

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

BETWEEN:

**MATTHEW WINSTON BROWN**

APPELLANT  
(Respondent)

-and-

**HER MAJESTY THE QUEEN**

RESPONDENT  
(Appellant)

-and-

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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## PART I – OVERVIEW AND STATEMENT OF FACTS

1. The Attorney General of Canada (AGC) intervenes in this appeal in support of the constitutional validity of s. 33.1 of the *Criminal Code*<sup>1</sup>, as he did in *R v Sullivan et al.*,<sup>2</sup> which raised the same issue. The AGC reaffirms the submissions he made in *Sullivan*,<sup>3</sup> and makes the following submissions to address selected issues raised by the Appellant in this appeal.

2. The court below correctly rejected the Appellant’s argument that s. 33.1 eliminates the need for voluntariness or *mens rea*, and effectively captures within its scope all substances which may result in intoxication. This characterization erroneously ignores the voluntariness element in s. 33.1 relating to a decision to ingest an intoxicant leading to potential automatism. It also ignores the adoption of a penal negligence standard in respect of that decision and the well-known common law principles that support its interpretation. Interpreted correctly, s. 33.1 serves the constitutionally compliant and valid objective of deterring the potential unleashing of a dangerous non-rational automaton upon the public.

3. Section 33.1 captures self-induced intoxication which renders a person unaware of, or incapable of consciously controlling their behaviour. It is narrowly tailored to target the social harm of violence that results from dangerous intoxication akin to automatism. Parliament responded to the pressing concern of holding perpetrators of intoxicated violence accountable. The provision protects the victims of such violence, who are predominantly women and children, while affirming their dignity and self-worth.

4. The provision uses well-known common law concepts. Courts routinely provide precision and clarification as to the *actus reus* and the *mens rea* elements of criminal provisions where needed. The marked departure standard, expressly referenced in the provision, appropriately describes the expectation that Canadians be informed about the potential dangerous effects of intoxicants they ingest, and that they take steps to guard against dangerous situations. That *mens rea* standard is constitutionally sufficient.

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<sup>1</sup> *Criminal Code*, [s 33.1](#), as amended by *An Act to amend the Criminal Code (self-induced intoxication)*, [SC 1995, c 32](#) (Bill C-72).

<sup>2</sup> SCC no. 39270, heard on October 12, 2021.

<sup>3</sup> The AGC’s factum in the *Sullivan* appeal is available on the Court’s [website](#).



5. Section 33.1's unique fault requirement was necessary to respond to the social harm of dangerous intoxication. It is constitutionally compliant in that the provision is narrowly tailored to apply only to general intent offences involving interpersonal violence, and only where there is a marked departure from the expected standard of care.

6. The Court below correctly held that if s. 33.1 is found to *prima facie* breach ss. 7 or 11(d), it can still be upheld under s. 1. The pressing and substantial purposes served by s. 33.1 achieve accountability and protection for victims of intoxicated violence. That analysis is separate and distinct from the analysis under s. 7. The pressing societal objectives served by s. 33.1 should not and cannot be collapsed with the effect of the provision in respect of s. 7 rights.

## **PART II – QUESTIONS IN ISSUE**

7. The AGC's position on the constitutional issues is that:
- a. Properly interpreted, s. 33.1 of the *Criminal Code* does not limit rights under ss. 7 and 11(d) of the *Charter*; and
  - b. in the alternative, any limitations of those rights are reasonable and demonstrably justified under s. 1 of the *Charter*.

## **PART III – STATEMENT OF ARGUMENT**

### **A. Proper application of the principles of statutory interpretation**

#### *Defining the elements of statutory offences often requires reference to common law principles*

8. Interpreting the elements of statutory offences often requires reference to common law concepts.<sup>4</sup> When Parliament uses a term with a well-understood legal meaning, it is presumed that Parliament intended to incorporate that legal meaning into the statute.<sup>5</sup> For example, s. 33.1's scope is limited to cases where the intoxication is "self-induced". Courts have enunciated tests in diverse criminal law contexts for determining whether intoxication is self-induced, and that

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<sup>4</sup> *R v DLW*, 2016 SCC 22, [2016] 1 SCR 402 (*DLW*) at [para 15](#).

<sup>5</sup> *DLW* at [para 18](#).

excludes liability in the case of involuntary intoxication.<sup>6</sup> This jurisprudence fairly imposes criminal sanctions for blameworthy conduct, and can continue to evolve to address new or different factual scenarios involving intoxication that may arise. Nothing in the text of s. 33.1 indicates Parliament meant to displace this jurisprudence. The same can be said of Parliament’s use of the marked departure concept, which also has a rich jurisprudential record.<sup>7</sup> By incorporating these concepts into s. 33.1, Parliament intended that they be understood and applied in accordance with the applicable jurisprudence.

