

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

**HER MAJESTY THE QUEEN**

Appellant

- and -

**PAUL FRANCIS TATTON**

Respondent

- and -

**THE CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)**

Intervener

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**MEMORANDUM OF ARGUMENT**  
of  
**THE CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)**

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**MEMORANDUM OF ARGUMENT OF THE INTERVENER  
(The Criminal Lawyers' Association)**

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**PART I – OVERVIEW**

1. The Criminal Lawyers Association (“CLA”) will limit its submissions to the proper classification of arson pursuant to s.434 of the *Criminal Code*. In particular, the CLA position is that arson is a specific intent offence.

**PART II – QUESTIONS IN ISSUE**

2. The question as stated by the Crown is:

Is the offence of arson, pursuant to section 434 of the *Criminal Code*, a crime of general or specific intent?

### **PART III – ARGUMENT**

#### **A) OVERVIEW**

3. This Honourable Court, in pre-*Charter* cases, has made it plain that a person who fails to make such enquiries as a reasonable and prudent person would make, or fails to know facts he should have known, is innocent of criminal wrongdoing in the eyes of the law.<sup>1</sup> Without overruling this line of authorities, this Honourable Court has modified the approach to criminal fault to endorse a form of criminal liability that does not require that fault attaches to *all* aspects of a prohibited act.<sup>2</sup> Nevertheless, it is rare to employ a purely objective standard to fix criminal liability: that is, one that has little or no a connection between fault and the prohibited act. The CLA will argue that the Crown's approach in this case essentially does just that.

4. The key consideration when classifying an offence as either a general or specific intent offence is the connection between intention (moral fault) and the prohibited act. The classification exercise should proceed through two stages. First, one must assess the text of the provision and, second, if a textual analysis does not yield an answer, the Court should have regard to policy considerations. Both analyses reveal that arson is a specific intent offence.

#### **B) TEXTUAL ANALYSIS**

5. Section 434 provides:

"Every person who *intentionally or recklessly causes damage by fire or explosion to property* that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years." (emphasis added)

6. The external element of this offence is causing damage to property by fire or explosion. There are any number of acts that can satisfy the causation requirement, everything from planting a bomb to falling asleep with a lit cigarette.

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<sup>1</sup> *R v. Sault Ste Marie*, [1978] 2 SCR 1299 at 1309-1310; see also *Levis (City) v. Tetrault*, [2006] 1 SCR 420 at para. 14-17.

<sup>2</sup> see *R v Desousa*, [1992] 2 SCR 944 at paras. 35-38; *R v Creighton*, [1993] 3 SCR 3 at paras. 27 and 28; *R v Pontes*, [1995] 3 SCR 44 at paras. 56-60.

7. But what makes causing a fire a crime? It is the intention of the actor that converts what might otherwise be careless or innocent behavior into a crime for which the person may be sentenced to 14 years imprisonment. This provision fixes criminal culpability where the fire is *intentionally* or *recklessly* caused. That is to say, no matter what the mechanism of causation, the actor *intends* that there be damage to property by fire or explosion, or that the actor *knows* the probable consequences of his acts would be to cause damage by fire, and yet proceeds recklessly in the face of that risk. Understood in this way, the intention to cause a fire is ulterior to the basic intent to perform the mechanism of causation.<sup>3</sup> There is no question that in certain circumstances the mechanism of causation can conclusively demonstrate both a basic and ulterior intention: take, for instance, the planting of a bomb. However, for there to be criminal liability the text of the statute requires the accused to *intend* to cause damage by a fire or explosion.

8. This is to be contrasted with a crime like assault where there is no ulterior intent requirement; the act of applying force is the intentional act.<sup>4</sup> In that circumstance, there is a total convergence of the act with the prohibited intent. That convergence is the essence of a general intent offence.

9. In the case of arson, the prohibited intent is not turning on a stove and leaving a pot unattended (or whatever modality caused the fire), but rather the intent to do damage to property by fire.

