

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal of Quebec)

B E T W E E N:

ESTATE OF ZAHRA (ZIBA) KAZEMI and STEPHAN (SALMAN) HASHEMI

Appellants

- and -

**ISLAMIC REPUBLIC OF IRAN, AYATOLLAH ALI KHAMENEI,
SAEED MORTAZAVI, MOHAMMAD BAKHSHI and
ATTORNEY GENERAL OF CANADA**

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- and -

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Amicus Curiae

- and -

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PART I - OVERVIEW

1. Canadian Lawyers for International Human Rights (“CLAIHR”) asserts that the Quebec Court of Appeal erred in holding that serious psychological trauma suffered in Canada cannot come within the exception to state immunity contained in s. 6(a) of the *State Immunity Act* (“SIA”). Specifically, CLAIHR makes the following submissions:

- (i) The Court of Appeal erred when it held that the appellant Hashemi’s claim failed because there was no physical injury. The Court of Appeal’s interpretation of “personal or bodily injury” in s. 6(a) of the *SIA* as requiring physical injury is incorrect as a matter of statutory interpretation, and is inconsistent with the interpretation of similar terms in other areas of Canadian law, including criminal law and tort law;
- (ii) The distinction drawn by the Court of Appeal between physical and psychological injury in its interpretation of s. 6(a) of the *SIA* is inconsistent with *Charter* values. The Court of Appeal’s interpretation has the effect of discriminating against psychological illness/mental disability, contrary to the equality values protected by s. 15 of the *Charter*;
- (iii) Recent medical research does not support a distinction between physical and psychological injury. A plaintiff should have an opportunity to address this expert evidence before a trial judge and not have his case summarily dismissed at the pre-trial stage; and
- (iv) This Court’s decision in *Schreiber* does not directly address claims of serious psychological harm or s. 15 of the *Charter*.

PART II - QUESTIONS IN ISSUE

2. This appeal raises constitutional issues and issues of statutory interpretation. CLAIHR makes submissions only on the issue of the statutory interpretation of s. 6(a) of the *SIA*.

3. The *Amicus Curiae* asserts that the Appellants have not challenged the decision of the Quebec Court of Appeal with respect to the application of s. 6(a) of the *SIA* to Mr. Hashemi’s claim (Factum of *Amicus Curiae*, para. 16). Without taking a position on the merits of what the appellants have appealed, which would be beyond its role as an intervener, CLAIHR respectfully submits that the Notice of Appeal filed by the Appellants was “at large” and not limited to any particular grounds. Further, and in any event, it is a basic principle of

constitutional analysis that before assessing the constitutionality of legislation, the Court must engage in statutory interpretation of the disputed provisions to decide their scope.

Canada (Attorney General) v. JTI-Macdonald Corp., [2007] 2 S.C.R. 610 at para. 44

PART III - ARGUMENT

(i) The Court of Appeal’s interpretation of “personal or bodily injury” in s. 6(a) of the SIA as excluding serious psychological harm is inconsistent with the interpretation of similar terms in Canadian criminal law and tort law

4. The Quebec Court of Appeal erred in holding that “allegations of a *breach of physical integrity*, not simply *psychological or psychic integrity*, are a prerequisite if a claim is to survive an exception to dismiss under the *SIA*”, and that any claim for “bodily injury” would have to be “provable by evidence other than the mere *ipse dixit* of the victim”, meaning an assertion made but not proven.

Islamic Republic of Iran v. Hashemi, 2012 354 D.L.R. (4th) 385 at paras. 82-83
[emphasis in original]

5. “Personal or bodily injury” in s. 6(a) of the *SIA* should be interpreted to include serious psychological trauma because that interpretation is consistent with the interpretation of similar terms in other areas of Canadian law, most notably the concepts of “bodily harm” in the *Criminal Code* and “personal injury” in Canadian tort law.

6. There is a presumption of “statutory coherence” when interpreting legislation:

...The legislature is presumed to know its own statute book and to draft each new provision with regard to the structures, conventions, and habits of expression as well as the substantive law embodied in existing legislation.

When courts examine a provision in the context of the statute book as a whole, they are concerned primarily with two things. One is avoiding conflict with the provisions of other statutes. It is presumed that the legislature does not intend to contradict itself; it is presumed to create coherent schemes. Therefore, interpretations that avoid the possibility of conflict or incoherence among different enactments are preferred. [footnotes omitted]

Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Canada: LexisNexis Canada Inc., 2008) at 411-412;

See also Pierre-André Côté, *The Interpretation of Legislation in Canada*, 4th ed (Toronto: Carswell, 2011) at 365;

65302 British Columbia Ltd. v. Canada, [1999] 3 S.C.R. 804 at para. 7

7. The *Criminal Code* is a law of such “general character” that it is “related to practically all legislation” and must therefore be taken into account when interpreting other legislation:

It is safe to assume that when the legislature uses a term that has a precise meaning in [the *Criminal Code*], the same meaning is intended. In fact, the courts will often refer to the [Code] in order to determine the meaning of an expression.