*The courts may legitimately give further precision to Criminal Code provisions*

9. Giving further precision to *Criminal Code* provisions in relation to both *actus reus* and *mens rea* elements is a normal judicial function. For example, the elements of the offence of fraud were “flesh[ed] out [in the case law] in a broad and purposive manner” over time.<sup>8</sup> Noting that “the generality of the language of the section coupled with the lack of jurisprudential antecedents created uncertainty as to the elements of the offence”, this Court “provided a comprehensive definition of the *actus reus* of the offence” in 1978, thirty years after the legislative enactment of the offence.<sup>9</sup> The “uncertainty [that] remained about what was required to establish the *mens rea* of the

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<sup>6</sup> See e.g. **suicide attempts** (*R v Honish*, 1991 ABCA 304 at [paras 7-9](#); *R v Abad*, [2009] OJ No 2515, 2009 CanLII 30967 (ON SC) at [para 1](#) (SCJ); *R c Gianakis*, [1998] JQ no 4309 at para 29 (Cour mun.) **Book of Authorities of the Intervener, Attorney General of Canada (AGC Auth.), Tab 3**); **use of prescription drugs with side effects** (*R v Murray*, [1985] OJ No 217 (CA), **AGC Auth., Tab 4**; *R v Barrett*, 2012 NLCA 12 (*Barrett*) at [paras 33-34](#); *R v Wentzell*, [2019] NJ No 330 (*Wentzell*) at paras 61-62 (Prov Ct), **AGC Auth., Tab 5**; *R v Dewey*, 2016 ONSC 7536 at [paras 92-95](#); *R v Weening*, 2013 ONCJ 408 (*Weening*) at [para 30](#); *R v Blayone*, [2012] OJ No 2191 (*Blayone*) at paras 35-37 (Prov Ct), **AGC Auth., Tab 1**; *R v Domb*, 2011 ONCJ 756 (*Domb*) at [paras 73](#) and [88](#); *R v Cosentino*, [2008] OJ No 5263 at paras 81-82 (SCJ), **AGC Auth., Tab 2**; *R v Cobban*, 2007 BCSC 1676 (*Cobban*) at [para 15](#)); **impaired driving** (The Hon. Mr. Justice Joseph F. Kenkel, *Impaired Driving in Canada*, 5th Ed. (LexisNexis Canada, looseleaf), esp. ch. 4.1(3)-(5), **AGC Auth., Tab 8**; and *Crankshaw's Criminal Code of Canada* at 253§10), **AGC Auth., Tab 7**); **the mistaken belief in communicated consent analysis for certain sexual offences** (*Criminal Code*, s. 153.1(5)(a)(i) and s. 273.2(a)(i), and cases interpreting those provisions); **intoxication defence where the intoxication was claimed to have been involuntary or not self-induced** (*R v Chaulk*, 2007 NSCA 84 at [para 34](#); *R v Harris*, 2019 BCCA 166 at [para 49](#); *R v Krewson*, 2019 BCCA 34 at [para 31-33](#)).

<sup>7</sup> *R v Creighton*, [1993] 3 SCR 3 (*Creighton*); *R v Beatty*, 2008 SCC 5 (*Beatty*); *R v Roy*, 2012 SCC 26 (*Roy*).

<sup>8</sup> *R v Theroux*, [1993] 2 SCR 5 at [15i-16e](#) (*Theroux*)

<sup>9</sup> *Theroux* at [15a](#) and [14h](#).

offence” was addressed another 15 years after that.<sup>10</sup> Furthermore, the offence of having the care or control of a motor vehicle while impaired was interpreted by this Court in *Boudreault* as requiring proof of the additional circumstance of “a realistic risk of danger to persons or property”, even though these words appear nowhere in the provision.<sup>11</sup> The courts required this additional element to “balanc[e] the rights of the accused with the objectives of the legislation”.<sup>12</sup>

10. Courts employ the same interpretive exercise in relation to *mens rea* as well. As this Court noted in *R v ADH*, “[d]iscerning parliamentary intent in relation to the fault element of crimes is often not an easy task” and “the courts must, and often do, infer the fault element”.<sup>13</sup> Moreover, this Court recognized in *R v DLW* that “many of the basic premises of the criminal law — the necessary conditions for criminal liability — are left to the common law”.<sup>14</sup>

