

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

B E T W E E N:

ROSS MCKENZIE KIRKPATRICK

Appellant
(Respondent)

– and –

HER MAJESTY THE QUEEN

Respondent
(Appellant)

– and –

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PART I - OVERVIEW

1. When a woman consents to penetrative sex only with a condom, she cannot and should not be deemed in law to have consented to intercourse without a condom. Neither a partner, nor the law, should override a complainant's agency, autonomy, sexual integrity and equality when she requires that a condom be used. The robust standard of affirmative consent in Canadian law under s.273.1 of the *Criminal Code* and repeatedly confirmed in this Court's jurisprudence since *R v Ewanchuk*,¹ includes the ability to control how one's body is touched as an essential element of consent.

2. The Appellant submits, relying on *R v Hutchinson*, that condom use is irrelevant to a complainant's consent; that while a complainant believes she is only consenting to sex with a condom, the law tells her otherwise. The Appellant argues that once a complainant consents to penile penetrative sex, she has, in law, consented to the relevant "sexual activity in question," regardless of how it is carried out. The Respondent Crown argues that this approach to consent is fundamentally at odds with the law of consent in Canada. Physical aspects of sexual touching, such as whether a condom is used or how much force is used, are clearly part of the "sexual activity in question" under s.273.1. Penetrative sex with and without a condom are fundamentally different forms of sexual touching. The Respondent Crown submits that the law of consent post-*Hutchinson* must be clarified to accord with our common-sense, statutory, and principled approach to consent, which respects the equality, sexual integrity and autonomy of persons to control the physical "how" of sexual contact.

3. The Barbra Schlifer Commemorative Clinic (the "Clinic") submits that the Respondent Crown's position is correct. This appeal offers this Court a much-needed opportunity to reconcile the line of cases in *R v Cuerrier*, *R v Mabior* and *R v Hutchinson* with the affirmative standard of consent articulated in *R v Ewanchuk*, *R v J.A.*, *R v Barton* and *R v Goldfinch*.² *Ewanchuk* was most recently affirmed in *R v GF*, where the majority began its judgment by quoting from *Ewanchuk* that "control over who touches one's body, **and how**, lies at the core of human dignity and autonomy".³ The discrete issue of HIV non-disclosure, and line of cases flowing from *Cuerrier* and *Mabior*, should neither dominate, distort nor diminish the scope of consent to physical touching in sexual assault law more generally. As argued below, in reconciling the caselaw, this Court can and must

¹ *R v Ewanchuk* [1999] 1 SCR 330.

² *R v Cuerrier*, [1998] 2 SCR 371; *R v Mabior* 2012 SCC 47; *R v J.A.* 2011 SCC 28; *R v Barton* 2019 SCC 33; *R v Goldfinch* 2019 SCC 38.

³ *R v GF*, 2021 SCC 20 at para 1, citing *R v Ewanchuk* at para. 28.

preserve the robust and meaningful affirmative standard of consent in Canadian law that protects how a person agrees to be touched as constitutive of consent.

4. This appeal has urgent implications for the lives and safety of women. Non-consensual condom removal and condom sabotage constitute widespread forms of gender-based violence in our society.⁴ If this Court adopts a narrow approach to the content and meaning of the “voluntary agreement to the sexual activity in question” under s. 273.1(1) in cases involving non-consensual condom-less sex, some of the most vulnerable victims of sexual violence will be excluded from the criminal law’s protection, including the migrant women, Indigenous women, racialized women and women experiencing domestic violence served by the Clinic. There are extremely serious implications for the equality and safety of women, if how one’s body is touched is not a fundamental component of subjective consent.

PART II – QUESTIONS IN ISSUE

5. The Barbra Schlifer Commemorative Clinic will address four issues: (1) Non-consensual condom removal, sabotage and resistance (“NCCR”) are serious forms of sexual assault that form part of the context of systemic gender inequality; (2) A narrow approach to affirmative consent will exclude victims of domestic violence, dating violence, and others from protection from NCCR; (3) A narrow interpretation of consent that excludes consent to how one’s body is touched will have serious implications in future cases involving other forms of sexual violence; and (4) Reconciling *Hutchinson* with *Ewanchuk* will not broaden the scope of criminalization of non-disclosure of HIV and other STIs.