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<sup>3</sup> This point was made by Ritchie J. in *R v George*, [1960] SCR 289 at 306, hereinafter referred to as *George*, who ruled that "a distinction is to be drawn between "intention" as applied to acts done to achieve an immediate end on the one hand and acts done with the specific and ulterior motive and intention of furthering or achieving an illegal object on the other hand. Illegal acts of the former kind are done "intentionally" in the sense that they are not done by accident or through honest mistake, but acts of the latter kind are the product of preconception and are deliberate steps taken towards an illegal goal. The former acts may be the purely physical products of momentary passion, whereas the latter involve the mental process of formulating a specific intent. A man, far advanced in drink, may intentionally strike his fellow in the former sense at a time when his mind is so befogged with liquor as to be unable to formulate a specific intent in the latter sense."

<sup>4</sup> Of course accident is always available, say if the accused tripped and fell or was pushed into a complainant. In that circumstance, the act was not voluntary and was not intentional.

4 MEMORANDUM OF ARGUMENT OF THE INTERVENER  
Criminal Lawyers' Association – PART III – ARGUMENT

10. This view is borne out by the model jury instructions:  
a) Watt's Manual of Criminal Jury Instructions<sup>5</sup>

This essential element relates to (NOA)'s state of mind at the time s/he caused the damage to the property (or, specify) by setting the fire or causing the explosion. To do something intentionally means to do it "on purpose", in other words, not by accident, to bring about a particular result.

- b) Criminal Jury Instructions (CRIMJI) – British Columbia<sup>6</sup>

The first way the Crown can prove the fifth ingredient is by proving that [the accused's] act(s) (or omission [where a legal duty to act exists]) (was/were) *done for the very purpose* of causing damage to [the property] by fire (or explosion). In other words, (he/she) meant to cause the damage; (he/she) *did it deliberately and on purpose*.<sup>7</sup>

11. The Crown submits that recklessness renders immaterial an intoxicated person's individual circumstances in determining criminal liability for arson. As a result, the Crown says that the Court must ignore the accused and instead ask how a sane and sober person would behave; in effect, the Crown urges the Court to employ an objective assessment to an intoxicated person's conduct. With respect, an objective analysis of fault should be rejected as it is based upon a misunderstanding of recklessness, an essential feature of the provision.

12. Recklessness has a subjective element requiring that the accused, *knowing* the probable consequences of his acts would be to cause damage by fire, proceeded recklessly in the face of that risk.<sup>8</sup> This subjective element requires the Court to look to this specific offender's knowledge. This is in contrast to a situation of objective *mens rea*,

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<sup>5</sup> The Honorable Justice Watt, *Watt's Manual of Criminal Jury Instructions*, Thomson Canada Ltd, 2005 pp. 703-707 [Emphasis Added]

<sup>6</sup> Gerry A Ferguson; Michael R Dambrot; Elizabeth A Bennett, *Criminal Jury Instructions (CRIMJI)* Vancouver: Continuing Legal Education Society of British Columbia, 2005, 4<sup>th</sup> ed, para.6.02 [Emphasis Added]

<sup>7</sup> This is consistent with the approach taken in *R. v. D. (S.D.)*, 2002 NFCA 18, 164 C.C.C. (3d) 1, 1 C.R. (6th) 5, the accused set fire to a bag of potato chips with the intent to release the air and make the bag easier to steal. However, the fire ended up causing extensive damage to the convenience store. The Court held that proof that the accused intentionally set fire to the bag was not sufficient to establish that she intentionally caused damage to the store, as specified in the indictment (see para. 26).

<sup>8</sup> *R v Creighton*, [1993] 3 SCR 3, para. 110

which assesses the failure to direct the mind to a risk that the reasonable person would have appreciated.<sup>9</sup>

13. A reckless person is aware that there is a risk that their conduct could bring about a prohibited result, but nevertheless goes on to do it. His state of mind is that he does not care whether the consequences happen or not - he sees the risk and takes the chance.<sup>10</sup> As such, recklessness is a concept distinct from an objective standard and is judged with regard to a subjective standard. It requires proof of a state of mind,<sup>11</sup> with the Court determining if the accused, "given his personality, situation and circumstances"<sup>12</sup> proceeded recklessly in the face of the risk.<sup>13</sup> Understanding that recklessness involves a subjective element, it follows that the Court must assess the extent to which intoxication has impaired the accused's foresight of the consequences of his act.<sup>14</sup>

14. The subjective quality of recklessness is confirmed in the standard jury instructions:

a) Watt's Manual of Criminal Jury Instructions<sup>15</sup>

To do something recklessly means to do something that creates an obvious risk of damage to property by fire or explosion, and *either not think about* the possibility of such a risk, or *recognize the possibility of the risk* but go ahead anyway despite it.

