

CANADA / JUDGMENT

R. v. Wilson

2025 SCC 32

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R. v. Wilson

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2025 SCC 32

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40990

Judges

Wagner, Richard; Karakatsanis, Andromache; Côté, Suzanne; Rowe, Malcolm; Martin, Sheilah; Kasirer, Nicholas; Jamal, Mahmud; O'Bonsawin, Michelle; Moreau, Mary

On appeal from

Saskatchewan

Subjects

Constitutional law

Notes

Case in Brief SCC Case Information

Decision Content

SUPREME COURT OF CANADA

Citation: R. v. Wilson, 2025 SCC 32

Appeal Heard: January 14, 2025

Judgment Rendered: October 24, 2025

Docket: 40990

Between:

His Majesty The King

Appellant

and

Paul Eric Wilson

Respondent

- and -

Director of Public Prosecutions,

John Howard Society of Saskatchewan,

Pivot Legal Society,

Canadian Civil Liberties Association,

Criminal Lawyers' Association (Ontario),

Canadian Drug Policy Coalition,

Association des intervenants en dépendance du Québec and

Harm Reduction Nurses Association

Intervenors

Coram: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

Reasons for Judgment:

(paras. 1 to 94)

Karakatsanis J. (Wagner C.J. and Martin, Kasirer, O'Bonsawin and Moreau JJ. concurring)

Dissenting Reasons:

(paras. 95 to 246)

Jamal J. (Côté and Rowe JJ. concurring)

Note: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports.

His Majesty The King Appellant

v.

Paul Eric Wilson Respondent

and

Director of Public Prosecutions,

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Pivot Legal Society, Canadian Civil Liberties Association,

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Canadian Drug Policy Coalition,

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Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

on appeal from the court of appeal for saskatchewan

Constitutional law — Charter of Rights — Arbitrary detention — Search and seizure — Remedy — Exclusion of evidence — Federal legislation providing exemption from charge or conviction for possession of controlled substance to person who seeks assistance for medical emergency if evidence in support of offence obtained or discovered as result of person having sought assistance or having remained at scene — Accused arrested for possession of controlled substance at scene of overdose — Police conducting search incident to arrest and finding evidence of other offences — Accused charged with other offences and applying to exclude evidence on basis that he was immune from arrest for possession of controlled substance — Whether accused's rights to be secure against unreasonable search or seizure and to be free from arbitrary detention violated by arrest and search incident to arrest — If so, whether evidence should be excluded — Canadian Charter of Rights and Freedoms, ss. 8, 9 — Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 4.1(2).

Criminal law — Arrest — Possession of controlled substance — Exemption in case of medical emergency — Federal legislation providing exemption from charge or conviction for possession of controlled substance to person who seeks assistance for medical emergency if evidence in support of offence obtained or discovered as result of person having sought assistance or having remained at scene — Whether exemption from charge or conviction also prohibits police from arresting person on charge of possession — Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 4.1(2) — Criminal Code, R.S.C. 1985, c. C-46, s. 495.

In 2017, Parliament enacted the Good Samaritan Drug Overdose Act (“GSDOA”), which added s. 4.1 to the Controlled Drugs and Substances Act (“CDSA”). Section 4.1(2) of the CDSA provides immunity from being “charged or convicted” for possession of a controlled substance under s. 4(1) of the CDSA to those who call for help or remain at the scene of a drug overdose where evidence of possession is discovered at the scene.

W remained at the scene of an overdose after 9-1-1 was called and was arrested for possession of a controlled substance contrary to s. 4(1) of the CDSA. A search incident to the arrest revealed evidence of other offences. W was not charged with possession of a controlled substance but was charged with multiple other offences. Relying on s. 4.1(2) of the CDSA, W applied for an order to exclude the evidence on the basis that it was obtained in breach of his rights to be secure from unreasonable search or seizure and to be free from arbitrary detention under ss. 8 and 9 of the Charter, respectively.

The trial judge admitted the evidence and convicted W of various firearms offences and of possession of identity documents intended to be used for identity fraud. He concluded that the police did not breach W’s s. 9 Charter right, but he did not directly address the impact of s. 4.1(2) of the CDSA on the lawfulness of W’s arrest. He also concluded that the search did not breach s. 8 of the Charter, finding that it was routine and related primarily to officer safety. The Court of Appeal unanimously quashed W’s convictions and directed verdicts of acquittal on all counts. It concluded that s. 4.1(2) of the CDSA, read in its grammatical and ordinary sense, means that simple possession remains an offence but that Parliament exempts a person from being charged with or convicted of that offence; thus, W could not be arrested under s. 495(1)(b) of the Criminal Code for committing that offence. Since the Court of Appeal found that the only purpose of the arrest was to charge W for possession of a controlled substance, an action prohibited by s. 4.1(2), it held that ss. 8 and 9 of the Charter were violated. It excluded the evidence under s. 24(2) of the Charter, finding that its admission would bring the administration of justice into disrepute.

Held (Côté, Rowe and Jamal JJ. dissenting): The appeal should be dismissed.

Per Wagner C.J. and Karakatsanis, Martin, Kasirer, O’Bonsawin and Moreau JJ.: Section 4.1(2) of the CDSA makes arrest for possession of a controlled substance unlawful when the evidence justifying that arrest was discovered because a person sought emergency assistance for, or remained at the scene of, a drug overdose. In the instant case, arresting W despite his immunity was a serious breach of his Charter rights that warrants the exclusion of evidence gathered consequent to the arrest. The Court of Appeal was right to enter acquittals on all charges.

Legal change, such as a change in the availability of arrest powers, is not always effected through express statutory language. Despite apparent plainness in language, a provision must be interpreted considering its entire purpose and context. This is why a phrase in a statute cannot be definitively understood by simply examining definitions of each individual word. Correctly interpreted, s. 4.1(2) of the CDSA limits the power to arrest by necessary implication.

Parliament intended immunity from arrest for the offence of possession of a controlled substance to form part of the immunity from charge and conviction for that offence. Its goal in enacting s. 4.1(2) of the CDSA was to save lives by encouraging individuals at the scene of an overdose to call 9-1-1. It recognized that those most likely to call for emergency assistance in life-threatening overdose situations will often themselves be drug users. Arrests and searches incident to arrest are an inherently significant infringement of an individual's personal liberty and autonomy. The strong disincentive created by the threat of arrest and the consequences that may flow from such an arrest would substantially undermine this life-saving purpose by dissuading people from seeking help from emergency services in the case of a drug overdose. Parliament's intent is reflected in the statements by legislators discussing the proposed GSDOA. These statements illustrate that legislators intended and understood that immunity from charge and conviction would include immunity from arrest. Legislative history that, viewed as a whole, provides a full and consistent picture of the thinking behind a provision can receive considerable weight in the interpretative exercise.

Achieving Parliament's goal requires a clear rule that can be broadly communicated to and understood by those affected by drug overdoses. An interpretation of s. 4.1(2) which distinguishes between immunity from arrest and immunity from charge on the same offence may not be readily apparent to the public. Further, when the text of s. 4.1(2) is read in the context of the entire section, it does not support a technical and narrow reading of the words "charged or convicted". In the narrow circumstances attracting the application of s. 4.1(2), where a life must necessarily be threatened by a medical emergency, Parliament prioritized saving that life over the more remote public safety benefits of arresting persons at the scene for simple possession.

In enacting s. 4.1(2), Parliament did not intend to allow the police to arrest individuals for the offence of simple possession, despite those individuals being immune from charge and conviction, to further other law enforcement goals. Canadian law has long prohibited a warrantless arrest under s. 495 of the Criminal Code for purely investigative purposes. Arrest is a significant deprivation of personal liberty that is not to be exercised lightly. The law of warrantless searches incident to arrest is also tightly circumscribed and ensures that the power is exercised for specific purposes. It is clear from its placement in the Criminal Code that the s. 495 power to arrest is intimately related to bringing persons before justice to answer criminal charges. The arrest power under s. 495 is not to be exercised for the investigation or prevention of criminal activity where an officer has no reasonable grounds to believe that an individual has committed or is about to commit an indictable offence. While a charge and prosecution need not always follow an arrest, an arrest under s. 495(1) based on the commission of an offence for which there is explicit immunity from charge and conviction is unlawful. Therefore, an

interpretation of the words “charged or convicted” that is in harmony with existing law displaces the police power to arrest under s. 495 of the Criminal Code where the only grounds for that arrest are that an offence made immune by s. 4.1(2) has been committed.

However, the s. 4.1(2) immunity from arrest for possession of a controlled substance does not affect other existing police powers. When responding to the scene of a drug overdose, the police still retain all their usual powers to respond to evidence of crimes other than the specific offence for which s. 4.1(2) offers an immunity and to ensure both their own safety and the safety of the public. First, the police can secure the scene and ask questions about the overdose that may help with the medical treatment required, prevent the use of tainted drugs by others, or identify the source of contaminated drugs that could pose further risks of overdose. Second, the police have the power to detain individuals where it is reasonably necessary in the totality of the circumstances, weighing the seriousness of the risk to public or individual safety against the liberty interests of members of the public at the scene. Third, under various provisions of the Criminal Code and of the CDSA, the police can still exercise a substantial number of search and seizure powers that allow them to search for weapons and drugs to protect themselves and the public at the scene of an overdose. Finally, all arrest and detention powers outside the scope of the s. 4.1(2) immunity remain available to the police.

In the instant case, W was arrested for possession of a controlled substance, and the evidence grounding an arrest for that offence was discovered as a result of him having remained at the scene of a drug overdose. The subsequent search which discovered the evidence of other offences was conducted incidentally to that arrest. Because s. 4.1(2) immunizes eligible individuals from arrest for simple possession, the arrest of W was unlawful and breached his right under s. 9 of the Charter. In turn, this means that the search incident to that arrest was not authorized by law and was a breach of his s. 8 right. Given the seriousness of the breach of the Charter rights and the impact of that violation on W’s Charter-protected interests, the evidence discovered during the search incident to his arrest must be excluded under s. 24(2) of the Charter.

Per Côté, Rowe and Jamal JJ. (dissenting): The appeal should be allowed, the acquittals set aside, and the convictions restored. The limited exemption under s. 4.1(2) of the CDSA against being charged or convicted of the offence of simple possession does not prohibit a lawful arrest for that offence under s. 495(1) of the Criminal Code. In the instant case, s. 4.1(2) of the CDSA operated exactly as intended: W was never charged with the offence of simple possession. Moreover, the police did not infringe ss. 8 or 9 of the Charter by arresting W for the offence of simple possession or by conducting a search incident to arrest.

A statutory provision must be interpreted based on its text, context, and purpose to find a meaning that is harmonious with the legislation as a whole. The object of a statute and that of a provision must also be considered with close attention always being paid to the text of the statute, which specifies the legislature’s chosen means of balancing competing policy objectives to achieve its purposes and remains the anchor of the interpretive exercise.

To consider whether s. 4.1(2) of the CDSA prohibits the police from exercising the statutory power to arrest without warrant under s. 495(1) of the Criminal Code, it is necessary to review both provisions and their respective legislative schemes. Under s. 495(1)(a), a peace officer may arrest without warrant in three circumstances: (1) the person has committed an indictable offence; (2) the peace officer believes, on reasonable grounds, that the person has committed an indictable offence; or (3) the peace officer believes, on reasonable grounds, that the person is about to commit an indictable offence. This statutory power authorizes the police to intervene at a stage prior to the commission of an attempt. It is therefore black-letter law that an arrest need not be for the purpose of charging a person with the commission of an offence. For its part, the CDSA reflects Parliament's distinct balance of the two competing interests of public safety and public health. Since the CDSA came into force, s. 4(1) has prohibited possession of a controlled substance included in Schedule I, II, or III. Through the GSDOA, Parliament added s. 4.1 to the CDSA, and s. 4.1(2) now provides the limited medical emergency exemption from being charged or convicted of the offence of simple possession. This exemption only applies to simple possession and does not prohibit being charged or convicted of any other offence.

The text of s. 4.1(2) of the CDSA limits the medical emergency exemption to charge and conviction. Section 4.1(2) does not mention "arrest" at all. On its face, it provides an exemption from only two distinct and well-established steps in the criminal process: being "charged" or "convicted", each of which has a settled legal meaning. Neither "charged" nor "convicted" is defined in the CDSA or the Criminal Code, indicating that Parliament intended these terms to retain their legal meanings. Neither term encompasses the legal meaning of the term "arrest". Two related presumptions of statutory interpretation are relevant to understanding the meaning of these legal terms in s. 4.1(2). The first is that when Parliament uses a term with a legal meaning, it intends the term to be given that meaning. The second, related presumption is the principle of stability in the law. Absent clear legislative intention to the contrary, a statute should not be interpreted as substantially changing the law, including the common law. A "charge" necessarily involves an accusation of a crime by a formal complaint, information, or indictment. It is a formal action that marks the beginning of a criminal prosecution. To "convict" means to find a person guilty of a criminal offence after proceedings before a court of law. In contrast, "arrest" means the actual seizure or touching of a person's body with a view to their detention. Absent a clear indication in the legislation to the contrary, Parliament is presumed to intend each of these legal terms to be given their legal meaning and for the longstanding power to arrest without warrant under s. 495(1) of the Criminal Code to remain stable.

The statutory context of s. 4.1(2) limits the medical emergency exemption to the prosecution stage of the criminal process. It confirms that s. 4.1(2) of the CDSA does not prohibit the police from exercising the statutory power to arrest under s. 495(1) of the Criminal Code for simple possession, and that possession of a controlled substance remains an offence, even when a person may benefit from the medical emergency exemption. It also confirms that s. 4.1(2) addresses when a person is "charged" or "convicted" during the prosecution stage of the criminal process, which occurs later than an arrest under s. 495(1) of the Criminal Code during the investigation stage of the criminal process. Section 495(1) does not require the police to have an

intent to charge, nor does an arrest make a charge inevitable. The possibility of a conviction has no bearing on the power to arrest. It is settled law that a person may be arrested even though there is no basis for charging them with the commission of any offence.

The purpose of s. 4.1(2) to balance public health and public safety is promoted by allowing an arrest for simple possession. Although one purpose of s. 4.1(2) of the CDSA is to promote public health by removing a legal disincentive to calling for help, that is not the only purpose or policy objective of the provision. A second purpose of the provision, and of the CDSA more broadly, is to promote public safety by maintaining simple possession as an offence and limiting the scope of the exemption under s. 4.1(2) to life-threatening emergency medical situations. Parliament sought to balance both public health and public safety, not to pursue public health at all costs — and certainly not at the expense of public safety. Interpreting s. 4.1(2) as prohibiting the power to arrest under s. 495(1) of the Criminal Code disturbs that balance by promoting public health but ignoring public safety. Had Parliament intended to radically reduce police investigatory powers or change police conduct at the scene of an overdose, it could have done so by limiting police powers with an express exemption from “arrest”. There is also clear evidence on the legislative record confirming that s. 4.1(2) was not intended to limit police powers.

Moreover, expanding s. 4.1(2) to prohibit an arrest for simple possession exposes the police and the public to significant safety risks. First, it would be impractical because it would leave police officers in a state of uncertainty and would limit their ability to properly fulfill their duties to protect life and public safety and to prevent crime. Section 4.1(2) exempts a person only if its conditions are met, and determinations as to whether the provision applies are not well-suited to split-second decision-making by police officers at the site of a suspected overdose, where the situation may be rapidly evolving and the police must act promptly to balance the safety of the overdose victim and the safety of others at the scene and the public at large. Second, it would, logically, also prohibit an investigative detention for the offence of simple possession, which would limit the police to reacting to specific threats as they occur, undermining the safety of the public and the police. If it were unlawful for the police to detain a person to investigate the offence of possession, it would severely compromise the ability of the police to investigate at the scene of an overdose where there is clear evidence of a continuing criminal offence of possession. The law does not require a police officer to be sent into harm’s way, alone at the scene of an ongoing criminal offence, without the necessary police power to protect the public or themselves. Absent a clear statement of legislative intent, Parliament did not intend to place the public and police officers in such danger.

The police did not infringe s. 9 of the Charter. W’s arrest without warrant was authorized by law, under s. 495(1) of the Criminal Code. The arresting officer noticed a baggie of what appeared to be crystal methamphetamine in plain view immediately upon arriving at the scene and then saw a streak of white powder appear on the ground near W’s feet. There is no debate that the police officer had reasonable and probable grounds to believe that the offence of possession had been and was being committed. Furthermore, the arrest was conducted reasonably. W’s arrest allowed the police to prevent him from continuing to commit the offence of simple possession. Given the

proximity to a school where many young children were present and the nature of the drugs in plain view, W's arrest was reasonably necessary and for a proper purpose. As well, the police did not infringe s. 8 of the Charter. W was lawfully arrested and the search was conducted in a reasonable manner: the search was no more invasive than necessary and was limited to searching for discrete items related to the arrest and to preserving public safety. The search was also truly incidental to the arrest: the search of the truck for concealed drugs was related to W's arrest and was motivated by concerns for public safety. Because the police did not breach ss. 8 or 9 of the Charter, it is unnecessary to consider whether the evidence should be excluded under s. 24(2).

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By Karakatsanis J.

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By Jamal J. (dissenting)

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APPEAL from a judgment of the Saskatchewan Court of Appeal (Schwann, Leurer and Drennan JJ.A.), 2023 SKCA 106, 429 C.C.C. (3d) 454, 91 C.R. (7th) 39, 539 C.R.R. (2d) 318, [2024] 2 W.W.R. 539, [2023] S.J. No. 323 (Lexis), 2023 CarswellSask 456 (WL), setting aside the convictions of the accused and entering acquittals. Appeal dismissed, Côté, Rowe and Jamal JJ. dissenting.

Erin Bartsch, for the appellant.

Thomas Hynes, Catriona Kaiser-Derrick and Nathan Metivier, for the respondent.

Janna A. Hyman and Colleen Liggett, for the intervener Director of Public Prosecutions.

Pierre E. Hawkins, for the intervener John Howard Society of Saskatchewan.

Mark Iyengar and Caitlin O. Shane, for the intervener Pivot Legal Society.

Sarah Rankin and Heather Ferg, for the intervener Canadian Civil Liberties Association.

Matthew R. Gourlay and Brandon Chung, for the intervener Criminal Lawyers' Association (Ontario).

Maxime Bédard and Meagan Berlin, for the interveners Canadian Drug Policy Coalition, Association des intervenants en dépendance du Québec and Harm Reduction Nurses Association.

The judgment of Wagner C.J. and Karakatsanis, Martin, Kasirer, O'Bonsawin and Moreau JJ. was delivered by

Karakatsanis J. —

I. Overview

- [1] In response to a national public health crisis of overdoses and deaths caused by opioids, Parliament has sought to encourage people to call for emergency assistance and remain at the scene of a drug overdose when a life is endangered. In 2017, it enacted the Good Samaritan Drug Overdose Act, S.C. 2017, c. 4 (GSDOA), which added s. 4.1 to the Controlled Drugs and Substances Act, S.C. 1996, c. 19 (CDSA). Section 4.1(2) provides immunity from being "charged or convicted" for possession of a controlled substance to those good Samaritans^[1] who call for help or remain at the scene of a drug overdose where evidence of that offence is discovered at the scene. This appeal is about the scope of the immunity offered by the provision — in immunizing individuals from being "charged or convicted", did Parliament also intend to provide an immunity from arrest?