P.-A. Côté, *supra* at 369

8. The term “bodily harm” in the *Criminal Code* has been consistently interpreted to include both physical and psychological harm. In *R. v. McCraw*, this Court held that the term “serious bodily harm”, which was defined in the *Criminal Code* as “any hurt or injury”, must include any serious or substantial *psychological* harm. As Cory J. held:

Does the phrase encompass psychological harm? I think that it must. The term “bodily harm” referred to in s. 267 is defined as “any hurt or injury”. Those words are clearly broad enough to include psychological harm. Since s. 264.1 refers to any “serious” hurt or injury then any serious or substantial psychological harm must come within its purview. So long as the psychological harm substantially interferes with the health or well-being of the complainant, it properly comes within the scope of the phrase “serious bodily harm”. There can be no doubt that psychological harm may often be more pervasive and permanent in its effect than any physical harm. I can see no principle of interpretation nor any policy reason for excluding psychological harm from the scope of s. 264.1(1)(a) of the Code. [emphasis added]

R. v. McCraw, [1991] 3 S.C.R. 72 at 81

9. Since the decision in *McCraw*, courts across Canada have consistently applied the fundamental holding that “bodily harm” includes psychological harm to other provisions of the *Criminal Code*, for example, in the context of sentencing decisions, the determination of a weapons prohibition under s. 110 of the *Code*, the definition of “serious violent offence” in s. 2 of the *Youth Criminal Justice Act*, the application of the Serious Violent Offence designation under the former s. 42(9) of the *Youth Criminal Justice Act*, and the definition of “health” in ss. 215 to 218 of the *Criminal Code*.

R. v. Nicholson (1993), 145 A.R. 262, AJ No 712 at para. 8

R. v. L.(S.), 2013 ONCJ 189 at para. 17

R. v. Carvalho, 2004 ONCJ 148 at paras. 13-16, 62 WCB (2d) 643

R. v. Y.(S.E.), 2008 ONCJ 284, 79 WCB (2d) 97)

R. v. L.K., 2011 ONSC 3056

10. Justice Cory’s reasoning in *McCraw* has also been applied outside of the context of criminal legislation. For example, in *In the Matter of the Mental Health Act and L.I.*, the

Ontario Consent and Capacity Board found that the term “bodily harm” in ss. 20(1.1) and (5) of the *Mental Health Act* should be interpreted to include psychological harm, consistent with the decision in *McCraw*.

In the Matter of the Mental Health Act and L.I., 2003 CanLII 10128

11. CLAIHR respectfully submits that the term “personal or bodily injury” in s. 6(a) of the *SIA* should be interpreted consistently with the term “bodily harm” in the *Criminal Code* and other statutes, and must be taken to include reference to serious psychological injury.

12. It is also clear in Canadian tort law that “personal injury” includes serious and prolonged psychological injury. For example, in *Mustapha v. Culligan of Canada Ltd.*, this Court assessed whether the plaintiff could recover damages for mental distress caused as a result of seeing a dead fly in a bottle of water. Although this Court held that the plaintiff’s damage was too remote to allow for recovery, it concluded that “personal injury” includes “psychological injury”. Of particular importance to this case is the Court’s recognition of the artificial nature of the distinction between physical and psychological injury:

Generally, a plaintiff who suffers personal injury will be found to have suffered damage. Damage for purposes of this inquiry includes psychological injury. The distinction between physical and mental injury is elusive and arguably artificial in the context of tort. As Lord Lloyd said in *Page v. Smith*, [1996] 1 A.C. 155 (H.L.), at p. 188:

In an age when medical knowledge is expanding fast, and psychiatric knowledge with it, it would not be sensible to commit the law to a distinction between physical and psychiatric injury, which may already seem somewhat artificial, and may soon be altogether outmoded. **Nothing will be gained by treating them as different “kinds” of personal injury, so as to require the application of different tests in law** [Emphasis added].

Mustapha v. Culligan of Canada Ltd., [2008] 2 S.C.R. 114 at para. 8

13. The Court’s holding in *Mustapha* that there is no clear distinction between physical injury and serious psychological trauma, and that both can qualify as “personal injury” in tort law, further supports the view that the concept of “personal or bodily injury” in s. 6(a) of the *SIA* should be interpreted to include claims for serious psychological trauma.

