contribute to respect for the law, and to the maintenance of a just, peace and safe society by imposing sanctions that:

- Denounce unlawful conduct and harm done to victims and the community.
- Deter the offender and others from committing offences.
- Separate offenders from society, where necessary.
- Assist with rehabilitation.
- Repair harms done to victims and community.
- Promote a sense of responsibility in offenders and acknowledgement of harm caused.

[13] Section 718.1 requires that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[14] Section 718.2 directs that a sentence should be increased or reduced to account for relevant aggravating or mitigating circumstances. The sentence should also be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

### Denunciation and Deterrence

[15] Denunciation and deterrence are primary considerations when sentencing offenders for sexual offences.

### Rehabilitation

[16] Rehabilitation remains an important objective, despite the need to emphasize denunciation and deterrence. This is confirmed by the Supreme Court of Canada in *R. v. Lacasse*, [2015] SCC 64, in the context of a sentence appeal on dangerous driving causing death. Wagner, J., as he then was, writing for the majority states at para. 4:

[4] One of the main objectives of Canadian criminal law is the rehabilitation of offenders. Rehabilitation is one of the fundamental moral values that distinguish[es] Canadian society from the societies of many other nations in the world, and it helps the courts impose sentences that are just and appropriate.

### Proportionality and Parity

[17] Proportionality and parity of sentences are fundamental sentencing principles. The Nova Scotia Court of Appeal in *R. v. White*, 2020 NSCA 33 at para. 69 provides guidance on the application of the parity principle:

[69] In conducting a parity analysis, sentencing judges are required to focus on both the “fundamental principle” of proportionality and the “secondary” principle of parity (*Lacasse*, paras. [53-54](#)). Judges must also understand that while the



proportionality and parity analyses are separate and distinct inquiries, there will always be a connection and interplay between the two. That is because proportionality not only involves a consideration of the individual features of an accused and his or her crime(s) but also a comparison with sentences for similar offences committed in much the same circumstances. As Wagner, J. directed in *Lacasse*:

[53] ...Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a sentence to be proportionate: [s. 718.2\(a\)](#) and (b) of the [Criminal Code](#) ...

[18] In other words, the sentence must be proportionate to the seriousness of the crime and the offender's culpability in committing it. The gravity of the offence and its consequences will be informed by the range of sentence prescribed in the applicable legislation.

### Aggravating and Mitigating Circumstances

[19] Evidence that the offence has a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation is considered an aggravating circumstance: [s. 718.2\(a\)\(iii.1\)](#).

### Aggravating Circumstances

[20] I agree with the Crown; the very nature of the offence is aggravating as it interferes with C.W.'s dignity and bodily integrity.

Mitigating Circumstances

[21] Mr. Parker has no criminal record, and he does not appear to be a risk to reoffend.

[22] His actions have resulted in several collateral consequences that address specific deterrence: he has lost his long-term well-paying employment and he is embarrassed by telling those close to him he has been convicted of sexual assault.

[23] The offence, having negatively impacted the victim, is nonetheless on the lower end of the spectrum.

[24] Due to the worldwide pandemic, there has been significant delay (over 3 years) in bringing the matter to trial. I accept these proceedings have weighed heavily on Mr. Parker and accept this as a mitigating factor.

**Law:**

Section 730(1)

[25] Where an accused pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for fourteen years or for life, the court may, if it considers it to be in the best interests of the accused and not contrary to the

public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions prescribed in a probation order made under subsection 731(2).

[26] The Defence has the burden of satisfying the Court, on a balance of probabilities, that a discharge is a fit and just sentence given the two-step process.

#### Best Interests of the Accused

[27] I am satisfied it is in the best interests of Mr. Parker not to be convicted of a sexual assault. There is considerable stigma attached to a conviction; it may impede his ability to secure certain types of employment or to travel abroad.

#### Not Contrary to the Public Interest

[28] The Nova Scotia Court of Appeal has provided guidance on this issue in *R. v. K.J.C.*, [2021] N.S.J. No. 7 at paras. 84 - 88:

- An offender does not have to establish that a discharge is in the public interest (*R. v. Sellars*, 2013 NSCA 129, at para. 27).
- An offender must show that a discharge will not be “deleterious” to the public interest (*R. v. D’Eon*, 2011 NSSC 330, at para. 25). A

discharge will be deleterious to the public interest if it fails to satisfy the objectives being pursued in sentencing.

- The factors to be considered in the public interest component will vary depending on the circumstances of the offence and the offender (*Sellars* at para. 37).
- The public interest component involves a consideration of the principle of general deterrence having regard to the gravity of the offence, its incidence in the community, public attitudes and public confidence (*Elsharawy*, [1997] N.J. No. 249 para. 3).

[29] In *K.J.C.* the Court of Appeal upholds a suspended sentence; A conditional discharge would not have given sufficient effect to the sentencing principles of denunciation and general deterrence.

[30] At para. 87 the Court of Appeal states:

[87] ... The trial judge's reasons show she was persuaded by the seriousness of the offence and the public interest in respecting women's dignity and right to sexual integrity that a conditional discharge was inappropriate in this case. Her concerns and the emphasis she gave them in imposing a suspended sentence with probation are entitled to deference.

