



Case in Brief: **R. v. J.J.**

Judgment of June 30, 2022 | On appeal from the Supreme Court of British Columbia and the Ontario Superior Court of Justice
Neutral citation: 2022 SCC 28

The Supreme Court finds constitutional a new procedure in the Criminal Code for deciding if a complainant's private documents can be used by an accused in a sexual offence trial.

J.J. was accused of sexual assault in British Columbia. His identity is protected by a publication ban. Shane Reddick was also accused of the same in Ontario. In both cases, the men argued that sections 278.92 to 278.94 of the *Criminal Code* are unconstitutional. Those provisions set out how a judge decides if a complainant's private documents (called "records" in the *Criminal Code*) can be used by the accused during their trial for a sexual offence. This is known as the record screening process. These provisions are also used to decide how evidence of the complainant's past sexual activity can be used. Evidence like private documents and past sexual activity can be allowed in certain circumstances.

J.J. had records of communications between himself and the complainant. He wanted to use those records to cross-examine the complainant. Likewise, Mr. Reddick wanted to cross-examine the complainant in his case, but on evidence of her past sexual activity.

Before their trial, both J.J. and Mr. Reddick asked a judge to decide that the record screening process violated three of their rights under the *Canadian Charter of Rights and Freedoms*: the right to remain silent and to not self-incriminate, the right to a fair trial, and the right of an accused to present evidence in their defence and challenge the evidence against them.

In J.J.'s case, the judge found one aspect of the record screening process unconstitutional. Both the Crown and J.J. appealed the judge's decision to the Supreme Court of Canada. A jury later found J.J. not guilty, and the Crown has not appealed the acquittal.

In Mr. Reddick's case, the judge found the entire record screening process unconstitutional. The complainant asked the Supreme Court for permission to appeal that decision. She said it affected the right of sexual assault complainants to participate in decision-making about how details of their private sexual lives would be used in a public courtroom. The Supreme Court gave her permission.

The Supreme Court has found the record screening process in sections 278.92 to 278.94 of the *Criminal Code* constitutional.

The record screening process does not violate the *Charter* rights of the accused.

Writing for a majority of the judges of the Supreme Court, Chief Justice Richard Wagner and Justice Michael Moldaver said the accused's rights are not violated. The accused's right to silence is not in issue because they are not forced to testify during the record screening process. Also, the accused's right to a fair trial does not mean they can receive the most advantageous or beneficial trial possible. Finally, the accused's right to present and challenge evidence is not unlimited. Ambushing complainants with their own highly private records at trial can be unfair to complainants and may be contrary to the search for truth.

The majority explained that sections 278.92 to 278.94 of the *Criminal Code* were created to remove barriers preventing sexual assault victims from coming forward. The goal of those sections was to have a process to protect the interests of complainants in their own private documents when an accused has those documents and wants to use them at trial. This process balances the rights and interests of the accused, the complainant and the public, the majority said.

Breakdown of the decision: *Majority*: Chief Justice [Wagner](#) and Justice [Moldaver](#) found the record screening process constitutional in its entirety (Justices [Karakatsanis](#), [Martin](#), [Kasirer](#) and [Jamaal](#) agreed) | ***Dissenting in***

part: Justice [Brown](#) found the record screening process unconstitutional for private records but constitutional for evidence of past sexual activity | **Dissenting in part:** Justice [Rowe](#) agreed with Justice Brown, and explained how to make a decision when sections 7 and 11 of the *Charter* are brought up at the same time | **Dissenting in part:** Justice [Côté](#) agreed with Justices Brown and Rowe but would have interpreted more narrowly some of the terms in the relevant *Criminal Code* provisions.

More information: [Decision](#) | Case information: [39133](#), [39516](#) | [Webcast of hearing](#)

Lower court rulings: first [judgment regarding J.J.](#) (Supreme Court of British Columbia) | second [judgment regarding J.J.](#) (Supreme Court of British Columbia) | [judgment regarding Shane Reddick](#) (Ontario Superior Court of Justice)