b) Criminal Jury Instructions (CRIMJI) – British Columbia<sup>16</sup>

The second way the Crown can prove the fifth ingredient is by proving that [the accused] recklessly caused damage to [the property] by fire (or explosion). A person recklessly causes damage if *he or she knows* that his or her actions will probably (possibly) cause damage, but he or she goes ahead and acts anyway. In such cases, we say that the person is reckless as to the consequences of his or her actions. Such a person may not desire, wish, or intend to cause damage, but *he or she does consciously and knowingly* take the risk that his or her actions will probably (possibly) cause the damage.

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<sup>9</sup> Ibid, para 111

<sup>10</sup> *R. v. Sansregret*, [1985] 1 S.C.R. 570, at para. 16

<sup>11</sup> Ibid, see also *R. v. S.D.D.*, 2002 NFCA 18 at para. 25

<sup>12</sup> *R. v. Hundal*, [1993] 1 S.C.R. 867, at para. 27

<sup>13</sup> *supra* note 3

<sup>14</sup> *R. v. Daley*, 2007 SCC 53 at para. 44.

<sup>15</sup> *Supra* note 5. [Emphasis Added]

<sup>16</sup> *Supra* note 6. [Emphasis Added]



15. It follows from the requisite internal element of the offence, that is the intention to cause damage to property by fire or explosion or consciously take a risk (recklessness), that arson is a specific intent offence.

**C) POLICY CONSIDERATIONS**

16. There are sound policy reasons for treating arson as a specific intent offence. Arson can only be prosecuted by indictment. The maximum punishment is 14 years.<sup>17</sup> It is amongst the most serious offences we have.<sup>18</sup> Given the serious consequences, where the statutory language does not preclude it,<sup>19</sup> the requisite mental element ought to be exacting.

17. The Crown position would substitute the intent to drink alcohol, an entirely legal activity, or self-induced intoxication, for the actual intention to damage property by fire, a crime. This is an untenable position as there are many everyday activities undertaken with or without the consumption of alcohol that *could* result in damage to property by fire or

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<sup>17</sup> Penitentiary sentences are not uncommon for these offences.

<sup>18</sup> The following is a list of those offences for which the maximum sentence is 14 years: s. 245 Administering Noxious Thing – Intent to Endanger Life; s. 244.1 Air Gun or Pistol – Discharge causing Bodily Harm; s. 78 Aircraft Taking Offensive Weapons & Explosive Substances on Board; s. 434 Arson – Damage to Property; s.434.1 Arson – Own Property; s. 268 Aggravated Assault; s. 431 Attack Internationally Protected Persons; s. 431.1 Attack United Nations Personnel; s. 463(a) Attempts, Accessories; s. 119 Bribery of Judicial Officers; s. 120 Bribery Officers; s.455 Clipping and Uttering Clipped Coin; s. 459 Conveying Instruments for Coining Out of Mint; s. 241 Counseling or Aiding Suicide; ss. 376, 449, 450,458 Counterfeit Offences; s. 342 Criminal Breach of Trust; s. 467.12 Criminal Organization; s. 374 Drawing of Legal Documents; s. 81(1) (c), (d) Explosives placing or making; s. 82(2) Explosives Possession Criminal Organization; s. 346(1.1)(b) Extortion; s. 137 Fabricating Evidence; s. 244(2)(b) Firearm Discharging with Intent; s. 249.1(4) Flight from Police – Causing Bodily Harm or Death; s. 380(1)(a) Fraud over \$5000; s. 279.1(2)(a.1) Hostage Taking Firearm; s.279.1(2)(b) Hostage Taking other; s. 155 Incest; s. 423.1 Intimidation Justice System Participation or Journalist; s. 279(1)(1.1)(a) and (a.1) and (b) Kidnapping Offences; s. 249(4) Dangerous Operation Death; s. 375 Obtaining Instrument based on Forged Document; s.57(1) Passport Forgery or Uttering; ss. 131 and 132 Perjury; s. 337 Public Servant refusing to deliver property; ss. 343, 344(1)(a) and (a.1) Robbery Firearm Offences; ss.272(2)(a) and (a.1) and (b) Sexual Assault Weapon; s. 249.3 Street racing Bodily Harm; ss. 249(3) and (4) Street Racing Dangerous Operation of Vehicle Bodily Harm or Death; s. 269.1 Torture; s. 279.01(1)(b) Trafficking in Persons; s.452 Uttering Counterfeit Money; s. 136 Witness Giving Contradictory Evidence.