PART III – ARGUMENT

(1) Non-consensual condom removal, sabotage and resistance are serious forms of gender based sexual assault in a social context of ongoing gender inequality

6. In these submissions, the Clinic will use the acronym NCCR to refer to the range of sexual

⁴ Rosie L Latimer et al, “Non-consensual condom removal, reported by patients at a sexual health clinic in Melbourne, Australia” (2018) 13:12 PloS one 1 at 1 (“Latimer”); Konrad Czechowski et al, “That’s not what was originally agreed to: Perceptions, outcomes, and legal contextualization of non-consensual condom removal in a Canadian sample” (2019) 14:7 PloS one 1 (“Czechowski”). Allira Boadle, Catherine Gierner & Simone Buzwell, “Young Women Subjected to Nonconsensual Condom Removal: Prevalence, Risk Factors, and Sexual Self-Perceptions” (2020) 27:10 Violence Against Women 1696 at 1706 (“Boadle”).

violence that includes non-consensual condom removal, condom sabotage and condom resistance. NCCR may involve deceptive or non-deceptive conduct. Some women experience NCCR when a partner either deceptively removes a condom, often called “stealthing”,⁵ merely pretends to have put on a condom, or sabotages a condom. Other women have their express consent to penetration only with a condom directly overridden by sexual partners.⁶

7. In the seven years since this Court decided *Hutchinson*, there has been significantly increased societal awareness of NCCR in its various forms as a violation of (primarily) women’s equality, dignity and autonomy, and as an act of reproductive coercion (as was so clearly demonstrated by the facts of *Hutchinson*). A robust social science literature has emerged, recognizing the phenomenon and its worrying prevalence.⁷

8. Specific groups of women are particularly at risk of being targeted for NCCR as a form of sexual assault, including women in abusive relationships and young women.⁸

9. Reproductive coercion through NCCR has a demonstrated association with domestic violence.⁹ In a violent intimate partner relationship, condom deception, sabotage and refusal can operate as tactics of power and control. This kind of coercive control is exacerbated among vulnerable women, including women living in poverty, racialized women and migrant women dependent on their spouses, who may face barriers to exiting an abusive relationship. In relationships where refusing sexual activity can trigger further violence, condom use is a mechanism for women to exercise a measure of control over their reproductive autonomy.¹⁰

10. Younger women are also targets for NCCR. A recent Canadian study surveying university students points to high rates of NCCR among young women.¹¹ The prevalence, influence and

⁵ *R v Lupi*, [2019 ONSC 3713](#).

⁶ *R v Rivera*, [2019 ONSC 3918](#); *R v Kraft*, [2021 ONSC 1970](#). For review of this case law see Lise Gotell and Isabel Grant, “[“Does No, Not without a Condom” Mean Yes Even Without a Condom?: The Fallout from R v Hutchinson](#)” (2020) 43:2 Dal LJ 747.

⁷ Latimer; Broadle, Czechowski, *supra* note 3.

⁸ Grace and Anderson at 383; Boadle et al at 1706.

⁹ See Karen Trister Grace & Jocelyn C Anderson, “Reproductive Coercion: A Systematic Review” (2018) 19:4 Trauma, Violence, & Abuse 371 at 383.

¹⁰ *Ibid*, at 385.

¹¹ *Supra* note 2, see also Cue Davis et al, “A qualitative examination of men’s condom use attitudes and resistance: It’s just part of the game: (2014) 43:3 Archives of Sexual Behaviour 631;

accessibility of pornography, in which NCCR is a common tactic of male conquest, has been found to be a contributing factor.¹² University and college sexual violence policies across the country have begun to include “stealthing” or “non-consensual condom removal” in their definitions of sexual violence in response to the pervasiveness of the problem.¹³ The facts of this case, *R v Lupi*, *R v Rivera*, *R v Changoo*, and *R v Kraft*¹⁴ also reflect the risks to women and others of NCCR in dating relationships, where explicit and expressed boundaries and terms for sexual contact are overridden and ignored.