(ii) The Court of Appeal’s interpretation of s. 6(a) of the SIA is inconsistent with the *Charter* value of equality, as it has the effect of discriminating against individuals with psychological illness/mental disability

14. CLAIHR further submits that the Court of Appeal’s summary dismissal of the appellant Hashemi’s claim to psychological injury has the effect of discriminating against individuals who suffer from psychological illness/mental disability. Such discrimination is at odds with the jurisprudence of this Court and with *Charter* values. At this stage of the proceedings, the Court is required to assume that assertions made in the plaintiff’s pleadings can be demonstrated at trial and that the plaintiff will be able to lay an appropriate evidentiary foundation. Claims for psychological trauma, just as claims for physical injury, can be proven through expert medical evidence. By dismissing the appellant Hashemi’s claim as “mere *ipse dixit*”, the Quebec Court of Appeal has essentially dismissed the entire fields of psychiatry and psychology and any possibility that the plaintiff could demonstrate, through medical evidence, that he experienced serious psychological trauma. Such an approach is inconsistent with the guarantee of equality under s. 15 of the *Charter*.

15. The term “personal or bodily injury” is ambiguous on its face, and is not clearly limited to circumstances of physical harm. The Supreme Court has consistently stated that where a statute is ambiguous, the interpretation most consistent with the *Charter* should be applied.

R. v. Bernshaw, [1995] 1 S.C.R. 254 at para. 29
McKay v. The Queen, [1965] S.C.R. 798 at 803-4
Severn v. The Queen (1878), 2 S.C.R. 70 at 103

16. Section 15 of the *Charter* provides for equal protection under the law for all, including for persons with mental and physical disabilities:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or **mental or physical disability** [emphasis added].

17. As a matter of statutory interpretation, an interpretation of s. 6(a) of the *SIA* which only recognizes the validity of — and provides a legal remedy for — physical injury, and not psychological injury, is inconsistent with the fundamental values protected by s. 15 of the *Charter*.

18. This Court has previously held that distinctions between physical and psychological injury are discriminatory and inconsistent with s. 15 of the *Charter*. In *Nova Scotia (W.C.B.) v. Martin; Nova Scotia (W.C.B.) v. Laseur*, this Court held that legislation which significantly limited workers compensation benefits available to injured workers who suffered from chronic pain violated s. 15 of the *Charter* by imposing different treatment based on the nature of a disability.

Nova Scotia (W.C.B.) v. Martin; Nova Scotia (W.C.B.) v. Laseur, [2003] 2 S.C.R. 504 at paras. 99-101

19. Similarly, in *Battlefords and District Co-Op v. Gibbs*, this Court held that a provision in a long term disability policy which limited income replacement benefits to two years for claimants suffering from a mental disability was discriminatory under s. 16 of the *Saskatchewan Human Rights Code*. The Court held that the denial of benefits to the complainant because he suffered from a mental disability was discriminatory and noted that there is a particular historical disadvantage suffered by persons with mental disabilities, as opposed to physical disabilities.

Battlefords and District Co-Op v. Gibbs, [1996] 3 S.C.R. 566 at paras. 31-34

20. CLAIHR further submits that there is no evidentiary basis for the Court of Appeal's assertion that allowing psychological injury as a basis for a claim against a foreign state will result in a floodgate of claims for mental distress. The Court of Appeal rhetorically refers to the possibility of claims for psychological injury brought by people who view on television in Canada horrific events abroad. With respect, the Court of Appeal's hypothetical example of the television viewer's claim is erroneous and would be addressed by the doctrines of proximity and remoteness. The questions of the proximity of the plaintiff and whether there is an appropriate cause of action are entirely separate matters from whether claims for mental distress fit within the exception to immunity carved out by s. 6(a) of the *SIA*.

Islamic Republic of Iran v. Hashemi, supra at para. 83
Childs v. Desormeaux, [2006] 1 SCR 643, at paras. 10-12
Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263 at paras. 46-51

21. In any event, immediate family members of victims of torture, like the appellant Hashemi, are in a very different situation than the hypothetical television viewer posited by the

Court of Appeal. There is no floodgates concern. As a matter of international human rights law, immediately family members of victims of international human rights violations have been held to be sufficiently proximate to be entitled to remedies. Similarly, tort law in Canada and a number of other jurisdictions recognizes the rights of immediate family members to recover damages in various circumstances for psychological or emotional harm to them as a result of injuries to their loved ones.

The Prosecutor v. Thomas Lubanga Dyilo (Situation in the Democratic Republic of Congo), decision of the International Criminal Court (Appeals Chamber), July 23, 2008, ICC-01/04-01/06-1432 11-07-2008, at para 32

Case of Furlan and Family v. Argentina, decision of the Inter-American Court of Human Rights, August 31, 2012, Case no. 12.539, at paras. 244-265

Cox v. Fleming (1993), 13 C.C.L.T. (2d) 305 (B.C.S.C.)

