SCC File No. 39438

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant
(Appellant)

-and-

OCEAN WILLIAM STORM HILBACH
CURTIS ZWOZDESKY

Respondents
(Respondents)

-and-

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(Rules 37 and 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

1. Canadian courts need further guidance on how the second, "reasonable hypothetical" stage of s. 12 *Charter* analysis should be performed. If this Court rejects Ontario's primary position as set out in *R. v. Hills* – "hypothetical personal characteristics, and indeed particular hypothetical scenarios, can be discarded"[1] – this Court should still make clear that personal mitigating factors that speak only to, as Mr. Zwozdesky puts it, "the kinds of people" who might commit a crime must be excluded: they unhelpfully divert attention to irrelevant considerations. The only relevant hypothetical personal characteristics are those that elucidate a feature of the impugned law by demonstrating its breadth or the nature of the punishment it imposes.

2. The Court of Appeal of Alberta majority was wrong to strike down the mandatory minimum sentences for robbery using an ordinary firearm (s. 344(1)(*a*.1)) and robbery using a restricted or prohibited firearm (s. 344(1)(*a*)(i)). The court relied on faulty hypotheticals and failed to grapple with whether the laws produce effects that are cruel and unusual – *i.e.* incompatible with an offender's human dignity. The court lost sight of the seriousness of robbery using a firearm, which invariably involves the use of a terrorizing and potentially lethal weapon to further a robbery, and a human victim who suffers an acute and immediate risk of physical and psychological harm. A four- or five-year sentence for this crime – far from cruel and unusual – accurately reflects the seriousness and dangerousness of the conduct, the moral blameworthiness of the offender, and the manifest need to deter and denounce interpersonal gun violence in the strongest possible terms.

3. Ontario takes no position on the facts.

PART II – POINTS IN ISSUE

4. Ontario submits that the Court should explain that (*a*) if hypotheticals are part of the s. 12 analysis, personal characteristics can be added to a "reasonable hypothetical" only if they elucidate something about the impugned law itself; (*b*) the impugned minimum sentences are constitutional; and (*c*) this Court has no apparent jurisdiction to stay the service of a constitutionally valid mandatory sentence.

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[1] Factum of the Attorney General of Ontario, *R. v. Hills* SCC 39338, at para. 47.

PART III – STATEMENT OF ARGUMENT

A. The constitutionality of a law cannot turn on hypothetical scenarios positing "the kinds of people" who might commit a crime

1. *Nur* has been wrongly interpreted, resulting in a deluge of personal characteristics

5. Mr. Zwozdesky says that the second, reasonable-hypothetical stage of s. 12 analysis should include consideration of hypothetical facts demonstrating the "kinds of people" who commit a crime.[2] This submission should be rejected. Personal characteristics added indiscriminately to hypothetical fact scenarios can "overwhelm the analysis" and cause courts to "lose sight of the seriousness of the conduct that the mandatory minimum proscribes".[3] Perhaps recognizing this, in *R. v. Nur*, the majority described results it sought to avoid in the second stage of s. 12 analysis: the outcome should not turn on "the bounds of a particular judge's imagination" or "lawyerly ingenuity"; the unchecked use of personal characteristics would improperly render "almost any mandatory minimum" unconstitutional; and it would be "unfortunate" if courts treated decisions as devoid of precedential value simply because "a trial judge fails to assign a particular concatenation of characteristics to her hypothetical".[4]

6. Despite the *Nur* majority's evident intent to limit the use of hypothetical sympathetic personal characteristics, Mr. Zwozdesky's submission correctly alludes to recent developments in the jurisprudence. Personal characteristics now often drive the s. 12 analysis and disrupt the precedential effect of binding appellate judgments. These developments can perhaps be traced to two passages in the *Nur* majority's reasons, which, when read entirely in isolation, appear somewhat ambiguous.

7. In the first passage,[5] the *Nur* majority sought to limit the use of personal characteristics at the second stage of s. 12 analysis. The majority affirmed "the admonition of *Goltz* that far-fetched or remotely imaginable examples should be excluded from consideration. This excludes using personal features to construct the most innocent and sympathetic case."[6] At the same time, the

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[2] Factum of the respondent Zwozdesky, at paras. 27, 43.
[3] *R. v. Lloyd*, 2016 SCC 13, at para. 102, *per* Wagner, Gascon and Brown JJ., dissenting, but not on this point.
[4] *R. v. Nur*, 2015 SCC 15, at paras. 57, 61, 75.
[5] *Ibid*., at paras. 74-76.
[6] *Ibid*., at para. 75.

majority explained that "personal characteristics cannot be entirely excluded":[7] courts may consider "personal characteristics relevant to people who may be caught by the mandatory minimum, but must avoid characteristics that would produce remote or far-fetched examples".[8]

8. Uncertainty remains on the extent to which courts may imbue hypothetical fact scenarios with personal mitigating factors.[9] What principle distinguishes permissible personal characteristics from "far-fetched" ones? The uncertainty has led to disagreement on whether particular hypotheticals are reasonable. Such disagreement has in turn led to the inconsistent application of criminal laws throughout Canada. For instance, disagreement between appellate courts on the reasonableness of a particular hypothetical fact scenario means a mandatory minimum sentence for sexual exploitation now operates in some but not all Canadian jurisdictions.[10]

9. A broad conception of what remains permissible is evident in some recent s. 12 decisions, which have relied on hypothetical offenders imbued with personal characteristics, like age, gender, motive, the absence of past criminality, pro-social pre- and post-offence conduct, rehabilitative potential and efforts, and extra-judicial consequences including media attention.[11] In the present appeal, Mr. Zwozdesky asserts that courts constructing hypotheticals should consider not only the kind of conduct the law may reach but also "the characteristics of foreseeable offenders who might commit [the crime at issue]", like addiction, pre-sentencing rehabilitation, intellectual disability, mental illness, poverty and homelessness.[12] Mr. Zwozdesky seeks to invalidate one minimum