- [2] Paul Eric Wilson was one of four people who remained at the scene of an overdose after 9-1-1 was called. Police arriving at the scene arrested them for the offence of possession of a controlled substance. A search incident to those arrests revealed evidence of other offences for which Mr. Wilson was later tried and convicted. Those convictions were overturned by the Court of Appeal, which found that the arrest was unlawful due to the immunity in s. 4.1(2) of the CDSA. Consequently, it concluded that Mr. Wilson's right to be free from arbitrary detention under s. 9 of the Canadian Charter of Rights and Freedoms had been infringed. Further, the search incident to that arrest breached Mr. Wilson's right to be secure from unreasonable search or seizure under s. 8 of the Charter. The Court of Appeal excluded the evidence found during that search under s. 24(2) of the Charter and entered acquittals.
- [3] The Crown appeals, arguing before this Court that police officers have lawful authority to arrest people for the offence of simple possession, and to search them incidentally to that arrest, even if those people are immune from charge and conviction for that offence because of s. 4.1(2). The Crown says Parliament deliberately omitted an explicit immunity from arrest from the text of the provision, as the police require the power to arrest so that they can search for and seize illegal drugs and prevent the commission of other crimes at the scene of an overdose. Mr. Wilson responds that immunity from arrest for simple possession of a controlled substance is necessarily implied by the immunity from charge and conviction. Permitting the arrest of people in such circumstances would undermine both the purpose of s. 4.1(2) and the well-established principle that arrest is not available solely for investigative purposes.
- [4] I would dismiss the Crown's appeal. The immunity from charge and conviction for simple possession explicitly mentioned in s. 4.1(2) of the CDSA includes, by necessary implication, immunity from arrest for that offence. This interpretation best serves the clear purpose of the provision: to save lives.
- [5] An arrest is a significant infringement of personal liberty. It can give rise to searches incident to arrest and to the prosecution of other criminal offences based on those searches. An interpretation of s. 4.1(2) which allows arrests for possession, and intrusive searches incident to those arrests, would maintain a strong disincentive to seek emergency assistance in life-threatening overdose situations. Parliament did not intend this result.
- [6] Further, while the word "arrest" is not included in the text of s. 4.1(2), an immunity from charge and conviction would be commonly — and legally — understood to include immunity from arrest for that charge. The frequent mentions of immunity from arrest in the parliamentary debates leading to the adoption of the provision attest to this understanding.
- [7] Finally, an interpretation of s. 4.1(2) that provides immunity not only from charge and conviction, but also from arrest on that charge, reflects the fact that our law has never permitted arrest purely for the purposes of investigation and tightly circumscribes the power to arrest and the power to search incidentally to arrest. Accepting the Crown's position would let the police circumvent the principled limits this Court has placed on police

powers by using arrests on immune charges as a pretext to conduct searches for other law enforcement purposes, such as investigating or preventing other offences for which no reasonable grounds are apparent. Such purely investigative arrests would be a novel expansion of police powers. There is nothing to suggest Parliament intended to expand the accepted uses of those police powers in this way when it enacted s. 4.1. The better view of the provision is that Parliament intended immunity from arrest for the offence of possession to form part of the immunity from charge and conviction for that offence.

- [8] This interpretation of s. 4.1(2) does not create a threat to public or officer safety. When responding to the scene of a drug overdose, the police still retain all their usual powers to respond to evidence of crimes other than the specific offence for which s. 4.1(2) offers an immunity and to ensure both their own safety and the safety of the public. For example, the police can still seize controlled substances in plain view. They can conduct certain warrantless searches in exigent circumstances or if necessary to protect their own safety and that of the public. The police can still detain individuals if reasonably necessary in all the circumstances, conduct investigative detentions, or arrest them where there are sufficient grounds to do so outside the scope of the immunity. These powers all have their own thresholds and preconditions for use. Parliament did not intend to allow the police to bypass these preconditions by permitting arrests for an offence that cannot be charged.
- [9] Parliament's purpose in enacting s. 4.1(2) was to save lives. Accepting the Crown's position in this appeal would not only undermine this clear purpose, but would also lead to an expansion of police powers by empowering the police to use arrests for offences immune from charge and conviction as a pretext for other investigatory and search purposes. I would affirm the unanimous decision of the Court of Appeal.

II. Facts

- [10] On September 10, 2020, Mr. Wilson and three other individuals were travelling in a truck through Vanscoy, Saskatchewan. When the group was near an elementary school, one of the occupants of the truck, Cheryl Delorme, began to overdose after having used fentanyl. A member of the group called 9-1-1.
- [11] By the time the first police officer arrived at the scene, Ms. Delorme was already receiving medical attention from emergency medical services. The officer, Constable Heidi Jo Marshall, observed two men — one of them being Mr. Wilson — lying under the truck, seemingly attempting to repair something, and another woman near the truck. She also saw a small bag containing a white substance on the ground near the driver's side of the truck, smelled marijuana, and noticed signs of drug impairment in the individuals who had not overdosed.

- [12] As a result, Constable Marshall detained Mr. Wilson and the other two individuals to investigate possession of a controlled substance contrary to s. 4(1) of the CDSA. During that detention, Constable Marshall observed Mr. Wilson handling something in his pocket and saw some white powder on the ground near Mr. Wilson which was not there before. After some questioning, Mr. Wilson produced a small case from his pocket, which contained syringes.
- [13] Constable Marshall arrested Mr. Wilson and the other individuals, including Ms. Delorme, for possession of a controlled substance contrary to s. 4(1) of the CDSA. Two other officers who had arrived at the scene then conducted a search incident to those arrests, searching the truck and the individuals' belongings, during which they discovered drugs and drug paraphernalia. In a backpack located inside the truck, the police also discovered modified handguns, parts for firearms, and ammunition. While Ms. Delorme was being taken to a hospital, the three individuals who had remained at the scene were rearrested for possession for the purpose of trafficking and firearms offences. Once at the station, Mr. Wilson admitted to the police that the backpack was his, along with the ammunition and guns, although he denied owning the drugs, apart from those found on his person.
- [14] Mr. Wilson was subsequently charged with breaching a firearms prohibition (Criminal Code, R.S.C. 1985, c. C-46, s. 117.01(1)); possession of identity documents to be used to commit identity fraud (s. 402.2(1)); identity fraud (s. 403); and various other firearms offences (ss. 86(2), 88, 90, 91(1), 92(1), 94, 95(1) and 99(3)). He was not charged with possession of a controlled substance for the purpose of trafficking contrary to s. 5(2) of the CDSA nor with possession of a controlled substance contrary to s. 4(1).
- [15] He applied for an order to exclude the evidence on the basis that his rights under ss. 8 and 9 of the Charter were breached, relying on s. 4.1(2) of the CDSA.

III. Judicial History

A. Provincial Court of Saskatchewan (Baniak Prov. Ct. J.)

- [16] The trial judge rejected Mr. Wilson's arguments. He concluded that the police did not breach his s. 9 right, but he did not directly address the impact of s. 4.1(2) of the CDSA on the lawfulness of Mr. Wilson's arrest in his brief reasons concerning the alleged s. 9 breach.
- [17] The trial judge also concluded that the search of the truck did not breach s. 8 of the Charter, finding that the search was routine and related primarily to officer safety. He concluded that the way the search was carried out was reasonable and that it was related to the reasons for the arrest.
- [18] The trial judge admitted the evidence and convicted Mr. Wilson of all but one of the firearms offences and of possession of identity documents intended to be used for identity fraud. He sentenced Mr. Wilson to eight years' incarceration, less two and a half years' credit for time served.

B. Court of Appeal for Saskatchewan, 2023 SKCA 106, 429 C.C.C. (3d) 454 (Schwann, Leurer and Drennan JJ.A.)

- [19] The Court of Appeal unanimously allowed the appeal, quashed Mr. Wilson's convictions, and directed verdicts of acquittal on all counts. The court defined the central issue as whether the police can arrest someone found committing an offence when that person cannot be lawfully charged with it.
- [20] Because there were no explicit findings of fact in the reasons of the trial judge with respect to Mr. Wilson's first arrest, the Court of Appeal first examined the record to determine the reason for this arrest. It found that Mr. Wilson and his companions were first detained for the purposes of an investigation into possession of a controlled substance contrary to s. 4(1) of the CDSA and were arrested for that offence soon after. The Court of Appeal also found that the police searches which discovered the hidden firearms and evidence of drug trafficking were incidental to that first arrest. The Court of Appeal held that it was "impossible to read the testimony of th[e] officers in any way other than that the search of Mr. Wilson's backpack was incidental to his arrest for simple possession of a controlled substance" (para. 36). It further stated that while it interpreted the trial judge as having made the same finding of fact, had he found otherwise, that finding would be a palpable and overriding error.
- [21] The Court of Appeal concluded that s. 4.1(2) of the CDSA, read in its grammatical and ordinary sense, means that simple possession remains an offence but that Parliament exempts a person from being charged with or convicted of that offence. Thus, while Mr. Wilson may have been found committing a crime, he could not be arrested under s. 495(1) (b) of the Criminal Code for committing that offence. The Court of Appeal held that powers given by statute are to be exercised only for the purposes for which they are given. The only purpose provided by the police testimony for the first arrest was to charge Mr. Wilson under s. 4(1) of the CDSA, an action prohibited by s. 4.1(2). The Court of Appeal also held that no evidence in the record supported the Crown's position that the first arrest was to take the drugs off the streets or to prevent the commission of another offence. In these circumstances, ss. 8 and 9 of the Charter were violated.
- [22] The Court of Appeal excluded the evidence under s. 24(2) of the Charter, finding that its admission would bring the administration of justice into disrepute. It entered acquittals on all charges.

IV. Issues

- [23] The Crown appeals, seeking to restore Mr. Wilson's convictions. It submits that Mr. Wilson's arrest for possession was lawful despite s. 4.1(2) of the CDSA. According to the Crown, the scope of the provision is plain and unambiguous — it provides immunity from charge and conviction, but not immunity from arrest. It says this reflects the balance chosen by Parliament between saving lives and ensuring public safety. The Crown argues that it was

lawful for the police to arrest Mr. Wilson for possession in exercise of their authority under s. 495 of the Criminal Code and to conduct a search incident to that arrest. Even if there was a Charter violation, the Crown says the evidence gathered further to that arrest should not be excluded under s. 24(2).

[24] Mr. Wilson maintains that his arrest was unlawful and that his acquittals should be affirmed. He submits that although the text of s. 4.1(2) does not explicitly reference immunity from arrest, it is necessarily implied. The legislative scheme and object of the GSDOA have a clear goal — “to save lives in overdose situations by encouraging bystanders to call for help without fear of legal repercussions” (R.F., at para. 28). Mr. Wilson also argues that an arrest under s. 495 of the Criminal Code must be for the purpose of laying a charge and initiating criminal proceedings. He submits that the evidence against him found further to his arrest should be excluded under s. 24(2) of the Charter.

[25] This appeal thus requires us to answer these questions:

1. Does the immunity from being “charged or convicted” of the offence of possession of a controlled substance in s. 4.1(2) of the CDSA include an immunity from arrest for that charge?
2. Were Mr. Wilson’s ss. 8 and 9 Charter rights violated by his arrest and the search incident to that arrest?
3. If Mr. Wilson’s Charter rights were violated, should the evidence obtained thereby be excluded under s. 24(2) of the Charter?

V. Analysis

A. The Good Samaritan Drug Overdose Act Amendments

[26] The CDSA is “the federal government’s response to the problem of illegal drug use across Canada” (Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44, [2011] 3 S.C.R. 134, at para. 20). At its heart are the dual purposes of protecting public safety and protecting public health (para. 41). The CDSA establishes various offences regarding controlled substances, including trafficking of such substances (s. 5(1)), production of a substance without authorization (s. 7(1)), and, significant to this appeal, possession of a controlled substance (s. 4(1)).

[27] In 2017, Parliament amended the CDSA through the GSDOA. That Act added s. 4.1 to the CDSA. Sections 4.1(2) and 4.1(3) as amended state:

- (2) No person who seeks emergency medical or law enforcement assistance because that person, or another person, is suffering from a medical emergency is to be charged or convicted of an offence under subsection 4(1) if the evidence in support of that offence was obtained or discovered as a result of that person having sought assistance or having remained at the scene.

- (3) The exemption under subsection (2) also applies to any person, including the person suffering from the medical emergency, who is at the scene on the arrival of the emergency medical or law enforcement assistance.
- [28] Section 4.1 creates circumscribed immunities for people who seek emergency assistance or remain at the scene of a medical emergency. A “medical emergency” is defined as “a physiological event induced by the introduction of a psychoactive substance into the body of a person that results in a life-threatening situation and in respect of which there are reasonable grounds to believe that the person requires emergency medical or law enforcement assistance” (s. 4.1(1)). Evidence gathered as a result of having sought assistance or remained at the scene of this kind of emergency cannot be used to support a simple possession charge (s. 4.1(2) and (3)) or to support a charge of violating a condition in a pre-trial release or probation order relating to simple possession (s. 4.1(4)). Moreover, conditions of pre-trial release, probation orders, conditional sentences, or parole which relate to simple possession are deemed not to have been violated at all (s. 4.1(5)), removing the possibility of other legal consequences that may be imposed without charge.
- [29] The GSDOA began as a private member’s bill, introduced by Ron McKinnon. Speaking in the House of Commons, Mr. McKinnon explained the statute’s goals, stating: “Unfortunately, with drug overdoses, many people are afraid to call 911 for fear of getting charged. People die. Saving lives needs to come first” (House of Commons Debates, vol. 148, No. 22, 1st Sess., 42nd Parl., February 22, 2016, at p. 1196). Ultimately, the bill passed with unanimous support in the House of Commons and Senate.
- [30] Section 4.1(2) was enacted in the context of the federal government’s overarching Canadian Drugs and Substances Strategy, which adopted a public health approach to substance use with an increased focus on harm reduction (see Health Canada, About the Good Samaritan Drug Overdose Act, last updated August 6, 2024 (online)). Harm reduction generally refers to policies “designed to minimize negative health and social consequences associated with drug use without requiring the cessation of drug use itself” (A. Klein, “Criminal Law and the Counter-Hegemonic Potential of Harm Reduction” (2015), 38 Dal. L.J. 447, at p. 449). It reflects “a shift in focus away from moral judgment and a rejection of punitive approaches in favour of pragmatic, public health-oriented interventions geared toward mitigating measurable harms” (p. 450). During the debates in the House of Commons, the Parliamentary Secretary to the Minister of Health explained the harmony between the government’s overarching drug policy and the proposed Act: “The [GSDOA] is consistent with our government’s approach to drug policy. . . . [It] also complements our government’s efforts to curb overdose deaths . . .” (House of Commons Debates, vol. 148, No. 48, 1st Sess., 42nd Parl., May 4, 2016, at p. 2898; see also House of Commons Debates, vol. 148, No. 100, 1st Sess., 42nd Parl., October 28, 2016, at pp. 6301-2).
- [31] Neither party to this appeal disputes that the GSDOA was enacted for this public health purpose: to reduce the harms associated with overdoses by removing disincentives to calling emergency services when one occurs (see A.F., at para. 28; R.F., at para. 28). Nor does

anyone dispute that the immunity it provides is circumscribed — a reflection of the CDSA’s public safety purpose. I agree with the Court of Appeal, at para. 52, that the act of simple possession remains an offence despite the immunity, a conclusion that is not challenged on appeal. The remaining disagreement concerns the scope of the legislative immunity: whether a person who has sought emergency assistance or remained at the scene of an overdose may be lawfully arrested for the offence of simple possession when they cannot be charged with that offence.

B. Immunity From Arrest Under Section 4.1(2) of the CDSA

- [32] The proper interpretation of s. 4.1(2) of the CDSA is central to the disposition of this appeal. Like all statutory provisions, s. 4.1(2) must be interpreted according to the modern approach to statutory interpretation, which requires that the words of the subsection be read in their entire context and harmoniously with its purpose (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21).
- [33] The Crown argues that notwithstanding the public health purpose of the provision, the scope of the immunity does not include arrest. According to the Crown, the immunity is “plainly and unambiguously defined” because the text of the provision does not specifically reference arrest (*A.F.*, heading of para. 33). The Crown adds that the words “charged or convicted” in s. 4.1(2) of the CDSA are terms of art that ought to be given narrow, technical meanings (paras. 36 and 40).
- [34] It is true that s. 4.1(2) of the CDSA does not explicitly include the word “arrest” and only references immunity from being “charged” and “convicted”. However, the words of a statutory provision can never be interpreted in isolation (see *La Presse inc. v. Quebec*, 2023 SCC 22, at para. 23). This Court has long recognized that, despite apparent plainness in language, a provision must be interpreted considering its entire purpose and context — the text is not in itself determinative (*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, at para. 48; *R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at paras. 31-33; *La Presse*, at para. 30). This is why a phrase in a statute cannot be definitively understood by simply examining definitions of each individual word (see *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, at para. 43; see also *R. Sullivan, The Construction of Statutes* (7th ed. 2022), at § 3.03[3]).
- [35] More specifically, legal change, such as a change in the availability of arrest powers, is not always effected through express statutory language. The Crown is wrong to suggest that “[i]n the absence of clear statutory language to the contrary” the power to arrest must necessarily be unaffected (outline of argument, at para. A(5), in condensed book, tab 1). It is “clear legislative intention”, not clear statutory language, that is required to rebut the presumption against substantial legislative change to existing law (*R. v. D.L.W.*, 2016 SCC 22, [2016] 1 S.C.R. 402, at para. 21; see also *R. v. Basque*, 2023 SCC 18, at para. 49). In *Basque*, Kasirer J. noted that statutes can displace pre-existing law without express language, “by necessary implication” (para. 42). The question is not, therefore, whether arrest is expressly

referenced in the language of the provision, but whether, correctly interpreted, s. 4.1 of the CDSA limits the power to arrest by necessary implication.