11. Control over women’s sexuality and reproduction has long been a fundamental component of systemic inequality. NCCR must be understood in this context. Overriding a woman’s insistence on condom use is strategy rooted in gender-based oppression. NCCR is a clear form of sexual assault, when understood as the denial of a woman’s sexual autonomy, reinforcing a woman’s status as a sexual object whose body serves as the means to the perpetrator’s own ends.

12. This Court has repeatedly recognized that sexual assault is an assault on human dignity and an act that “constitutes a denial of any concept of equality for women.”¹⁵ The affirmative definition of consent embedded in the *Criminal Code* since 1992 was expressly enacted with a view to Parliament’s concern for the impacts of sexual violence on the *Charter* equality rights of women and children.¹⁶ The fundamental criminal wrong in all forms of NCCR is the undermining of the sexual agency of the victim as to how her body is touched sexually. NCCR must be understood as an act of power, control and inequality by the perpetrator. This is true whether the refusal to wear a

and Davis and Greene, “Young Men’s Aggressive Tactics to Avoid Condom Use (2012) 36:4 Social Work Research 223, cited in Gotell and Grant, “NCCR in Canadian Law Before and After *R v Hutchinson*” (forthcoming) at fn 12-15.

¹² See e.g. Ahmad, M., et al, “[You do it without their knowledge](#)”, [Assessing Knowledge and Perception of Stealthing Among College Students](#)”, Int J Environ Res Public Health. 2020 May; 17(10): 3527.

¹³ For example, the following university sexual violence policies include condom removal and/or stealthing as a form of sexual violence covered by the policy: University of Ottawa, “[Policy 67B Prevention of Sexual Violence](#)” (9 December 2019); St. Francis Xavier University, “[Sexual Violence Response Policy](#)” (February 2020) at 4; Dalhousie University, “[Sexualized Violence Policy](#)” (25 June 2019) at 5.

¹⁴ *Supra* notes 5 and 6.

¹⁵ *R v Ewanchuk* at para. 69, citing *R v Osolin* [1993] 4 SCR 595 at p.669.

¹⁶ Preamble, Bill C-49, An Act to amend the Criminal Code (sexual assault), 3rd Sess, 34th Parl, 1992 (assented to 23 June 1992), SC 1992, c 38 [Bill C-49].

condom or the removal of the condom is overt or deceptive.

13. *Hutchinson* recognized only a limited physical harm associated with NCCR, attributing a criminal wrong only where there is deception, and the victim is subjected to a risk of disease or unwanted pregnancy. If left unclarified in this and future cases, the ruling in *Hutchinson* would leave Canadian sexual assault law with “an impoverished conception of sexual autonomy divorced from any recognition of the inequality women have historically faced around control of their reproduction and sexuality.”¹⁷ As Professors Gotell and Grant write:

NCCR needs to be understood as a widespread form of gender-based violence. As long as we criminalize sexual assault as a violation of sexual autonomy, NCCR must be understood as constituting a lack of agreement to the sexual activity in question. While violative condom practices can subject survivors to the risks of unwanted pregnancies and STIs, these acts also produce complex forms of harm, undermining survivors’ sexual agency and dignity, and reinforcing a form of masculinity defined by sexual conquest, premised on the objectification of women, and antithetical to any concept of sexual equality. Whether the criminal law recognizes a person’s autonomy to choose whether or not to engage in unprotected sexual intercourse should not depend on whether they are capable of becoming pregnant.¹⁸

14. Some of the serious consequences to women of such an impoverished and narrow approach to substantive consent to physical sexual touching are set out below.