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[7] *Ibid*., at para. 74.
[8] *Ibid*., at para. 76.
[9] See *e.g. R. v. Ford*, 2019 ABCA 87, at paras. 12-16; *R. v. Plange*, 2019 ONCA 646, at paras. 70-71, *per* Doherty J.A., dissenting on the constitutionality of a minimum sentence; Derek Spencer, "A Reasonable Approach to the Hypothetical Offender" (2019) 67 C.L.Q. 274, at 1 "Introduction"; Michael Plaxton "Can a reasonable hypothetical offender be Aboriginal?", *Policy Options* (April 18, 2015), online.
[10] *Lloyd*, *ibid.*, at paras. 89-100; *R. v. Hood*, 2018 NSCA 18, at paras. 150-156; *R. v. E.J.B.*, 2018 ABCA 239, at paras. 61-66 & 73, leave to appeal to S.C.C. refused, [2018] S.C.C.A. No. 441; *R. v. E.O.*, 2019 YKCA 9, at paras. 50-53.
[11] See *e.g. R. v. J.C.*, 2017 ONSC 4246, at paras. 65-72, rev'd on other grounds, 2018 ONCA 986; *R. v. Robertson*, 2020 BCCA 65, at paras. 63-69; *R. v. Antwi*, 2016 ONSC 4325, at paras. 15, 17 & 48; *Hood*, *supra*, at para. 150; *R. v. Scofield*, 2019 BCCA 3, at para. 82; *Ford*, *supra*, at para. 16; *R. v. Joseph*, 2020 ONCA 733, at para. 150; *R. v. Elliot*, 2016 BCSC 393, at para. 57, aff'd 2017 BCCA 214; *R. v. Drumonde*, 2019 ONSC 1005, at paras. 54-55.
[12] Factum of the respondent Zwozdesky, at para. 27.

sentence by pointing to fully rendered hypothetical people, with rich and detailed backgrounds.[13] It is difficult to accept that this is what the *Nur* majority intended.

10. In the second passage,[14] the *Nur* majority sought to ensure that the ordinary rules of *stare decisis* would dictate whether prior s. 12 rulings should be followed in later cases. The majority held that "[o]nce a law is held not to violate s. 12, *stare decisis* prevents an offender in a later case from simply rearguing what constitutes a reasonably foreseeable range of the law." Courts could still look "at different circumstances and new evidence" not considered by the earlier court, including "different foreseeable applications". However, "the threshold for revisiting the constitutionality of a mandatory minimum is high and requires a significant change in the reasonably foreseeable applications of the law."[15]

11. Notwithstanding this high threshold, the permission to consider "in future [cases…] different reasonable applications", combined with a broad view of the personal characteristics that can be considered, has been taken as an invitation to conduct the analysis anew when an offender states a new hypothetical collection of mitigating factors.[16] Consider *R. v. Abdelrazzaq*, where the Ontario provincial court found unconstitutional a punishment that the Court of Appeal for Ontario had upheld less than four months earlier in *R. v. Chung*. The provincial court held it was not bound by *Chung*, but instead bound "to consider the [new] reasonable hypotheticals advanced by the Applicant". The court noted that "[t]he Court of Appeal could only deal with the issues and the reasonable hypotheticals before it, and its findings must be interpreted in that light."[17] The court then found the law at bar unconstitutional based on its hypothetical effects on highly sympathetic people, taken from other cases, who had not been subjected to the punishment at issue.[18] Allowing s. 12 challenges to turn on personal characteristics rather than something inherent in the law can diminish certainty in the law and the precedential effect of court judgments.

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[13] Factum of the respondent Zwozdesky, at paras. 63-77.
[14] *Nur*, *supra*, at para. 71.
[15] *Ibid*.
[16] See *e.g. Plange*, *supra*, at paras. 30, 37.
[17] *R. v. Chung*, 2021 ONCA 188, leave to appeal to S.C.C. sought, 39705; *R. v. Abdelrazzaq*, Court file No. Ottawa 20-30051, Ont. C.J., at paras. 83-84.
[18] *Abdelrazzaq*, *ibid*., at paras. 85-95, 99-104, 136-138.

2. This Court should affirm *Nur*'s principled limits on using personal characteristics

12. While the passages in the majority's reasons discussed above may at first appear ambiguous, the ambiguity dissolves when the reasons are read as a whole. If this Court rejects Ontario's position in *Hills* and holds that hypothetical situations and personal characteristics should still be considered, for three reasons, the Court should affirm the limits on that approach evident in *Nur*.[19] Personal characteristics may be considered if they assist in statutory interpretation – *i.e.* elucidate something about the law itself. However, ones that show only, as Mr. Zwozdesky says, "the kinds of people" who might commit a crime must not be considered:

a. *Nur* affirmed a settled approach in the jurisprudence by excluding "mitigating factors specific to the offender" from the second stage of s. 12 analysis;

b. Mr. Zwozdesky's approach would add only irrelevant information; and

c. Mr. Zwozdesky's approach would disrupt the operation of the ordinary rules of *stare decisis*.

a. *Nur* affirmed a settled approach in the jurisprudence by excluding "mitigating factors specific to the offender" from the second stage of s. 12 analysis

13. Although this Court's early s. 12 decision *R. v. Smith* could be characterized as having relied on a hypothetical "most innocent possible offender", this Court quickly moved away from an approach laden with mitigating factors like the offender's age or motive. As the Court of Appeal for Ontario observed in *Nur*, in *R. v. Goltz*, this Court narrowed the approach by focussing "on imaginable circumstances which could commonly arise in day-to-day life." Later, in *R. v. Morrisey*, a majority of this Court expressed reluctance "to enter into a case-by-case analysis of the specific circumstances". The majority held that the proper approach was to instead "develop imaginable circumstances which could commonly arise with a degree of generality appropriate to the particular offence."[20] In other words, the constituent elements of the offence dictate how

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[19] See *e.g.* Derek Spencer, "A Reasonable Approach to the Hypothetical Offender" (2019) 67 C.L.Q. 274, at 4.(a) "Clarity and Consistency".

[20] *R. v. Smith*, [1987] 1 S.C.R. 1045, at p. 1053; *R. v. Goltz*, [1991] 3 S.C.R. 485, at pp. 515-516; *R. v. Morrisey*, 2000 SCC 39, at paras. 50-52; *R. v. Nur*, 2013 ONCA 677, at paras. 135-37, 142, aff'd 2015 SCC 15, ("*Nur* ONCA"); see also Palma Paciocco, "Proportionality, Discretion, and the Roles of Judges and Prosecutors at Sentencing" (2014) 18 Can. Crim. L. Rev. 241, at p. 259; Derek Spencer, "A Reasonable Approach to the Hypothetical Offender" (2019) 67 C.L.Q. 274, at 2. "Mandatory Minimum Sentences in Canada".

general or specific the hypothetical should be. The features of the law drive the analysis.