[31] In *K.J.C.* an elderly accused was convicted of a historical sexual assault on his grandson's girlfriend. He grabbed her left breast on one occasion and pressed

into her and kissed her neck during a hug. When sentenced, the Accused was 84 years old and had no criminal record. He had been married for many years and was the primary caregiver for his wife until her death. He volunteered in his community for many years. The trial judge placed his conduct and moral culpability on the very low end of the sexual assault spectrum but found that a conditional discharge was contrary to the public interest.

[32] Returning to Mr. Parker, I am not persuaded a discharge is not contrary to the public interest. Mr. Parker asks if he can touch the victim's breast; he is told no, categorically. He ignores her response. He touches her breast for his own gratification. This is not simply an error in judgment; this is a flagrant disregard for the victim's personal autonomy.

[33] I agree with the comments of the trial judge affirmed by the Nova Scotia Court of Appeal in *K.J.C.*, at para. 75:

[75] ...

...discharges in sexual assault cases are rarely found to comply with the public interest requirement. There is no surprise in this. A woman's dignity as well as her right to sexual integrity must be respected and decisions of the court should reflect and support this important public interest consideration.

## **Sentence**

[34] Accordingly, I impose a suspended sentence and probationary period of two years with the following ancillary conditions:

- Report to Probation Services within two business days at 277 Pleasant Street, Dartmouth and thereafter as directed.
- Refrain from having any contact, directly or indirectly, or any communication with C.W.
- Refrain from being within 50 meters of any residence or place of work of C.W.
- Undergo and participate in such assessment and counselling as directed by Probation Services.

### **Should Mr. Parker be exempt from a SOIRA Order?**

#### Background

[35] On October 28, 2022, the Supreme Court of Canada holds that mandatory s. 490.012 *SOIRA* orders are unconstitutional pursuant to s. 52(1) of the *Constitution Act 1982* because they offend section 7 of the *Charter*, for being overbroad and they cannot be saved by s. 1 of the *Charter*: *R. v. Ndhlovu*, [2022] S.C.J. No. 38.

[36] That said, the court rules that the declaration be suspended for one year and that it apply prospectively.

[37] Mr. Parker seeks a ‘tailored’ remedy under s. 24(1) of the *Charter* that he be exempted from the suspension of invalidity, and that s. 490.012 of the *Criminal Code* should not apply in his individual circumstances. In other words, he argues he is not at risk to reoffend and mandatory registration, in all the circumstances of his case, is grossly disproportionate to the objective of s. 490.012 which is to help police prevent and investigate crimes of a sexual nature.

[38] Mr. Parker has the burden of satisfying the Court on the balance of probabilities.

[39] *SOIRA* registration imposes considerable constraints on a person’s liberty. *R. v. O.R.*, [2023] M.J. No. 51 at para. 19, points to the various infringements:

[19] The **Ndhlovu** decision is a formal recognition by the Supreme Court of Canada that *SOIRA* registration generates significant infringements on a person’s liberty interests and is onerous in nature. This is particularly so when there is found to be little risk of reoffending. ... *SOIRA* has a serious impact on an offender’s liberty by virtue of requiring continuous monitoring, invasive and extensive reporting requirements that must be kept totally up to date, the reporting of travel plans, along with the threat of prosecution and punishment for non-compliance. There is also the possibility of visits from the authorities that can take place at any time, along with the requirement for annual self-reporting.

[40] That said, the standard of gross disproportionality, which must be shown by Mr. Parker, is high and requires a marked and serious imbalance between the objective of the legislation and the impact on the registrant: *O.R.* at para. 20; *R. v. D.D.*, 2020 BCCA 169 (CanLII).

[41] The effect of compliance with *SOIRA* varies from one offender to another based on their life circumstances: *Ndhlovu*.

Analysis:

*Risk of Reoffending*

[42] Based on his background, Mr. Parker poses little, if any, risk of reoffending. He is 55 years old. He has never been in trouble with the law. He does not have any substance abuse issues. He had a 15-year career at his place of employment.

[43] Several personal references, who have known Mr. Parker for many years, describe him as very hard working, friendly, helpful, funny, genuine, and kind with “an upright character in the community”. They have neither seen, nor experienced, inappropriate behaviour on the part of Mr. Parker.

[44] Mr. Parker has a good relationship with his sister and his son.

[45] Because of the incident before the Court, Mr. Parker has lost his long-term, well-paying employment. Though initially suspended pending investigation, he was eventually fired some six weeks later. He is disconnected from his colleagues and feels destroyed.



[46] Mr. Parker says these proceedings “consume” his thoughts daily and weigh heavily on him. It was difficult for him to tell his son and friends about the charge.

*Potential Impact of SOIRA*

[47] Though presently employed, at a significantly reduced rate of pay, Mr. Parker is worried about his present employer finding out about this charge, as it could jeopardize his employment.

[48] Mr. Parker has significant financial stressors and debt collection looming. He is concerned that reporting requirements may interfere with his employment obligations with his current or future employers.

[49] Mr. Parker describes himself as a very private person and fears that lengthy and onerous reporting requirements will further impair his already tenuous mental health.

[50] Mr. Parker fears that reporting requirements may impair his ability to start a new relationship or make new friends.

[51] For those reasons, which I accept, I am persuaded, on balance, there is a marked and serious imbalance between the objectives of the legislation and the significant infringements on Mr. Parker’s liberty interests.

[52] A remedy under section 24(1) of the *Charter* is granted such that Mr. Parker is exempt from the suspension of invalidity, and section 490.012 of the *Criminal Code* shall not apply, in his individual circumstances.

Chief Judge Pamela S. Williams, JPC