Dillon v. Legg (1968), 69 Cal. Rptr. (2d) 72 (California Supreme Court)

Jaensch v. Coffey, [1983] 54 A.L.R. 417 (High Court of Australia)

McLoughlin v. O'Brian, [1982] 2 All E.R. 298 (H.L.) (House of Lords)

(iii) Recent medical research does not support a distinction between physical and mental injury

22. As noted above, at this stage of the proceedings the Court is required to take the allegations in the pleadings as fact. In interpreting s. 6(a) of the *SIA*, it is significant that expert scientific/medical evidence that the asserted distinction between psychological and physical harm is not a tenable one will potentially be available at trial to a plaintiff in a case alleging serious psychological injury. The availability of this evidence supports the conclusion of the Quebec Superior Court that it cannot be said as a matter of law that the harms pleaded by the plaintiff are not “personal or bodily injury” as defined in s. 6(a) of the *SIA*.

Kazemi (Estate of) c. Islamic Republic of Iran, 2011 QCCS 196 at paras. 79-92

23. Specifically, there is increasing scientific evidence of the close interdependence between psychological and physiological reactions, or what are referred to as the “biological concomitants” of psychological symptoms. For example, some studies have indicated that trauma survivors often have significant physical health problems that may endure for years after the traumatic event has ended. Exposure to traumatic events, and prolonged and significant increases in associated stress hormones, have also been found to increase levels of inflammation conditions in trauma survivors, which are associated with increased risk of a number of

significant health problems including cardiovascular disease, myocardial infarction, chronic pain syndromes, impaired immune function, and impaired wound healing. Further, periods of extreme psychological trauma may have an impact on neurological development, particularly in young children, with long-term physiological and neurological implications such as impairment of the central nervous system, differential brain development, and cognitive impairments.

- D. Edmondson and B. Cohen, *Posttraumatic Stress Disorder and Cardiovascular Disease*. *Progress in Cardiovascular Diseases* 55 (2013) 548-556.
- H. Gola et al., *Posttraumatic stress disorder is associated with an enhanced spontaneous production of pro-inflammatory cytokines by peripheral blood mononuclear cells*. *BMC Psychiatry* 2013, 13:40.
- K. Kendall-Tackett, *Psychological Trauma and Physical Health: A Psychoneuroimmunology Approach to Etiology of Negative Effects and Possible Interventions*. *Psychological Trauma: Theory, Research, Practice, and Policy* 2009. Vol. 1, No. 1, 35-48. (“*Psychological Trauma and Physical Health*”)
- N. Krause, B. Shaw and J. Cairney, *A Descriptive Epidemiology of Lifetime Trauma and the Physical Health Status of Older Adults*. *Psychology and Aging*. 2004, Vol. 19, No. 4 637-648
- J. D. Bremner, *Effects of Traumatic Stress on Brain Structure and Function: Relevance to Early Responses to Trauma*. *Journal of Trauma & Dissociation*, 2005, Vol. 6, No. 2 51-68
- J. Ford, *Complex adult sequelae of early life exposure to psychological trauma*, in The Impact of Early Life Trauma on Health and Disease: The Hidden Epidemic, R. Lanius, E. Vermetten and C. Panin eds. Cambridge: Cambridge University Press, 2010

24. Symptoms of psychological trauma have been well documented as including numerous physiological reactions such as racing heart or sweating, hyper-muscular reactions, disrupted sleep patterns, loss of appetite and weight loss, and intense physical reactions to reminders of the traumatic event. Child and adolescent victims of trauma have also been documented to experience physical aches and pains without apparent cause.

- R. Yehuda, *Post-Traumatic Stress Disorder*, *N. Engl J. Med*, 2002, Vol. 346, No. 2 108-114
Psychological Trauma and Physical Health, supra

25. Such evidence could be put forward at trial by a plaintiff seeking damages for a psychological injury experienced in Canada as a result of the conduct of a foreign state. Such a claim should not, therefore, be struck on a pre-trial basis.

(iv) *Schreiber* did not address circumstances of serious psychological harm

26. Both lower courts relied heavily on the decision of this Court in *R. v. Schreiber* in determining whether the appellant Hashemi's claim could proceed under the exception in s. 6(a) of the *SIA*. In particular, the lower courts noted that this Court in *Schreiber* found that a claim for mental distress can only succeed where the distress manifests itself physically. It is submitted, however, that *Schreiber* is distinguishable. *Schreiber* was decided on the basis that there can be no damages for mental distress as a result of *lawful imprisonment* in Canada. Indeed, there were no concrete facts of severe psychological injury even claimed in *Schreiber*, and Schreiber himself had no complaints of serious psychological trauma. Rather, the injuries he claimed were better characterized, this Court found, as "moral damages", such as interference with his reputation and privacy. Such injuries are clearly not captured by the exception to immunity in s. 6(a).

