Unofficial English Translation of the Judgment of the Court

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| R. c. Houle | | | | | 2023 QCCA 99 |
| COURT OF APPEAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF QUEBEC | | |  | | |
| No.: | 200-10-004000-225 | | | | |
| (400-01-093518-199) | | | | | |
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| DATE: | January 25, 2023 | | | | |
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| CORAM: | | THE HONOURABLE | | GUY GAGNON, J.A.  SUZANNE GAGNÉ, J.A.  SOPHIE LAVALLÉE, J.A. | |
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| HIS MAJESTY THE KING | | | | | |
| APPLICANT – Prosecutor | | | | | |
| v. | | | | | |
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| SIMON HOULE | | | | | |
| RESPONDENT – Accused | | | | | |
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| JUDGMENT | | | | | |
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WARNING**: An order restricting publication under s. 486.4 *Cr. C*. was made on November 1, 2021**, by the Court of Québec (the Honourable Matthieu Poliquin), District of Trois-Rivières, directing that **any information that could identify the victim or a witness shall not be published or broadcast in any way.**

1. The prosecution seeks leave to appeal from a sentencing judgment rendered on June 21, 2022, by the Court of Québec (the Honourable Matthieu Poliquin), District of Trois-Rivières. The judgment conditionally discharged Simon Houle after he pleaded guilty to charges of sexual assault and voyeurism committed against L.L.B.[[1]](#footnote-1)
2. For the reasons below, the Court will grant the application for leave to appeal, allow the appeal, revoke the conditional discharge, and substitute it with a total sentence of 12 months’ imprisonment.
3. **Background**
4. The trial judge described the background and acts committed by Mr. Houle in a carefully drafted judgment:

[translation]

[7]  The accused and the victim were attending the same university in April 2019. They were not studying in the same field but knew each other because they were part of the same group of friends.

[8]  On the evening of the events, they were having drinks in a bar with some friends. When the bar closed, some of them – including the accused and the victim – continued the party at a friend’s apartment.

[9]  The accused and the victim were talking to each other at that apartment. Among other things, they discussed the fact that each of them had lost a parent. The discussion made the victim emotional and she phoned her mother, who offered to come and pick her up. The victim replied that it was not necessary, and the accused also reassured the mother.

[10]  A little later, the victim went into the bedroom of the apartment tenant. She lay down on his bed beside him. She was on her back, fully clothed and on top of the blankets. She fell asleep. The accused was not in the bedroom.

[11]  The victim was awakened by the light from a camera. She felt fingers moving back and forth in her vagina. She also realized that her camisole was pulled up and her bra was unhooked in the front.

[12]  She panicked. She moved a little and the accused removed his fingers from her vagina. She got up, fastened her bra, pulled down her camisole and went to the kitchen, where she lay down on the floor.

[13]  The accused found her there. He took her in his arms and brought her back to the bed in the bedroom. She finally fell back asleep, and when she woke up, she understood what had happened to her during the night.

[14]  She called her spouse and told him she thought the accused had taken photos of her while she was sleeping.

[15]  The victim’s spouse confronted the accused via text messages. The accused quickly joined the victim in the bedroom and threw his phone at her, telling her to look. Without looking at the phone, she asked him to leave, which he did.

[16]  A few days later, one of the accused’s friends, aware of this incident, looked at the accused’s phone. He found photos of a woman’s private parts in the device’s trash bin. He told the victim, who filed an official complaint with the police.

[17]  Nine photos were recovered from the accused’s cellphone. They were shown to the victim, who recognized her body.[[2]](#footnote-2)

[Reference omitted]

1. Mr. Houle was charged with sexual assault and voyeurism (ss. 271(a) and 162(1)(5)(a) *Cr. C.*). He pleaded guilty to these charges on November 21, 2021, more than two years after his first appearance.
2. The victim, Mr. Houle, and Mr. Houle’s friend testified at the sentencing hearing. In addition to the testimony, the judge had a psychotherapy assessment report describing Mr. Houle’s progress since November 2019 and a pre-sentence report dated February 24, 2022.
3. During sentencing submissions, the prosecution sought sentences of 12 to 15 months’ imprisonment on the count of sexual assault and 3 months’ imprisonment on the count of voyeurism, for a total sentence of 15 to 18 months. Mr. Houle sought a conditional discharge plus a donation and community service.
4. On June 21, 2022, the judge sentenced him as follows:

[translation]

[102] **ORDERS** a conditional discharge and 3 years’ probation with the following conditions:

• Keep the peace and be of good behaviour;

• Appear before the court when required to do so by the court;

• Notify the court or the probation officer in advance of any change of name or address, and promptly notify of any change of employment or occupation;

• Abstain from communicating, directly or indirectly, with L.L.B. (1995-[...]) and the members of her immediate family;

• Not be in the physical presence of L.L.B. (1995-[...]);

• Not be present anywhere L.L.B. (1995-[...]) lives, works, or studies;

• Report to a probation officer within two working days after the coming into force of the probation order, and thereafter, when required by the probation officer and in the manner directed by the probation officer;

• Continue his psychological treatment for the time and manner determined by the psychologist, with the probation officer’s agreement;

• Donate $6,000 within 32 months, and at least $2,000 a year, to CALACS (Centre d'aide et de lutte contre les agressions à caractère sexuel) de Trois‑Rivières, to be paid to the court office;

[103] On count 1, **ORDERS** the accused to provide the number of samples of bodily substances that is reasonably required for the purpose of forensic DNA analysis within three months;

[104] On count 1, **ORDERS** the accused to comply with the *Sex Offender Information Registration Act* for 20 years;

[105] On count 1, **PROHIBITS** the accused from possessing any firearm, cross-bow, restricted weapon, ammunition, and explosive substances for a period of 10 years, and any restricted firearm, prohibited firearm, prohibited weapon, prohibited device, and prohibited ammunition for life;

[106] **EXEMPTS** the accused from paying the victim surcharge.

1. **Judgment under appeal**
2. After describing the background, including the consequences on the victim and Mr. Houle’s situation, the judge correctly set out the sentencing principles and objectives as well as the principles applicable to sexual assault and discharges.
3. Under the heading [translation] “Appropriate sentence”, he placed the crimes committed by Mr. Houle in the intermediate and upper ranges of the seriousness scale. He characterized their subjective severity as [translation] “serious,” while noting that [translation] “there is a single victim and a single incident, which happened very quickly.”[[3]](#footnote-3)
4. The judge discussed the great vulnerability of the victim at the time and noted that Mr. Houle’s inebriated state [translation] “is not a defence or a justification, although it may explain his behaviour.”[[4]](#footnote-4)
5. He then considered Mr. Houle’s admission that he had behaved similarly in the past. The psychotherapy assessment report revealed that one evening in 2015, Mr. Houle touched the genitals of a young woman who was sleeping, over her clothes. For the judge, [translation] “this also demonstrates his transparency and the seriousness of the psychotherapy he started shortly after the events.”[[5]](#footnote-5)
6. He then listed the aggravating and mitigating factors:

[translation]

[82]  From this analysis, the Court finds that none of the aggravating factors listed by Parliament in s. 718.2(a) *Cr. C*. has been demonstrated. However, it is acknowledged that this list of factors is not exhaustive, and the Court accepts the following aggravating elements:

• The gravity of the interference with the victim’s bodily and psychological integrity;

• The serious consequences of the crimes on the victim;

• The consequences on her loved ones;

• The abuse of the victim’s vulnerability arising from the fact that she was unconscious.

[83]  The Court also accepts the following mitigating factors:

• The guilty plea …;

• The accused has only one prior conviction for impaired driving, and therefore no convictions for violence;

• The accused was only 27 at the time he committed the offence;

• The accused’s sincere and genuine remorse, regrets and apologies;

• The therapeutic treatment undertaken quickly and seriously;

• The accused’s honesty and transparency;

• The very positive pre-sentence report;

• The low risk of re-offending;

• The fact that he has always been an asset to society;

• The particularly convincing demonstration of the accused’s rehabilitation ….[[6]](#footnote-6)

[References omitted]

1. Taking all these elements into account, the judge concluded that a conditional discharge was the appropriate sentence. On the criterion of the accused’s best interests, he found that Mr. Houle [translation] “has generally demonstrated that he has good morals”[[7]](#footnote-7) and that the serious and criminal acts he committed against the victim were [translation] “contextual and isolated in his life.”[[8]](#footnote-8) The judge also noted that a conviction [translation] “could harm his engineering career” since it would be hard for him to travel outside the country.[[9]](#footnote-9)
2. On the criterion of public interest, the judge weighed both the gravity of the offence and the importance of general deterrence related to sexual assault offences against the mitigating circumstances. He concluded that [translation] “the public would not lose confidence in the credibility of the legal system if the accused was discharged.”[[10]](#footnote-10)
3. In closing, the judge reiterated that [translation] “a conditional discharge includes a mechanism whereby a judge can revoke the discharge and sentence the offender for the original offence” if he commits a new offence.[[11]](#footnote-11)
4. **The issues and the positions of the parties**
5. The prosecution raises five grounds of appeal:

* The trial judge erred in principle in his assessment of certain mitigating factors (Mr. Houle’s inebriation, his good morals, the duration of the assault), thereby demonstrating a misunderstanding of the harm caused by sex offences;
* He unreasonably exercised his discretionary powers by giving too much weight to Mr. Houle’s profile and rehabilitation and not enough to the subjective seriousness of the offences;
* He erred in principle by concluding that the criterion of the best interests of the accused was met, even though neither the evidence nor judicial notice supported the professional prejudice alleged by Mr. Houle;
* He erred by failing to sentence on the count of voyeurism or by failing to provide sufficient reasons for his decision;
* He imposed a demonstrably unfit sentence.

1. Counsel for Mr. Houle replies that trial judges “are best‑positioned to craft a fit sentence for the offenders before them”[[12]](#footnote-12) and that an appellate court cannot vary a sentence “simply because it would have weighed the relevant factors differently”.[[13]](#footnote-13) According to counsel, the judge could pass one sentence for both counts and his assessment of the mitigating circumstances was reasonable, as was his assessment of the criteria to order a discharge. On this last point, counsel for Mr. Houle asks the Court to distinguish the public interest from [translation] “the clamour of a misinformed public”.[[14]](#footnote-14)
2. It will not be necessary to rule on all the grounds of appeal. It will be sufficient to reiterate the standard for intervention on an appeal from a sentence, establish the errors of principle that justify the Court’s intervention, and determine the appropriate sentence based on the fundamental principle of proportionality.
3. **Analysis**
4. *Standard of intervention*
5. According to well-established authority, “appellate courts may not intervene lightly”[[15]](#footnote-15) in the exercise of the sentencing judge’s discretion, especially since the sentencing judge has the advantage of seeing and hearing the witnesses. In *R. v. Friesen*, rendered in 2020, the Supreme Court reiterated the principles confirmed a few years earlier in *R. v. Lacasse*:

[26]  As this Court confirmed in *Lacasse*, an appellate court can only intervene to vary a sentence if (1) the sentence is demonstrably unfit, or (2) the sentencing judge made an error in principle that had an impact on the sentence. Errors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor. The weighing or balancing of factors can form an error in principle “[o]nly if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably” ….[[16]](#footnote-16)

[Reference omitted]

1. *Errors in principle*
2. The judge imposed only one sentence for the counts of sexual assault and voyeurism, contrary to s. 725(1)(a) *Cr.* *C.* As Vauclair J.A. explained in *R. c. Guerrero Silva*, this is not in itself an error, given how Parliament has qualified the provision:

[translation]

[54]  I recall that section 725(1)(a) of the *Criminal* *Code* provides that the judge shall determine a sentence for each of the offences. I acknowledge that this requirement is qualified by Parliament itself, which added the words “if it is possible and appropriate to do so” to this provision. That seems to indicate that there will be cases where a comprehensive sentence is possible, which section 728 of the *Code* confirms to some extent. It provides that one sentence passed on two or more counts of an indictment is good if any of the counts would have justified the sentence.[[17]](#footnote-17)

1. The judge’s overall approach, however, led him to disregard some of the aggravating factors related to the commission of the offence of voyeurism, in particular the number of photos, their content, and the fact that they remained accessible in Mr. Houle’s phone for 44 days.
2. In *R. v. Jarvis*, the Supreme Court acknowledged “the greater threat to privacy and sexual integrity posed by recording, as opposed to mere observation.”[[18]](#footnote-18) In this case, which involves the offence of voyeurism, Mr. Houle did not merely observe the victim’s breasts and genitals while she slept, he took close-up photos of them. The nine photos remained in his possession for 44 days and were seen by his friend. As the prosecution argues, [translation] “the victim can never be certain that her sexual integrity and privacy are no longer at risk.”[[19]](#footnote-19)
3. It should be recalled that there is an intimate connection between privacy and individual dignity.[[20]](#footnote-20) By photographing the most intimate parts of the victim’s body without her knowledge, Mr. Houle violated an area of her privacy essential to the maintenance of her human dignity.[[21]](#footnote-21)
4. The judge did not take into account the aggravating factors related to the commission of the offence of voyeurism. He noted that Mr. Houle had time to take nine photos, but only to assess the duration of the incident. With respect to the aggravating factors, he accepted the gravity of the interference with the victim’s bodily and psychological integrity but failed to note the violations of her privacy and dignity.
5. In reality, apart from mentioning that voyeurism is punishable by a maximum prison sentence of 5 years, the judge seems to have lost sight of this offence when he determined the appropriate sentence. The following excerpt from his reasons is quite revealing:

[translation]

[91]  Second, the Court is of the opinion that granting a conditional discharge in this case is not contrary to the public interest, notwithstanding the gravity of the **offence**, especially due to the consequences on the victim and the abuse of her vulnerability, its impact on the community, and the importance of general deterrence associated with **sexual assault** offences.

[Emphasis added]

1. The same is true of the case law relied upon by the judge. In paragraph 98 of his reasons, he noted that [translation] “[t]he case law establishes that discharges have been granted in sexual assault cases”, but in every case he cited,[[22]](#footnote-22) sexual assault was the only offence that mandated a sentence.
2. This case is similar to *R. c. Cardinal*,[[23]](#footnote-23) where the offender pleaded guilty to charges of child luring and possession of child pornography. The trial judge imposed the minimum sentence for the latter offence, without mentioning child luring in his conclusions. Regarding the judge’s reasons, Kasirer J.A. (as he was then), on behalf of the Court, concluded that [translation] “their unintelligibility does not allow us to decide definitively between the argument on the lack of sentence for child luring and the argument on concurrent sentences.”[[24]](#footnote-24) Kasirer J.A. (as he then was) added:

[translation]

[51]  But this is not all: even if we admit that the judge punished the child luring in a total sentence, his reasons do not show that he properly took into account the appropriate sentencing factors, suggesting instead that he failed to consider the objective gravity of the offence of child luring and mistakenly underestimated its subjective gravity.[[25]](#footnote-25)

1. That is the case here. Even if we assume that the judge wanted to determine an overall sentence and had the offence of voyeurism in mind, his reasons do not show that he took into account the aggravating factors related to the commission of this offence.
2. Moreover, the photos show that Mr. Houle continued to assault the victim after she fled to the kitchen. In his reasons, the judge finds that the incident happened [translation] “rather quickly”, but what he went on to describe was anything but quick: [translation] “the accused nevertheless had time to take nine photos of the victim’s private parts at two different locations in the apartment.”[[26]](#footnote-26) However, the judge does not list Mr. Houle’s persistence as an aggravating factor.
3. Last, the judge erred in his assessment of Mr. Houle’s admission that he had touched the genitals of a young woman who was sleeping, over her clothes, during an evening in 2015. The judge was of course free to discount the importance of this previous conduct due to Mr. Houle’s transparency and the seriousness of his psychotherapy. But he could not go one step further and characterize the sexual assault and voyeurism involving L.L.B. as acts that were [translation] “contextual and isolated in his life.”
4. These errors had an impact on the sentence. They diminished the subjective gravity of the offences and Mr. Houle’s degree of responsibility, and thereby resulted in a sentence that does not respect the fundamental principle of proportionality.
5. The Court must therefore perform its own sentencing analysis to determine a fit sentence.[[27]](#footnote-27)
6. *Determining the appropriate sentence*
7. The *Criminal Code* sets out several penological objectives that give the sentence [translation] “attributes of both punitive justice and restorative justice.”[[28]](#footnote-28) For example, a sentence can be intended to denounce unlawful conduct and deter offenders from committing offences, just as it may assist in their rehabilitation and provide reparations for harm done to victims or to the community.[[29]](#footnote-29) These objectives are not mutually exclusive. On the contrary, as Vauclair J.A. wrote in *Harbour c. R.*, [translation] “[t]he sentence must take into account all of the penological objectives, not just some of them. Only a balance will result in a fit sentence.”[[30]](#footnote-30) And, whatever weight a judge may wish to assign to certain objectives, the sentence the judge imposes must respect the fundamental principle of proportionality.[[31]](#footnote-31)
8. This principle is codified in s. 718.1 *Cr. C.*:

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| 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. | **718.1**  La peine est proportionnelle à la gravité de l’infraction et au degré de responsabilité du délinquant. |

1. In *R. v. Nasogaluak,* LeBel J., on behalf of the Supreme Court, provided a good description of “the two perspectives on proportionality”:

[42]  For one, it requires that a sentence not exceed what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence. In this sense, the principle serves a limiting or restraining function. However, the rights-based, protective angle of proportionality is counter-balanced by its alignment with the “just deserts” philosophy of sentencing, which seeks to ensure that offenders are held responsible for their actions and that the sentence properly reflects and condemns their role in the offence and the harm they caused. Understood in this latter sense, sentencing is a form of judicial and social censure. Whatever the rationale for proportionality, however, the degree of censure required to express society’s condemnation of the offence is always limited by the principle that an offender’s sentence must be equivalent to his or her moral culpability, and not greater than it. The two perspectives on proportionality thus converge in a sentence that both speaks out against the offence and punishes the offender no more than is necessary.[[32]](#footnote-32)

[References omitted]

1. The demands of proportionality must also be [translation] “calibrated” by reference to sentences imposed in similar cases,[[33]](#footnote-33) based on the principle of parity of sentences. As the Supreme Court explained it in *R. v. 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*.[[34]](#footnote-34)

1. Mr. Houle must therefore be given a sentence proportional to the gravity of the crimes he committed and his degree of responsibility, bearing in mind all of the penological objectives, the circumstances of the case, and sentences imposed for similar offences committed in similar circumstances.

**\* \* \***

1. As the judge stated, Mr. Houle’s crimes fall in the intermediate and upper ranges of the seriousness scale, with voyeurism punishable by a maximum term of imprisonment of 5 years in prison and sexual assault by a maximum term of imprisonment of 10 years.
2. The subjective gravity of the crimes, i.e., the way Mr. Houle committed them, is high. The Court accepts the following aggravating factors:

* The degree of interference with the victim’s bodily and sexual integrity;
* The number and content of the photos, which indicate the degree of violation of the victim’s privacy and dignity;
* The fact that the photos remained accessible in Mr. Houle’s phone for 44 days;
* The abuse of vulnerability;
* The fact that Mr. Houle continued to assault the victim after she fled to the kitchen;
* The serious psychological and financial consequences on the victim;[[35]](#footnote-35)
* The consequences on her loved ones.

1. Mr. Houle’s degree of responsibility, however, is mitigated by the following factors:

* The guilty plea;
* Mr. Houle’s sincere remorse, regrets, and apologies;
* The therapy he undertook rapidly and seriously, including his honesty and transparency with his psychotherapist;
* The very positive pre-sentence report;
* The low risk of re-offending;
* The fact that he has a full-time job and presents a positive personal and professional profile, despite everything.

1. Unlike the judge, the Court does not consider the absence of prior convictions for violent offences and Mr. Houle’s age to be mitigating factors. It should be recalled that he was 27 years old when he committed the offences, had a prior conviction for impaired driving, and had previously committed sexual touching against a young woman who was sleeping. What he did to L.L.B. cannot be considered a youthful indiscretion or an accident.
2. Balancing all of the factors weighs in favour of the objectives of denunciation and general deterrence. Without neglecting Mr. Houle’s rehabilitation, the sentence to be imposed must denounce his unlawful conduct and the harm done to the victim, in terms of not only her bodily and sexual integrity, but also her privacy and dignity.
3. The type of sexual act committed by Mr. Houle is not trivial and increases the risk of harm to the victim. As the Supreme Court noted in *R. v. Friesen*, “[p]enetration, whether penile, digital, or with an object, may also cause physical pain and physical injuries to the victim”,[[36]](#footnote-36) quite apart from the increased risk of emotional or psychological harm stemming from the abuse of vulnerability. In *R. v. McDonnell*,[[37]](#footnote-37) McLachlin J. (later Chief Justice) described the harm sexual assault can cause a sleeping victim as follows:

[113]  … The result of such an assault on a typical victim would likely have been shame, embarrassment, unresolved anger, a reduced ability to trust others and fear that even in innocent sleep, people could and would abuse her and her body.[[38]](#footnote-38)

This is precisely the harm Mr. Houle caused L.L.B. In her statement filed under s. 722 *Cr. C.*, she said that she [translation] “felt crushed, overwhelmed by the shame and the frustration” and had trouble trusting others, an effect that will remain with her [translation] “for a very long time.”