<sup>19</sup> This is to be contrasted with the suite of sexual offences that carry a maximum 14-year sentence, with various minimums, as the charging provision is not amenable to a specific intent interpretation. In this regard see offences under ss. 272(2)(a), (a.1) and (b).

explosion: take, for example, routine acts of cooking with a gas stove, or an open fire barbecue in one's backyard. Justice Pardu outlines a number of examples.<sup>20</sup>

18. The Crown, in paragraph 45 of its factum, asserts that the fact that drunken people (as a class of persons) behave irresponsibly and therefore are a greater risk to cause a fire is a justification to displace the intent prescribed in the provision. This argument should be rejected as it could be applied to any number of offences which would never be re-classified as general intent offences, such as attempted murder,<sup>21</sup> break and enter with intent,<sup>22</sup> robbery,<sup>23</sup> carrying concealed weapon,<sup>24</sup> possession of counterfeit money,<sup>25</sup> and forgery<sup>26</sup> to name a few. Moreover, adjusting the classification of offences to eliminate the availability of certain defences on the basis of perceived "social ills" is the wrong way for judges to approach classification. Such concerns are properly left to Parliament. Indeed, as far as self-intoxication is concerned, Parliament has addressed the scope of the defence by operation of s.33.1 of the *Code*.<sup>27</sup> Instead, this Honourable Court should look to the relationship between intention and the prohibited act, and ask which of a specific or general intent paradigm provides sufficient proximity between the two to justify criminal liability.

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<sup>20</sup> See *R v Tatton*, 2014 ONCA 273 at para. 47, hereinafter referred to as *Tatton ONCA*, wherein Pardu J.A. lists household activities which could result in a fire, such as "placing a pan on a stove burner, smoking a cigarette, or lighting a candle", any of which could be undertaken while consuming or having consumed alcohol.

<sup>21</sup> S. 239 of the *Criminal Code*.

<sup>22</sup> S. 348 of the *Criminal Code*.

<sup>23</sup> S. 343 of the *Criminal Code*.

<sup>24</sup> S. 90 of the *Criminal Code*.

<sup>25</sup> S. 450 of the *Criminal Code*.

<sup>26</sup> S. 366 of the *Criminal Code*.

<sup>27</sup> Section 33.1 prescribes that:

33.1 (1) It is not a defence to an offence referred to in subsection (3) that the accused, by reason of self-induced intoxication, lacked the general intent or the voluntariness required to commit the offence, where the accused departed markedly from the standard of care as described in subsection (2).

(2) For the purposes of this section, a person departs markedly from the standard of reasonable care generally recognized in Canadian society and is thereby criminally at fault where the person, while in a state of self-induced intoxication that renders the person unaware of, or incapable of consciously controlling, their behaviour, voluntarily or involuntarily interferes or threatens to interfere with the bodily integrity of another person.

(3) This section applies in respect of an offence under this Act or any other Act of Parliament that includes as an element an assault or any other interference or threat of interference by a person with the bodily integrity of another person.

19. In considering the proximity question, the following four hypothetical actors and their attendant mental states favour treating arson as a specific intent offence:

- a) Person A – Plants and detonates a pipe bomb and destroys property;
- b) Person B – While making dinner, having not had anything to drink, fails to turn off the gas, which ignites catching fire destroying the property. There is no evidence of mechanical defect;
- c) Person C – Heavily intoxicated, although not an automaton, while making dinner fails to turn off the gas, which ignites catching fire destroying the property. There is no evidence of mechanical defect;
- d) Person D – Extremely intoxicated to the point of an automaton while making dinner fails to turn off the gas, which ignites catching fire destroying the property. There is no evidence of mechanical defect.