14. The *Nur* majority affirmed this approach without changing it.[21] The majority emphasized that the second stage of s. 12 analysis focusses on identifying conduct that might be caught by the offence at bar. Hypotheticals assist in discerning the "reasonably foreseeable" scope of the law, by showing "the sort of situations that may reasonably be expected to be caught by the mandatory minimum" (emphasis added), "what situations may reasonably arise" (emphasis added), and the circumstances "foreseeably captured by the minimum conduct caught by the offence" (emphasis added). "Determining the reasonable reach of a law is essentially a question of statutory interpretation." "What is the reach of the law? What kind of conduct may the law reasonably be expected to catch? What is the law's reasonably foreseeable impact?" (emphasis added).[22]

15. Consistent with this focus on the reach of the law, the majority explained that when courts consider whether to revisit a ruling that a mandatory minimum does not violate s. 12, different classes of evidence are relevant under the first stage (dealing with the offender before the court) and second stage (dealing with hypothetical situations). The Court adverted to "mitigating factors specific to the offender" as information that could be considered at the first stage, but omitted this type of information when listing what could be considered at the second stage. This approach is consistent with the Court of Appeal for Ontario's holding in *Nur* that if highly mitigating situations arise in a real case, they might invalidate a mandatory minimum, but if they do not arise, the prospect that they might will be insufficient to invalidate the mandatory minimum.[23]

16. As the *Nur* majority intended the analysis to involve "essentially […] statutory interpretation", the comment in *Nur* that "personal characteristics cannot be entirely excluded" should be understood to have opened the door only a crack.[24] The majority explained this comment by pointing to personal characteristics that highlighted the breadth of the firearm-possession

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[21] *R. v. McIntyre*, 2019 ONCA 161, at para. 13.
[22] *Nur*, *supra*, at paras. 61, 68, 74; see also *R. v. Morrison*, 2019 SCC 15, at paras. 169-171, *per* Karakatsanis J. on a point not considered by the majority.
[23] *Nur*, *supra*, at para. 71; *Nur* ONCA, *supra*, at para. 122; *c.f. R. v. Vu*, 2018 ONCA 436, at para. 24; *Plange*, *supra*, at para. 70, *per* Doherty J.A., dissenting but not on this point.
[24] See Derek Spencer, "A Reasonable Approach to the Hypothetical Offender" (2019) 67 C.L.Q. 274, at 4.(c) "Allowance for Individualization".

offence before the Court. The offence captured both legal and illegal acquisition of a firearm and a broad range of mental states (from knowing illegal possession to possession believed to be legal based on a mistaken understanding of a regulatory regime).[25] The majority marshalled these characteristics to further "an inquiry into the range or scope of the law".[26] These features elucidated the scope of the law and showed that its act and fault requirements were broad enough to capture situations where the minimum sentence would be irrational and extreme.

17. Mr. Zwozdesky is wrong to suggest that *R. v. Boudreault* and *R. v. Lloyd* have overtaken *Nur*.[27] In *Boudreault*, the majority explained that "referring to 'hypotheticals' in this case is somewhat of a misnomer. The 'reasonable hypothetical' offender urged on this Court is Mr. Michael; not a fabrication, but a real person." The majority analyzed the mandatory victim surcharge based on the offenders before the Court and an offender – Shaun Michael – who was not before the Court but had been subject to the impugned law and had challenged its constitutionality successfully.[28]

18. While *Boudreault* is not truly about hypothetical facts, it shows a second way in which a hypothetical personal characteristic might elucidate something relevant about a law, in addition to the way they were used in *Nur* to disclose the scope of the law. The personal characteristic of impecuniosity elucidated the way in which the victim surcharge and its enforcement regime could affect one person differently, and more harshly, than another. The nature of a punishment's effect on an offender is relevant to its constitutionality.[29]

19. The *Lloyd* majority relied on two hypotheticals. The first involved someone sharing a small quantity of, *e.g.*, cocaine with friends, after years earlier sharing a small quantity of marijuana with friends. The personal characteristics elucidated the scope of the law. For example, it highlighted that the legal concept of trafficking captures not only large-scale financially motivated transactions, but also passing a joint in a social setting.[30]

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[25] *Nur*, *supra*, at paras. 79, 82-83.
[26] *Ibid*., at para. 60.
[27] See Factum of the respondent Zwozdesky, at para. 27.
[28] See *R. v. Michael*, 2014 ONCJ 360.
[29] *R. v. Boudreault*, 2018 SCC 58, at paras. 50, 55; *R. v. Newborn*, 2020 ABCA 120, at para. 46.
[30] *Lloyd*, *supra*, at paras. 6, 32.

20. The second *Lloyd* hypothetical involved a reformed drug user before the court who was twice convicted of trafficking that he undertook only to obtain drugs to feed his addiction. This hypothetical may be read as a colourful illustration of the diverse forms of drug trafficking the law captured. It has also been read by Mr. Zwozdesky as signalling a broader permissible use of personal characteristics like addiction and recovery. The *Lloyd* majority's use of personal characteristics and their comment expressing concern about mandatory minimums applying to offences that can be committed by "a wide range of people", could suggest the *Lloyd* majority disagreed with the *Nur* majority.[31] However, it should not be assumed that the *Lloyd* majority intended to implicitly change the law and depart from the approach affirmed in *Nur*. The unexplained broader conception of permissible personal characteristics perhaps alluded to in *Lloyd*, and evident in Mr. Zwozdesky's proposed approach, should not be adopted. This Court should instead affirm the *Nur* approach as a principled constraint on s. 12 analysis.

b. Mr. Zwozdesky's approach would add only irrelevant information to the analysis

21. As discussed above, it appears that the majority of this Court (and the unanimous Court of Appeal) in *Nur* intended courts to consider "mitigating factors specific to the offender" only at the first stage of s. 12 analysis (focussed on the offender before the court). This is a sound and principled limitation on their use, which this Court should endorse if it retains the use of hypothetical scenarios in the analysis.

22. The premise driving the first stage of s. 12 is that cruel and unusual punishment must not be imposed. Permitting the use of personal mitigating factors at the first stage properly ensures that if a real "most innocent and sympathetic case imaginable"[32] comes before a court and the offender challenges the minimum sentence, the sentence will fall.