1. The object of the offence of voyeurism is “to protect individuals’ privacy and sexual integrity, particularly from new threats posed by the abuse of evolving technologies”.[[39]](#footnote-39) The Supreme Court has often recognized the fundamental importance of individual autonomy, privacy and dignity in a free and modern society.[[40]](#footnote-40) In *Sherman Estate v. Donovan,* Kasirer J., on behalf of the Supreme Court, remarked that “[w]here dignity is impaired, the impact on the individual is not theoretical but could engender real human consequences, including psychological distress.”[[41]](#footnote-41) This case is an unfortunate illustration of this.
2. In short, the objective of denouncing unlawful conduct and the harm it causes to victims is of significant importance here, coupled with the objective of general deterrence.
3. This does not resolve the issue of sentencing, because [translation] “it is a mistake to believe that only imprisonment can adequately satisfy the objectives of denunciation and general deterrence, because seriousness is not an exclusive hallmark of imprisonment.”[[42]](#footnote-42) The case law also establishes that [translation] “the objective of general deterrence when dealing with crimes that are by nature more serious is not a fundamental obstacle to a discharge.”[[43]](#footnote-43)
4. In fact, a discharge does not exclude any crime (except those that carry minimum sentences or 14 years’ imprisonment), and it is not an exceptional measure.[[44]](#footnote-44) It can be ordered if the judge considers “that it is in the best interests of the accused and not contrary to the public interest”.[[45]](#footnote-45)
5. In this case, assuming that the criterion of the best interests of the accused is met – which need not be decided – that of the public interest is not. As authors Parent and Desrosiers have observed, [translation] “the more serious the offence, the lesser the likelihood a discharge will be granted, and the greater the need to demonstrate factors favourable to the accused”.[[46]](#footnote-46)
6. Consideration must also be given to the difference between a discharge and sentences imposed in similar cases. In *R. c. Douab,* Jean-François Gosselin J. of the Court of Québec correctly wrote that [translation] “the greater the difference, the less the public interest will be able to accommodate a discharge …. In other words, the bar is higher if the crime to be punished warrants a term of imprisonment, for example.”[[47]](#footnote-47)
7. That consideration is in keeping with the principle of parity of sentences. In sexual assault cases, the range of sentences generally imposed in similar circumstances varies from 12 to 20 months’ imprisonment when the offence is prosecuted by way of indictment.[[48]](#footnote-48) Incarceration is the preferred punishment, even if there are exceptions to this general rule.[[49]](#footnote-49)
8. One of those exceptions is *R. c. Gravel*,[[50]](#footnote-50)cited by the judge. In that case, the accused was a roommate of the victim’s former spouse. He sexually touched the victim while she was very drunk and asleep. The victim thought he was her former spouse, with whom she had just had sexual intercourse, and consented to the touching. When he penetrated the victim, the accused asked her if she knew who he was, which put an abrupt halt to the assault.
9. This Court did not intervene with the judge’s exercise of discretion to discharge the accused, noting in passing that there was no statement about the consequences of the crime, [translation] “although the complainant had the opportunity to make one”.[[51]](#footnote-51) *R. c.* *Gravel* can therefore be distinguished from Mr. Houle’s case in at least two respects: the accused was not convicted of voyeurism in that case and the evidence was silent as to the consequences of the crime on the victim and her loved ones.
10. The sentences imposed in *R. v. L.A.A.*,[[52]](#footnote-52) *R. v. R.R.*,[[53]](#footnote-53) and *R. c. Savard*[[54]](#footnote-54) may serve as better benchmarks. In all three of these cases, the accused abused the vulnerability of an unconscious victim to sexually assault her and filmed or photographed the scene. They were convicted of sexual assault and voyeurism.[[55]](#footnote-55) Notwithstanding the presence of several factors favourable to the accused, including evidence of their overall good morals and low risk of re-offending, they were given total sentences of 15, 36, and 8 months’ imprisonment.[[56]](#footnote-56)
11. Thus, the difference between an absolute discharge and the sentences in cases where the subjective seriousness of the offences and the offender’s degree of responsibility were similar is too great to risk undermining public trust in the administration of justice and is thus contrary to the public interest. A reasonable person informed about sentencing objectives and principles and all of the circumstances would not understand how Mr. Houle could avoid a conviction.
12. To summarize, Mr. Houle’s crimes are serious. He abused the victim’s vulnerability and seriously interfered with her bodily and sexual integrity, as well as her privacy and dignity. The consequences of the crimes on the victim are major. The evidence shows that the objectives of specific deterrence, rehabilitation, and responsibility are on the right track, but that the objective of denouncing sexual violence and voyeurism and the harm done to victims weighs heavily, coupled with the objective of general deterrence. Last, the principle of parity of sentences weighs in favour of a term of imprisonment.
13. All things considered, the Court believes that Mr. Houle deserves sentences of 12 months’ imprisonment on the count of sexual assault and 2 months’ imprisonment on the count of voyeurism, to be served concurrently in view of the close relationship between the two offences.
14. The probation period should therefore be reduced to one year and the $6,000 donation to CALACS de Trois‑Rivières removed.