Person A is clearly morally culpable. Person D is clearly not morally culpable. However, Person B and C are similarly placed. Neither carried on in spite of perceiving the risk (recklessness). Nor did either person *intend* to damage the property by fire. Under the Crown's construction,<sup>28</sup> both would be culpable. In the case of Person B the act of turning on and leaving the stove satisfies the intention requirement, as a matter of general intent. In the case of Person C, a sane and sober person would turn the stove off. Neither actor could successfully claim accident.<sup>29</sup>

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<sup>28</sup> See paragraph 34 of the Crown's Factum, in particular the notion that failing to adhere to a standard of prudence can found liability on a recklessness standard.

<sup>29</sup> If arson were to be understood to be a general intent offence, the defence of accident would relate to the cause of the fire being unexpected or occurring by chance. Accident has been defined as: "mishap or untoward event not expected or designed", or "unforeseen contingency or occurrence." (*R v Whitehorse* 2005 CanLII 34553 (NLPC) at para. 51 and *Hill v R*, (1974) 14 CCC (2d) 505 at p. 405-406). Where a crime is classified as general intent, these offences require the Crown to establish that the accused performed the illegal acts "intentionally" in the sense that they are not done by accident or through honest mistake (*R. v. L.(S.)*, 2011 ONCJ 806 at para. 40). The defence of accident generally relates to an unexpected or chance event so unreasonably foreseeable that it exculpates the accused from any blameworthy conduct preceding the accident (*R. v. D.M.I.*, 2009 ABPC 127 at para. 124).

20. Reclassifying arson as a general intent offence would extend the reach of criminal liability to circumstances in which proximity of intent to the prohibited conduct is remote or non-existent. Accordingly, as a matter of policy, arson is a specific intent offence.

**D) CONCLUSION**

21. Ultimately, the text of the provision favours treating arson as a specific intent offence. There are sound policy reasons to support this conclusion as the gravamen of the offence is intending to damage property by fire or explosion. Given the multitude of everyday activities that potentially can cause fire, it is morally just to brand and punish as arsonists those who intend to damage property by fire or explosion. Persons who do not harbour that intention or the requisite reckless state of mind should not be so branded.

**PART IV – COSTS**


22. The CLA seeks no costs and asks that no costs be awarded against it.

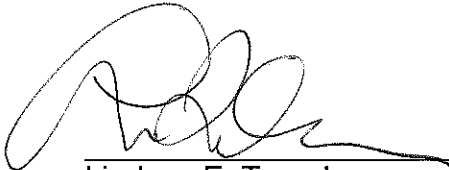
**PART V – ORDER SOUGHT**

23. The CLA takes no position on the ultimate disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Toronto this 27<sup>th</sup> day of November, 2014.

  
\_\_\_\_\_  
Anil K. Kapoor

  
\_\_\_\_\_  
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**PART VI - AUTHORITIES**

	<b>Paragraph</b>
<i>R v Sault Ste Marie</i> , [1978] 2 SCR 1299	3
<i>Levis (City) v Tetrault</i> , [2006] 1 SCR 420	3
<i>R v Desousa</i> , [1992] 2 SCR 944	3
<i>R v Creighton</i> , [1993] 3 SCR 3	3, 12
<i>R v Pontes</i> , [1995] 3 SCR 44	3
<i>R v George</i> , [1906] SCR 289 at 306	7, 13
<i>R v D (SD)</i> , 2002 NFCA 18, 164 CCC (3d) 1, 1 CR (6th) 5	10, 13
<i>R v Sansregret</i> , [1985] 1 SCR 570	13
<i>R v Hundal</i> , [1993] 1 SCR 867	13
<i>R v Daley</i> , 2007 SCC 53	13
<i>R v Tatton</i> , 2014 ONCA 273	17
<i>R v Whitehorne</i> , [2005] N.J. No. 299	19
<i>Hill v R</i> (1974), 14 CCC (2d) 505	19
<i>R v L(S)</i> , 2011 ONCJ 806	19
<i>R v DMI</i> , 2009 ABPC 127	19

**SECONDARY SOURCES**

The Honorable Justice Watt, <i>Watt's Manual of Criminal Jury Instructions</i> , Thomson Canada Ltd, 2005	10, 14
Gerry A Ferguson; Michael R Dambrot; Elizabeth A Bennett, <i>Criminal Jury Instructions (CRIMJI) Vancouver: Continuing Legal Education Society of British Columbia, 2005, 4<sup>th</sup> ed.</i>	10, 14

**PART VII - TABLE OF STATUTES**

**Criminal Code, SC 1985, c C-46**

**Arson — damage to property**

**434.** Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., 1985, c. C-46, s. 434;  
1990, c. 15, s. 1.

**Attempt to commit murder**

**239.** (1) Every person who attempts by any means to commit murder is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

**Incendie criminel : dommages matériels**

**434.** Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque, intentionnellement ou sans se soucier des conséquences de son acte, cause par le feu ou par une explosion un dommage à un bien qui ne lui appartient pas en entier.