- [36] A reading of the provision in its entire context, which reflects Parliament’s purpose to save lives along with Parliament’s understanding of the relationship between charge, conviction, and arrest, demonstrates that the words “charged or convicted” were not used in the narrow sense urged by the Crown. To the extent these words have technical legal meanings in some contexts, those meanings are clearly rebutted by other indicators of intent (see, by analogy, *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1, [2011] 1 S.C.R. 3). As I shall explain, where evidence of an offence of possession was discovered as a result of a person having sought emergency assistance or having remained at the scene of an overdose, s. 4.1(2), properly interpreted, means this evidence cannot be grounds for a lawful arrest on that possession charge.
- (1) Immunity From Arrest Is Necessary To Achieve Parliament’s Life-Saving Purpose
- [37] It is accepted by both parties that Parliament’s goal in enacting s. 4.1(2) of the CDSA was to save lives by encouraging individuals at the scene of an overdose to call 9-1-1. But the strong disincentive created by the threat of arrest and the consequences that may flow from such an arrest would substantially undermine this life-saving purpose.
- [38] It has been repeatedly recognized by this Court that arrests and searches incident to arrest are an inherently significant infringement of an individual’s personal liberty and autonomy. As this Court held in *Fleming v. Ontario*, 2019 SCC 45, [2019] 3 S.C.R. 519, “few police actions interfere with an individual’s liberty more than arrest — an action which completely restricts the person’s ability to move about in society free from state coercion” (para. 65).
- [39] Searches incident to arrest are also intrinsically intrusive and can proceed in highly invasive fashions, such as strip searches (*R. v. Golden*, 2001 SCC 83, [2001] 3 S.C.R. 679), searches of cell phones (*R. v. Fearon*, 2014 SCC 77, [2014] 3 S.C.R. 621), or searches of individuals’ homes, including those areas outside the arrested person’s physical control (*R. v. Stairs*, 2022 SCC 11, [2022] 1 S.C.R. 169). As seen in this case, those searches can provide the foundation for charges for offences other than simple possession.
- [40] These consequences can strongly dissuade people from seeking help from emergency services in the case of a drug overdose. The medical emergencies intended to be captured by s. 4.1(2) will often involve vulnerable people and occur within people’s homes. For individuals addicted to drugs, the risk that a police search can result in the discovery and seizure of illegal drugs, either from their person or from inside their home, can be a powerful disincentive to calling 9-1-1 in the case of an overdose. As this Court stated in *PHS*, “the need for an immediate fix or the fear of police discovering and confiscating drugs can override even ingrained safety habits” (para. 10). The interveners the Pivot Legal Society and the Canadian Civil Liberties Association point out the fear of potential arrests and searches may be acute for vulnerable and marginalized individuals, like those struggling with drug addiction, who often have a history of negative interactions with law enforcement and are

disproportionately affected by police practices and criminalization (I.F., Pivot Legal Society, at paras. 30-32; I.F., Canadian Civil Liberties Association, at paras. 15-23; see also *R. v. Le*, 2019 SCC 34, [2019] 2 S.C.R. 692, at para. 90). For such individuals, courts must appreciate how previous experiences and marginalization colour their perception and responses to interactions with the police (see generally *Le*, at paras. 72-73).

- [41] Given the well-understood consequences of an arrest, an interpretation of s. 4.1(2) of the CDSA which allows for arrest would greatly undermine Parliament's intent to save lives by promoting resort to emergency services following a drug overdose. It intended to do so by reducing individuals' fear of legal consequences should they call 9-1-1. As Mr. McKinnon stated when introducing the bill that would become the GSDOA:

Canadians need to take care of each other, especially the vulnerable among us. This bill means that when lives are at stake, people can take action without fear of penalty. Hopefully, they will pick up the phone and save someone's son or daughter. People will live who might otherwise have died.

(House of Commons Debates, February 22, 2016, at p. 1196)

- [42] This intent is reflected in the statements by legislators discussing the proposed GSDOA. They illustrate that legislators intended and understood that immunity from charge and conviction would include immunity from arrest. Due to the substantial number of such statements while the bill was being debated and passed, and due to its unanimous support when it was passed, these statements reflect what legislators understood by the words of the bill (see House of Commons Debates, May 4, 2016, at p. 2895 (T. Doherty) and at pp. 2899-2900 (C. Moore); House of Commons Debates, vol. 148, No. 65, 1st Sess., 42nd Parl., June 3, 2016, at p. 4032 (E. Weir); House of Commons Debates, October 28, 2016, at pp. 6302-3 (K. McCauley); House of Commons Debates, vol. 148, No. 168, 1st Sess., 42nd Parl., May 2, 2017, at p. 10678 (J. Lightbound); Debates of the Senate, vol. 150, No. 80, 1st Sess., 42nd Parl., December 1, 2016, at p. 1911 (Hon. V. White)).

- [43] In endorsing the GSDOA, the Parliamentary Secretary to the Minister of Health made several statements which reflect an intention to immunize from arrest. For example, she stated:

I recognize that problematic drug use is a complex issue for which there are no easy answers, but we cannot arrest our way out of this problem. . . .

. . .

. . . rather than arresting those who are suffering from a disease of addiction, an overdose is an important opportunity for first responders to intervene and help direct individuals toward community and social services to obtain treatment for their illness. [Emphasis added.]

(House of Commons Debates, May 4, 2016, at pp. 2898-99; see also House of Commons Debates, October 28, 2016, at p. 6301.)

- [44] Together, these statements reflect a clear understanding that the s. 4.1(2) immunity includes immunity from arrest for the charge of simple possession. It is trite law that courts must not place undue weight on the legislative history of an enactment (see *R. v. I.M.*, 2025 SCC 23, at para. 127; *R. v. Khill*, 2021 SCC 37, [2021] 2 S.C.R. 948, at para. 111; *Rizzo*, at para. 35). However, legislative history that, viewed as a whole, provides “a full and consistent picture of the thinking behind a provision” can receive “considerable weight” in the interpretative exercise (*Sullivan*, at § 23.03[4][b]). This is particularly so when, as here, members of all parties evidenced a similar understanding in *Hansard* (see, e.g., *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 485; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, [2020] 2 S.C.R. 587, at para. 13).
- [45] Importantly, achieving Parliament’s goal in this case requires a clear rule that can be broadly communicated to and understood by those affected by drug overdoses. As one member said during debate in the House of Commons, “if people still think they can be arrested and get into trouble, we will be no further ahead” — saving lives would be achieved “not only by passing legislation, but also by ensuring that people are aware of [Parliament’s] laws” (House of Commons Debates, May 4, 2016, at p. 2900 (C. Moore)). I agree with the intervener the Pivot Legal Society that an interpretation of the provision which distinguishes between immunity from arrest and immunity from charge on the same offence may not be readily apparent to the public (*I.F.*, at paras. 27-30). The difficulty in communicating the nature of the legal protection would further undermine Parliament’s public health purpose because people are less likely to seek emergency assistance if they do not understand the legal consequences from which they are immune.
- [46] Immunizing eligible individuals from arrest does not ignore the importance of the public safety goal of the broader CDSA. Section 4.1(2) includes several robust, specific conditions and only immunizes individuals from one offence — possession under s. 4(1). It requires reasonable belief of the need for assistance in a life-threatening drug-induced medical emergency and provides immunity only for people who seek help or are at the scene when assistance arrives. An individual is immune only if the evidence supporting the offence of possession is obtained as a result of that person seeking assistance or remaining at the scene. Further, Parliament drew the line at one offence, possession of a controlled substance, and did not provide immunity from any other more serious offences such as drug trafficking or weapon possession. This legislative choice distinguishes between the implications of the offence of simple possession for personal use and the wider societal harms of trafficking, while still allowing for a clear rule that is easily communicated to the public. No party suggested that this interpretation would give rise to any absurdity in its application.

- [47] By contrast, other than the absence of an explicit reference to the word “arrest”, there is nothing to support the Crown’s contention that Parliament chose to allow the police to arrest the good Samaritans for the offence of possession. Nothing suggests that Parliament intended for the police to be able to arrest people who are immune from charge, either as a tool for the seizure of drugs (not in plain view) or for the investigation of other potential crimes (for which there are no reasonable suspicions or grounds).
- [48] Rather, the Crown’s interpretation runs counter to the many statements of legislators indicating an intention and understanding that immunity from arrest would follow immunity from charge and conviction. It would undermine the harm reduction purpose those legislators sought to achieve — a clear rule they could communicate to the public that would encourage the seeking of emergency assistance when lives are in danger. In the narrow circumstances attracting the application of s. 4.1(2), where a life must necessarily be threatened by a medical emergency, Parliament clearly prioritized saving that life over the more remote public safety benefits of arresting persons at the scene for simple possession. And, as I discuss below, immunity from arrest for simple possession does not prevent officers from using all other existing police powers, where the conditions for their use are met, to protect themselves or public safety or to investigate other crimes.
- (2) The Broader Context of Section 4.1 Is Consistent With Immunity From Arrest
- [49] An interpretation conferring immunity from arrest is consistent with the statutory scheme in which s. 4.1(2) is found. When the text of the provision is read in the context of the entire section, it does not support a technical and narrow reading of the words “charged or convicted”.
- [50] In addition to conferring immunity from charge and conviction for the offence of simple possession, s. 4.1 of the CDSA provides additional immunities regarding the breach of conditions that relate to simple possession. Sections 4.1(4) and 4.1(5) state:
- (4) No person who seeks emergency medical or law enforcement assistance because that person, or another person, is suffering from a medical emergency, or who is at the scene on the arrival of the assistance, is to be charged with an offence concerning a violation of any condition of a pre-trial release or probation order relating to an offence under subsection 4(1) if the evidence in support of that offence was obtained or discovered as a result of that person having sought assistance or having remained at the scene.
- (5) Any condition of a person’s pre-trial release, probation order, conditional sentence or parole relating to an offence under subsection 4(1) that may be violated as a result of the person seeking emergency medical or law enforcement assistance for their, or another person’s, medical emergency, or as a result of having been at the scene on the arrival of the assistance, is deemed not to be violated.

- [51] The Crown submits that the existence of s. 4.1(5) supports its narrow reading of s. 4.1(2) (A.F., at para. 41). It recognizes that violating the conditions covered by s. 4.1(5) provides no grounds for arrest since that violation is considered in law not to have occurred. The Crown contrasts s. 4.1(5) with s. 4.1(2), which leaves the possession offence in place even where it provides immunity from charge and conviction. It says Parliament could have used the same deeming language from s. 4.1(5) in s. 4.1(2) had it wished to exclude the possibility of arrest for the possession offence, but did not do so. Given this, the Crown contends that it follows that s. 4.1(2) must be interpreted to preserve the power to arrest for possession. I disagree.
- [52] These additional protections reflect Parliament's clear goal to remove disincentives to seek emergency assistance that could save lives. Section 4.1(5) goes beyond providing immunity for condition violations — it deems the violations not to have occurred. Deeming such conditions not to have been breached is necessary to immunize eligible individuals from the consequences arising from their breach that do not require a criminal charge (see I.F., John Howard Society of Saskatchewan, at para. 22). For example, violating pre-trial release conditions can result in cancellation of the release order (Criminal Code, s. 524). Since those consequences are specific to these condition violations, it is unsurprising that a similar deeming provision was not enacted for the offence of possession.
- [53] That Parliament sought to address unique consequences of condition violations in s. 4.1(5) says nothing about whether the s. 4.1(2) immunity extends to arrest.
- [54] The Crown also argues that the words “charged or convicted” in s. 4.1(2) are terms of art that ought to be given narrow, technical meanings (A.F., at paras. 36 and 40). But the drafting of s. 4.1 does not support the idea that these terms were used in a sense so narrow and technical that they would exclude arrest. Indeed, as the intervener the John Howard Society of Saskatchewan points out, when read with this kind of technical lens, the text of this section could give rise to inconsistencies and contradictions (I.F., at paras. 33-36). Despite Parliament's intent apparently being to offer equivalent protection in s. 4.1(2) and (4), for the offences of possession and violation of conditions respectively, s. 4.1(2) uses “charged or convicted” whereas s. 4.1(4) merely uses “charged”. If “charged or convicted” were carefully chosen terms of art, this variation in language with no apparent effect would be surprising. Indeed, an immunity from being charged necessarily prevents a conviction; in that sense the use of both words simply confirms immunity from the process that could otherwise result in conviction based on the charge. Further, the fact that s. 4.1(5) deems violations of any condition of a person's pre-trial release or probation order not to have occurred would suggest, on the Crown's technical reading, that the s. 4.1(4) immunity is superfluous. An individual cannot be charged with an offence concerning a violation of pre-trial release or a probation order that has been deemed out of existence (see I.F., John Howard Society of Saskatchewan, at paras. 26-27).

- [55] Thus, an examination of the language of s. 4.1 contradicts the idea that the terms “charged or convicted” in s. 4.1(2) were used as precise terms of art specifically chosen by Parliament. The broader understanding of the phrase “charged or convicted”, which better serves Parliament’s purpose to save lives, is consistent with the provision as a whole.
- (3) Parliament Would Not Have Preserved Arrests for Offences Immune From Charge and Conviction as a Pretext for Investigating Other Offences
- [56] The Crown argues that the arrest power under s. 495 of the Criminal Code permits arrests based on the commission of an offence even where immunity from charge and conviction is available (A.F., at paras. 45-46). Section 495 permits a peace officer to arrest an individual without a warrant where the officer has reasonable grounds to believe that the individual has committed or is about to commit an indictable offence (s. 495(1)(a)) or where the officer finds the individual committing a criminal offence (s. 495(1)(b)). The Crown says that the arrest power under s. 495 is unaffected because s. 4.1(2) of the CDSA creates immunity from charge and conviction instead of deeming simple possession not to be an offence. According to the Crown, “[a] warrantless arrest on ‘reasonable grounds to believe’ is a valid investigative tool”, which can be used to seize dangerous substances or to prevent the commission of other offences (A.F., at para. 36; see also paras. 43-47).
- [57] I cannot agree. In enacting s. 4.1(2), Parliament did not intend to allow the police to arrest individuals for the offence of simple possession, despite those individuals being immune from charge and conviction, to further other law enforcement goals. Parliament is presumed to know the law, and our law has long prohibited a warrantless arrest under s. 495 of the Criminal Code for purely investigative purposes. Accepting the Crown’s position would expand the s. 495 power to arrest contrary to the jurisprudence of this Court. It would permit the exercise of the power of arrest in a way that is disconnected from the purposes for which that power was granted to the police.
- [58] Arrest is not a power to be exercised lightly. It is a significant deprivation of personal liberty. As this Court stated in *Kosoian v. Société de transport de Montréal*, 2019 SCC 59, [2019] 4 S.C.R. 335, “[i]n a free and democratic society, no one should accept — or expect to be subjected to — unjustified state intrusions. Interference with freedom of movement, just like invasion of privacy, must not be trivialized” (para. 139; see also *Fleming*, at paras. 65 and 91).
- [59] An arrest is also a very specific exercise of police powers, which in turn gives rise to other police powers, most notably search incident to arrest. In this sense, arrest is distinct from other powers which may be exercised by the police, such as investigative detention (see *R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59) or the general police power to detain if reasonably necessary (see *R. v. Clayton*, 2007 SCC 32, [2007] 2 S.C.R. 725; *R. v. Aucoin*, 2012 SCC 66, [2012] 3 S.C.R. 408). While more limited detentions may give rise to their own powers to search, those powers are much more circumscribed in their scope and intrusiveness than search incident to arrest.

- [60] In recognition of their significance, this Court has hesitated to expand the scope of police arrest powers. For example, in *Fleming* this Court declined to recognize a common law power for the police to arrest lawfully acting individuals to prevent an apprehended breach of the peace (para. 88). The Court added that it had “difficulty seeing any need for the courts to fill a legislative gap by recognizing a common law power of arrest for the purpose of preventing individuals from committing breaches of the peace themselves” (para. 61). Similarly, in *R. v. Feeney*, [1997] 2 S.C.R. 13, this Court significantly curtailed the power of the police to effect warrantless arrests following forced entry into a private dwelling (para. 51).
- [61] The power to arrest under s. 495 of the Criminal Code is not merely another tool to be used by the police in furthering their general mandate to protect life and safety (see *R. v. MacDonald*, 2014 SCC 3, [2014] 1 S.C.R. 37, at paras. 31 and 35). Sections 495(1)(a) and 495(1)(b) confer powers that are dependent on the knowledge that an offence has been or is being committed or the existence of reasonable grounds to believe that an offence has been or is about to be committed. Section 495(2) further limits the use of the warrantless arrest power for certain offences, focusing on what is necessary to the criminal process. The provision precludes arrest without warrant where the officer has reasonable grounds to believe “that the public interest . . . may be satisfied without so arresting the person” (s. 495(2)(d)) and has no reasonable grounds to believe that the individual “will fail to attend court in order to be dealt with according to law” if they are not arrested (s. 495(2)(e)).
- [62] In addition, the s. 495 arrest power appears in Part XVI of the Criminal Code, titled “Compelling Appearance of Accused Before a Justice and Interim Release”, as “part of a larger scheme for causing an individual who is alleged to have committed a crime to appear in court to face charges” (S. Coughlan and G. Luther, *Detention and Arrest* (3rd ed. 2024), at p. 183). Nowhere does this Part of the Criminal Code suggest an absolute distinction between an “investigative stage” and a prosecution, language that is completely absent from the statute (contra transcript, at p. 4). To the contrary, it is clear from its placement in the Criminal Code that the s. 495 power to arrest is intimately related to bringing persons before justice to answer criminal charges.
- [63] Further, as noted by Glanville L. Williams, “[t]o be an arrest, there must be an intention to subject the person arrested to the criminal process If one thinks about the matter there can hardly be any doubt that it must be an intention in some sense to take the first step in charging the suspect with a crime” (“Requisites of a Valid Arrest”, [1954] *Crim. L.R.* 6, at p. 15; see also *Cloutier v. Langlois*, [1990] 1 S.C.R. 158, at p. 182). The arrest power under s. 495 must be exercised for the purpose for which it is granted. An officer cannot arrest a person for an offence for which there is immunity from charge and conviction.
- [64] While it is true, as the Crown points out, that in some circumstances the exercise of the preventative arrest power under s. 495(1)(a), where an individual is about to commit a crime, will not result in the laying of a charge, this is distinct from the circumstance where there is immunity from charge and conviction. Section 24 of the Criminal Code

contemplates charges for attempted offences, and a charge under that provision may result from a preventative arrest made under s. 495(1)(a) (see Quigley’s Criminal Procedure in Canada (loose-leaf), by D. Rose, ed., at § 9:6). While a charge and prosecution need not always follow an arrest, an arrest under s. 495(1) based on the commission of an offence for which there is explicit immunity from charge and conviction is unlawful.