R. v. Schreiber, [2002] 3 S.C.R. 269 at paras 28, 49, 64-65, 80

27. By contrast, while Schreiber was lawfully imprisoned in a Canadian jail for eight days, Ms. Kazemi was imprisoned by Iranian authorities, where she was tortured, denied appropriate medical care, denied legal counsel or other protections of the rule of law, and ultimately murdered by Iranian authorities. These are precisely the kind of unlawful and abusive conditions which the Court in *Schreiber* recognized could potentially give rise to compensable mental injury.

Schreiber, supra, at paras 48-49, 63-64

28. Indeed, the Court in *Schreiber* left a window open for circumstances, unlike Schreiber's, where there is a viable claim for serious mental distress. As the Court noted, the notion of physical integrity is flexible enough to capture circumstances of serious mental distress, such as complaints of "nervous shock".

Schreiber, supra, at para 42

29. Furthermore, the decisions of this Court in *Martin* and *Laseur* and in *Mustapha* were released after *Schreiber*. This Court did not have the benefit of the reasoning in those cases when it considered the interpretation of s. 6(a) of the *SIA* in *Schreiber*. Moreover, the inconsistency with *Charter* values of a distinction between physical and psychological disability under s. 15 of the *Charter* does not appear to have been argued before the Court in *Schreiber*.

Similarly, much of the medical literature with respect to the interdependence of psychological and physical injury has developed since *Schreiber* was decided and was not before the Court at that time. As such, the Court in *Schreiber* did not have an opportunity to fully consider or determine whether claims to serious psychological harm can properly be excluded from s. 6(a) of the *SIA*, and whether such an exclusion is consistent with the guarantee of equality in the *Charter*.

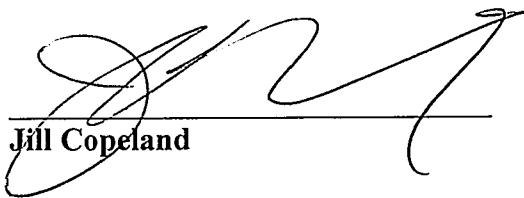
PART IV - SUBMISSIONS CONCERNING COSTS

30. CLAIHR does not seek costs, and asks that no costs be ordered against it.

PART V - ORDER REQUESTED

31. CLAIHR respectfully submits that the decision of the Quebec Court of Appeal should be overturned and that this honourable Court should adopt an interpretation of s. 6(a) of the *SIA* which includes — and provides a legal remedy for — serious psychological injury suffered in Canada as a result of foreign state action. CLAIHR requests permission to make oral argument of 15 minutes at the hearing of the appeal.

All of which is respectfully submitted this 14th day of November, 2013.



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PART VII - STATUTORY PROVISIONS

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

Criminal Code, R.S.C., 1985, c. C-46, as amended

INTERPRETATION

Definitions

2. In this Act,

“bodily harm” - “bodily harm” means any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature;

DÉFINITIONS ET INTERPRÉTATION

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi.

« lésions corporelles » - « lésions corporelles »
Blessure qui nuit à la santé ou au bien-être d'une personne et qui n'est pas de nature passagère ou sans importance.

PROHIBITION ORDERS

Discretionary prohibition order

110. (1) Where a person is convicted, or discharged under section 730, of

(a) an offence, other than an offence referred to in any of paragraphs 109(1)(a), (b) and (c), in the commission of which violence against a person was used, threatened or attempted, or

(b) an offence that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a

ORDONNANCE D'INTERDICTION

Ordonnance d'interdiction discrétionnaire

110. (1) Le tribunal doit, s'il en arrive à la conclusion qu'il est souhaitable pour la sécurité du contrevenant ou pour celle d'autrui de le faire, en plus de toute autre peine qu'il lui inflige ou de toute autre condition qu'il lui impose dans l'ordonnance d'absolution, rendre une ordonnance lui interdisant d'avoir en sa possession des armes à feu, arbalètes, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions, munitions prohibées et substances explosives, ou l'un ou plusieurs de ces objets, lorsqu'il le déclare coupable ou l'absout en vertu de l'article 730 :

restricted weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance and, at the time of the offence, the person was not prohibited by any order made under this Act or any other Act of Parliament from possessing any such thing,

the court that sentences the person or directs that the person be discharged, as the case may be, shall, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, consider whether it is desirable, in the interests of the safety of the person or of any other person, to make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court decides that it is so desirable, the court shall so order.

Duration of prohibition order

(2) An order made under subsection (1) against a person begins on the day on which the order is made and ends not later than ten years after the person's release from imprisonment after conviction for the offence to which the order relates or, if the person is not then imprisoned or subject to imprisonment, after the person's conviction for or discharge from the offence.

Reasons

(3) Where the court does not make an order under subsection (1), or where the court does make such an order but does not prohibit the possession of everything referred to in that subsection, the court shall include in the record a statement of the court's reasons for not doing so.

a) soit d'une infraction, autre que celle visée aux alinéas 109(1)a), b) ou c), perpétrée avec usage, tentative ou menace de violence contre autrui;

b) soit d'une infraction relative à une arme à feu, une arbalète, une arme prohibée, une arme à autorisation restreinte, un dispositif prohibé, des munitions, des munitions prohibées ou des substances explosives, perpétrée alors que celui-ci n'est pas sous le coup d'une ordonnance, rendue en vertu de la présente loi ou de toute autre loi fédérale, lui interdisant la possession.