(2) A narrow approach to affirmative consent will exclude victims of domestic violence, young women and others from protection

15. In the Clinic’s experience,¹⁹ women navigating abusive relationships frequently engage in complex and nuanced exercises of survival and self-preservation. As is well documented in the literature, women experiencing intimate partner violence remain in abusive relationships for a host of complex and interrelated reasons, which may include love for the abuser, lack of awareness and education of intimate partner violence, normalization of sexually aggressive behavior²⁰, financial and other dependence, community pressure and norms, presence of children, loss of confidence and

¹⁷ Gotell and Grant, “NCCR in Canadian Law Before and After *R v Hutchinson*” (forthcoming)

¹⁸ *Ibid.*

¹⁹ Barbra Schlifer Commemorative Clinic, [*Family Law Reform in Ontario: increasing safety for women and children and bringing more consistency between the Children’s Law Reform Act and the Divorce Act*](#), Ministry of Attorney General Submission.(January 17, 2020) at page 1-2.

²⁰ Lévesque S, Rousseau C. Young Women’s Acknowledgment of Reproductive Coercion: A Qualitative Analysis. *Journal of Interpersonal Violence*. 2021; 36 (15-16):NP8200-NP8223.

self-worth arising from the abuse, and risk of even greater violence or instability associated with leaving, up to and including lethal violence by the abuser.²¹

16. The stark reality is that some women experiencing intimate partner violence may have limited or no ability to safely refuse sex. Managing and balancing the dynamics of abusive relationships may involve abused women agreeing to the sexual act, but insisting on, or attempting to insist on, the use of a condom, as a matter of self-protection and reproductive autonomy.²²

17. Where an abused woman's expressed consent to sex only with a condom is overridden by an abusive partner without deception—for example, where he simply ignores her request and proceeds to penetrate her without a condom – the Appellant's application of *Hutchinson* and the decision of the minority in the Court below, would deny any recognition in criminal law of the woman's sexual agency, equality and right to control over her reproduction, and physical health and well-being.²³

18. For front-line service providers like the Clinic, a common fact scenario of sexual victimization through NCCR without deception, involves younger (or otherwise disempowered) women in dating or 'hook-up' contexts, often with men they don't know very well. The women agree to sexual contact, but only with a condom, an expressed sexual boundary that is overtly ignored or violated. This breach by the perpetrator is an act of dominance, objectification, inequality, and violence. There is no subjective consent here.

19. Yet if the minority decision of Justice Bennett in the Court of Appeal for British Columbia is followed, the subjective and systemic harms perpetrated against the women in these scenarios will be beyond the reach of the criminal law. In circumstances where NCCR occurs with without deception, the lack of voluntary agreement, and often expressions of clear communicated non-consent, will have no legal effect because, by consenting to penetrative sex with a condom, women

²¹ Patricia Coelho, [The Intimate Partner Violence Risk Identification Assessment \(IPV RIA\) Tool and User Guide](#); Statistics Canada – Family Violence in Canada: A Statistical Profile 2011: [Section 3: Intimate Partner Violence](#).

²² Lynn Hecht Schafran, [Risk Assessment and Intimate Partner Sexual Abuse: The Hidden Dimension of Domestic Violence](#), 93 JUDICATURE, no. 4, (January-February 2010) at 161; (“pregnancy-stemming from [marital sexual violence] as a hidden risk factor of lethality of IPV”)

²³ Neilson, Elizabeth C., et al. “Psychological Effects of Abuse, Partner Pressure, and Alcohol: The Roles of in-the-Moment Condom Negotiation Efficacy and Condom-Decision Abdication on Women's Intentions to Engage in Condomless Sex.” *Journal of Interpersonal Violence*, June 2019.”

are deemed in law to have consented to penetrative sex without protection. Because their victimization was not achieved by way of fraud or deception, their consent was not vitiated.

20. As Professors Lise Gotell and Isabel Grant write:

there should be no difference between tricking someone into believing a condom is being used and simply disregarding a woman's express requirement that a condom be used.