- [65] This Court has also made clear that “[a]n arrest cannot be made solely for the purpose of investigation” (Feeney, at para. 35). Considerations such as the need to find and preserve evidence are irrelevant to the question of whether reasonable grounds for arrest exist (para. 30). The arrest power under s. 495 is not to be exercised for the investigation or prevention of criminal activity where an officer has no reasonable grounds to believe that an individual has committed or is about to commit an indictable offence (see *R. v. Storrey*, [1990] 1 S.C.R. 241, at p. 250; Feeney, at para. 29).
- [66] The law of warrantless searches incident to arrest is also tightly circumscribed and ensures that the power is exercised for specific purposes. While searches incident to arrest can be conducted to address officer or public safety concerns arising from taking a person into custody or to discover and preserve evidence, those purposes must still be truly incidental to the arrest (*R. v. Caslake*, [1998] 1 S.C.R. 51, at para. 19). As stated in *Caslake*, “the search is only justifiable if the purpose of the search is related to the purpose of the arrest” (para. 17). In addition, where the purpose is to discover or preserve evidence, that evidence must be related to the offence for which the person is being arrested (para. 22; see also *Fearon*, at paras. 76-78; *Stairs*, at paras. 78-81).
- [67] The public always has an interest in removing drugs and firearms from the street, especially near a school. But our criminal law has been careful to circumscribe the scope and conditions of the police power to act in the public interest, and in particular the powers to arrest and to search. This is because the expansion of these powers poses a risk to civil liberties (see, e.g., *R. v. Tim*, 2022 SCC 12, [2022] 1 S.C.R. 234, at para. 30).
- [68] The powers to arrest and search involve the important individual human rights of privacy and freedom from arbitrary detention protected under ss. 8 and 9 of the Charter. Police powers must be exercised lawfully and respecting the Charter rights of all people, including people who have called for emergency assistance. The scope of lawful police powers is not defined simply by the general scope of officers’ duties to investigate crime in the public interest (see *MacDonald*, at para. 38, citing *Wiretap Reference*, [1984] 2 S.C.R. 697, at pp. 718-19, per *Dickson J.*, dissenting). Other police powers provide the tools to deal with exigent circumstances or public safety concerns if the conditions for their use are met.
- [69] Therefore, I do not accept, as the Crown argues, that Parliament intended to allow the police to arrest and search good Samaritans on the grounds that an offence of simple possession was committed, despite making that offence immune from prosecution under s. 4.1(2) of the CDSA (*A.F.*, at para. 57). The Crown’s proposition would suggest that Parliament intended, in enacting s. 4.1(2), to preserve the ability of the police to arrest good Samaritans for the

offence of possession as a pretext for broader criminal investigations and searches that would otherwise be unlawful under principled limits to other police powers set out by this Court.

[70] Parliament is presumed to have known the existing law when it enacted s. 4.1(2) (see D.L.W., at para. 21). A reading of s. 4.1(2) that would allow for arrest for possession when an individual is immune from that charge would be an unexpected departure from the law of arrest. Nothing in the language of s. 4.1(2) indicates that Parliament intended such a departure. It is unsurprising given the state of the law that Parliament did not specifically include the word “arrested”. An interpretation of the words “charged or convicted” that is in harmony with existing law displaces the police power to arrest under s. 495 of the Criminal Code where the only grounds for that arrest are that an offence made immune by s. 4.1(2) has been committed. As I discussed above, this interpretation also reflects the intention and the understanding of the legislators who debated and passed this legislation.

(4) Conclusion on the Statutory Interpretation of Section 4.1(2)

[71] For these reasons, I conclude that, by necessary implication, s. 4.1(2) of the CDSA provides immunity not just from charge and conviction for simple possession, but also from arrest for such a charge. Parliament’s aim was to save lives, and it created an immunity to encourage those at the scene of an overdose to call for life-saving emergency services. In providing immunity from charge and conviction for simple possession, Parliament intended to create an exception to the use of the police power of arrest for that offence. It recognized that those most likely to call for emergency assistance in life-threatening overdose situations will often themselves be drug users: not all good Samaritans will be law-abiding.

C. Lawful Powers of the Police at the Scene of a Drug Overdose

[72] The s. 4.1(2) immunity from arrest for possession of a controlled substance does not affect other existing police powers and does not leave the police powerless to protect public safety at the scene of a drug overdose. All other relevant powers remain available to the police when they respond to a situation falling within the scope of s. 4.1(2). I outline some of the important powers that may be available to the police.

[73] First, the police can secure the scene and ask questions about the overdose that may help with the medical treatment required, prevent the use of tainted drugs by others, or identify the source of contaminated drugs that could pose further risks of overdose. As this Court said in *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353, “a police officer who attends at a medical emergency on a 911 call is not detaining the individuals he or she encounters. This is so even if the police, in taking control of the situation, effectively interfere with an individual’s freedom of movement” or question bystanders to “obtain information that may assist in their investigation” (paras. 36-37). Such questions may be more readily answered by people who have remained at the scene when they have a clear immunity from arrest for possession offences covered by s. 4.1(2).

- [74] Second, this Court has established that the police have the power to detain individuals “where it is reasonably necessary in the totality of the circumstances”, weighing the seriousness of the risk to public or individual safety against the liberty interests of members of the public at the scene (Aucoin, at para. 36, citing Clayton, at para. 31).
- [75] Third, the police can still exercise a substantial number of search and seizure powers when responding to an overdose. For example, under the plain view seizure power, the police can seize drugs and other items which were obtained by the commission of an offence and which are out in the open (Criminal Code, s. 489(2)). The police can also search a person to seize firearms and other weapons under the terms of s. 117.04(2) of the Criminal Code. Further, in MacDonald, this Court established that the police may conduct a safety search where it “is reasonably necessary to eliminate an imminent threat to the safety of the public or the police” (para. 40; see also para. 41). And where exigent circumstances are present and make it impracticable to obtain a warrant, the police can exercise their power of warrantless search under s. 487.11 of the Criminal Code and search for and seize controlled substances both in places and on people under s. 11(7) of the CDSA (see generally R. v. Paterson, 2017 SCC 15, [2017] 1 S.C.R. 202; R. v. Campbell, 2024 SCC 42). It would therefore be wrong to say that the police are prohibited from searching for weapons and drugs to protect themselves and the public at the scene of an overdose.
- [76] Finally, all arrest and detention powers outside the scope of the s. 4.1(2) immunity remain available to the police. These include the power of investigative detention where they reasonably suspect that the individual “is connected to a particular crime” and that detention is necessary in the circumstances (Mann, at para. 45). Such an investigative detention permits a pat-down search incident to the detention where the police believe on reasonable grounds that their safety or the safety of the public is at risk (see paras. 40-44). The police may also exercise the power to arrest for a breach of the peace or the power to arrest for offences other than simple possession where an individual committed an indictable offence or is committing a criminal offence or where the police have reasonable grounds to believe that the individual committed or is about to commit an indictable offence (Criminal Code, ss. 31 and 495). These powers would encompass situations, for example, where an intoxicated individual attempts to drive away from the scene or where there are sufficient indicia of trafficking or other crimes to provide reasonable grounds for an arrest for those offences. Such arrests for other offences could also allow the police to conduct searches incident to arrest (see Caslake, at para. 19).
- [77] Significantly, all of these other powers have their own thresholds and preconditions for use and, as has been recognized by this Court, the police must often quickly assess whether those conditions are met when responding to an evolving situation (see Fleming, at para. 52; see also Stairs, at para. 74; MacDonald, at para. 32). In addition, some of those thresholds are higher than those required for an arrest under s. 495 and the corresponding search incident to arrest. For example, the powers to search and seize set out by s. 11(7) of the CDSA and s. 487.11 of the Criminal Code have a requirement of exigency. Similarly, in MacDonald,

this Court recognized that the common law safety search power is available in specific circumstances involving “an imminent threat to the safety of the public or the police” (para. 41). These conditions are not necessarily required for warrantless arrests under s. 495. The Crown’s position that the power to arrest for possession is necessary for broad investigative and safety purposes runs counter to our jurisprudence. It could undermine and circumvent the controls for the exercise of other police powers for the purposes of investigation, such as those available in exigent circumstances or to address public safety concerns, contrary to the law’s careful delineation of these police powers. All police powers represent a careful calibration between personal liberty and the requirements of law enforcement. This appeal is not the appropriate place to significantly change police powers, undermining previously established conditions for their use.

- [78] The Director of Public Prosecutions, as an intervener, asks this Court to recognize a freestanding power to search for controlled substances at the scene of an overdose (I.F., at paras. 3-5). This is not an appropriate appeal in which to consider the existence of this novel power, which is unnecessary to dispose of this appeal and was not raised by the parties or in the courts below. This Court has recognized limited search powers where necessary to address imminent threats to safety (see, e.g., MacDonald). But whether or not a search to remove controlled substances which may have resulted in an overdose could meet that threshold, or satisfy the requirements to recognize a new freestanding search and seizure power, is an issue to be determined in a different case, where those facts arise.
- [79] It is similarly unnecessary to address the power of investigative detention on reasonable suspicion that an immune possession offence has been committed or powers to conduct warrantless searches where the reasonable grounds relate to an immune offence. No one submitted that s. 4.1(2) creates an immunity from investigative detention or limits the ability to conduct warrantless searches. Mr. Wilson does not challenge the lawfulness of his initial investigative detention, but rather his subsequent arrest for possession. The search that ultimately led to the evidence at issue here occurred further to that arrest which, as I explain below, was unlawful and justifies the exclusion of the evidence.
- [80] The immunity provided by s. 4.1(2) is aimed at saving lives. Apart from this limited immunity for simple possession, it removes none of the other existing police powers allowed in criminal law to protect police and public safety.

D. Application

(1) Sections 8 and 9 of the Charter

- [81] I have concluded that s. 4.1(2) of the CDSA includes immunity from arrest for possession of a controlled substance. There is no dispute that Mr. Wilson remained at the scene of a medical emergency within the meaning of s. 4.1, nor that the evidence supporting his initial arrest was obtained or discovered as a result. So, the issue is whether his initial arrest was an unlawful arrest for simple possession or whether it was carried out for a purpose that is authorized by law. A detention which is not authorized by law is arbitrary and violates s. 9 of

the Charter (Grant, at para. 54). Furthermore, because the legality of a search incident to arrest depends on the legality of the arrest, a search based on an illegal arrest will necessarily be an infringement of s. 8 (Caslake, at para. 13).

- [82] The Crown argues that the Court of Appeal erred “by substituting its own view of the facts for the trial judge” (A.F., at para. 63). According to the Crown, it was not open to the Court of Appeal to find that the first arrest of Mr. Wilson was motivated by “the sole purpose of charging him with an offence prohibited by law” (para. 64). Instead, the Crown argues that the arrest may have been motivated by other purposes, such as the seizure of prohibited drugs (see paras. 62-63).
- [83] Although the trial judge’s reasons did not contain explicit findings of all the relevant facts, he stated that he “found the testimony of the police officers to be both credible and reliable” (A.R., at p. 21) and that “Constable Marshall first detained the three individuals for [an] investigative purpose. Once she saw a white powder which she believed was crystal meth, she arrested them for possession of a drug” (p. 15). Regarding the evidence of the firearms, the trial judge’s reasons suggest he found that the search in which the firearms were discovered was conducted incidentally to the second arrest for possession for the purpose of trafficking: “Following the search of Ms. Delorme’s belongings, a large amount of drugs were discovered. At that point, the three individuals were arrested for [the offence of] possession for the purpose of trafficking A further search incident to this arrest resulted in discovery of the firearms” (p. 15). I agree with the Court of Appeal that such a finding was not available on this record and would be a palpable and overriding error (paras. 36-38).
- [84] The only interpretation available on the evidence is that Mr. Wilson was arrested for possession of a controlled substance contrary to s. 4(1) of the CDSA and that the subsequent search which discovered the evidence of drug trafficking and the firearms was conducted incidentally to that arrest.
- [85] Constable Marshall, the first officer at the scene and the one who conducted the investigative detention of Mr. Wilson and the others, repeatedly stated in her testimony that both the initial detention and arrest had been made due to the possession of drugs (see A.R., at pp. 94, 99 and 137-38). Constable Mavrick Hamon-Boulay, one of the two officers who arrived after Constable Marshall, also said that the first arrest was made for possession of a controlled substance (pp. 148-49).
- [86] Constable Marshall was clear in describing the observations she made at the scene which formed the basis for the initial detention and arrest. These observations included the information from the EMS responder that Ms. Delorme had overdosed on fentanyl; the smell of marijuana; the indicia of drug intoxication; and the small quantities of drugs she saw on the ground near the truck and near Mr. Wilson (A.R., at pp. 88-89, 93, 108 and 135-38). She saw nothing that would provide reasonable grounds to arrest for drug trafficking or firearms offences — those grounds did not exist until the search was

conducted. Constables Marshall and Hamon-Boulay also explicitly stated that the search was conducted incidentally to the arrest for possession (see pp. 139 and 159). There was no evidence from the officers that the search was for another purpose. The record is also clear that Mr. Wilson and the others were rearrested for drug trafficking and the firearms offences simultaneously after the search was conducted and the indicia of trafficking and the firearms were found (pp. 120, 141 and 155).

[87] Therefore, because s. 4.1(2) immunizes eligible individuals from arrest for simple possession, based on the record here, the arrest of Mr. Wilson was unlawful and breached his s. 9 right. The record indicates that the arrest was expressly for the offence of simple possession, and the evidence grounding an arrest for that offence was discovered as a result of Mr. Wilson having remained at the scene of the drug overdose. In turn, this means that the search incident to that arrest was not authorized by law and was a breach of Mr. Wilson's s. 8 right.

(2) Section 24(2) of the Charter

[88] Under s. 24(2) of the Charter, evidence obtained through a Charter breach shall be excluded if its admission would bring the administration of justice into disrepute. This engages three avenues of inquiry: (1) the seriousness of the Charter-infringing state conduct; (2) the impact of the breach on the Charter-protected interests of the accused; and (3) society's interest in the adjudication of the case on its merits (Grant, at para. 71).

[89] The Court of Appeal considered the relevant factors and concluded that the evidence obtained in breach of Mr. Wilson's Charter rights must be excluded. Before this Court, the Crown argues to the contrary that the police should be entitled to rely on the text of the law "as it is stated in black and white" and that if the courts later revise the ambit of a provision through statutory interpretation, that should not merit exclusion under s. 24(2) (transcript, at pp. 39-40).

[90] But as noted above, a purposive reading of s. 4.1(2) and the clear jurisprudence on the scope of the power of arrest both indicate that arrest for possession of a controlled substance was precluded in Mr. Wilson's circumstances. The police ought to have known that the warrantless arrest power under s. 495 of the Criminal Code is unavailable for an offence with immunity from charge and conviction. Further, they ought to have known that since Feeney was decided in 1997, this Court has been clear that arrests cannot be made solely for investigative purposes (para. 35). Finally, the police should have known the necessary conditions to undertake a warrantless search.

[91] I agree with the conclusions of the Court of Appeal. Given the seriousness of the breach of the Charter rights and the impact of that violation on Mr. Wilson's Charter-protected interests, the evidence must be excluded under s. 24(2). Without that evidence, the record is insufficient to permit any trial court to convict, and Mr. Wilson must therefore be acquitted.

VI. Conclusion

- [92] The police retain many powers when they respond to the scene of an overdose. That said, s. 4.1(2) makes arrest for possession of a controlled substance unlawful when the evidence justifying that arrest was discovered because the person sought emergency assistance for, or remained at the scene of, a drug overdose. This is the balance Parliament has struck to save lives.
- [93] Mr. Wilson had immunity under s. 4.1(2) when he was arrested for possession. Arresting him despite his immunity was a serious breach of his Charter rights that warrants the exclusion of evidence gathered consequent to the arrest. The Court of Appeal was right in the circumstances to enter acquittals on all charges.
- [94] I would dismiss the appeal.

The reasons of Côté, Rowe and Jamal JJ. were delivered by

Jamal J. —

I. Introduction

- [95] In criminalizing the simple possession of drugs, the Parliament of Canada has always tried to balance the objectives of public health and public safety. Both objectives are engaged at the scene of a potentially fatal drug overdose and must be balanced. That balance lies at the heart of this appeal.
- [96] In 2007, several U.S. states began enacting “Good Samaritan” drug overdose laws to encourage individuals at the scene of an overdose to call 9-1-1 for help. Although the state laws differ widely, they share a common purpose of mitigating the caller’s fear of legal repercussions for the offence of simple possession. Each law seeks to balance public health, by protecting the lives of those experiencing an overdose, and public safety, by protecting members of the public from harmful drugs.
- [97] In 2017, Parliament followed suit and enacted the Good Samaritan Drug Overdose Act, S.C. 2017, c. 4, after it was introduced as a private member’s bill. The new legislation amended the Controlled Drugs and Substances Act, S.C. 1996, c. 19 (“CDSA”), to encourage people to call for help from the scene of an overdose. Section 4.1(2) of the CDSA now provides that if a person seeks emergency medical or law enforcement assistance, and if evidence in support of the offence of simple possession of a controlled substance contrary to s. 4(1) of the CDSA is discovered as a result of that person having sought assistance or having remained at the scene, then the person is exempt from being “charged or convicted” of simple possession.
- [98] At issue on this appeal is whether the police violated the rights of the respondent, Paul Eric Wilson, under ss. 8 and 9 of the Canadian Charter of Rights and Freedoms at the scene of an overdose. This requires the Court to consider whether the exemption under s. 4.1(2) of the CDSA from an individual being “charged or convicted” of simple possession prohibits the

police from arresting that individual under s. 495(1) of the Criminal Code, R.S.C. 1985, c. C-46. There is no dispute that simple possession remains a criminal offence, that the police have statutory and common law duties to investigate crime and protect the public, and that the Good Samaritan Drug Overdose Act did not amend or even refer to s. 495(1) of the Criminal Code.

- [99] Mr. Wilson was detained for the purpose of investigation at the scene of a drug overdose in a schoolyard of an elementary-middle school in session in rural Saskatchewan. When the police officer saw what she believed was crystal methamphetamine, she arrested Mr. Wilson and his companions for the offence of simple possession. After the arrests, their truck was searched incident to arrest for weapons and illegal drugs. The search revealed that Mr. Wilson was in unlawful possession of stolen property, firearms, and ammunition. It was later learned that he was already subject to a firearms prohibition order. Mr. Wilson was charged with several firearms offences, possession of stolen identity information, fraudulent impersonation, and breaching a firearms prohibition. In accordance with s. 4.1(2) of the CDSA, he was not charged with simple possession under the CDSA.
- [100] The trial judge rejected Mr. Wilson's argument that the police had infringed his rights under ss. 8 and 9 of the Charter by arresting him and conducting a search incident to arrest. He found the police lawfully detained Mr. Wilson for the purpose of investigation, and then lawfully arrested him and conducted a search incident to arrest for simple possession by using the power to arrest under s. 495(1) of the Criminal Code. The trial judge convicted Mr. Wilson of several firearms offences and unauthorized possession of identity information.
- [101] The Court of Appeal for Saskatchewan allowed the appeal from conviction. The court held that the police infringed ss. 8 and 9 of the Charter by arresting Mr. Wilson for simple possession and conducting a search incident to that arrest. The court found as fact that the only purpose of the police in arresting Mr. Wilson was to charge him with the offence of simple possession. This was an unlawful purpose for the arrest, the court said, because s. 4.1(2) of the CDSA exempted Mr. Wilson from being "charged or convicted" of simple possession. The court found the infringement of Mr. Wilson's Charter rights to have been so serious that it excluded the evidence obtained under s. 24(2) of the Charter and acquitted him of all charges.
- [102] I would allow the appeal. The police did not infringe ss. 8 or 9 of the Charter. There is no evidence in the record to justify the Court of Appeal's factual finding that the police arrested Mr. Wilson solely for the purpose of charging him with simple possession. Further, Mr. Wilson was never charged with that offence or with any offence under the CDSA.
- [103] In my view, the text, context, and purpose of s. 4.1(2) of the CDSA confirm that the provision provides only a limited exemption from being "charged or convicted" of simple possession but does not prohibit an arrest for that offence.