Durée de l'ordonnance

(2) Le cas échéant, la période d'interdiction — commençant sur-le-champ — expire au plus tard dix ans après la libération du contrevenant ou, s'il n'est pas emprisonné ni passible d'emprisonnement, après sa déclaration de culpabilité ou son absolution.

Motifs

(3) S'il ne rend pas d'ordonnance ou s'il en rend une dont l'interdiction ne vise pas tous les objets visés au paragraphe (1), le tribunal est tenu de donner ses motifs, qui sont consignés au dossier de l'instance.

Definition of “release from imprisonment”

(4) In subsection (2), “release from imprisonment” means release from confinement by reason of expiration of sentence, commencement of statutory release or grant of parole.

Application of ss. 113 to 117

(5) Sections 113 to 117 apply in respect of every order made under subsection (1).

DUTIES TENDING TO PRESERVATION OF LIFE

Duty of persons to provide necessities

215. (1) Every one is under a legal duty

(a) as a parent, foster parent, guardian or head of a family, to provide necessities of life for a child under the age of sixteen years;

(b) to provide necessities of life to their spouse or common-law partner; and

(c) to provide necessities of life to a person under his charge if that person

(i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and

(ii) is unable to provide himself with necessities of life.

Définition de « libération »

(4) Au paragraphe (2), « libération » s’entend de l’élargissement entraîné par l’expiration de la peine ou le début soit de la libération d’office soit d’une libération conditionnelle.

Application des articles 113 à 117

(5) Les articles 113 à 117 s’appliquent à l’ordonnance rendue en application du paragraphe (1).

DEVOIRS TENDANT À LA CONSERVATION DE LA VIE

Devoir de fournir les choses nécessaires à l’existence

215. (1) Toute personne est légalement tenue :

a) en qualité de père ou mère, de parent nourricier, de tuteur ou de chef de famille, de fournir les choses nécessaires à l’existence d’un enfant de moins de seize ans;

b) de fournir les choses nécessaires à l’existence de son époux ou conjoint de fait;

c) de fournir les choses nécessaires à l’existence d’une personne à sa charge, si cette personne est incapable, à la fois :

(i) par suite de détention, d’âge, de maladie, de troubles mentaux, ou pour une autre cause, de se soustraire à cette charge,

(ii) de pourvoir aux choses nécessaires à sa propre existence.

Offence

(2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform that duty, if

(a) with respect to a duty imposed by paragraph (1)(a) or (b),

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently;
or

(b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

Punishment

(3) Every one who commits an offence under subsection (2)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Infraction

(2) Commet une infraction quiconque, ayant une obligation légale au sens du paragraphe (1), omet, sans excuse légitime, dont la preuve lui incombe, de remplir cette obligation, si :

a) à l'égard d'une obligation imposée par l'alinéa (1)a) ou b) :

(i) ou bien la personne envers laquelle l'obligation doit être remplie se trouve dans le dénuement ou dans le besoin,

(ii) ou bien l'omission de remplir l'obligation met en danger la vie de la personne envers laquelle cette obligation doit être remplie, ou expose, ou est de nature à exposer, à un péril permanent la santé de cette personne;

b) à l'égard d'une obligation imposée par l'alinéa (1)c), l'omission de remplir l'obligation met en danger la vie de la personne envers laquelle cette obligation doit être remplie, ou cause, ou est de nature à causer, un tort permanent à la santé de cette personne.

Peine

(3) Quiconque commet une infraction visée au paragraphe (2) est coupable :

a) soit d'un acte criminel passible d'un emprisonnement maximal de cinq ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois.

Presumptions

(4) For the purpose of proceedings under this section,

(a) [Repealed, 2000, c. 12, s. 93]

(b) evidence that a person has in any way recognized a child as being his child is, in the absence of any evidence to the contrary, proof that the child is his child;

(c) evidence that a person has failed for a period of one month to make provision for the maintenance of any child of theirs under the age of sixteen years is, in the absence of any evidence to the contrary, proof that the person has failed without lawful excuse to provide necessaries of life for the child; and

(d) the fact that a spouse or common-law partner or child is receiving or has received necessaries of life from another person who is not under a legal duty to provide them is not a defence.

Duty of persons undertaking acts dangerous to life

216. Every one who undertakes to administer surgical or medical treatment to another person or to do any other lawful act that may endanger the life of another person is, except in cases of necessity, under a legal duty to have and to use reasonable knowledge, skill and care in so doing. R.S., c. C-34, s. 198.