Why is it that a brief moment during which someone does not yet realize that the condom has been removed may be enough to render one form of condom removal assault, while those who accomplish condom-less sex through undisguised coercion...be viewed as less blameworthy?...there is no principled approach for distinguishing these situations, particularly when both rest upon the objectification of the complainant and the erasure of her sexual agency.²⁴

21. *Hutchinson* involved a clear act of deception. It is thus understandable why a narrow majority in the 4:3 decision, found the legal analysis based in fraud compelling. The Clinic also recognizes that *R v Hutchinson* was decided under the shadow of Canada's harshly punitive approach to HIV non-disclosure. The valid concern about not expanding criminalization for the stigmatized group of persons living with HIV, however, should not result in the distortion of sexual assault law and the erosion of established principles of consent.²⁵

22. If non-consensual sex without a condom is only a criminal wrong where there is deception, the vulnerable women in the examples above, and others subjected to similar violations of their sexual integrity and equality will be excluded from the criminal law's recognition and protection.

23. As well, as addressed in the facts of the Crown and other interveners, if non-consensual sex without a condom is only sexual assault where there is deprivation by risk of physical harm, infertile women, pregnant women, and trans-women/cis-men (who cannot become pregnant) will be excluded as well, unless the partner has an STI. The degradation and objectification that they experience at the time of the sexual contact will become meaningless, even as they are subject to a profound violation of their choices as to how their bodies may be physically touched. As Justices Abella and Moldaver stated in *Hutchinson* at para 88:

²⁴ Isabel Grant, Lise Gotell, "Does "No Without a Condom" Mean "Yes, Even Without a Condom"?: The Fallout from *R v Hutchinson*" (2020) 43:2 Dal LJ 747 at 785.

²⁵ Isabel Grant, "[The Complex Legacy of *R v Cuerrier*: HIV Nondisclosure Prosecutions and Their Impact on Sexual Assault Law](#)" (2020) 58:1 Alta L Rev 45 ["Complex Legacy"].

A person consents to *how* she will be touched, and she is entitled to decide what sexual activity she agrees to engage in for whatever reason she wishes. The fact that some of the consequences of her motives are more serious than others, such as pregnancy, does not in the slightest undermine her right to decide the manner of the sexual activity she wants to engage in. It is neither her partner's business nor the state's.

(3) A narrow interpretation of consent that excludes consent to how one's body is touched will have serious implications in future cases

24. At paragraph 26 of the Respondent Crown's Factum, the Crown submits that, at a minimum, the following five physical aspects of sexual contact are engaged by s. 273(1) as constitutive elements of consent:

- i. the part of the body being touched;
- ii. what is used to touch the body - body part, object or substance;
- iii. how direct is the contact - whether it is direct skin to skin contact, or over clothing or with some other barrier;
- iv. the invasiveness of the touching – such as penetration or some less invasive touching;
- v. the level of force used in the touching.

25. The Clinic agrees with the Respondent Crown's submission above and elaborates on the critical importance in this appeal of the Court acknowledging that the level of force used in the touching is a fundamental component of the "how" of the "sexual activity in question."²⁶

26. In *R v Barton*, the Alberta Court of Appeal directly identified the level of force as an integral component of the "sexual activity in question" under s.273.1, noting that if all that was required for consent was consent to the "type" of sexual activity (e.g. vaginal penetration), that blanket consent would include penetration by fingers, hand, penis or exacto knife.²⁷ The appellate court correctly held that "the jury ought to have been invited to determine whether the degree of force used in the sexual activity...exceeded the scope of any consent Gladue gave."²⁸ The Crown did not appeal on this point to this Court, and thus this Court held that it would be procedurally unfair for the Court to address the level of force as a component of consent in its 2019 ruling. It is noted, however, that

²⁶ See discussion in Lise Gotell, "Thinly Construing the Nature of the Act Legally Consented To: The Corrosive Impact of *R v Hutchinson* on the Law of Consent" pp. 53–100 (2020) 53:1 UBC L Rev 53 at pp. 81-97; and Grant, *Complex Legacy* at p.74.