23. The premise driving the second stage of s. 12 analysis is that if it is reasonably foreseeable that a law will produce unconstitutional effects, the law itself is defective and must be struck

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[31] *Lloyd*., *supra*, at paras. 33, 35 (McLachlin C.J.), 88 (Wagner, Gascon, Brown JJ., dissenting); Factum of the Attorney General of Ontario, *R. v. Hills* SCC 39338, at paras. 44-46; Factum of the respondent Zwozdesky, at para. 27.
[32] *Nur*, *supra*, at para. 75.

down.[33] If a finding of unconstitutionality would depend on an offender with certain mitigating characteristics committing the offence, courts should not treat that possibility as reasonably foreseeable. The unconstitutional scenario involving the determinative mitigating factors may never arise in real life. Even if it does, it may arise in conjunction with aggravating factors that show that the minimum sentence would not be cruel and unusual. Robbery using a firearm has been subject to a four-year mandatory minimum since 1996. If an unconstitutional mix of facts and mitigating personal characteristics has never arisen in a reported case, is the prospect of it arising anything more than speculative?

24. Personal characteristics should be maintained in the analysis only to the extent they contribute something useful. The *Nur* majority was rightly concerned that by adding too many personal characteristics "almost any mandatory minimum could be argued to violate s. 12".[34] If an applicant is permitted to "stack mitigating circumstance upon circumstance […] the mandatory minimum" will eventually be "crushed by the resulting weight of the mitigation."[35] This approach is flawed, because not all mandatory minimums offend s. 12.[36] Several have been upheld by this Court.[37] So long as mandatory minimums are not *per se* unconstitutional, the legal test under s. 12 must provide tools to distinguish unconstitutional laws from constitutional ones.

25. This Court's jurisprudence shows two ways that personal characteristics can be used to distinguish unconstitutional laws from constitutional ones. In *Nur* and the first *Lloyd* hypothetical, for example, the majorities pointed to characteristics that elucidated the scope of the impugned laws (*i.e.* the range of conduct to which they applied). In *Boudreault*, the majority pointed to

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[33] *Nur* ONCA, at paras. 110-11; *Nur*, at paras. 51, 57-58.
[34] *Ibid*., at para. 75; see also Don Stuart, "Boudreault: The Supreme Court Strikes Down Mandatory Victim Surcharges to Protect Vulnerable Offenders" (2019) 50 CR-ART 276, who sees all mandatory minimums, including for murder, as vulnerable as a result of a broader use of personal characteristics.
[35] See Derek Spencer, "A Reasonable Approach to the Hypothetical Offender" (2019) 67 C.L.Q. 274, at "3."
[36] *Lloyd*, *supra*, at para. 60, *per* Wagner, Gascon and Brown JJ., dissenting but not on this point.
[37] See *R. v. Luxton*, [1990] 2 S.C.R. 711 (first-degree murder); *Goltz*, *supra* (driving while prohibited); *Morrisey*, *supra* (criminal negligence causing death with a firearm); *R. v. Latimer*, 2001 SCC 1 (second-degree murder); *R. v. Ferguson*, 2008 SCC 6 (manslaughter with firearm).

characteristics that elucidated a law's effects (*i.e.* the harsh treatment it meted out).[38] Elucidating these aspects of a law may demonstrate "a failure of instrumental rationality" – *i.e.* that the offence's essential elements or punishments have been crafted in a way that results in punitive consequences in some cases that are irrational and extreme.[39] This type of 'failure' – present in some but not all laws – may aid in distinguishing unconstitutional from constitutional laws.

26. Analyzing the "kinds of people" who might commit an offence sheds no further light on a law's constitutionality.[40] In *Lloyd*, the majority held that "[t]he wider the range of conduct and circumstances captured by the mandatory minimum, the more likely it is that the mandatory minimum will apply to offenders for whom a sentence would be grossly disproportionate".[41] Mr. Zwozdesky invokes this idea in arguing that courts should consider "the sympathetic stories of the people who" might commit the offence at issue.[42]

27. For the concept of breadth to meaningfully distinguish unconstitutional and constitutional laws, it must be applied to a measurable factor that varies depending on the law at issue. Attempting to define the "kinds of people" who may commit a particular crime is unhelpful. This factor does not vary on an offence-by-offence basis in an objectively measurable way. There is no identifiable "range of person" who can commit an offence. Any offence can be committed by any person. All offences – assessed in this light – cast an equally broad net.

c. Mr. Zwozdesky's approach would disrupt the operation of the ordinary rules of *stare decisis*

28. The unchecked use of personal characteristics can lead courts to ignore precedent and repeat the s. 12 analysis whenever a new hypothetical offender is constructed. Under the ordinary rules of *stare decisis*, a decision is not binding in subsequent distinguishable facts. If a s. 12 decision can turn on a hypothetical combination of personal characteristics, a new combination could distinguish an earlier case upholding the law. Through "lawyerly ingenuity", it would always be

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[38] See *Nur*, *supra*; *Boudreault*, *supra*.
[39] See *Canada (Attorney General) v. Bedford*, 2013 SCC 72, at para. 107.
[40] See *e.g. R. v. McIvor*, 2018 MBCA 29, at para. 31.
[41] *Lloyd*, *supra*, at paras. 24 and 35; *R. v. Forcillo*, 2018 ONCA 402, at para. 126.
[42] Factum of the respondent Zwozdesky, at para. 95.

possible to state a new hypothetical and prompt a new analysis. Higher-court decisions would never truly bind lower courts. The *Nur* majority sought to impose order through the rules of *stare decisis*, and could not have intended new imagined personal characteristics to be capable of establishing the "significant change in the reasonably foreseeable applications of the law" that the majority said was required to distinguish an earlier s. 12 ruling.[43]

29. *Stare decisis* operates properly if personal characteristics are added to the reasonable hypothetical only to the extent that they assist in elucidating the law itself – *i.e.* as tools in aid of statutory interpretation. A court's conclusion on the law's scope and effects – questions of law – can be assessed objectively by a subsequent court. If the first court interpreted the law correctly and the law has not changed, the court's decision would bind lower courts and attract comity from coordinate courts.[44] If the first court's statutory interpretation is "plainly wrong", a subsequent coordinate court would be entitled to depart from the earlier ruling.[45] If the first court's statutory interpretation was correct when the case was decided but is later overtaken by "a significant change in the reasonably foreseeable applications of the law" (*e.g.* a broader scope or harsher punitive effects),[46] both coordinate and lower courts would be entitled to depart from the earlier ruling.