**FOR THESE REASONS, THE COURT:**

1. **GRANTS** the application for leave to appeal;
2. **ALLOWS** the appeal;
3. **REVOKES** the conditional discharge issued by the trial judge;
4. **CONDEMNS** Simon Houle to serve concurrent prison sentences of 12 months on count 1 (sexual assault) and 2 months on count 2 (voyeurism);
5. **VARIES** the probation order for the sole purpose of reducing its duration to one year and removing the condition of making a $6,000 donation to CALACS de Trois‑Rivières;
6. **MAINTAINS** the other orders issued by the judge;
7. **ORDERS** Simon Houle to surrender himself to the prison authorities no later than **January 30, 2023**, between 9 a.m. and 3 p.m.

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|  | | SOPHIE LAVALLÉE, J.A. |
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| Mtre Eve-Lyne Goulet  Mtre Maxime Lacoursière | | |
| DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS | | |
| For the appellant | | |
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| Mtre Pierre Spain | | |
| BIRON, SPAIN | | |
| For the respondent | | |
|  | | |
| Hearing date: | December 9, 2022 | |

1. *R. c. Houle*, 2022 QCCQ 4039 [judgment under appeal]. That judgment also ordered 3 years’ probation and compulsory ancillary orders. [↑](#footnote-ref-1)
2. Judgment under appeal at paras. 7–17. [↑](#footnote-ref-2)
3. *Ibid*. at para. 74. [↑](#footnote-ref-3)
4. *Ibid*. at para. 78. [↑](#footnote-ref-4)
5. *Ibid*. at para. 80. [↑](#footnote-ref-5)
6. *Ibid*. at paras. 82–83. [↑](#footnote-ref-6)
7. *Ibid*. at para. 87. [↑](#footnote-ref-7)
8. *Ibid*. at para. 88. [↑](#footnote-ref-8)
9. *Ibid*. at para. 90. [↑](#footnote-ref-9)
10. *Ibid*. at para. 94. [↑](#footnote-ref-10)
11. *Ibid*. at paras. 100–101. [↑](#footnote-ref-11)
12. *R. v. Parranto*, 2021 SCC 46 at para. 13. [↑](#footnote-ref-12)
13. *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089 at para. 49, referring *inter alia* to *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206 at para. 46. [↑](#footnote-ref-13)
14. Respondent’s arguments at para. 59. [↑](#footnote-ref-14)
15. *R. v.* *Lacasse*, *supra* note 13 at para. 39. [↑](#footnote-ref-15)
16. *R. v. Friesen*, 2020 SCC 9 at para. 26. [↑](#footnote-ref-16)
17. *R. c. Guerrero Silva*, 2015 QCCA 1334 at para. 54. [↑](#footnote-ref-17)
18. *R. v. Jarvis*, 2019 SCC 10, [2019] 1 S.C.R. 488 at para. 53. [↑](#footnote-ref-18)
19. Applicant’s arguments at para. 63, citing *R. v. Jarvis*, *supra* note 18 at para. 62. [↑](#footnote-ref-19)
20. See in particular *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 5 and 51; *Reference re Genetic Non‑Discrimination Act*, 2020 SCC 17 at paras. 82–83. [↑](#footnote-ref-20)
21. *R. v. Dyment*, [1988] 2 S.C.R. 417 at para. 27, within the context of s. 8 of the *Canadian Charter of Rights and Freedoms*. [↑](#footnote-ref-21)
22. *R*. *c.* *Gravel*, 2018 QCCA 1114; *Rozon* *c.* *R.*, 1999 CanLII 11146 (Sup. Ct.) at para. 36; *R*. *c.* *Laouar*, 2015 QCCQ 14839; *R*. *c.* *H.T.N.*, 2006 QCCQ 7302; *R*. *c.* *A.L*., 2005 CanLII 35274 (C.Q.). [↑](#footnote-ref-22)
23. *R. c. Cardinal*, 2012 QCCA 1838. [↑](#footnote-ref-23)
24. *Ibid*. at para. 50. [↑](#footnote-ref-24)
25. *Ibid*. at para. 51. [↑](#footnote-ref-25)
26. Judgment under appeal at para. 74. [↑](#footnote-ref-26)