²⁷ Logan T.K., Walker, R. & Cole, J. (2015). Silenced Suffering: The Need for a Better Understanding of Partner Sexual Violence. *Trauma, Violence & Abuse*, 16(2), paras. 111-135 ("Logan").

²⁸ Logan, paras. 187 and 177.

interveners before the SCC in that case argued that the inevitable result of *Hutchinson* was that the level of force engaged in by the accused is irrelevant to the consent inquiry (which the Clinic submits would be an extremely dangerous legal position for women).²⁹

27. The scope of consent under s.273.1, however, is directly before the Court in this appeal. Applied to level of force, the issue is whether consenting: to a kiss, means voluntarily agreeing to a kiss that involves biting causing bleeding and/or requiring stitches; to vaginal penetration with a toy constitutes voluntary agreement to vaginal penetration with any object, or, as in the case of *R v Barton*, agreeing to digital penetration implies consent to “sexual activity that involved the degree of force required to rip an 11 centimeter hole in [the victims’] vaginal wall” through repeated and violent thrusting.³⁰

28. Further, as demonstrated by the horrific facts in *Barton*, a woman's ability to control the level of force applied to her body as a matter of subjective consent to the physical sexual act, can be a matter of life and death. Any development of the law that would deem consent to violent sexual contact from the prior consent to the type of sexual contact in general, would not only fly in the face of any substantive understanding of affirmative consent that is ongoing and contemporaneous with the event, but would be downright dangerous, particularly for women in abusive relationships, Indigenous women, racialized women, younger women and women who engage in the sex trade. As the Alberta Court of Appeal put it, "when a sex trade worker gives her consent to “Intercourse, sex”, that sex trade worker is not consenting to bodily harm from that sexual activity.”³¹ The intersection of colonialism and racism further increases this danger, by presenting the bodies of certain groups of women as simply receptacles for male violence. Migrant women, who may be entirely dependent on their spouses or other persons such as extended family, experience higher vulnerabilities and are at higher risk of violence as well as stigma and stereotyping about their experience of sexual violence. Indigenous women are targeted for appallingly high rates of sexual violence³² and their accounts of this violence are still systemically minimized and dismissed in our legal system. It is essential that the law confirm the right of these and other women to control how their bodies are

²⁹ *R v Barton*, 2019 SCC 33 ([Factum of the Intervener, Criminal Lawyers Association of Ontario](#) at para 8), at para 13.

³⁰ *R v Barton*, [2017 ABCA 216](#), at para. 195.

³¹ *R v Barton*, [2017 ABCA 216](#), at para. 196.

³² Catalogue no. 85-002-X ISSN 1209-6393. Loanna Heidinger, [Intimate partner violence: Experiences of First Nations, Métis and Inuit women in Canada](#), 2018.

touched, and with what, if any, force.

(4) Reconciling *Hutchinson* with *Ewanchuk* will not broaden the scope of criminalization of non-disclosure of HIV and other STIs

29. The Clinic shares the concerns underlying *Cuerrier* and *Mabior* that persons living with HIV are subject to discrimination that should not be over-criminalized. However, as Grant has noted, the compelling reasons for more restraint in HIV nondisclosure prosecutions do not extend to sexual assault more generally outside that context.

Sexual assault is a profoundly under-reported and under-prosecuted crime. Conviction rates outside of the HIV context are low compared to other violent crimes. Already marginalized populations tend to be targeted for sexual assault such as, for example, Indigenous women and girls and those with disabilities.³³

30. Re-affirmation by this Court that the “how” of physical sexual contact is an essential component of consent does not put persons living with HIV at a heightened risk of criminal prosecution unless they disregard their partner’s insistence on a condom. As the minority clearly articulated in *Hutchinson*, how sexual activity is carried out does not include the potential consequences/risks of sexual activity. The Crown in this appeal has correctly not included HIV status in the list of factors included within the list of physical aspects of consent to sexual activity. This Court has already determined that the fact that a person is HIV positive is not relevant to the physical nature of the sexual activity in question.