B. The impugned minimum sentences for robbery using a firearm are constitutional

1. The Alberta Court of Appeal erred in its s. 12 analysis

30. The Court of Appeal majority wrongly relied on personal characteristics irrelevant to the constitutionality of the four-year mandatory minimum sentence for robbery using an ordinary firearm. The majority pointed to the hypothetical cases of "Adam" and "Brian". For Adam, they adverted to his age, race, mental health, and his unsympathetic drug-dealer victim.[47] For Brian, they adverted to characteristics like his age, lack of prior criminality, alcoholism, Fetal Alcohol Spectrum Disorder and intoxicated state at the time of the offence.[48] None of these characteristics elucidate the scope of the offence or nature of the punishment.

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[43] *Nur*, *supra*, at para. 71.
[44] See *R. v. Al-Isawi*, 2017 BCCA 163, at para. 53.
[45] *R. v. Sullivan*, 2020 ONCA 333, at para. 38, leave to appeal to S.C.C. granted, 39270.
[46] *Nur*, *supra*, at para. 71.
[47] *R. v. Hilbach*, 2020 ABCA 332, at para. 63 ("Court of Appeal Reasons").
[48] *Ibid.*, at para 64.

31. In his factum, Mr. Zwozdesky would go further. The hypotheticals he posits show that if personal characteristics are permitted to intrude unchecked, the second stage of s. 12 is more creative writing than legal analysis. Mr. Zwozdesky conjures up five people, whom he names Adam, Brian, Chahid, Danielle, and Eric. He imbues these fictional characters with rich personal backgrounds, amusing anecdotes ("a nice kid, but not the brightest bloom in the canola patch"), and numerous mitigating factors.[49] Most of the facts set out in more than three pages of Mr. Zwozdesky's factum have nothing to do with the scope of the offence of robbery using an ordinary firearm. The "sympathetic stories" Mr. Zwozdesky seeks to rely on "evoke sympathy" but are irrelevant to the analysis contemplated in *Nur*: statutory interpretation.[50] They inolve people who may never exist or may never come before the court after having committed the offence at bar. They are straw men that distract from an analysis of the law itself, and are inappropriate tools for assessing the constitutionality of a democratically enacted minimum sentence.

32. The Court of Appeal also wrongly failed to properly grapple with whether the mandatory minimums at bar are cruel and unusual. As noted in Ontario's factum in *R. v. Hills*, the threshold for cruel and unusual punishment is met only by a punishment that is incompatible with human dignity. The law must impose suffering or abusive treatment that is "[e]xtraordinary; abnormal" and "[d]ifferent from what is reasonably expected".[51] In *Bedford*, this Court illustrated the degree of disconnect between a measure and its purpose required to establish gross disproportionality under s. 7 of the *Charter* by reference to a law "with the purpose of keeping the streets clean that imposes a sentence of life imprisonment for spitting on the sidewalk. The connection between the draconian impact of the law and its object must be entirely outside the norms accepted in our free and democratic society".[52]

33. The Court of Appeal majority's conclusions seem to rest on a purely comparative assessment, without considering the fundamental question: are the mandatory minimums cruel and unusual? The majority concluded that a fit sentence for Mr. Hilbach would be three years and that

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[49] Factum of the respondent Zwozdesky, at paras. 63-73.
[50] See *McIvor*, *supra*, at para. 31.
[51] Factum of the Attorney General of Ontario, *R. v. Hills* SCC 39338, at para. 27, citing *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, at para. 82.
[52] *Bedford*, *supra*, at para. 120.

the "additional two years in jail over and above a fit and proper sentence [required for robbery using a prohibited firearm] would shock the conscience".[53] The majority noted that hypotheticals it considered in relation to robbery using an ordinary firearm could attract a sentence "well below" the four-year mandatory minimum, which was unconstitutional as it would "be perhaps double a fit and proper sentence" or "[a]n additional year and a half to two years in jail beyond a fit and proper sentence".[54] This numeric, comparative analysis is inadequate. It is not self-evident that a jail sentence a-year-and-a-half or two-years longer than the fit sentence identified by a particular court will necessarily be incompatible with an offender's human dignity. Can a five-year sentence truly be described as "extraordinary" suffering where a three-year sentence would be perfectly fit and perhaps even at the low end of the appropriate range?

2. The minimum sentences are not cruel and unusual: they reflect the seriousness and blameworthiness of the crime

34. While gun-related crime is always serious, offences of interpersonal gun violence are of the utmost gravity. These offences always involve a real victim, targeted by an offender who seeks to further the commission of an offence by employing a terrorizing, potentially lethal weapon; the risk of physical and psychological harm is inherent. These offences are qualitatively different than firearms offences that do not directly endanger a person's safety, and ought to be punished more severely. They are also qualitatively different than the broad offences at issue in *Nur* and *Lloyd*: they narrowly target highly blameworthy, dangerous conduct.[55] For these crimes, the predominant sentencing objectives are denunciation and general deterrence. These objectives demand exemplary sentences, even when significant mitigating factors are present. For these offences, the impugned minimum sentences could produce – at most – an unfit sentence; they will not produce cruel and unusual punishment.

a. Denunciation and general deterrence are the predominant sentencing objectives

35. A sentencing judge must fashion a "just and appropriate" sentence that is proportionate with the gravity of the offence and the moral blameworthiness of the offender.[56] The *Criminal Code*

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[53] Court of Appeal Reasons, at paras. 53-54.
[54] *Ibid*., at paras. 68-70.
[55] See *Forcillo*, *supra*, at paras. 128-29.
[56] *R. c. Lacasse*, 2015 SCC 64, at para. 53; *R. v. Friesen*, 2020 SCC 9, at para. 30.

identifies several objectives of sentencing, including denunciation and general deterrence.[57] These objectives can demand sentences "not just about" the offender, but also "about all of the others [*sic*] members of the community and our collective need to denounce this conduct; express our collective outrage; and re-affirm the values that lie at the heart of the sentencing principles".[58]

