



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

Judgment of November 10, 2021 (written reasons issued April 22, 2022) | On appeal from the Court of Appeal of Quebec
Neutral citation: 2022 SCC 15

The Supreme Court restores the 2017 convictions of an individual who was found guilty of multiple sex offences against children.

In 2012, J.D. was charged with 18 counts of sexual offences involving young people committed between 1974 and 1993 in Quebec. Two of the complainants were his children (C.D. and S.D.). The trial by judge alone (without a jury) started in 2016. J.D.'s daughter (C.D.) testified over two days. Soon after, the judge fell ill and the trial was postponed.

Section 669.2(3) of the *Criminal Code* sets out what should happen if a judge cannot continue a trial but has not yet rendered a verdict. In this case, a new trial was started before another judge. At the new trial in 2017, the parties agreed to file the original transcript of C.D.'s testimony so that she would not have to testify again. The new judge also heard testimony from the other complainants and found J.D. guilty on nine counts of sexual offences.

J.D. appealed to Quebec's Court of Appeal, which ordered a new trial on the counts concerning his two children. The court said the trial judge should have conducted a two-part test before permitting C.D.'s initial testimony to be filed as evidence at the new trial. The judges said the test would have ensured that the accused truly agreed with the decision to file the testimony and that the filing would not affect the fairness of the trial. The Crown then appealed to the Supreme Court of Canada.

The Supreme Court has sided with the Crown.

A transcript of witness testimony given at a first trial can be filed as evidence in a second trial if the parties agree.

Writing for a unanimous Court, Justice Suzanne Côté said the law does not require the new judge to conduct a test before allowing a transcript of witness testimony given at a first trial to be filed as evidence at a second trial, if the parties agree.

Justice Côté said section 669.2(3) of the *Criminal Code* is clear. Where a trial is by judge alone, the new judge must begin the trial again as if no evidence had been taken, and cannot require the parties to file evidence from the first trial. Instead, both the prosecution and the defence can present their evidence as they see fit. For example, they may choose, as they did in this case, to file a transcript of previous testimony. This is a strategic decision like choosing to cross-examine a witness, and the judge should not intervene. "All that is needed is that the transcript be duly filed and that the parties consent to it being filed", Justice Côté wrote.

In this case, the new judge did not require the parties to file the transcript from the first trial. Rather, the parties agreed between themselves to file it. There was no reason for the judge to question the accused's consent in this regard. As a result, the second trial was fair.

Breakdown of the decision: *Unanimous*: Justice [Côté](#) allowed the appeal and restored the convictions and sentences on the counts concerning C.D. and S.D. (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Brown](#), [Rowe](#), [Martin](#), [Kasirer](#) and [Jamal](#) agreed)

More information (case # 39370): [Decision](#) | [Case information](#)

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