Duty of persons undertaking acts

217. Every one who undertakes to do an act is

Présomptions

(4) Aux fins des poursuites engagées en vertu du présent article :

a) [Abrogé, 2000, ch. 12, art. 93]

b) la preuve qu'une personne a de quelque façon reconnu un enfant comme son enfant, constitue, en l'absence de toute preuve contraire, une preuve que cet enfant est le sien;

c) la preuve qu'une personne a omis, pendant une période d'un mois, de pourvoir à l'entretien d'un de ses enfants âgé de moins de seize ans constitue, en l'absence de toute preuve contraire, une preuve qu'elle a omis, sans excuse légitime, de lui fournir les choses nécessaires à l'existence;

d) le fait qu'un époux ou conjoint de fait ou un enfant reçoit ou a reçu les choses nécessaires à l'existence, d'une autre personne qui n'est pas légalement tenue de les fournir, ne constitue pas une défense.

Obligation des personnes qui pratiquent des opérations dangereuses

216. Quiconque entreprend d'administrer un traitement chirurgical ou médical à une autre personne ou d'accomplir un autre acte légitime qui peut mettre en danger la vie d'une autre personne est, sauf dans les cas de nécessité, légalement tenu d'apporter, en ce faisant, une connaissance, une habileté et des soins raisonnables. S.R., ch. C-34, art. 198.

Obligation des personnes qui s'engagent à accomplir un acte

217. Quiconque entreprend d'accomplir un

under a legal duty to do it if an omission to do the act is or may be dangerous to life. R.S., c. C-34, s. 199.

acte est légalement tenu de l'accomplir si une omission de le faire met ou peut mettre la vie humaine en danger. S.R., ch. C-34, art. 199.

Duty of persons directing work

Obligation de la personne qui supervise un travail

217.1 Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task. 2003, c. 21, s. 3.

217.1 Il incombe à quiconque dirige l'accomplissement d'un travail ou l'exécution d'une tâche ou est habilité à le faire de prendre les mesures voulues pour éviter qu'il n'en résulte de blessure corporelle pour autrui. 2003, ch. 21, art. 3.

Abandoning child

Abandon d'un enfant

218. Every one who unlawfully abandons or exposes a child who is under the age of ten years, so that its life is or is likely to be endangered or its health is or is likely to be permanently injured,

218. Quiconque illicitement abandonne ou expose un enfant de moins de dix ans, de manière que la vie de cet enfant soit effectivement mise en danger ou exposée à l'être, ou que sa santé soit effectivement compromise de façon permanente ou exposée à l'être est coupable :

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

a) soit d'un acte criminel passible d'un emprisonnement maximal de cinq ans;

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois.

ASSAULTS

VOIES DE FAIT

Uttering threats

Proférer des menaces

264.1 (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

264.1 (1) Commet une infraction quiconque sciemment profère, transmet ou fait recevoir par une personne, de quelque façon, une menace :

(a) to cause death or bodily harm to any person;

a) de causer la mort ou des lésions corporelles à quelqu'un;

Assault with a weapon or causing bodily harm	Agression armée ou infliction de lésions corporelles
267. Everyone who, in committing an assault, (a) carries, uses or threatens to use a weapon or an imitation thereof, or (b) causes bodily harm to the complainant, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.	267. Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois quiconque, en se livrant à des voies de fait, selon le cas : a) porte, utilise ou menace d'utiliser une arme ou une imitation d'arme; b) inflige des lésions corporelles au plaignant.

Mental Health Act, R.S.O., 1990, c. M.7, as amended

PART II – HOSPITALIZATION

PARTIE II – HOSPITALISATION

Conditions for involuntary admission

Conditions de l'admission en cure obligatoire

20(1.1) The attending physician shall complete a certificate of involuntary admission or a certificate of renewal if, after examining the patient, he or she is of the opinion that the patient,

20(1.1) Le médecin traitant remplit un certificat d'admission en cure obligatoire ou un certificat de renouvellement si, après avoir examiné le malade, il est d'avis que celui-ci remplit les conditions suivantes :

- (a) has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in serious bodily harm to the person or to another person or substantial mental or physical deterioration of the person or serious physical impairment of the person;
- (b) has shown clinical improvement as a result of the treatment;
- (c) is suffering from the same mental disorder as the one for which he or she previously received treatment or from a

- a) il a déjà reçu un traitement pour des troubles mentaux continus ou récidivants qui, lorsqu'ils ne sont pas traités, sont d'une nature ou d'un caractère qui aura probablement comme conséquence que le malade s'infligera ou infligera à une autre personne des lésions corporelles graves ou qu'il subira une détérioration mentale ou physique importante ou un affaiblissement physique grave;
- b) il a connu une amélioration sur le plan clinique de son état par suite du traitement;

mental disorder that is similar to the previous one;