- [104] The text of s. 4.1(2) exempts an individual from being “charged” or “convicted”, both of which are legal terms whose legal meaning is different from that of the legal term “arrest”. Parliament is presumed to intend legal terms to retain their settled legal meaning.
- [105] The context of s. 4.1(2) confirms that simple possession remains an offence. Nothing in the CDSA or under the criminal law suggests that s. 4.1(2) prohibits the power to arrest under s. 495(1) of the Criminal Code. Had Parliament intended to prohibit the power to arrest, it could have said so in clear and simple terms.
- [106] The purpose of s. 4.1(2) also strongly suggests that this provision cannot be interpreted to prohibit the power to arrest. Like the CDSA as a whole, s. 4.1(2) seeks to balance public health, by preventing overdose deaths, and public safety, by preventing harm to society from dangerous drugs, including by suppressing their availability. Because simple possession remains an offence, the police have a duty and power to investigate that offence to protect the public. A court must read the clear words in s. 4.1(2) based on the two policy objectives that Parliament balanced under this provision. A court cannot consider the public health objective alone and pursue it at all costs, while ignoring the public safety objective. This is especially so when such an approach entails absurd consequences. Here, interpreting s. 4.1(2) to prohibit the police power to arrest for the offence of simple possession means that the police cannot detain to investigate that offence either. This will place the public and the police at great risk.
- [107] The Member of Parliament who sponsored the private member’s bill, Mr. Ron McKinnon, expressly assured the Standing Senate Committee on Legal and Constitutional Affairs that the proposed measure was “not about weapons-related offences”, would “not exempt anyone from further investigation”, and would “not limit police powers” (Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, No. 21, 1st Sess., 42nd Parl., February 8 and 9, 2017, at p. 21:13). Yet, on the Court of Appeal’s interpretation, and the interpretation now adopted by my colleague Karakatsanis J., those assurances no longer hold.
- [108] It necessarily follows from my colleague’s reading that s. 4.1(2) of the CDSA eliminates not only the power to arrest for simple possession at the scene of an overdose, but also the power to detain for the purpose of investigating that offence. Further, by eliminating the police power to search incident to arrest, the police are prohibited from searching for weapons and drugs to protect the public and the police. This remains so, even at a school, where many young children are present and the accused has drugs, firearms, and ammunition close at hand. I cannot accept that Parliament intended this result.
- [109] I conclude that s. 4.1(2) of the CDSA does not prohibit the police from exercising the power to arrest without warrant under s. 495(1) of the Criminal Code. Nor do I see any basis to find an infringement of ss. 8 or 9 of the Charter in this case.

II. Facts

- [110] At about 8:25 a.m. on a school morning in September 2020, Constable Heidi Jo Marshall, a 20-year veteran of the RCMP, was dispatched to respond to a drug-related incident in the schoolyard of a rural elementary-middle school in Vanscoy, Saskatchewan. Four individuals, including the respondent, Mr. Wilson, had parked a truck on the north end of the schoolyard. One of the women in the group was in medical distress after using fentanyl. Someone in the group had called 9-1-1.
- [111] On the way to the scene, Cst. Marshall learned that the school principal had also just called 9-1-1. Construction workers nearby had warned the principal that four individuals had parked a truck in the north end of the schoolyard and “appeared very high and should absolutely not be driving”; they were “certain drugs were involved” (A.R., at p. 88). A man appeared to be giving CPR to a woman on the ground.
- [112] When Cst. Marshall arrived, many young children were in the area. An ambulance was already there. The ambulance supervisor immediately approached Cst. Marshall and said that a woman, later identified as Cheryl Delorme, had overdosed on fentanyl but was now conscious in the ambulance, while three other individuals were walking around and “appeared extremely high” (p. 88).
- [113] Cst. Marshall approached the truck and saw signs of drug possession and drug use. She smelled a strong odour of marijuana coming from the area of the truck and a baggie of what looked like crystal methamphetamine on the ground near the driver’s side door. The three individuals displayed obvious signs of impairment. Two men, Mr. Wilson and James Mann, were under the truck. Cst. Marshall believed that they were trying to fix a tire to drive away. She was concerned that they were in no condition to be driving.
- [114] Cst. Marshall asked Mr. Wilson, Mr. Mann, and the third individual, Natasha Kerfoot, to come over to her police vehicle and asked them to stand about three feet apart. She was the only officer present at the time. She told them they were detained “for the purpose of the Controlled Drugs and Substances Act investigation, possession” (voir dire reasons (reproduced in A.R., at pp. 4-16), at p. 6). She also cautioned them and informed them of their right to counsel. All three asked to speak to a lawyer.
- [115] After Cst. Marshall detained the three individuals, she noticed Mr. Wilson fiddling with something in his pocket and saw a streak of white powder appear near his feet. She believed the powder was crystal methamphetamine and arrested all three individuals for possession of a controlled substance under s. 4(1) of the CDSA.

- [116] Two other RCMP officers, Constable Mavrick Hamon-Boulay and Constable Sean Nave, arrived as backup and placed Mr. Wilson and Mr. Mann in police vehicles. Cst. Marshall went to the ambulance and placed Ms. Delorme under arrest for possession of a controlled substance, cautioned her, and advised her of her right to counsel. Ms. Delorme said that she wanted to speak to a lawyer and asked Cst. Marshall to retrieve her belongings from the truck.
- [117] The officers searched the truck incident to the arrests for possession of a controlled substance. They were looking for “any weapons or any other drugs” (voir dire reasons, at p. 8). The officers were concerned that “fentanyl is a very potent substance and can harm anyone who touches it if you’re not careful and if you are not gloved” (p. 8), especially given “the proximity to [the] school” (A.R., at p. 161). As the officers tried to figure out which bags belonged to Ms. Delorme, Cst. Marshall and Cst. Nave found four large “rocks” of drugs that they believed were a Schedule I controlled substance, as well as drug trafficking tools such as baggies, scoresheets, scales, and needles. Cst. Nave also found a backpack containing two handguns, firearm parts, and ammunition. One of the handguns had been modified.
- [118] The officers arrested Mr. Wilson, Mr. Mann, and Ms. Kerfoot again, this time for firearms offences and possession of a controlled substance for the purpose of trafficking. By now, Ms. Delorme had been taken to the hospital. The truck was towed and later searched pursuant to a warrant. The police asked the school principal and school staff to walk around the school perimeter to “look for any obvious safety concerns”, such as “needles or anything like that” (A.R., at p. 163).
- [119] Mr. Wilson, Mr. Mann, and Ms. Kerfoot were transported to a nearby police station. In an interview conducted after he took drugs in his cell, Mr. Wilson confirmed that the backpack, firearms, and ammunition were his.
- [120] Mr. Wilson was not charged with possession or possession for the purpose of trafficking under the CDSA. He was, however, charged with eight firearms-related offences, breaching a firearms prohibition, and two offences related to the possession of another person’s identity information.

III. Judicial History

A. Provincial Court of Saskatchewan, Voir Dire Ruling (Baniak J.)

- [121] At trial, Mr. Wilson admitted that he was subject to a firearms prohibition order under s. 109 of the Criminal Code at the time of the alleged offences. He also did not contest that the handguns were operating “firearms” under the Criminal Code and that he was not authorized to have the identity information found in his possession.
- [122] Instead, Mr. Wilson challenged the legality of his initial arrest for simple possession of a controlled substance under s. 4(1) of the CDSA. He claimed that because s. 4.1(2) of the CDSA provides that he could not be “charged or convicted” for simple possession, the police

could not lawfully arrest him for that offence either under s. 495(1) of the Criminal Code. He also argued that the police had no lawful authority to search the truck incident to his arrest. As a result, Mr. Wilson asserted, the police infringed his rights under ss. 8 and 9 of the Charter.

[123] The Crown responded that s. 4.1(2) of the CDSA did not prevent the police from conducting an investigative detention or arrest and noted that Mr. Wilson was not charged with simple possession. The Crown argued that Cst. Marshall “was fully justified in detaining the individuals she encountered on the scene”, and was “similarly acting on a well-founded and reasonable suspicion that led to further investigation” (voir dire reasons, at p. 12). In the Crown’s submission, “[t]he nature of the dispatch call, [the] possible fentanyl overdose, the proximity of the vehicle to the school, the officer’s experience with respect to drugs, and the overall concern over officer and public safety made her actions reasonable and prudent under the circumstances” (p. 12). As a result, the Crown contended, the police did not infringe ss. 8 or 9 of the Charter.

[124] The trial judge rejected Mr. Wilson’s Charter arguments. He stated that, at common law, the “[p]olice officers may detain an individual for investigative purposes if there are reasonable grounds to suspect in all the circumstances that an individual is connected to a particular crime and that such a detention is necessary” (p. 16, quoting *R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59, at para. 45). Applying this principle, the trial judge found that “[i]f Constable Marshall believed that . . . fentanyl was involved in the overdose, the vehicle was in close proximity to the school, [then] in her experience, it was necessary to take all steps to ensure officer and public safety” (p. 16). He also found that the police had “reasonable grounds to detain Mr. Wilson” and that “the investigative detention was not unduly long or egregious” (p. 16). The trial judge reviewed the officers’ evidence that they had searched the truck for “weapons or any other drugs” (p. 8) and found as fact that the search was “primarily” for “officer safety” (p. 14). The trial judge held that, as a result, the investigative detention, arrest, and search incident to arrest did not infringe ss. 8 or 9 of the Charter. He made no finding as to whether the circumstances were a “medical emergency” under s. 4.1(2) of the CDSA.

[125] The trial judge ruled that Mr. Wilson’s confession that the gun and ammunition were his was voluntary and admissible. He was convicted of all but one of the firearms offences and of knowingly possessing another individual’s identity information, and sentenced to eight years of incarceration, less credit for pre-sentence custody.

B. Court of Appeal for Saskatchewan, 2023 SKCA 106, 429 C.C.C. (3d) 454 (Leurer J.A. (As He Then Was), Schwann and Drennan JJ.A. Concurring)

[126] The Court of Appeal for Saskatchewan allowed the conviction appeal. Leurer J.A. (as he then was) for the court rejected Mr. Wilson’s argument that, where s. 4.1(2) applies, a person found at the scene of an overdose is not committing an offence at all. The court noted that simple possession “remains an offence, although one which is immune either to

prosecution or to conviction in the circumstances in which it applies” (para. 52). As a result, the police were entitled to seize the drugs found in plain view under s. 489(2) of the Criminal Code.

[127] Even though simple possession remains an offence, the court held that s. 4.1(2) of the CDSA prohibited the police from arresting Mr. Wilson. The court said that state powers, including the power to arrest without warrant under s. 495(1)(b) of the Criminal Code, “are bounded by the principle that they are to be exercised only for the purposes for which they are given” (para. 55). Here, the court said, “the only purpose for the first arrest of Mr. Wilson was to charge him [for simple possession] under s. 4(1) of the CDSA” (para. 56). But, the court added, “this was an action that Parliament has prohibited by s. 4.1(2)” (para. 56 (emphasis in original)). As a result, the police infringed ss. 8 and 9 of the Charter by arresting Mr. Wilson and searching him and the truck incident to arrest. The court excluded the evidence obtained under s. 24(2) of the Charter and acquitted Mr. Wilson of all the charges.

IV. Analysis

[128] The key issue on this appeal is whether the police lawfully arrested Mr. Wilson. This issue turns on whether the limited exemption under s. 4.1(2) of the CDSA against being “charged or convicted” of the offence of simple possession prohibits a lawful arrest for that offence under s. 495(1) of the Criminal Code. I will begin by reviewing the relevant principles of statutory interpretation and the two statutory provisions at issue. I will then address whether s. 4.1(2) of the CDSA prohibits an arrest that can otherwise be lawfully made under s. 495(1) of the Criminal Code. Finally, I will consider whether the police infringed ss. 8 and 9 of the Charter by arresting Mr. Wilson for simple possession and conducting a search incident to arrest, and whether the evidence obtained should be excluded under s. 24(2) of the Charter.

A. Does Section 4.1(2) of the CDSA Prohibit a Warrantless Arrest Under Section 495(1) of the Criminal Code?

(1) Principles of Statutory Interpretation

[129] Statutory interpretation is conducted in accordance with the modern principle. A statutory provision must be interpreted based on its text, context, and purpose to find a meaning that is harmonious with the legislation as a whole (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 117). The modern principle is reinforced by s. 12 of the federal Interpretation Act, R.S.C. 1985, c. I-21, which provides that “[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects” (*Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26).

- [130] Text, context, and purpose need not be addressed separately or in a formulaic way, since they are often closely related or interdependent (*Piekut v. Canada (National Revenue)*, 2025 SCC 13, at para. 43, citing *Bell ExpressVu*, at para. 31; *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84, at para. 28). As this Court has noted, “just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretive exercise” (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 (“*CISSS A*”), at para. 24; *Piekut*, at para. 45).
- [131] The text specifies the legislature’s chosen means of balancing competing policy objectives to achieve its purposes. These means “may disclose qualifications to primary purposes, and this is why the text remains the focus of interpretation” (*CISSS A*, at para. 24, quoting M. Mancini, “The Purpose Error in the Modern Approach to Statutory Interpretation” (2022), 59 *Alta. L. Rev.* 919, at p. 927). The relevant context is also essential in interpreting the text of a provision. That context includes the surrounding words, the Act as a whole, related statutes, and the relevant legal context (R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 1.05).
- [132] A court must interpret the “text through which the legislature seeks to achieve [its] objective”, because “the goal of the interpretative exercise is to find harmony between the words of the statute and the intended objective, not to achieve the objective ‘at all costs’” (*R. v. Breault*, 2023 SCC 9, at para. 26, quoting *MediaQMI inc. v. Kamel*, 2021 SCC 23, [2021] 1 S.C.R. 899, at para. 39, and *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at para. 174). However laudable and important the policy objectives at stake, a court cannot “distort the meaning to be given to the text of [the legislation] in the statutory interpretation exercise” (*Breault*, at para. 26).
- [133] Although each of the statutory text, context, and purpose must always be considered under the modern principle, this Court has recognized that “[w]hen the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process” (*Canada Trustco*, at para. 10; see also *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150, at para. 88; *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, [2020] 1 S.C.R. 521, at para. 60; *Canada v. Loblaw Financial Holdings Inc.*, 2021 SCC 51, [2021] 3 S.C.R. 687, at para. 41; *Dow Chemical Canada ULC v. Canada*, 2024 SCC 23, at para. 101; *R. v. Wolfe*, 2024 SCC 34, at para. 61). As this Court has explained, “[t]he words, if clear, will dominate; if not, they yield to an interpretation that best meets the overriding purpose of the statute” (*Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1, [2011] 1 S.C.R. 3, at para. 21).
- [134] Many of the traditional “rules” of statutory interpretation are considered when applying the modern principle. Only if genuine ambiguity remains after considering a textual, contextual, and purposive analysis may a court have recourse to secondary principles of

interpretation, such as the residual presumption against strict construction of penal statutes or the presumption of conformity with the Charter (Piekut, at paras. 47-48, citing Sullivan, at § 2.01[4]; Bell ExpressVu, at para. 29; La Presse inc. v. Quebec, 2023 SCC 22, at para. 24).

[135] At the end of the day, the prime directive in statutory interpretation is to adopt an appropriate interpretation that reflects legislative intent (British Columbia v. Philip Morris International, Inc., 2018 SCC 36, [2018] 2 S.C.R. 595, at para. 17; Rizzo, at para. 21; Telus Communications Inc. v. Federation of Canadian Municipalities, 2025 SCC 15, at para. 32). An appropriate interpretation is one that can be justified in terms of its plausibility, by complying with the legislative text; its efficacy, by promoting the legislative intent; and its acceptability, by complying with accepted legal norms and by being reasonable and just (Piekut, at para. 49, citing Sullivan, at § 2.01[4]; R. v. Alex, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 32).

(2) Relevant Statutory Provisions

[136] To consider whether s. 4.1(2) of the CDSA prohibits the police from exercising the statutory power to arrest without warrant under s. 495(1) of the Criminal Code, it is necessary to review both provisions and their respective legislative schemes.

(a) Section 495(1) of the Criminal Code Provides That a Peace Officer May Arrest Without Warrant

[137] A statutory power to arrest without warrant has existed under Canadian law since Canada's first Criminal Code of 1892 (The Criminal Code, 1892, S.C. 1892, c. 29). The Criminal Code, 1892 provided that a peace officer could arrest "any one" found committing an offence, and that "any one", whether a peace officer or a private citizen, could arrest without warrant "[a]ny one" found committing an offence in certain circumstances (s. 552).

[138] The power to arrest without warrant under the Criminal Code, 1892 codified the power of a private citizen to arrest at common law (see, on the history of the codification, J. Phillips, P. Girard and R. B. Brown, A History of Law in Canada, vol. 2, Law for the New Dominion, 1867-1914 (2022), at pp. 423-28; D. H. Brown, The Genesis of the Canadian Criminal Code of 1892 (1989); N. Kasirer, "Canada's Criminal Law Codification Viewed and Reviewed" (1990), 35 McGill L.J. 841, at pp. 853-55). The concept of a citizen's arrest "is as old as the common law" and "is in direct descent over nearly a thousand years of the powers and duties of citizens . . . in relation to the 'King's Peace'" (R. v. Asante-Mensah, 2003 SCC 38, [2003] 2 S.C.R. 3, at para. 36, quoting R. v. Lerke (1986), 24 C.C.C. (3d) 129 (Alta. C.A.), at p. 135). At common law, a citizen had a right and positive obligation to arrest when a felony was being or had been committed (para. 37). The creation of modern police forces by legislation "brought about a transfer of law enforcement activities from private citizens to peace officers" (para. 40).

[139] The current Criminal Code continues to provide citizens and peace officers the power to arrest without warrant. Section 494 of the Criminal Code retains an updated version of the citizen's ancient common law power to arrest without warrant, while s. 495(1) sets out the power of a peace officer to do so. Section 495(1) provides:

495 (1) A peace officer may arrest without warrant

- (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
- (b) a person whom he finds committing a criminal offence; or
- (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

[140] Under s. 495(1) of the Criminal Code, only a "peace officer" is authorized to arrest without warrant. Under s. 495(1)(a), a peace officer may do so in three circumstances: (1) the person has committed an indictable offence; (2) the peace officer believes, on reasonable grounds, that the person has committed an indictable offence, based on subjectively held but objectively justifiable reasonable and probable grounds (*R. v. Storrey*, [1990] 1 S.C.R. 241, at pp. 250-51); or (3) the peace officer believes, on reasonable grounds, that the person is about to commit an indictable offence.