27. *R. v. Friesen*, *supra* note 16 at para. 27. [↑](#footnote-ref-27)
28. *Lacelle Belec c. R.*, 2019 QCCA 711 at para. 27. [↑](#footnote-ref-28)
29. Section 718 *Cr. C.* [↑](#footnote-ref-29)
30. *Harbour c. R.*, 2017 QCCA 204 at para. 84. [↑](#footnote-ref-30)
31. *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433 at para. 37; *R. v. Nasogaluak*, *supra* note 13 at para. 40. [↑](#footnote-ref-31)
32. *R. v. Nasogaluak*, *supra* note 13 at para. 42. See also *R. v. Bissonnette*, 2022 SCC 23 at para. 50; *R. v. Ipeelee*, *supra* note 31 at para. 37. [↑](#footnote-ref-32)
33. *R. v. Friesen*, *supra* note 16 at para. 33. [↑](#footnote-ref-33)
34. *R. v. Lacasse*, *supra* note 13 at para. 53, reproduced in *R. v. Parranto*, *supra* note 12 at para. 12. [↑](#footnote-ref-34)
35. In addition to suffering great emotional harm (sadness, disappointment, anger, etc.), the victim was hospitalized in a psychiatric unit for five days and off work for five months, to name but a few of these consequences: Judgment under appeal at paras. 19–28. [↑](#footnote-ref-35)
36. *R. v. Friesen*, *supra* note 16 at para. 139. [↑](#footnote-ref-36)
37. *R. v. McDonnell*, [1997] 1 S.C.R. 948. [↑](#footnote-ref-37)
38. *Ibid.* at para. 113. Even though McLachlin C.J. was writing on behalf of the dissenting judges, the Supreme Court reproduced those remarks in *R. v. Friesen*, *supra* note 16 at para. 57. [↑](#footnote-ref-38)
39. *R. v.* *Jarvis*, *supra* note 18 at para. 48. [↑](#footnote-ref-39)
40. *Supra* note 20. [↑](#footnote-ref-40)
41. *Sherman Estate v. Donovan*, *supra* note 20 at para. 72. [↑](#footnote-ref-41)
42. *Harbour c. R.*, *supra* note 30 at para. 81, citing *R. c. Charbonneau*, 2016 QCCA 1567 at paras. 14-16. [↑](#footnote-ref-42)
43. *Ibid*. at para. 96. [↑](#footnote-ref-43)
44. *Ibid.* at para. 91 and the authorities cited therein. [↑](#footnote-ref-44)
45. Section 730 *Cr. C.* [↑](#footnote-ref-45)
46. Hugues Parent & Julie Desrosiers, *Traité de droit criminel*, t. 3 “La peine”, 3rd ed. (Montreal: Thémis, 2020) at 299. [↑](#footnote-ref-46)
47. *R. c. Douab*, 2009 QCCQ 5734 at para. 53. [↑](#footnote-ref-47)
48. *Oum c. R.*, 2021 QCCA 462 at para. 55, referring to *Côté c. R.*, 2014 QCCA 2083 at para. 22. [↑](#footnote-ref-48)
49. *R. c. Gravel*, *supra* note 22 at para. 15, citing Julie Desrosiers, *L’agression sexuelle en droit canadien*, 2d ed. (Cowansville, Que.: Yvon Blais, 2017) at 272–273. [↑](#footnote-ref-49)
50. *R. c. Gravel*, *supra* note 22. [↑](#footnote-ref-50)
51. *Ibid*. at para. 22. [↑](#footnote-ref-51)
52. *R. v. L.A.A.*, 2020 ONCJ 556. [↑](#footnote-ref-52)
53. *R. v. R.R.*, 2022 ONCJ 407. [↑](#footnote-ref-53)
54. *R. c. Savard*, 2013 QCCQ 1950. [↑](#footnote-ref-54)
55. In *R. c. Savard* the accused pleaded guilty to those charges. [↑](#footnote-ref-55)
56. It should be noted that penile penetration occurred in both *R. v. L.A.A.* and *R. v. R.R.* However, according to the Supreme Court in *R. v. Friesen*, *supra* note 16 at paras. 140 and 143, there is a danger in “defining a sentencing range based on penetration or the specific type of sexual activity at issue”, especially because “harm to the victim is not dependent on the type of physical activity involved”. [↑](#footnote-ref-56)