36. When denunciation is relevant, it mandates a sentence that sends a symbolic statement of society's condemnation of the offender's conduct and communicates to an offender why he or she is being punished.[59] A sentence serving the objective of general deterrence sends a message to society that warns of the consequences of the law's transgression and is meant to reduce future commission of the crime at issue.[60] Both objectives focus on the offender's conduct. Denunciation mandates condemnation of the conduct, not the offender's character or personal circumstances. Similarly, general deterrence leads to more severe punishment "not necessarily because [the offender] deserves it, but because the court decides to send a message" to discourage "others who may be inclined to engage in similar" conduct.[61] The more serious the offence, the greater import denunciation and general deterrence will have.[62] When denunciation and general deterrence must be emphasized, courts have very few options but to impose imprisonment.[63]

37. Courts have accepted that protecting the public from interpersonal gun violence requires that denunciation and general deterrence be treated as predominant for these crimes.[64] Firearms "pose a grave danger to Canadians". They are "expressly designed to kill or wound" with "deadly efficiency". The use of a firearm in the commission of a crime "exacerbates its terrorizing effects"

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[57] *Criminal Code*, R.S.C. 1985, c. C-46, s. 718.
[58] *R. v. Garland*, 2021 ABCA 46, at para. 36.
[59] *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 81; *Friesen*, *supra*, at para. 105; *Morrisey*, *supra*, at para. 47.
[60] *R. v. B.W.P.; R. v. B.V.N.*, 2006 SCC 27, at para. 2; *Morrisey*, *ibid.*, at paras. 45-46, 54; *Nur*, *supra*, at para. 45; *Forcillo*, *supra*, at para. 172.
[61] *B.W.P.; B.V.N.*, *supra*, at para. 2; *Morrisey*, *supra*, at para. 45.
[62] *Friesen*, *supra*, at paras. 104; *Lacasse*, *supra*, at paras. 77-79; *R. v. Brown*, 2015 ONCA 361 at paras. 4-5 ("*Brown 2015*").
[63] *Lacasse*, *supra*, at para. 6.
[64] See *e.g. R. v. Jones*, 2012 ONCA 609, at para. 12; *R. v. Maytwayashing*, 2018 MBCA 36, at para. 40; *R. v. Agin*, 2018 BCCA 133, para. 67; *R. v. Danvers* (2005), 199 C.C.C. (3d) 490 (Ont. C.A.), at para. 78; *R. v. Marshall*, 2015 ONCA 692, at para. 49 ("*Marshall 2015*"); *R. v. Bellissimo*, 2009 ONCA 49, at para. 5; *R. v. Brown*, 2010 ONCA 745, at paras. 13-14 ("*Brown 2010*").

and poses a "real and immediate danger to the public".[65]

b. Exemplary sentences are required to effectively denounce and deter

38. Denouncing and deterring interpersonal gun violence is essential to public safety. There can be no dispute interpersonal gun violence remains a pressing concern in Canadian society.[66] A sentence that is too lenient fails to adequately convey society's abhorrence of gun violence, loses its deterrent effect, and fails to protect Canadians from future firearm offences. In order to effectively deter, sentences for offences involving interpersonal gun violence need to communicate to potential offenders that they will – without doubt – face a significant sentence.[67]

39. Jurisprudence in Ontario articulates a direct relationship between exemplary sentences and public safety. The Court of Appeal for Ontario has repeatedly imposed or upheld exemplary sentences for gun-related offences, including offences of mere possession or offences committed by youthful first-offenders.[68] That court has endorsed the imposition of exemplary penitentiary sentences as a tool to address the social problem of interpersonal gun violence, noting in *R. v. Danvers*, for example, that "[o]nly the imposition of exemplary sentences will serve to deter criminals from arming themselves with handguns".[69] The calls for exemplary sentences are no less prevalent in Ontario's trial courts, where judges have observed first-hand the "destruction wrought by guns" and "the heart wrenching human consequences brought about by guns and their impact

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[65] *Nur*, *supra*, at para. 1, 82; *R. v. Felawka*, [1993] 4 S.C.R. 199, at p. 211; *Morrisey*, *supra*, at para. 43; *R. v. Steele*, 2007 SCC 36, at para. 23.
[66] Statistics Canada, *Police-Reported Crime Statistics in Canada, 2020* (Juristat) (N.p.: Statistics Canada, 2021), online; Toronto Police Service, *Shootings & Firearm Discharges: Year to Date* (N.p.: Toronto Police Service, 2021), online.
[67] *Jones*, *supra*, at para. 12; *R. v. Mark*, 2018 ONSC 447, at para. 24; *R. v. Thavakularatnam*, 2018 ONSC 2380, at para. 21.
[68] See *e.g. R. v. Mohiadin*, 2021 ONCA 122 (3 years); *R. v. Hewitt*, 2018 ONCA 561 (3 years); *Marshall 2015*, *supra* (3.5 years); *R. v. Mansingh*, 2017 ONCA 68 (3.5 years); *R. v. Curry*, 2013 ONCA 420 (3.5 years); *R. v. Marshall*, 2021 ONCA 28 (4 years) ("*Marshall 2021"*); *R. v. Omar*, 2015 ONCA 207 (6 years); *R. v. Desir,* 2021 ONCA 486 (6 years); *Brown 2015*, *supra* (7 years); *R. v. Nembhard*, 2010 ONCA 420 (7 years); *R. v. Marsh*, 2008 ONCA 374 (7 years, 4 months); *R. v. Abdi*, 2014 ONCA 520 (7.5 years); *Brown 2010*, *supra* (8 years); *R. v. Claros*, 2019 ONCA 626 (8 years); *R. v. Bullock*, 2017 ONCA 398 (9 years); *Jones*, *supra* (9 years); *Bellissimo*, *supra* (10 years).
[69] *Danvers*, *supra*, at paras. 77-78; *R. v. Doucette*, 2015 ONCA 583, at paras. 59-60.

on victims".[70] In *R. v. Mark*, the court explained that exemplary sentences remain essential to ensure public safety and "combat" the social problem of gun violence because in "the absence of such sentences, these offences and their disastrous consequences will only continue unabated."[71]

c. Mitigating personal factors cannot negate the need for exemplary sentences

40. Where general deterrence and denunciation demand an exemplary sentence, mitigating personal factors remain relevant, but necessarily perform a less significant role in sentencing.[72] For robbery using a firearm, personal mitigating circumstances can mitigate, but cannot cancel out features inherent in the offence that demand an exemplary sentence.[73]