L.R. (1985), ch. C-46, art. 434;  
1990, ch. 15, art. 1.

**Tentative de meurtre**

**239.** (1) Quiconque, par quelque moyen, tente de commettre un meurtre est coupable d'un acte criminel passible :

a) s'il y a usage d'une arme à feu à autorisation restreinte ou d'une arme à feu prohibée lors de la perpétration de l'infraction, ou s'il y a usage d'une arme à feu lors de la perpétration de l'infraction et que celle-ci est perpétrée au profit ou sous la direction d'une organisation criminelle ou en association avec elle, de l'emprisonnement à perpétuité, la peine minimale étant :

(i) de cinq ans, dans le cas d'une première infraction,

(ii) de sept ans, en cas de récidive;

(a.1) dans les autres cas où il y a usage d'une arme à feu lors de la perpétration de l'infraction, de l'emprisonnement à perpétuité, la peine minimale étant de quatre ans;

b) dans tous les autres cas, de l'emprisonnement à perpétuité.

### **Breaking and entering with intent, committing offence or breaking out**

- 348.** (1) Every one who
- (a) breaks and enters a place with intent to commit an indictable offence therein,
  - (b) breaks and enters a place and commits an indictable offence therein, or
  - (c) breaks out of a place after
    - (i) committing an indictable offence therein, or
    - (ii) entering the place with intent to commit an indictable offence therein, is guilty
  - (d) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life, and
  - (e) if the offence is committed in relation to a place other than a dwelling-house, of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

### **Robbery**

- 343.** Every one commits robbery who
- (a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;
  - (b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person;
  - (c) assaults any person with intent to steal from him; or

### **Introduction par effraction dans un dessein criminel**

- 348.** (1) Quiconque, selon le cas :
- a) s'introduit en un endroit par effraction avec l'intention d'y commettre un acte criminel;
  - b) s'introduit en un endroit par effraction et y commet un acte criminel;
  - c) sort d'un endroit par effraction :
    - (i) soit après y avoir commis un acte criminel,
    - (ii) soit après s'y être introduit avec l'intention d'y commettre un acte criminel, est coupable :
  - d) soit d'un acte criminel passible de l'emprisonnement à perpétuité, si l'infraction est commise relativement à une maison d'habitation;
  - e) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans ou d'une infraction punissable sur déclaration de culpabilité par procédure sommaire si l'infraction est commise relativement à un endroit autre qu'une maison d'habitation.

### **Vol qualifié**

- 343.** Commet un vol qualifié quiconque, selon le cas :
- a) vole et, pour extorquer la chose volée ou empêcher ou maîtriser toute résistance au vol, emploie la violence ou des menaces de violence contre une personne ou des biens;
  - b) vole quelqu'un et, au moment où il vole, ou immédiatement avant ou après, blesse, bat ou frappe cette personne ou se porte à des actes de violence contre elle;
  - c) se livre à des voies de fait sur une personne avec l'intention de la voler;
  - d) vole une personne alors qu'il est muni

(d) steals from any person while armed with an offensive weapon or imitation thereof.

R.S., c. C-34, s. 302.

### **Carrying concealed weapon**

90. (1) Every person commits an offence who carries a weapon, a prohibited device or any prohibited ammunition concealed, unless the person is authorized under the Firearms Act to carry it concealed.  
Punishment

(2) Every person who commits an offence under subsection (1)

(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.

R.S., 1985, c. C-46, s. 90; 1991, c. 28, s. 6, c. 40, ss. 4, 35; 1994, c. 44, s. 6; 1995, c. 39, s. 139.

### **Possession, etc., of counterfeit money**

450. Every one who, without lawful justification or excuse, the proof of which lies on him,

(a) buys, receives or offers to buy or receive,

(b) has in his custody or possession, or

(c) introduces into Canada, counterfeit money is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., c. C-34, s. 408.