[141] The statutory power to arrest without warrant under s. 495(1)(a) is "much wider than the authority [peace officers] possessed at common law", because the statutory power authorizes the arrest of a person who "has not made an attempt to commit any offence" (*R. E. Salhany*, *Canadian Criminal Procedure* (6th ed. (loose-leaf)), at § 3:16). G. Arthur Martin, Q.C., as he then was, writing in 1960 regarding the predecessor provision to s. 495(1), observed that "[t]he power to arrest one whom [the police officer] on reasonable and probable grounds believes to be about to commit an indictable offence obviously enables the officer to intervene at a stage prior to the commission of an attempt" ("*Police Detention and Arrest Privileges in Canada*" (1961), 4 C.L.Q. 54, at p. 56 (emphasis in original)). Critically, Martin also noted that a police officer may arrest without warrant "where he believes the person arrested is about to commit an indictable offence although he has no basis for charging him with the commission of any offence" (p. 56 (emphasis added)). It has therefore been black-letter law for over 65 years that an arrest need not be for the purpose of charging a person with the commission of an offence.

[142] The reasonable grounds standard ensures balance "between the individual's right to liberty and the need for society to be protected from crime" (*Storrey*, at pp. 249-50). The existence of objective grounds to believe "is based on the totality of the circumstances known to the officer at the time of the arrest, including the dynamics of the situation, as seen from the perspective of a reasonable person with comparable knowledge, training, and experience as the arresting officer" (*R. v. Tim*, 2022 SCC 12, [2022] 1 S.C.R. 234, at para. 24).

- [143] Under s. 495(1)(b), a peace officer may arrest a person whom the peace officer finds committing a criminal offence. A peace officer may do so when it would be apparent to a reasonable person in the circumstances of the arresting officer at the time of the arrest that the person is committing an offence (*Roberge v. The Queen*, [1983] 1 S.C.R. 312, at p. 324; *R. v. Biron*, [1976] 2 S.C.R. 56, at p. 75).
- (b) Section 4.1(2) of the CDSA Provides a Limited Exemption to the Offence of Simple Possession
- [144] The CDSA reflects Parliament’s distinct “balance [of] the two competing interests of public safety and public health” (*Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134, at para. 20). Under the CDSA, Parliament has favoured “a blanket prohibition on possession and trafficking in illegal drugs” (para. 20), illustrated by the offences and punishments for infringing its prohibitions in ss. 4 to 7.1 and 46 to 46.3. At the same time, the legislation recognizes that “there are good reasons to allow the use of illegal substances in certain circumstances”, reflected in the government’s authority to “issue exemptions for medical and scientific purposes” and to “make regulations for the medical, scientific and industrial use of illegal substances” under ss. 55 and 56 (para. 20).
- [145] Since the CDSA came into force in May 1997, s. 4(1) has prohibited possession of a controlled substance included in Schedule I, II, or III:
- 4 (1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III.
- [146] In 2017, Parliament amended the CDSA through An Act to amend the Controlled Drugs and Substances Act (assistance — drug overdose), whose short title is the Good Samaritan Drug Overdose Act. The amending legislation was introduced through Bill C-224, a private member’s bill tabled by Mr. Ron McKinnon. At second reading, Mr. McKinnon described the “point of the bill” as being to encourage people at the site of an overdose to call 9-1-1 by reducing the “[f]ear of prosecution” for the offence of simple possession, which he described as “the largest barrier to people calling for help in an overdose situation” (*House of Commons Debates*, vol. 148, No. 48, 1st Sess., 42nd Parl., May 4, 2016, at p. 2893).
- [147] Through the Good Samaritan Drug Overdose Act, Parliament added s. 4.1 to the CDSA. Section 4.1(2) now provides the following limited exemption from being “charged or convicted” of the offence of simple possession:
- (2) No person who seeks emergency medical or law enforcement assistance because that person, or another person, is suffering from a medical emergency is to be charged or convicted of an offence under subsection 4(1) if the evidence in support of that offence was obtained or discovered as a result of that person having sought assistance or having remained at the scene.

- [148] Section 4.1(2) applies to “any person, including the person suffering from the medical emergency, who is at the scene on the arrival of the emergency medical or law enforcement assistance” (CDSA, s. 4.1(3)). This exemption only applies to simple possession and does not prohibit being charged or convicted of any other offence.
- (3) Section 4.1(2) of the CDSA Does Not Prohibit an Arrest Under Section 495(1) of the Criminal Code
- [149] I now consider whether s. 4.1(2) of the CDSA prohibits an arrest without warrant under s. 495(1) of the Criminal Code for simple possession. As this Court has noted, “[t]he decision to grant or withhold the power of arrest is a legislative decision. Absent a Charter challenge, our task is limited to statutory interpretation” (Asante-Mensah, at para. 27). Statutory interpretation is a question of law reviewable for correctness (Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8; Piekut, at para. 23).
- [150] The Court of Appeal did not suggest that, as a matter of statutory interpretation, the exemption from being “charged or convicted” under s. 4.1(2) of the CDSA necessarily includes an exemption from “arrest”. Instead, the court concluded that Mr. Wilson’s arrest in this case was unlawful because the police arrested him solely for the purpose of charging him with the offence of possession. I will address the Court of Appeal’s reasoning later when considering whether the police infringed s. 9 of the Charter.
- [151] My colleague Karakatsanis J. takes a different approach. She states that the legal terms “charged or convicted” should not be given what she calls “narrow, technical meanings” (para. 33; see also para. 36). She concludes that “an immunity from charge and conviction would be commonly — and legally — understood to include immunity from arrest for that charge” (para. 6). With respect, I cannot agree.
- [152] I will consider the text, context, and purpose of s. 4.1(2) in turn.
- (a) The Text of Section 4.1(2) Limits the Exemption To Charge and Conviction
- [153] On its face, s. 4.1(2) of the CDSA provides an exemption from only two distinct and well-established steps in the criminal process: being “charged” or “convicted”, each of which has a settled legal meaning. Section 4.1(2) does not mention “arrest” at all. Neither “charged” nor “convicted” is defined in the CDSA or the Criminal Code, indicating that Parliament intended these terms to retain their legal meanings. Neither term encompasses the legal meaning of the term “arrest”.
- [154] Two related presumptions of statutory interpretation are relevant to understanding the meaning of these legal terms in s. 4.1(2). The first is that “[w]hen Parliament uses a term with a legal meaning, it intends the term to be given that meaning. Words that have a well-understood legal meaning when used in a statute should be given that meaning unless Parliament clearly indicates otherwise” (R. v. D.L.W., 2016 SCC 22, [2016] 1 S.C.R. 402, at para. 20). “Parliament is presumed to know the legal context in which it legislates’ and . . . it is ‘inconceivable’ that Parliament would intend to disturb well-settled law without ‘explicit

language” (para. 20, quoting *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575, at paras. 55-56).

- [155] The second, related presumption is the “principle of stability in the law” (D.L.W., at para. 21). As this Court has noted, “[a]bsent clear legislative intention to the contrary, a statute should not be interpreted as substantially changing the law, including the common law” (para. 21; *R. v. Basque*, 2023 SCC 18, at para. 49). Although applying this principle too strictly “may lead to refusal to give effect to intended legislative change”, it “reflects the common sense idea that Parliament is deemed to know the existing law and is unlikely to have intended any significant changes to it unless that intention is made clear” (D.L.W., at para. 21). “This principle is reflected in ss. 45(2) and 45(3) of the Interpretation Act, R.S.C. 1985, c. I-21, which provide that the amendment of an enactment does not imply any change in the law and that the repeal of an enactment does not make any statement about the previous state of the law” (para. 21). As a result, “any departure from that legal meaning must be clear, either by express language or necessary implication from the statute” (para. 18).
- [156] Accordingly, absent an express or necessarily implied exemption or prohibition of the power to arrest in s. 495 of the Criminal Code, the words “charged” and “convicted” in s. 4.1(2) of the CDSA must be interpreted in accordance with their settled legal meanings.
- [157] In *R. v. Chabot*, [1980] 2 S.C.R. 985, this Court explained the legal meaning of “charge”. The Court cited the Black’s Law Dictionary (5th ed. 1979) definition of “charge”, “for the purposes of the criminal law”, as an “[a]ccusation of a crime by a formal complaint, information or indictment” (pp. 1004-5). The Court also cited the definition of “charge” in Jowitt’s Dictionary of English Law (2nd ed. 1977), as “to prefer an accusation against anyone” (p. 1005). In addition, the Court (at p. 1005) cited *United States v. Patterson*, 150 U.S. 65 (1893), at p. 68, in support of the view that “a criminal charge, strictly speaking, exists only when a formal written complaint has been made against the accused”, and that “[i]n the eyes of the law a person is charged with crime only when he is called upon in a legal proceeding to answer to such a charge.”
- [158] Similarly, in *R. v. Kalanj*, [1989] 1 S.C.R. 1594, this Court rejected the view that the word “charged” under s. 11 of the Charter should be given “a flexible definition, one which would vary depending on the circumstances of the particular case” (p. 1607). A person is “charged with an offence” within the meaning of s. 11 of the Charter when an information is sworn alleging an offence against him, or where a direct indictment is laid against him when no information is sworn” (p. 1607).
- [159] The most recent edition of Black’s Law Dictionary (12th ed. 2024) similarly defines a “charge” as “[a] formal accusation of an offense as a preliminary step to prosecution” (p. 291).

- [160] In light of these authorities, a “charge” necessarily involves an accusation of a crime by a formal complaint, information, or indictment. It is a formal action that marks the beginning of a criminal prosecution.
- [161] The relevant authorities demonstrate that to “convict” means to find a person guilty of a criminal offence after proceedings before a court of law. In *Morris v. The Queen*, [1979] 1 S.C.R. 405, at p. 429, this Court explained that the meaning of the word “conviction”, when used in legislation, “varies depending on the context in which it is found; it may or may not include the imposition of a penalty”. The Court added that, “[g]enerally, however, a ‘conviction is where a person is found guilty of an offence’” (p. 429, quoting Jowitt’s *Dictionary of English Law*, sub verbo “conviction”). The Court also cited the *Oxford English Dictionary* (1st ed. 1933), which defines “to convict” as “[t]o prove (a person) guilty of an offence which makes him liable to legal punishment” (pp. 429-30).
- [162] The most recent edition of *Black’s Law Dictionary* similarly defines “convict” as to “prove or officially announce (a criminal defendant) to be guilty of a crime after proceedings in a law court” (p. 423).
- [163] In contrast, “arrest” means the actual seizure or touching of a person’s body with a view to their detention. In *R. v. Whitfield*, [1970] S.C.R. 46, at p. 48, this Court adopted, for the purposes of the Criminal Code, the common law definition of “arrest” from *Halsbury’s Laws of England* (3rd ed. 1955), vol. 10, at p. 342:
631. Meaning of arrest. Arrest consists of the actual seizure or touching of a person’s body with a view to his detention. The mere pronouncing of words of arrest is not an arrest, unless the person sought to be arrested submits to the process and goes with the arresting officer. An arrest may be made either with or without a warrant.

This definition was also accepted as correct by the unanimous Court in *R. v. Latimer*, [1997] 1 S.C.R. 217, at para. 24, and again in *Asante-Mensah*, at para. 42.

- [164] Absent a clear indication in the legislation to the contrary, Parliament is presumed to intend each of these legal terms to be given their legal meaning and for the longstanding power to arrest without warrant under s. 495(1) of the Criminal Code to remain stable. The clear text of the provision must remain the “anchor” of the interpretive exercise (CISSS A, at para. 24) and must retain its “dominant role in the interpretive process” (*Canada Trustco*, at para. 10).
- [165] My colleague suggests that an exemption from being “charged” with simple possession necessarily prevents being “convicted” of that offence, which in her view suggests that the words “charged” and “convicted” were not “carefully chosen terms of art” (para. 54). I respectfully disagree. The private member’s bill as originally tabled only provided an exemption from being “charged” with simple possession, without an exemption for being “convicted” of that offence. The Standing Senate Committee on Legal and Constitutional Affairs proposed adding an exemption from being “convicted”. It was concerned that if the

exemption only barred being “charged” with simple possession, individuals who otherwise met the requirements of s. 4.1(2) could be overcharged with offences such as trafficking, for which possession is a lesser included offence, and that they could then be convicted of simple possession through a plea deal (Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, No. 23, 1st Sess., 42nd Parl., March 1 and 2, 2017, at p. 23:59). Plainly, then, Parliament understood that, before this amendment to the bill, a person could have been convicted of simple possession through a plea deal, even if they could not be charged with that offence. This supports my conclusion that “charged” and “convicted” were indeed carefully chosen terms of art. These legal terms must be given their legal meaning.

[166] I now turn to the statutory context of s. 4.1(2) of the CDSA.

(b) The Context of Section 4.1(2) Limits the Exemption to the Prosecution Stage of the Criminal Process

[167] The statutory context, which includes the CDSA and the criminal law as a whole, confirms that s. 4.1(2) of the CDSA does not prohibit the police from exercising the statutory power to arrest under s. 495(1) of the Criminal Code for simple possession. The context confirms that possession of a controlled substance remains an offence, even when a person may benefit from the medical emergency exemption. It also confirms that s. 4.1(2) addresses when a person is “charged” or “convicted” during the prosecution stage of the criminal process, which occurs later than an arrest under s. 495(1) of the Criminal Code during the investigation stage of the criminal process.

[168] I agree with the Court of Appeal that “[t]he grammatical and ordinary sense of the words used in s. 4.1(2) is that the act of simple possession remains an offence” (para. 52), and that “it was proper for the officers to understand that Mr. Wilson was found committing a crime” (para. 54). As the court noted, s. 4.1(2) recognizes that a person cannot be “charged or convicted of an offence” of possession “if the evidence in support of that offence was obtained or discovered as a result of that person having sought assistance or having remained at the scene” of an overdose (para. 52 (first emphasis added (emphasis in original deleted); second emphasis in original)).

[169] Section 4.1(2) of the CDSA also contrasts with s. 4.1(5), which provides that “[a]ny condition of a person’s pre-trial release, probation order, conditional sentence or parole” relating to a possession offence under s. 4(1) that may otherwise be violated in relation to the medical emergency “is deemed not to be violated”. By “deeming” the listed conditions “not to be violated”, circumstances that would otherwise be an offence are not so. In contrast, s. 4.1(2) simply provides that a person cannot be “charged or convicted” of simple possession, which remains an offence.

[170] Because simple possession remains an offence under s. 4.1(2) of the CDSA, by virtue of s. 34(2) of the Interpretation Act, the power to arrest without warrant under s. 495(1) of the Criminal Code also applies to that offence. Section 34(2) provides that all the provisions of

the Criminal Code relating to indictable or summary conviction offences apply respectively to indictable and all other offences created by an enactment, except to the extent that the enactment otherwise provides. As a result, the power to arrest under s. 495(1) is unaffected by the exemption from being charged or convicted of simple possession.

- [171] In addition, the power to “arrest” under s. 495(1) engages a different stage of the criminal process than a “charge” or “conviction”. A warrantless arrest under s. 495 occurs at the investigation stage, before charges are laid. Section 495(1) does not require the police to have an intent to charge, nor does an arrest make a charge inevitable. As this Court accepted in *Storrey*, “[t]he essential role of the police is to investigate crimes”, which “can and should continue after they have made a lawful arrest”, so that, if appropriate, an innocent arrested person “may be cleared of the charges as quickly as possible” (p. 254).
- [172] The possibility of a conviction has no bearing on the power to arrest. Under both s. 495(1) (a) and (b), a peace officer is “not required to have a prima facie case for conviction before making the arrest” (*Tim*, at para. 24, citing *R. v. Feeney*, [1997] 2 S.C.R. 13, at para. 24; *R. v. Stillman*, [1997] 1 S.C.R. 607, at para. 28; *R. v. Chehil*, 2013 SCC 49, [2013] 3 S.C.R. 220, at paras. 45-47; *R. v. MacKenzie*, 2013 SCC 50, [2013] 3 S.C.R. 250, at para. 73). Moreover, as I have described above, s. 495(1) authorizes the arrest of a person who has not yet made an attempt to commit any offence, which would necessarily preclude a subsequent charge (*Salhany*, at § 3:16). And, as already noted, it is settled law that a person may be arrested even though there is “no basis for charging [them] with the commission of any offence” (*Martin*, at p. 56).
- [173] In contrast with the power of arrest under s. 495(1), charge and conviction mark, respectively, the beginning and end of the prosecution stage of a criminal proceeding. Each is governed by distinct rules that apply to persons acting in different capacities in the criminal process.
- [174] The formal prosecution stage of the criminal process begins with a “charge” laid by an information (Criminal Code, s. 504; S. Penney, V. Rondinelli and J. Stribopoulos, *Criminal Procedure in Canada* (3rd ed. 2022), at ¶5.4). In some provinces and territories, the police can lay charges directly without prior approval from a Crown counsel. In Alberta, British Columbia, Manitoba, New Brunswick, and Quebec, however, the police cannot independently lay criminal charges in most cases. In those provinces, the police generally submit a report to Crown counsel, who decides whether to approve and formally lay a charge. This is known as a “prosecution” or “pre-charge screening model” (see P. Lindsay et al., *Charge Screening Practices and Crown Evidentiary Thresholds in Canada* (2023)).