11. The mental elements of many crimes are not specified in the *Criminal Code*.<sup>15</sup> For example, this Court recently considered the offence of failing to comply with a recognizance. The statutory provision only defines the *actus reus*, and the lower courts had divided for decades on what *mens rea* to apply.<sup>16</sup> Last year in *Zora*, this Court considered the question for the first time since the offence was created in 1972, and held that subjective *mens rea* is required for this offence.<sup>17</sup> Other examples of offences whose *mens rea* elements are entirely defined by the common law, guided by constitutional standards, include: unlawfully causing bodily harm (*DeSousa*), dangerous driving (*Hundal*), unlawful act manslaughter (*Creighton*), failure to provide the necessities of life (*JF*) and child abandonment (*ADH*).<sup>18</sup> For sexual assault, the *mens rea* in

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<sup>10</sup> *Theroux* at [15c](#).

<sup>11</sup> *R v Boudreault*, 2012 SCC 56 (*Boudreault*) at [para 39](#).

<sup>12</sup> *Boudreault* at [para 28](#) and [para 32](#). See also *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4 at [paras 22-42](#), interpreting s. 43 (correction of child by force).

<sup>13</sup> *R v ADH*, 2013 SCC 28 (*ADH*) at [para 20](#).

<sup>14</sup> *DLW* at [para 15](#).

<sup>15</sup> *DLW* at [para 16](#).

<sup>16</sup> *R v Zora*, 2020 SCC 14 (*Zora*) at [para 31](#) and [para 36](#).

<sup>17</sup> *Zora* at [para 17](#), [para 31](#) and [para 107](#).

<sup>18</sup> *R v DeSousa*, [\[1992\] 2 SCR 944](#); *R v Hundal*, [\[1993\] 1 SCR 867](#); *Creighton*; *R v JF*, 2008 SCC 60 at [para 8](#) and [para 67](#); *ADH* at [para 21](#). See also infanticide (*R v LB*, 2011 ONCA 153 at [para 106-121](#), cited with approval in *R v Borowiec*, 2016 SCC 11 at [para 16](#)); defamatory libel (*R v Lucas*, [\[1998\] 1 SCR 439](#) at [para 58](#)); child pornography (*R v McSween*, 2020 ONCA 343 at

relation to the lack of consent of the complainant has been developed both in the common law over time<sup>19</sup> and in statutory provisions that do not attempt to conclusively define it.<sup>20</sup>

12. The case law on impaired driving is particularly instructive, given that the structure of that offence is similar to that of the fault-creating provision in s. 33.1(2). When this Court considered the offence in *King* and *Penno*, it read: “Every one who, while his ability to drive a motor vehicle is impaired by alcohol or a drug, drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, is guilty ...”.<sup>21</sup> The text of the provision did not explicitly attach any mental fault to a decision to voluntarily become intoxicated. Despite this, the Court in *King* interpreted the provision as requiring that “the impaired condition which the section prohibits [be] brought about by some conscious act of the will or intention”.<sup>22</sup> It also held that the offence was not committed if “the impairment was produced as a result of using a drug in the form of medicine on a doctor’s order or recommendation and that its effect was unknown to the patient”.<sup>23</sup> This was so, notwithstanding that the text of the subordinate clause (“while his ability to drive ... is impaired”), if given a purely literal reading, would have been fulfilled under that scenario.

13. Further, this Court in *Penno* held that “the mental element of the offence lies in voluntarily becoming intoxicated” and “intoxication ... is the very gravamen of the offence”.<sup>24</sup> This is so even though the ingestion of the substance that created the state of self-induced intoxication would have taken place before the actions referred to in the present tense (“drives” or “has the care or control”).

14. Parliament enacted s. 33.1 a little over four years after this Court’s decision in *Penno*. It was reasonable for Parliament to expect that courts would interpret the similarly structured s. 33.1(2) in a

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[para 87](#)); and abetting (*R v Curran*, [1977] AJ No 770 at [para 23](#) (CA); *R v Helsdon*, 2007 ONCA 54 at [paras 43-44](#); *R v Almarales*, 2008 ONCA 692 at [para 67](#); *R v Machushek*, 2016 SKCA 41 at [para 49](#); *R v Vu*, 2012 SCC 40 at [para 58](#)).

<sup>19</sup> *R v Pappajohn*, [1980] 2 SCR 120 at [145-146](#) (per Dickson J); *R v Park*, [1995] 2 SCR 836 at [paras 39-51](#) (per L’Heureux-Dubé J); *R v Ewanchuk*, [1999] 1 SCR 330 at [para 42](#).