41. Even in its least-serious iteration, robbery using a firearm[74] catches only offenders who engage in highly dangerous, highly blameworthy conduct. The offender must (*i*) steal property knowing it does not belong to him or her (a specific-intent offence)[75] (*ii*) while armed with a firearm (or a secondary party to a principal who is so armed)[76] and (*iii*) "use" the firearm in the commission of the offence. "Use" requires that the firearm be present or readily available (*i.e.* capable of being possessed without interrupting the commission of the offence). The offender must not only possess the firearm, but reveal it to facilitate the commission of the offence or escape.[77]

42. An offender's moral blameworthiness remains high even for an unplanned or impulsive robbery using a firearm. The scenario Mr. Zwozdesky proposes of an incident of shoplifting that

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[70] *R. v. Chizanga*, 2020 ONSC 4647, at para. 13; *Thavakularatnam*, *supra*, at para. 21; *R. v. Clarke*, 2018 ONSC 612, at para. 30; *R. v. Grant*, [2005] O.J. No. 4599 (S.C.), at para. 35-39; *R. v. Johnson*, [2010] O.J. No. 5440 (S.C.), at paras. 27, 32-34, rev'd on other grounds 2019 ONCA 145.
[71] *Mark*, *supra*, at para. 24.
[72] *Nur* ONCA, at para. 107; *R. v. Oud*, 2016 BCCA 332, at para. 40; *Mansingh*, *supra*, at para. 24.
[73] *Marshall 2021*, *supra*, at para. 39; *Claros*, *supra*, at para. 68; *R. v. Hylton*, 2016 ONCA 991, at paras. 2-3; *Brown 2015*, *supra*, at paras. 8-10; *Jones*, *supra*, at para. 12; *R. c. Lapierre*, [1998] R.J.Q. 677 (C.A.), at para. 30.
[74] *R. v. Manley*, 2011 ONCA 128, at paras. 60-62 (firearm aggravating; not element of offence).
[75] *R. v. George*, [1960] S.C.R. 871, at p. 877
[76] See the definition of firearm at *Criminal Code*, R.S.C. 1985, c. C-46, s. 2; *R. v. Dunn*, 2013 ONCA 539, aff'd 2014 SCC 69; see also *R. v. Goard*, 2014 ONSC 2215, at paras. 120-130.
[77] *Steele*, *supra*, at paras. 32, 55; *Al-Isawi*, *supra*, at paras. 66-68.

"morphs into a robbery" when a store clerk pursues the shoplifter still involves highly blameworthy conduct.[78] A firearm used on a whim or to facilitate escape is just as risky and as terrorizing as a firearm used at the outset during a planned robbery.

43. The use of a firearm during a robbery cannot be "excused on sympathetic grounds".[79] The presence of a firearm, even an unloaded one, "in and of itself creates a highly volatile and dangerous situation".[80] Even if the firearm is unloaded, its terrorizing effects can result in significant and lasting trauma for victims and communities.[81] An unloaded firearm also creates the risk of physical harm. It intensifies the situation and enhances the risk that a high degree of responsive force will be used by, *e.g.*, the victim, or police officers, who may not know the firearm is unloaded.[82] A loaded firearm amplifies the danger further, as the potential for its discharge, whether deliberate or accidental, is "pernicious and intolerable".[83]

44. Using a restricted or prohibited firearm enhances both the danger and moral blameworthiness of the offence. These firearms are easily concealable, difficult to detect and present an elevated risk to the public. An offender attracts a heightened minimum for using a restricted or prohibited firearm only if they have knowledge of the characteristics that make it restricted or prohibited.[84]

45. Secondary party liability for robbery using a firearm is similarly narrowly defined. To be punished as an aider or abettor for the use of a firearm, an offender must assist or encourage the commission of robbery using a firearm[85] with both (*i*) intent to assist the principal to commit robbery using a firearm and (*ii*) knowledge of, or willful blindness to, the principal's intention to

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[78] Factum of the respondent Zwozdesky, at para. 30.
[79] *McIvor*, *supra*, at para. 31; *R. v. L.W.W.*, 125 C.C.C. (3d) 43 (B.C. C.A.), at para. 61, rev'd on other grounds, 2000 SCC 18; *Al-Isawi*, *supra*, at para. 57-58; *Forcillo*, *supra*, at para. 176.
[80] *Al-Isawi, ibid.*, at para. 57.
[81] *R. v. Breese*, 2021 ONSC 1611, at para. 34; *R. v. John*, 2016 ONSC 396, at para. 27; *R. v. Stoddart*, [2005] O.J. No. 6076 (S.C.), at para. 6, aff'd 2007 ONCA 139; *R. v. Asif*, 2020 ONSC 1403, at para. 40; *R. v. Charley*, 2019 ONSC 6490, at para. 45.
[82] *R. v. Stewart*, 2010 BCCA 153 at para. 27; *R. v. Uniat*, 2015 ONCA 197, at para. 5.
[83] *R. v. Caceres*, 2012 ONSC 5214, at para. 47; *Asif*, *supra*, at para. 53.
[84] *McIvor*, *supra*, at paras. 27, 36; *R. v. Harper*, 2016 MBCA 64, at para. 41; *Nur*, *supra*, at para. 121, *per* Moldaver J., dissenting; *R. v. Archer* (1983), 6 C.C.C. (3d) 129 (Ont. C.A.), at p. 132.
[85] *R. v. Briscoe*, 2010 SCC 13, at para. 14; *R. v. Dooley*, 2009 ONCA 910, at paras. 120-123; *R. v. Alvarez-Maggiani*, 2018 ONSC 4834, at paras. 39-40; *McIvor*, *supra*, at paras 27-30.

use a firearm. This knowledge or willful blindness must exist prior to the commission of the offence.[86] A secondary party who only becomes aware of the presence of the firearm mid-robbery is liable only for robbery simpliciter.[87]

46. As such, Mr. Zwozdesky is wrong to suggest that an offender like Ms. Link would be subject to the minimum sentences. Ms. Link was found liable only for robbery simpliciter because the imitation firearm "caught her by surprise" and she did not have the opportunity to "appreciate the seriousness of the situation and properly extricate herself from it." Her liability did not change when she provided the gun-wielding principal with a bag for the stolen goods because she was merely complying with a request made by a person holding a gun.[88]

d. The minimum sentences under s. 344 are not cruel and unusual

47. Sentencing ranges for robbery using a firearm in Ontario over the last two decades reflect judicial recognition of the seriousness and profound impact of interpersonal gun violence. Sentences above the mandatory minimums are often imposed, even for offenders with compelling mitigating factors.[89] Robberies targeting individuals or small commercial establishments with an ordinary firearm have received penitentiary sentences as high as eight years.[90] Bank and home-invasion robberies involving firearms, even where there are no physical injuries, can attract high single-digit and double-digit penitentiary sentences.[91] Even higher sentences can result for