### **Forgery**

366. (1) Every one commits forgery who makes a false document, knowing it to be false, with intent

d'une arme offensive ou d'une imitation d'une telle arme.

S.R., ch. C-34, art. 302.

### **Port d'une arme dissimulée**

90. (1) Commet une infraction quiconque porte dissimulés une arme, un dispositif prohibé ou des munitions prohibées sans y être autorisé en vertu de la Loi sur les armes à feu.  
Peine

(2) Quiconque commet l'infraction prévue au paragraphe (1) 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.

L.R. (1985), ch. C-46, art. 90; 1991, ch. 28, art. 6, ch. 40, art. 4 et 35; 1994, ch. 44, art. 6; 1995, ch. 39, art. 139.

### **Possession, etc. de monnaie contrefaite**

450. Quiconque, sans justification ou excuse légitime, dont la preuve lui incombe, selon le cas :

a) achète, reçoit ou offre d'acheter ou de recevoir;

b) a en sa garde ou possession;

c) introduit au Canada, de la monnaie contrefaite, est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans.

S.R., ch. C-34, art. 408.

### **Faux**

366. (1) Commet un faux quiconque fait un faux document le sachant faux, avec l'intention, selon le cas :



(a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or

(b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.

### **When defence not available**

33.1 (1) It is not a defence to an offence referred to in subsection (3) that the accused, by reason of self-induced intoxication, lacked the general intent or the voluntariness required to commit the offence, where the accused departed markedly from the standard of care as described in subsection (2).

Criminal fault by reason of intoxication

(2) For the purposes of this section, a person departs markedly from the standard of reasonable care generally recognized in Canadian society and is thereby criminally at fault where the person, while in a state of self-induced intoxication that renders the person unaware of, or incapable of consciously controlling, their behaviour, voluntarily or involuntarily interferes or threatens to interfere with the bodily integrity of another person.

Application

(3) This section applies in respect of an offence under this Act or any other Act of Parliament that includes as an element an assault or any other interference or threat of interference by a person with the bodily integrity of another person.

1995, c. 32, s. 1.

a) qu'il soit employé ou qu'on y donne suite, de quelque façon, comme authentique, au préjudice de quelqu'un, soit au Canada, soit à l'étranger;

b) d'engager quelqu'un, en lui faisant croire que ce document est authentique, à faire ou à s'abstenir de faire quelque chose, soit au Canada, soit à l'étranger.

### **Non-application du moyen de défense**

33.1 (1) Ne constitue pas un moyen de défense à une infraction visée au paragraphe (3) le fait que l'accusé, en raison de son intoxication volontaire, n'avait pas l'intention générale ou la volonté requise pour la perpétration de l'infraction, dans les cas où il s'écarte de façon marquée de la norme de diligence énoncée au paragraphe (2).

Responsabilité criminelle en raison de l'intoxication

(2) Pour l'application du présent article, une personne s'écarte de façon marquée de la norme de diligence raisonnable généralement acceptée dans la société canadienne et, de ce fait, est criminellement responsable si, alors qu'elle est dans un état d'intoxication volontaire qui la rend incapable de se maîtriser consciemment ou d'avoir conscience de sa conduite, elle porte atteinte ou menace de porter atteinte volontairement ou involontairement à l'intégrité physique d'autrui.

Infractions visées

(3) Le présent article s'applique aux infractions créées par la présente loi ou toute autre loi fédérale dont l'un des éléments constitutifs est l'atteinte ou la menace d'atteinte à l'intégrité physique d'une personne, ou toute forme de voies de fait.

1995, ch. 32, art. 1.

HER MAJESTY THE QUEEN  
Appellant

- and -

PAUL FRANCIS TATTON  
Respondent

- and -

THE CRIMINAL LAWYERS' ASSOCIATION  
Intervener

Court File No. 35866

*Service of a copy hereof admitted*

*this 26 day of November 2014.*

*J. Douglas Grenke per [unclear] [unclear]*  
SOLICITOR FOR

*Respondent, Paul Francis Tatton*

*Service of a copy hereof admitted*

*this 26 day of November 2014.*

*R. Schwartz per [unclear] [unclear]*  
SOLICITOR FOR

*Appellant, Her Majesty the Queen*

IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE  
COURT OF APPEAL FOR ONTARIO)

MEMORANDUM OF ARGUMENT  
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