(d) given the person's history of mental disorder and current mental or physical condition, is likely to cause serious bodily harm to himself or herself or to another person or is likely to suffer substantial mental or physical deterioration or serious physical impairment;

(e) has been found incapable, within the meaning of the Health Care Consent Act, 1996, of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained; and

(f) is not suitable for admission or continuation as an informal or voluntary patient. 2000, c. 9, s. 7 (2).

c) il souffre du même trouble mental que celui pour lequel il a déjà été traité ou d'un trouble mental semblable;

d) étant donné ses antécédents de troubles mentaux et son état mental ou physique actuel, il risque probablement de s'infliger ou d'infliger à une autre personne des lésions corporelles graves ou de subir une détérioration mentale ou physique importante ou un affaiblissement physique grave;

e) il a été jugé incapable, au sens de la Loi de 1996 sur le consentement aux soins de santé, de consentir à son traitement dans un établissement psychiatrique et le consentement de son mandataire spécial a été obtenu;

f) il ne convient pas de l'admettre à titre de malade en cure facultative ou volontaire ni de le maintenir en cure facultative ou volontaire. 2000, chap. 9, par. 7 (2).

Conditions for involuntary admission

(5) The attending physician shall complete a certificate of involuntary admission or a certificate of renewal if, after examining the patient, he or she is of the opinion both,

(a) that the patient is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the patient,

(ii) serious bodily harm to another person, or

(iii) serious physical impairment of the patient,

Conditions de l'admission en cure obligatoire

(5) Le médecin traitant remplit un certificat d'admission en cure obligatoire ou un certificat de renouvellement si, après avoir examiné le malade, il est d'avis que :

a) d'une part, celui-ci souffre d'un trouble mental d'une nature ou d'un caractère qui aura probablement l'une des conséquences suivantes :

(i) il s'infligera des lésions corporelles graves,

(ii) il infligera des lésions corporelles graves à une autre personne,

(iii) il souffrira d'un

unless the patient remains in the custody of a psychiatric facility; and

(b) that the patient is not suitable for admission or continuation as an informal or voluntary patient. R.S.O. 1990, c. M.7, s. 20 (5); 2000, c. 9, s. 7 (3, 4).

affaiblissement physique grave,

à moins qu'il ne reste sous la garde des autorités de l'établissement psychiatrique;

b) d'autre part, il ne convient pas d'admettre le malade à l'établissement psychiatrique à titre de malade en cure facultative ou volontaire ou que celui-ci ne peut continuer d'y rester à ce titre. L.R.O. 1990, chap. M.7, par. 20 (5); 2000, chap. 9, par. 7 (3) et (4).

State Immunity Act, R.S.C., 1985, c. S-18, as amended

STATE IMMUNITY

Death and property damage

6. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to

(a) any death or personal or bodily injury,

...

that occurs in Canada.

IMMUNITÉ DE JURIDICTION

Dommages

6. L'État étranger ne bénéficie pas de l'immunité de juridiction dans les actions découlant :

a) des décès ou dommages corporels survenus au Canada;

Youth Criminal Justice Act, S.C. 2002, c. 1, as amended

INTERPRETATION

Definitions

2. (1) The definitions in this subsection apply in this Act.

“serious violent offence” - “serious violent offence” means an offence under one of the following provisions of the Criminal Code:

(a) section 231 or 235 (first degree murder or second degree murder);

DÉFINITIONS

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

« infraction grave avec violence » - « infraction grave avec violence » Toute infraction visée à l'une des dispositions ci-après du Code criminel :

a) les articles 231 ou 235 (meurtre au

(b) section 239 (attempt to commit murder);

(c) section 232, 234 or 236 (manslaughter); or

(d) section 273 (aggravated sexual assault).

premier ou au deuxième degré);

b) l'article 239 (tentative de meurtre);

c) les articles 232, 234 ou 236 (homicide involontaire coupable);

d) l'article 273 (agression sexuelle grave).

Youth Criminal Justice Act, S.C. 2002, c. 1
(Version of document from 2012-03-13 to 2012-10-22)

Loi sur le système de justice pénale pour les adolescents, L.C. 2002, ch. 1
(Version du document du 2012-03-13 au 2012-10-22)

Determination by court

Décision du tribunal

42(9) On application of the Attorney General after a young person is found guilty of an offence, and after giving both parties an opportunity to be heard, the youth justice court may make a judicial determination that the offence is a serious violent offence and endorse the information or indictment accordingly.

(9) Le tribunal pour adolescents peut, à la demande du procureur général, après avoir donné aux parties l'occasion de présenter des observations, décider que l'infraction dont l'adolescent a été déclaré coupable est une infraction grave avec violence et faire mention de ce fait sur la dénonciation ou l'acte d'accusation.

[Repealed, 2012, c. 1, s. 174]

[Abrogés, 2012, ch. 1, art. 174]