31. The valid concern of over-criminalization of persons with HIV should not result in a “thinly construed” standard of consent. NCCR is a violation of dignity and autonomy and a person’s right to self-determination in how their body is touched. It especially puts the safety of marginalized and abused women at risk. It is this serious issue of sexual assault law that needs to be addressed in this appeal.

PART IV – SUBMISSIONS ON COSTS & PART V - ORDER

32. Barbra Schlifer Commemorative Clinic does not seek costs and asks that no order be made against it.

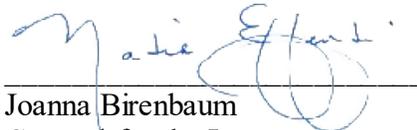
³³ Grant, *Complex Legacy* at p.78.

PART VI – SUBMISSIONS ON PUBLICATION

N/A

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of August 2021.

Per:

A handwritten signature in blue ink, appearing to read "Joanna Birenbaum", written over a horizontal line.

Joanna Birenbaum
Counsel for the Intervener,
Barbra Schlifer Commemorative Clinic

PART VII – AUTHORITIES

Caselaw:

No.	Authority	Paragraph Reference
1.	<i>R v Barton</i> 2019 SCC 33	3, 26
2.	<i>R v Barton</i> , 2017 ABCA 216	27, 28
3.	<i>R v Cuerrier</i> , [1998] 2 SCR 371	3, 29
4.	<i>R v Ewanchuk</i> [1999]1 SCR 330	1, 3, 5, 12
5.	<i>R v GF</i> , 2021 SCC 20	3
6.	<i>R v Goldfinch</i> 2019 SCC 38	3
7.	<i>R v J.A.</i> 2011 SCC 28	3
8.	<i>R v Kraft</i> , 2021 ONSC 1970	6, 10
9.	<i>R v Lupi</i> , 2019 ONSC 3713	6, 10
10.	<i>R v Mabior</i> 2012 SCC 47	3, 29
11.	<i>R v Osolin</i> [1993] 4 SCR 595	12
12.	<i>R v Rivera</i> , 2019 ONSC 3918	6, 10

Secondary Sources:

No.	Secondary Source	Paragraph Reference
1.	Ahmad, M., et al, “ You do it without their knowledge ”, Assessing Knowledge and Perception of Stealthing Among College Students ”, Int J Environ Res Public Health. 2020 May; 17(10): 3527	10
2.	Barbra Schlifer Commemorative Clinic, Family Law Reform in Ontario: increasing safety for women and children and bringing more consistency between the Children’s Law Reform Act and the Divorce Act , Ministry of Attorney General Submission.(January 17, 2020) at page 1-2	15