- [175] A conviction ends the prosecution stage. Absent a guilty plea, only a judge or jury can convict, after a fair and impartial hearing on being satisfied that the Crown has proved the charge beyond a reasonable doubt (*R. v. W. (D.)*, [1991] 1 S.C.R. 742, at p. 753; *R. v. Lifchus*, [1997] 3 S.C.R. 320, at para. 13). An eventual acquittal does not render the initial arrest unlawful (*Biron*, at p. 75). The investigation and prosecution stages are thus distinct in practice and in law.
- [176] As a result, both the text and the statutory context of s. 4.1(2) of the CDSA confirm that simple possession remains an offence and that the police can continue to exercise their statutory power to arrest a person without warrant under s. 495(1) of the Criminal Code, even if s. 4.1(2) precludes a charge or conviction for that offence.
- [177] I now consider the purposes or policy objectives of s. 4.1(2) of the CDSA.
- (c) The Purpose of Section 4.1(2) To Balance Public Health and Public Safety Is Promoted by Allowing an Arrest for Simple Possession
- [178] My colleague states that her interpretation of s. 4.1(2), which prohibits an arrest for the offence of simple possession, “best serves the clear purpose of the provision: to save lives” (para. 4; see also para. 9). She claims that allowing an arrest under s. 495(1) of the Criminal Code for simple possession would “maintain a strong disincentive to seek emergency assistance in life-threatening overdose situations” and that “Parliament did not intend this result” (para. 5; see also paras. 37 and 41). In her view, such an approach would not only “undermine this clear purpose” to save lives, but would also “lead to an expansion of police powers by empowering the police to use arrests for offences immune from charge and conviction as a pretext for other investigatory and search purposes” (para. 9; see also paras. 56-70). She asserts that “our law has long prohibited a warrantless arrest under s. 495 of the Criminal Code for purely investigative purposes” (para. 57).
- [179] I respectfully disagree. The Good Samaritan Drug Overdose Act simply amended the CDSA. When this amending legislation came into force, it became integrated into the CDSA, and must therefore be interpreted in the context of the scheme that it amended (*Sullivan*, at §§ 13.02[2] and 24.06[3]). As I will elaborate, to say that the purpose of s. 4.1(2) is simply to “save lives” ignores the obligation to interpret the provision in the broader context of the CDSA (*Canada Trustco*, at para. 10; *R. v. Downes*, 2023 SCC 6, at para. 24). Although I agree that one purpose of s. 4.1(2) of the CDSA is to promote public health by removing a legal disincentive to calling for help, that is not the only purpose or policy objective of the provision. A second purpose of the provision, and of the CDSA more broadly, is to promote public safety by maintaining simple possession as an offence and limiting the scope of the exemption under s. 4.1(2) to life-threatening emergency medical situations. In effect, as in other jurisdictions, Parliament sought to balance both public health and public safety, not to pursue public health at all costs — and certainly not at the expense of public safety.
- (i) General Principles

[180] As this Court recently confirmed, “[c]ourts draw on a wide range of sources to determine legislative purpose, including an explicit statement of purpose in the legislation; the text, context, and scheme of the legislation; legislative history and evolution; and extrinsic evidence, such as parliamentary debates (while remaining mindful of their limited reliability and weight)” (Piekut, at para. 75, citing *R. v. Moriarity*, 2015 SCC 55, [2015] 3 S.C.R. 485, at paras. 31-32; Rizzo, at para. 35; Sullivan, at § 9:03; and P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at paras. 1352-60). In doing so, courts must define a law’s purpose “at the appropriate level of generality, which ‘resides between the statement of an “animating social value” — which is too general — and a narrow articulation’ that amounts to a virtual repetition of the challenged provision, divorced from its context” (*R. v. Ndhlovu*, 2022 SCC 38, at para. 62, quoting *R. v. Safarzadeh-Markhali*, 2016 SCC 14, [2016] 1 S.C.R. 180, at para. 27, quoting *Moriarity*, at para. 28).

[181] In addition, related statutory provisions must be interpreted harmoniously to respect the multiple purposes or policy objectives of each provision. As this Court explained in *R. v. Rafilovich*, 2019 SCC 51, [2019] 3 S.C.R. 838, at para. 20:

Parliament . . . is presumed to intend for its provisions to be read harmoniously, and to be interpreted and applied so they fit together in a way that respects Parliament’s multiple objectives and gives purpose and meaning to each provision. . . . [W]here the dispute involves multiple legislative objectives and the inter-relationship between two or more statutory provisions, the scheme of the Act and the objectives underlying each of the relevant provisions are particularly significant.

[182] In *Rafilovich*, this Court also warned that “primary legislative purposes, however important, ‘are not pursued at all costs and are clearly intended to be balanced with other important interests within the context of a carefully calibrated scheme’” (para. 30, quoting *Sun Indalex*, at para. 174). The Court approvingly quoted Professor Sullivan’s observation that “the primary goals of legislation are almost never pursued single-mindedly or wholeheartedly”, and that “various secondary principles and policies are inevitably included in a way that qualifies or modifies the pursuit of the primary goals” (para. 30, quoting Sullivan on the Construction of Statutes (6th ed. 2014) (“Sullivan (2014)”), at p. 271 (footnote omitted)). Secondary principles, as Professor Sullivan explained, are often only revealed “through analysis of the legislative scheme, and more particularly through analysis of the relation of each provision to the others in the Act” (para. 30, quoting Sullivan (2014), at p. 271).

[183] Even an appropriately formulated statement of statutory objectives cannot justify an outright rejection of the text, since the text must remain “the anchor of the interpretive exercise” (CISSS A, at para. 24). The text may “tell an interpreter just how far a legislature wanted to go in achieving some more abstract goal” (para. 24, quoting Mancini, at p. 927).

[184] With this Court’s guidance in mind, I now consider the purposes of the CDSA as a whole and the particular purposes of s. 4.1(2).

(ii) Section 4.1(2), and the CDSA as a Whole, Protect Both Public Health and Public Safety

- [185] The CDSA has been described as “the federal government’s response to the problem of illegal drug use across Canada” (PHS Community Services Society, at para. 20). Taken as a whole, the legislation has two purposes or policy objectives: “. . . the protection of both public safety and public health” (paras. 41, 52 and 110; see also *R. v. Malmo-Levine*, 2003 SCC 74, [2003] 3 S.C.R. 571, at para. 65). Like the CDSA, the particular purposes of s. 4.1(2) are also to protect both public safety and public health, by balancing both objectives.
- [186] To begin with, s. 4.1(2) undoubtedly has the purpose or policy objective of protecting public health. Parliament eliminated a disincentive for those who might otherwise choose not to call for emergency assistance or remain at the scene of an overdose by removing the prospect of being charged or convicted of simple possession. As highlighted by the bill’s sponsor, Mr. Ron McKinnon, s. 4.1(2) addresses the reality that “many people are afraid to call 9-1-1 for fear of getting charged” (House of Commons Debates, vol. 148, No. 22, 1st Sess., 42nd Parl., February 22, 2016, at p. 1196). The provision is intended to “mak[e] it safe for a friend to help save the life of someone they care about without facing criminal possession charges — charges which would haunt that person for the rest of their lives” (Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, February 8 and 9, 2017, at p. 21:13 (Mr. Ron McKinnon)).
- [187] From a policy perspective, s. 4.1(2) of the CDSA is often described as a harm reduction measure, including by the Government of Canada (Health Canada, *Good Samaritan Drug Overdose Act Becomes Law in Canada*, May 4, 2017, modified August 13, 2018 (online); Health Canada, *The Canadian Drugs + Substances Strategy: The Government of Canada’s approach to substance use related harms and the overdose crisis* (2023); see also S. Moallem et al., “A drug-related Good Samaritan Law and calling emergency medical services for drug overdoses in a Canadian setting” (2021), 18:91 *Harm Reduct. J.* 1, at p. 2). In the drug enforcement context, “harm reduction” generally refers to “policies, programs, interventions or practices designed to minimize negative health and social consequences associated with drug use without requiring the cessation of drug use itself” (A. Klein, “Criminal Law and the Counter-Hegemonic Potential of Harm Reduction” (2015), 38 *Dal. L.J.* 447, at p. 449, citing D. J. Beirness et al., *Harm Reduction: What’s in a Name?* (2008), at p. 3; P. G. Erickson, “Harm reduction: what it is and is not” (1995), 14 *Drug Alcohol Rev.* 283, at p. 284; and Harm Reduction International, *What is harm reduction?* (online)).
- [188] But like the CDSA as a whole, another purpose or policy objective of s. 4.1(2) is to protect public safety. The provision does not seek to promote public health at all costs, including by sacrificing public safety. In this regard, s. 4(1) of the CDSA is particularly relevant in interpreting s. 4.1(2), because it is expressly referred to in that provision. The purpose or policy objective of the simple possession offence under s. 4(1) is to protect public safety by suppressing the availability of harmful drugs. It criminalizes the possession of controlled substances included in Schedules I, II, and III, to reduce their presence in Canada and to prevent the harm to society resulting from addiction (see *Malmo-Levine*, at para. 65; PHS

Community Services Society, at para. 52). As noted, under s. 4.1(2), simple possession remains an offence and the purposes served by its criminalization must be given due weight.

[189] As a result, as the Crown correctly notes, the purpose of protecting public safety “by discovering and seizing dangerous substances does not depend on whether the items seized can be used in a future criminal prosecution” (A.F., at para. 43). The Court of Appeal likewise accepted that s. 4.1(2) does not prevent the police from lawfully seizing controlled substances in plain view at the scene of an overdose under s. 489(2) of the Criminal Code (para. 59).

[190] By granting only a limited exemption from being charged or convicted of simple possession, s. 4.1(2) thus reflects Parliament’s legislative choice to protect both public health and public safety by balancing both objectives.

(iii) Preserving the Power To Arrest Promotes Parliament’s Purpose To Protect Both Public Health and Public Safety

[191] Interpreting the exemption in s. 4.1(2) to include only charge and conviction — but not to prohibit the power to arrest — promotes Parliament’s purpose of balancing public health and public safety. By contrast, interpreting s. 4.1(2) as prohibiting the power to arrest under s. 495(1) of the Criminal Code disturbs that balance by promoting public health but ignoring public safety.

[192] The power to arrest under s. 495(1) of the Criminal Code helps to promote public safety. As noted, s. 495(1) allows for arrest to interrupt or prevent the commission of an offence. In the present context, there is a pressing public safety purpose in interrupting or preventing the commission of the offence of simple possession at the scene of an overdose. As the Crown correctly notes, “[t]he objective of removing illegal and dangerous drugs from the streets is a pressing public interest concern and a valid law enforcement purpose for an arrest” (A.F., at para. 52). That pressing public safety purpose is promoted through the power to arrest under s. 495(1) of the Criminal Code, even though under s. 4.1(2) the person arrested cannot later be charged or convicted of the offence of possession. The public safety purpose of an arrest does not depend on the intention of the police to lay criminal charges. Nor does it depend on whether the accused will later face prosecution, a decision made by Crown counsel exercising independent judgment in the public interest as a matter of prosecutorial discretion (*R. v. Anderson*, 2014 SCC 41, [2014] 2 S.C.R. 167, at paras. 39-40, citing *Krieger v. Law Society of Alberta*, 2002 SCC 65, [2002] 3 S.C.R. 372, at paras. 43 and 46-47; *R. v. Varennes*, 2025 SCC 22, at paras. 42, 44 and 48).

[193] Parliament deliberately circumscribed the limited exemption in s. 4.1(2). Before the House of Commons Standing Committee on Health, Mr. McKinnon stated that Bill C-224 was drafted narrowly because expanding the exemption “would make it difficult to pass” and “would require considerably more study” (Evidence, No. 17, 1st Sess., 42nd Parl., June 15, 2016, at p. 1). Likewise, before the Standing Senate Committee on Legal and Constitutional

Affairs, Mr. McKinnon noted that there were many ways Bill C-224 could have been broadened, but that “the real focus was to keep it narrow so [they] could actually achieve something” (Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, February 8 and 9, 2017, at p. 21:21).

[194] There is also clear evidence on the legislative record confirming that s. 4.1(2) was not intended to limit police powers. Mr. McKinnon reassured the Standing Senate Committee on Legal and Constitutional Affairs that the proposed measures would not exempt anyone from “further investigation” by the police, were not about “weapons-related offences”, and would “not limit police powers” (emphasis added):

Bill C-224 is not about outstanding warrants, it’s not about drunk driving and it’s not about weapons-related offences. It does not exempt anyone from further investigation and it does not limit police powers.

(Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, February 8 and 9, 2017, at p. 21:13)

[195] Had Parliament intended to radically reduce police investigatory powers or change police conduct at the scene of an overdose, it could have done so. Parliament could have limited police powers with an express exemption from “arrest”, as has been done in several U.S. states (see, e.g., N.M. Stat. Ann. § 30-31-27.1 (2025); Colo. Rev. Stat. § 18-1-711(1) (2025); Del. Code Ann. tit. 16, § 4769(b) (2025); Ga. Code Ann. § 16-13-5(b) (2025); Haw. Rev. Stat. § 329-43.6(b) (2024); Miss. Code Ann. § 41-29-149.1(3)(a) and (b) (2024); Or. Rev. Stat. § 475.898(1) and (2) (2024); Tenn. Code Ann. § 63-1-156(b) (2025)). But Parliament did not go that far. By limiting s. 4.1(2) to “charge” and “conviction”, Parliament fashioned an exemption that balances public health and public safety purposes. As I have noted, the text of a provision may “tell an interpreter just how far a legislature wanted to go in achieving some more abstract goal” (CISSS A, at para. 24). A court interpreting a statutory provision must respect Parliament’s chosen balance.

[196] I therefore respectfully disagree with my colleague who, despite Mr. McKinnon’s clear assurance to the Standing Senate Committee on Legal and Constitutional Affairs that the proposed measures would “not limit police powers”, concludes that “Parliament intended to create an exception to the use of the police power of arrest for that offence” (para. 71). With respect, when engaged in statutory interpretation, courts must avoid judicial amendment through interpretation. As Professor Sullivan explains,

the words used in legislative text impose an outer limit on meaning, and normally there is only limited room for expansion between the ordinary meaning of a provision and the outer limit fixed by its words. If a court wishes to go beyond that limit, it must add new words to the text to cover the overlooked circumstance (i.e., words that expand the scope of the legislation), replace the specific words with more general words or strike out words of qualification. These are generally considered types of amendment rather than interpretation. [§ 12.02[2]]

- [197] I accept that courts may construe a statutory provision to include matters not expressly addressed when necessary in order to achieve the object intended by the legislation (see *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, at para. 51). In this case, however, the result of my colleague's interpretation is to eliminate the existing statutory police power of arrest under the Criminal Code and to discard Parliament's objective of protecting public safety under the CDSA. Given the specific words used in the legislation, I cannot accept that Parliament could have intended such an extraordinary result without expressly saying so. Parliament's objective was to balance public health and public safety, not to pursue public health alone. Parliament did not intend to eliminate the power to arrest under s. 495(1) of the Criminal Code.
- [198] I recognize that during the legislative debates several parliamentarians spoke colloquially by using the terms "charge", "arrest", and "prosecution" interchangeably (see, e.g., House of Commons Debates, May 4, 2016, at pp. 2895 (Mr. Todd Doherty), 2898 (Ms. Kamal Khera), and 2900 (Ms. Christine Moore); House of Commons Debates, vol. 148, No. 65, 1st Sess., 42nd Parl., June 3, 2016, at p. 4031-32 (Mr. Erin Weir); Debates of the Senate, vol. 150, No. 80, 1st Sess., 42nd Parl., December 1, 2016, at p. 1910 (Hon. Vernon White)). My colleague suggests that Parliament's intent is reflected in the "substantial number of such statements", which indicate "what legislators understood by the words of the bill" (para. 42).
- [199] With respect, I cannot agree. These statements stand in stark contrast with Mr. McKinnon's plain assurances to Parliament about the narrow nature of the exemption, which is consistent with the final text of s. 4.1(2). The settled meaning of legal terms is not changed by repetition on the floor of the House of Commons or Senate. No such principle regarding the use of Hansard evidence has ever been adopted by any court at any level. Instead, this Court has consistently highlighted the "limited reliability and weight" of a record of parliamentary debates (Piekut, at para. 75). Our Court has also "repeatedly warned against placing too much weight on Hansard evidence" and stated unequivocally that "Parliamentary debates [cannot be] relied on to override specific text in legislation" (*R. v. Khill*, 2021 SCC 37, [2021] 2 S.C.R. 948, at para. 111; see also *R. v. I.M.*, 2025 SCC 23, at paras. 127-28). As the Court observed in *R. v. Sharma*, 2022 SCC 39, at para. 89, it is trite law that "[s]tatements of purpose in the legislative record may be rhetorical and imprecise" (citing *Safarzadeh-Markhali*, at para. 36; and *Sullivan*, at p. 293) and "can be poor indicators of parliamentary purpose" (citing *Canada (Attorney General) v. Whaling*, 2014 SCC 20, [2014] 1 S.C.R. 392, at paras. 67-68). Further, "the intent of particular members of Parliament is not the same as the intent of the Parliament as a whole" (para. 89, quoting *R. v. Heywood*, [1994] 3 S.C.R. 761, at p. 788). This salutary caution applies a fortiori in this case, where the legislation originated in a private member's bill that lacked a more authoritative statement of purpose from a government minister who introduced the measures (*Sharma*, at para. 90).

(d) Expanding Section 4.1(2) To Prohibit an Arrest for Simple Possession Exposes the Police and the Public to Significant Safety Risks

[200] Although I conclude that the text, context, and purpose all show that Parliament did not intend to prohibit the power to arrest under s. 495(1) of the Criminal Code for the offence of simple possession, I am reinforced in this conclusion by considering some of the consequences of the contrary view. As is well known, “[c]ourts should interpret legislation under the presumption that a legislature does not intend to produce absurd consequences” (Piekut, at para. 98), broadly understood:

An interpretation of a statutory provision produces absurd consequences if, for example, it frustrates the purpose of the legislation; creates irrational distinctions; leads to ridiculous or futile consequences; is extremely unreasonable or unfair; leads to incoherence, contradiction, anomaly, or disproportionate or pointless hardship; undermines the efficient administration of justice; or violates established legal norms such as the rule of law (Rizzo, at para. 27; La Presse, at para. 54; R. v. Basque, 2023 SCC 18, at para. 73; Downes, at para. 51; Sullivan, at §§ 10.02-10.03; Côté and Devinat, at paras. 1514-19). [para. 98]

[201] Expanding s. 4.1(2) to encompass an exemption from arrest for simple possession would be impractical and would necessarily include an exemption from investigative detention, exposing the police and the public to significant safety risks when they arrive at the scene of an overdose. These are “absurd consequences” that Parliament should be presumed not to have intended.

(i) An Exemption From Arrest For Simple Possession Would Be Impractical

[202] Expanding s. 4.1(2) to include an exemption from arrest for simple possession would be impractical because it would leave police officers in a state of uncertainty at the scene of an overdose and would limit their ability to properly fulfill their duties to protect life and public safety and to prevent crime.

[203] Under the wording of s. 4.1(2), a person is not automatically entitled to the limited exemption under the provision whenever they call emergency services about a potential overdose. Section 4.1(2) exempts a caller or a person at the scene only if its conditions are met. Police officers attending at the scene may be unable to determine immediately whether the situation qualifies under s. 4.1(2).

[204] First, s. 4.1(2) only provides that individuals cannot be “charged” or “convicted” of the offence of simple possession. It does not prevent individuals from being charged or convicted of other offences, even offences such as possession for the purposes of trafficking for which possession is an element of the offence (see, e.g., Aube v. R., 2022 NBCA 65, at paras. 67-68). Accordingly, if s. 4.1(2) precludes arrest for simple possession, the overlap between evidence that could support a charge for simple possession and for a charge for possession for the purposes of trafficking would create complexity and confusion, both for police officers contemplating arrest at the scene of an overdose and for

callers seeking to predict whether they will fall under the limited exemption.

[205] Second, some courts have held that, to qualify as a medical emergency, the consumption of drugs must cause a life-threatening situation, and not merely a disturbed mental state (*R. v. Lévesque*, 2021 QCCQ 9272, at para. 30). Others have held that, at the time the call for assistance is made, the caller must reasonably believe that the overdose is a medical emergency (*R. v. Beaulieu*, 2023 QCCQ 8005, at para. 19).