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[86] *Briscoe*, *supra*, at paras. 16-18, 21-22; *R. v. Dunlop*, [1979] 2 S.C.R. 881, at p. 896; *R. v. Watson*, 2008 ONCA 614, at paras. 44, 52, 55; *R. v. Kennedy*, 2016 ONCA 879, at paras. 24-26; *R. v. Garrell*, 2018 ONSC 3001, at para. 15; *R. v. Koroma*, 2012 ONSC 4397, at paras. 88-90, aff'd 2015 ONCA 769.

[87] *R. v. Bernier*, 2001 BCCA 394, at paras. 19-21; *R. v. O.M.*, 2019 ONCJ 552, at paras. 313-318.

[88] *R. v. Link*, 2012 MBPC 25, at paras. 115-117, 122.

[89] See *e.g. John*, *supra* (4 years and 11 months); *R. v. Dayes*, 2013 ONCA 614 (5 years); *R. v. Taylor*, [2017] O.J. No. 139 (S.C.) (5.5 years); *R. v. Kreko,* 2016 ONCA 367 (6 years); *Stoddart*, *supra* (6 years); *R. v. Haughton*, [2004] O.J. No. 2103 (C.A.) (7.25 years); *R. v. Rocheleau*, 2013 ONCA 679 (8 years); *R. v. Pink*, 2020 ONSC 814 (8 years)

[90] *Rocheleau*, *supra*; *Dayes*, *supra*; *Stoddart*, *supra*; *Taylor*, *supra*; *Pink*, *supra*; *Haughton*, *supra*.

[91] *Caceres*, *supra*: the sentencing judge accepted a 10-year joint submission but noted that 12-15 years is the appropriate range for youthful offenders involved in a string of armed bank robberies, even if they did not wield firearms. See also: *Garrell*, *supra* (9 years).

robberies with a restricted or prohibited firearm, including for offenders with significant personal mitigating factors.[92] The lowest available sentences – the four or five-year minimums – are reserved for highly mitigating or unusual circumstances.[93]

48. The foregoing suggests that the Court of Appeal for Ontario was correct to find that even in highly mitigating circumstances, the mandatory minimums at bar are not cruel and unusual punishment. As Rosenberg J.A. held in *R. v. McDonald*, and Doherty J.A. affirmed in *R. v. McIntyre*, upholding the four-year minimum and five-year minimum respectively, demonstrably unfit "is not the same as gross disproportionality". Rosenberg J.A. was "not convinced that having regard to the objective gravity of any offence involving the use of a firearm, even an unloaded one, a sentence approaching four years shocks the conscience."[94]

C. This Court has no apparent jurisdiction to stay a lawful mandatory sentence

49. Mr. Zwozdesky raises an important issue with constitutional overtones by asking that if the minimum sentence for robbery using an ordinary firearm is found valid, this Court "should stay the newly increased sentence".[95] Although this Court has exercised the power to stay the service of a mandatory sentence before, no source of jurisdiction for this practice is apparent.[96]

50. Arguably, a court may notionally 'stay' a sentence by identifying the appropriate sentence in its reasons, and then imposing a non-custodial sentence.[97] However, this approach depends on a lawful non-custodial option existing. Where none exists and the law mandates a jail sentence, it is unclear on what basis a court may choose not to impose it. Doing so comes uncomfortably close

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[92] *Clarke*, *supra* (5.5 years); *Breese*, *supra* (5 years and 9 months); *R. v. Rose*, 2013 ONSC 158 (6 years); *R. v. Henry*, 2019 ONCA 229 (8 years); *R. v. Lewis*, 2009 ONCA 792 (9 years); *Hylton, supra* (10 years).
[93] See *e.g. Clarke*, *supra*; *Asif*, *supra*.
[94] *R. v. McDonald* (1998), 127 C.C.C. (3d) 57, [1998] O.J. No. 2990 (C.A.), at para. 72; *McIntyre*, *supra*, at paras. 10-16.
[95] Factum of the respondent Zwozdesky, at para. 109.
[96] *R. v. Anderson*, 2014 SCC 41, at para. 65: staying a mandatory sentence "in accordance with the concession of the Crown"; see also *Plange*, *supra* at paras. 43-47.
[97] See *e.g. R. v. Proulx*, 2000 SCC 5, at para. 132 (Crown not seeking reincarceration); *R. v. Veysey*, 2006 NBCA 55, at paras. 18-31.

to granting an impermissible constitutional exemption.[98]

51. In an appeal against sentence under s. 40 of the *Supreme Court Act*,[99] this Court's powers are limited to those that would have been available in the court below.[100] Here, the Court of Appeal's power under s. 687 of the *Criminal Code* allowed it to either dismiss the appeal or "vary the sentence within the limits prescribed by law".[101]

PARTS IV AND V – SUBMISSIONS AS TO COSTS AND ORDER SOUGHT

52. Ontario asks that the minimum sentences in *Criminal Code*, ss. 344(1)(*a*)(i) and 344(1)(*a*.1) be found constitutional, but takes no position on the appropriate sentence for either respondent. Ontario makes no submissions as to costs.

ALL OF WHICH is respectfully submitted by:

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DATED at Toronto, Ontario, this 24th day of August, 2021.

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[98] See *Ferguson*, *supra*, at para. 56.
[99] *R. v. St-Onge*, 2011 SCC 16, at para. 2.
[100] See *Supreme Court Act*, R.S.C. 1985, c. S-26, s. 45; *R. v. S. (P.L.)*, [1991] 1 S.C.R. 909, at p. 918(b).
[101] *Criminal Code*, R.S.C. 1985, c. C-46, s. 687.

PART VI – SUBMISSIONS ON CASE SENSITIVITY

53. Not applicable.

PART VII – AUTHORITIES CITED

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SECONDARY SOURCES **Paragraphs**

CANADIAN LEGISLATION **Paragraphs**