No.	Secondary Source	Paragraph Reference
3.	Boadle, Allira, Gierner, Catherine & Buzwell, Simone, “Young Women Subjected to Nonconsensual Condom Removal: Prevalence, Risk Factors, and Sexual Self-Perceptions” (2020) 27:10 <i>Violence Against Women</i> 1696 at 1706	4, 8
4.	Coelho, Patricia, “ The Intimate Partner Violence Risk Identification Assessment (IPV RIA) Tool and User Guide ”;	15
5.	Czechowski, Konrad et al, “That’s not what was originally agreed to: Perceptions, outcomes, and legal contextualization of non-consensual condom removal in a Canadian sample” (2019) 14:7 <i>PloS one</i> 1	4, 7
6.	Dalhousie University, “ Sexualized Violence Policy ” (25 June 2019) at 5	10
7.	Davis, Kelly Cue and Logan-Greene, Patricia, “ Young Men’s Aggressive Tactics to Avoid Condom Use (2012) 36:4 <i>Social Work Research</i> 223, cited in Gotell and Grant, “NCCR in Canadian Law Before and After <i>R v Hutchinson</i> ”	10
8.	Davis, Kelly Cue et al, “A qualitative examination of men’s condom use attitudes and resistance: It’s just part of the game: (2014) 43:3 <i>Archives of Sexual Behaviour</i> 631	10
9.	Gotell, Lise and Grant, Isabel, “ Does No, Not Without a Condom Mean Yes Even Without a Condom?:The Fallout from R v Hutchinson ” (2020) 43:2 <i>Dal LJ</i> 747	6
10.	Gotell, Lise and Grant, Isabel, “Non-consensual Condom Removal in Canadian Law Before and After <i>R v Hutchison</i> , forthcoming	10
11.	Gotell, Lise, “Thinly Construing the Nature of the Act Legally Consented To: The Corrosive Impact of <i>R v Hutchinson</i> on the Law of Consent” pp. 53–100 (2020) 53:1 <i>UBC L Rev</i> 53	25
12.	Grace, Karen Trister & Anderson, Jocelyn C., “Reproductive Coercion: A Systematic Review” (2018) 19:4 <i>Trauma, Violence, & Abuse</i> 371 at 383, 385	9
13.	Grant, Isabel, “ The Complex Legacy of R v Cuerrier: HIV Nondisclosure Prosecutions and Their Impact on Sexual Assault Law ” (2020) 58:1 <i>Alta L Rev</i> 45	21

No.	Secondary Source	Paragraph Reference
14.	Hecht Schafran, Lynn, “ Risk Assessment and Intimate Partner Sexual Abuse: The Hidden Dimension of Domestic Violence ”, 93 JUDICATURE, no. 4, (January-February 2010) at 161	16
15.	Heidinger, Loanna, “ Intimate partner violence: Experiences of First Nations, Métis and Inuit women in Canada ”, 2018, Catalogue no. 85-002-X ISSN 1209-6393	48
16.	Latimer, Rosie L. et al, “Non-consensual condom removal, reported by patients at a sexual health clinic in Melbourne, Australia” (2018) 13:12 PloS one 1 at 1	4, 7
17.	Lévesque, Sylvie and Rousseau, Catherine, “Young Women’s Acknowledgment of Reproductive Coercion: A Qualitative Analysis”. <i>Journal of Interpersonal Violence</i> . 2021; 36 (15-16):NP8200-NP8223	15
18.	Logan, T.K., Walker, R. & Cole, J. (2015). “Silence Suffering: The Need for a Better Understanding of Partner Sexual Violence”. <i>Trauma, Violence & Abuse</i> , 16(2), paras. 111-135, 177, 187	26
19.	Neilson, Elizabeth C., et al. “Psychological Effects of Abuse, Partner Pressure, and Alcohol: The Roles of in-the-Moment Condom Negotiation Efficacy and Condom-Decision Abdication on Women’s Intentions to Engage in Condomless Sex.” <i>Journal of Interpersonal Violence</i> , June 2019	17
20.	St. Francis Xavier University, “ Sexual Violence Response Policy ” (February 2020) at 4	10
21.	Statistics Canada – Family Violence in Canada: A Statistical Profile 2011: Section 3: Intimate Partner Violence	15
22.	University of Ottawa, “ Policy 67B Prevention of Sexual Violence ” (9 December 2019)	10

Statutes, Regulations, Rules, etc.:

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
1.	Bill C-46, 1 st Sess, 42 nd Leg Royal Assent: 2018-06-21 <i>An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts, SC 2018, c 21</i>	Preamble
	Projet de loi C-46, 1 ^{re} sess, 42 ^e légis Sanction royale : 2018-06-21 <i>Loi modifiant le Code criminel (infractions relatives aux moyens de transport) et apportant des modifications corrélatives à d'autres lois, LC 2018, c 21</i>	Préambule
2.	<i>Criminal Code</i> , RSC 1985, c C-46	s. 265(3)(c) s. 273.1(1)
	<i>Code criminel</i> , LTC 1985, c C-46	s. 265(3)(c) s. 273.1(1)

PART VII – STATUTES, REGULATIONS, ETC.

See Part VII above.