[206] Finally, there will also likely be cases when the police cannot determine on the spot whether evidence was discovered as a result of a person seeking assistance or remaining at the scene.

[207] Such determinations as to whether s. 4.1(2) applies are not well-suited to split-second decision-making by police officers at the site of a suspected overdose, where the situation may be rapidly evolving and the police must act promptly to balance the safety of the overdose victim and the safety of others at the scene and the public at large. Police must discharge their duty to “use [their] judgment to adapt the process of law enforcement to individual circumstances and to the real-life demands of justice” (*R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190, at para. 37). Consistent with the limited exemption under s. 4.1(2), considerations of whether the exemption applies are better dealt with when deciding whether to lay a charge.

(ii) Prohibiting an Arrest Would Also Prevent the Police From Conducting an Investigative Detention and Limit Them to Reacting to Specific Safety Threats as They Occur

[208] Expanding s. 4.1(2) to prohibit an arrest would, logically, also prohibit an investigative detention for the offence of simple possession. This would limit the police to reacting to specific threats as they occur, undermining the safety of the public and the police.

[209] Although the trial judge specifically held that the police lawfully “detained” Mr. Wilson “for investigative purpose[s]” (p. 15), the Court of Appeal did not address the lawfulness of the initial investigative detention in this case. My colleague similarly states that it is “unnecessary to address the power of investigative detention on reasonable suspicion that an immune possession offence has been committed”, claiming that “[n]o one submitted that s. 4.1(2) creates an immunity from investigative detention” (para. 79). Elsewhere, however, my colleague appears to suggest that an investigative detention for the offence of simple possession, as occurred in this case before the arrest, would be unlawful (see paras. 8 and 76).

[210] I respectfully disagree that it is unnecessary to address the issue of investigative detention. In oral argument before this Court, the Crown specifically pleaded that Mr. Wilson’s position “would remove any ability for the police to detain for investigation” (transcript, at p. 6). This issue was squarely raised in argument and amply debated before this Court (see transcript, at pp. 5-6, 42-46, 70-78 and 98). The police and courts across Canada are entitled to know whether police can exercise their ordinary power of investigative detention for the

offence of simple possession at the scene of an overdose.

- [211] This issue cannot be avoided. The ineluctable logic of Mr. Wilson’s submission to this Court is that it was unlawful for the police to detain him to investigate the offence of possession. Such a conclusion would severely compromise the ability of the police to investigate at the scene of an overdose where, as here, there is clear evidence of a continuing criminal offence of possession.
- [212] This conclusion would also seriously impact the safety of the public and the police. It would leave the police unable to control a suspected crime scene by employing their common law power to detain for investigative purposes. Absent the power to arrest and detain for investigation, police attending at the scene of a suspected overdose will be limited to reacting to specific safety threats as they occur, even where, as here, they have reasonable grounds to believe that individuals are actively committing the criminal offence of possession.
- [213] In this case, for example, Cst. Marshall, who arrived at the scene alone, would have been prevented from detaining the individuals at the scene for the purpose of investigation. This would have undermined Cst. Marshall’s common law and statutory duties to proactively protect the emergency medical personnel at the scene, the construction workers nearby, the many young children arriving for school, as well as her own safety (see Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10, s. 18; *Dedman v. The Queen*, [1985] 2 S.C.R. 2, at pp. 11-12; *R. v. Godoy*, [1999] 1 S.C.R. 311, at para. 15; *R. v. MacDonald*, 2014 SCC 3, [2014] 1 S.C.R. 37, at para. 31).
- [214] I accept that, under limited circumstances, an officer could conduct a common law safety search if the officer has “reasonable grounds to believe that there is an imminent threat to the safety of the public or the police” (*MacDonald*, at para. 46; see also paras. 32 and 40-44). But a safety search is generally “a reactionary measure” to a threat posed by another (para. 32), rather than a preventative measure to protect officer and public safety before a specific threat arises. Reliance on such a power would leave police at the mercy of the actions of those at the scene of an overdose. Here, for example, such an approach would have required a specific and imminent threat to emerge — separate and apart from the crime underway — before Cst. Marshall could respond.
- [215] The undoubted power of the police to conduct a warrantless search under exigent circumstances under s. 487.11 of the Criminal Code is also of no moment. On my colleague’s reading, this power would apply only where there are reasonable grounds to believe that an offence other than the offence of simple possession requires investigation. If, as my colleague concludes, the police cannot exercise their power to arrest for simple possession without warrant under s. 495(1) of the Criminal Code, they equally cannot exercise the power to search without a warrant under s. 487.11.

[216] The law does not require a police officer such as Cst. Marshall to be sent into harm's way, alone at the scene of an ongoing criminal offence, without the necessary police power to protect the public or herself. Absent a clear statement of legislative intent, I cannot accept that Parliament intended to place the public and police officers in such danger. These concerns are especially acute given how impractical it is for the police to determine whether the limited exemption under s. 4.1(2) applies when they arrive at the scene of an overdose.

(4) Conclusion

[217] Applying a textual, contextual, and purposive analysis, I conclude that s. 4.1(2) of the CDSA does not prohibit an arrest without warrant under s. 495(1) of the Criminal Code for the offence of simple possession. In this case, s. 4.1(2) of the CDSA operated exactly as intended. Mr. Wilson was never charged with the offence of simple possession. At the same time, s. 4.1(2) was never intended to exempt individuals from being charged or convicted of other offences, including serious weapons offences. Nor does s. 4.1(2) limit the common law and statutory powers of the police to detain for the purpose of investigating suspected criminal activity or to arrest and search incident to arrest for the purpose of protecting the public and the police.

[218] I will now consider whether Mr. Wilson's arrest and search incident to arrest infringed his rights under ss. 8 or 9 of the Charter.

B. Did the Police Infringe Sections 8 or 9 of the Charter?

(1) The Police Did Not Infringe Section 9 of the Charter

[219] The Court of Appeal found that the police infringed s. 9 of the Charter because they arrested Mr. Wilson solely for the improper purpose of charging him with an offence for which he could not lawfully be charged or convicted. I respectfully disagree with the Court of Appeal's factual finding. There was no evidence that Mr. Wilson was arrested solely for the purpose of being charged with simple possession. On its face, s. 495 provides the authority to arrest a person for purposes other than charging them.

(a) General Principles

[220] Section 9 of the Charter provides that "[e]veryone has the right not to be arbitrarily detained or imprisoned."

[221] Detention under s. 9 refers to "suspension of the individual's liberty interest by a significant physical or psychological restraint" (R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353, at para. 44; see also Mann, at para. 19). The purpose of s. 9 is "to protect individual liberty from unjustified state interference" (Grant, at para. 20). Section 9 operates to limit "the state's ability to impose intimidating and coercive pressure on citizens without adequate justification" (R. v. Le, 2019 SCC 34, [2019] 2 S.C.R. 692, at para. 25; see also Grant, at para. 20).

[222] The analysis under s. 9 of the Charter proceeds in two steps. First, a court must determine whether the individual was detained. Detention occurs whenever “a state agent, by way of physical or psychological restraint, takes away an individual’s choice simply to walk away” (Grant, at para. 25). Second, a court must determine whether that detention was arbitrary. A detention is arbitrary if: (1) it is not authorized by law; (2) the authorizing law is itself arbitrary; or (3) the manner in which the detention is carried out is unreasonable (Le, at para. 124).

(b) The Arrest Was Authorized by Section 495(1)

[223] Mr. Wilson’s arrest without warrant was authorized under s. 495(1) of the Criminal Code. Cst. Marshall noticed a baggie of what appeared to be crystal methamphetamine in plain view immediately upon arriving at the scene and then saw a streak of white powder appear on the ground near Mr. Wilson’s feet. Simple possession remains an offence. As the Court of Appeal correctly noted, “it was proper for the officers to understand that Mr. Wilson was found committing a crime” (para. 54).

[224] Before this Court, Mr. Wilson submits that s. 495 of the Criminal Code only authorizes an arrest to charge the arrested person with a crime and bring them before the court to face prosecution for that charge. But, as set out above, an arrest under s. 495 may be conducted for a purpose other than laying a charge and does not require the police to consider whether a charge will ultimately be laid. The purpose of the statutory power of arrest is not simply to compel attendance at trial.

[225] On its face, s. 495(1)(a) authorizes the arrest of any person whom a peace officer believes, on reasonable grounds, is about to commit an indictable offence. The police can thus arrest to prevent the commission of an indictable offence (*Fleming v. Ontario*, 2019 SCC 45, [2019] 3 S.C.R. 519, at para. 61). Plainly, a person who is arrested on the basis that they are about to commit an indictable offence cannot be charged with that offence: the arrest prevented them from committing it. They may be charged with attempt if the conduct exceeds mere preparation, though such a charge is not inevitable (see *R. v. Root*, 2008 ONCA 869, 241 C.C.C. (3d) 125, at para. 96; *R. v. Deutsch*, [1986] 2 S.C.R. 2, at pp. 19-26), or they may be charged with an entirely different offence (see, e.g., *R. v. Beaudette* (1957), 118 C.C.C. 295 (Ont. C.A.)). But it cannot be said that the only purpose of an arrest authorized by s. 495(1) is to lay a charge and compel appearance. An arrest under s. 495 also plays a preventative role to preserve order and protect public safety. As I noted above, all of this has been accepted as settled law since 1960, when G. Arthur Martin, Q.C., wrote on the power of arrest, but is now seemingly swept aside.

[226] My colleague states that “our law has never permitted arrest purely for the purposes of investigation”, and that “purely investigative arrests would be a novel expansion of police powers” (para. 7). In support of this proposition, she cites (at para. 65; see also para. 90) this Court’s decision in *Feeney*, at para. 35, as holding that “[a]n arrest cannot be made solely for the purpose of investigation”. Elsewhere, she states that “our law has long

prohibited a warrantless arrest under s. 495 of the Criminal Code for purely investigative purposes” (para. 57).

[227] I respectfully disagree. To ensure that there is no misunderstanding on this point, the quoted statement from Feeney cannot be read in isolation. At issue in Feeney was whether an officer may arrest if they have subjective grounds but lack objective grounds to believe that an offence has been committed. In that context, this Court stated that an officer may not arrest “solely for the purpose of investigation” if they lack objective grounds that an offence has been committed:

... in my view the objective test was not met regardless of the officer’s views. An arrest cannot be made solely for the purpose of investigation, but if grounds exist on a subjective and objective basis, the fact that police intend to continue the investigation and do so does not invalidate the arrest: see Storrey, supra. A lawful arrest may be made that allows the police to continue their investigation, such as in Storrey where the police arrested a suspect in order to place him in a police line-up to be identified or not, but it is a fundamental pre-requisite that the police have reasonable grounds to arrest prior to arrest, whether or not the investigation is ongoing, particularly where an arrest is made without the safeguards to the citizen resulting from the warrant process. [Emphasis added; para. 35.]

[228] Read as a whole, Feeney does not prohibit an arrest to further an investigation of a criminal offence when the police already have reasonable grounds to believe that an offence has been committed. Rather, Feeney holds that an arrest cannot be made to obtain reasonable grounds. Feeney relied on Storrey, where this Court expressly rejected the notion “that whenever a lawful arrest is made, in circumstances where the police intend to do further investigation, that the arrest should then be considered to have been made for an improper purpose” (p. 253). The Crown’s argument does not, as my colleague suggests, contradict this settled law. In this case, there is no debate that Cst. Marshall had reasonable and probable grounds to believe that the offence of possession had been and was being committed. The trial judge found that this was so, and the Court of Appeal upheld that finding and accepted that Cst. Marshall found Mr. Wilson committing a crime.

[229] The Court of Appeal erred in finding that s. 495(1) did not authorize the police to arrest Mr. Wilson because “the only purpose for the first arrest of Mr. Wilson was to charge him under s. 4(1) of the CDSA” (para. 56; see also para. 61). Cst. Marshall never testified as to whether her purpose in arresting Mr. Wilson was to charge him with the offence of possession. Nor is there anything in the record that supports that conclusion. Mr. Wilson was never charged with simple possession or with any offence under the CDSA. The trial judge also made no finding that the purpose of the police in arresting Mr. Wilson was to charge him for possession. In my view, the Court of Appeal made a palpable and overriding error by making its factual finding in the absence of evidence.

[230] I conclude that Mr. Wilson’s arrest was authorized by law.

(c) The Arrest Was Conducted Reasonably

- [231] An arrest or detention authorized by law may nonetheless be unlawful when the manner in which the individual was arrested or detained was not reasonably necessary in the circumstances (*R. v. Aucoin*, 2012 SCC 66, [2012] 3 S.C.R. 408, at paras. 31-43). Mr. Wilson contends that because his arrest was for the unlawful purpose of laying a charge for which he was exempt, his arrest was not reasonably necessary and was therefore arbitrary.
- [232] I disagree. In this case, Mr. Wilson's arrest allowed the police to prevent him from continuing to commit the offence of simple possession. Given the proximity to a school where many young children were present and the nature of the drugs in plain view, Mr. Wilson's arrest was reasonably necessary and for a proper purpose.
- [233] I would add that not all arrests for simple possession in the context of a medical emergency will necessarily be reasonable or justified. For example, an arrest made to intimidate or harass an individual may be unlawful. Each case will turn on its particular facts (*R. v. Clayton*, 2007 SCC 32, [2007] 2 S.C.R. 725, at para. 31; *Mann*, at para. 45).
- [234] In this case, however, it was reasonable for the police officers to arrest Mr. Wilson to prevent the continuation or repetition of the offence of simple possession. I also see no basis to impugn the trial judge's finding that the arrest was conducted in a reasonable manner.

(d) Conclusion

- [235] Mr. Wilson's arrest was authorized by s. 495(1) of the Criminal Code, and it has not been suggested that s. 495 is, itself, arbitrary. The arrest was also conducted reasonably. Accordingly, there was no breach of s. 9 of the Charter.

(2) The Police Did Not Infringe Section 8 of the Charter

(a) General Principles

- [236] The power to search incident to arrest is "extraordinary" because it does not require a warrant or reasonable and probable grounds (*R. v. Stairs*, 2022 SCC 11, [2022] 1 S.C.R. 169, at para. 34, quoting *R. v. Fearon*, 2014 SCC 77, [2014] 3 S.C.R. 621, at paras. 16 and 45). Instead, the police only require "some reasonable basis" to believe that their law enforcement purpose is connected to the arrest and will be served by the search (*Stairs*, at para. 37, quoting *R. v. Caslake*, [1998] 1 S.C.R. 51, at para. 20).
- [237] For a search incident to arrest to be reasonable and therefore consistent with s. 8 of the Charter, three requirements must be met: (1) the individual was lawfully arrested; (2) the search was truly incidental to the arrest in the sense that it is for a valid law enforcement purpose related to the reasons for the arrest; and (3) the search was conducted in a reasonable manner (*R. v. Saeed*, 2016 SCC 24, [2016] 1 S.C.R. 518, at para. 37; *Fearon*, at para. 27). Under the second requirement, "valid law enforcement purposes for search incident to arrest include (a) police and public safety; (b) preventing the destruction of

evidence; and (c) discovering evidence that may be used at trial” (Stairs, at para. 36, citing Fearon, at para. 75).

(b) The Search Incident to Arrest Was Reasonable

[238] In this case, the first and third requirements are easily met. Mr. Wilson was lawfully arrested and the search was conducted in a reasonable manner. The search was no more invasive than necessary and was limited to searching for discrete items related to the arrest and to preserving public safety.

[239] As for the second requirement, Mr. Wilson contends that a search incident to arrest can only be for the purpose of “(i) safely bring[ing] people before the courts, and (ii) discover[ing] and preserv[ing] evidence that could then be used to establish guilt at the accused’s trial” (R.F., at para. 55). Mr. Wilson submits that since neither purpose applies in this case, the search incident to his arrest was unlawful.

[240] With respect, this submission is inconsistent with this Court’s jurisprudence. In Fearon, this Court held that a search incident to arrest can serve several valid law enforcement objectives, including “to allow police to identify and mitigate risks to public safety or to assist them to preserve evidence that might otherwise be lost or destroyed” (para. 49 (emphasis added)).

[241] In this case, the search of the truck for concealed drugs was related to Mr. Wilson’s arrest and was motivated by concerns for public safety. Cst. Marshall testified that she had public safety concerns because she was responding to a possible fentanyl overdose, which she noted “is a very dangerous substance to . . . handle” and “a huge officer safety risk” (A.R., at p. 99). The trial judge found that “[i]f Constable Marshall believed that the fentanyl was involved in the overdose, the vehicle was in close proximity to the school, and in her experience, it was necessary to take all steps to ensure officer and public safety” (voir dire reasons, at p. 16). I see no basis to impugn these findings.

[242] Cst. Marshall also knew that Mr. Wilson and his companions likely had crystal methamphetamine in their possession outside a school where many young children were present. She saw a baggie of crystal methamphetamine on the ground that appeared to have fallen from the truck and a streak of white powder near Mr. Wilson’s feet. The three suspects had been seen walking around the perimeter of the school and “appeared extremely high”. The police were clearly concerned with proactively managing an obvious public safety risk.

[243] Accordingly, the search incident to the arrest for simple possession was reasonable. The police did not infringe s. 8 of the Charter.

(3) Conclusion

[244] The police did not infringe ss. 8 or 9 of the Charter by arresting Mr. Wilson for the offence of simple possession or by conducting a search incident to arrest.

C. Should the Evidence Be Excluded Under Section 24(2) of the Charter?

[245] Because the police did not breach ss. 8 or 9 of the Charter, it is unnecessary to consider whether the evidence should be excluded under s. 24(2).

V. Disposition

[246] I would allow the appeal, set aside the acquittals, and restore the convictions.

Appeal dismissed, Côté, Rowe and Jamal JJ. dissenting.

Solicitor for the appellant: Ministry of Justice, Regina.

Solicitors for the respondent: Pfefferle Law Office, Saskatoon.

Solicitor for the intervener Director of Public Prosecutions: Public Prosecution Service of Canada, Winnipeg.

Solicitor for the intervener John Howard Society of Saskatchewan: John Howard Society of Saskatchewan, Regina.

Solicitors for the intervener Pivot Legal Society: MI Law, Vancouver; Pivot Legal Society, Vancouver.

Solicitors for the intervener Canadian Civil Liberties Association: Rodin Law Firm, Calgary; McKay Ferg, Calgary.

Solicitors for the intervener Criminal Lawyers' Association (Ontario): Henein Hutchison Robitaille, Toronto.

Solicitors for the interveners Canadian Drug Policy Coalition, Association des intervenants en dépendance du Québec and Harm Reduction Nurses Association: Daniel Brown Law, Toronto; Mack Law Corporation, Saanichton, B.C.

[1] The term “good Samaritan” refers to someone who gives help to people in need (Canadian Oxford Dictionary (2nd ed. 2004), sub verbo “Samaritan”; Le Grand Robert de la langue française (electronic version), sub verbo “samaritain, aine”).

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