<sup>20</sup> See e.g. *Criminal Code*, ss. [273.1](#) and [273.2](#), as interpreted by *R v Barton*, 2019 SCC 33, [2019] 2 SCR 579 (*Barton*) at [paras 91-92](#).

<sup>21</sup> *R v King*, [1962] SCR 746 (*King*) at [749](#); *R v Penno*, [1990] 2 SCR 865 (*Penno*) at [874](#) [emphasis added].

<sup>22</sup> *King* at [762](#).

<sup>23</sup> *King* at [764](#).

<sup>24</sup> *Penno* at [904d](#) and [905a](#).

similar way, albeit with the necessary modifications to take into account the fact that it was addressing in that section only intoxication to the extreme degree of rendering oneself unaware of, or incapable of consciously controlling, one's behaviour. The very gravamen of the fault-creating provision in s. 33.1(2) is extreme intoxication. Section 33.1 makes voluntary intoxication an *actus reus* element of this mode of liability, where there is a real risk of automatism. It also has an associated fault element of objective foreseeability of that automatism coupled with a marked departure from the standard of care in relation to the danger. This interpretation limits the scope of the provision to blameworthy acts of self-intoxication to the requisite degree. It is the only interpretation that accords with the existing common law and the requirement that this court interpret penal provisions in a meaningful and purposive manner, and that gives a reasonable meaning to subsection (2).

***All the terms in s. 33.1 must be given a meaning in order to properly interpret its specific application and limited scope***

15. Section 33.1 is not as broad as the Appellant says. Section 33.1 does not “capture within its scope all substances which may result in intoxication”.<sup>25</sup> The Appellant misstates s. 33.1 as “only refer[ring] to ‘self-induced intoxication’”<sup>26</sup> when the provision in fact limits that intoxication to only that which “renders the person unaware of, or incapable of consciously controlling, their behaviour”. All, not just some, of the words used by Parliament must be given meaning when interpreting a provision.<sup>27</sup>

16. The Appellant also ignores the references to “marked departure”, which is a term used in the *Criminal Code* and the jurisprudence to express the penal negligence standard.<sup>28</sup> When Parliament uses a similar or identical term also used in related provisions or in the common law, it is presumed to retain the meaning given to those terms by the existing body of jurisprudence.<sup>29</sup>

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<sup>25</sup> *Contra* the Appellant's factum at para. 15.

<sup>26</sup> The Appellant's factum at para. 15.

<sup>27</sup> *R v Katigbak*, 2011 SCC 48 at [para 59](#); *Winters v Legal Services Society*, [1999] 3 SCR 160 at [para 48](#).

<sup>28</sup> *Creighton*; *Beatty*; *Roy*.

<sup>29</sup> *R v Szerbaniwicz*, 2010 SCC 15 at [para 18](#); *Amos v Insurance Corp. of British Columbia*, [1995] 3 SCR 405 at [para 15](#); *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at [para 24](#).

17. These terms, properly interpreted, limit the applicability of s. 33.1 to circumstances where accused knew or ought to have known that their consumption of the intoxicant would create a realistic risk of automatism and the accused departed markedly from the standard of care of a reasonable person in avoiding the risk. For example, scientific evidence, which was not in the record before the Court in *Daviault*, has clearly shown that the consumption of alcohol alone, even at high volumes, is incapable of rendering a person unaware of, or incapable of consciously controlling, their behaviour, and yet physically capable of engaging in an act of violence.<sup>30</sup> As noted earlier, courts have held, in the impaired driving context, that consuming prescription drugs in accordance with medical direction does not generally fall within the scope of the concept of self-induced or voluntary intoxication where the danger of impairment is not made known to the patient.<sup>31</sup> Thus, contrary to the Appellant's exaggerated claim, s. 33.1 addresses the consumption of a far narrower class of intoxicants and behaviours than what "most Canadians regularly engage in ... every single day across this country in bars, restaurants, private residences, hospitals, doctors' offices, and everywhere in between".<sup>32</sup>

#### **B. Objective foreseeability and what a reasonable person would know before ingesting intoxicants**

18. Contrary to the Appellant's suggestion, the reasonable person does not need to have the level of scientific knowledge of an expert on factual causation to know about risks associated with intoxicants they plan to consume. In assessing objective foreseeability in a particular case, the trial court considers all the circumstances, including the particular intoxicant in question and a reasonable person's knowledge about its potential effects. This *mens rea* question asks whether a reasonable person would know that the circumstances of intoxication created a realistic risk of being rendered "unaware of, or incapable of consciously controlling, their behaviour". This is distinct from the *actus reus* question of whether the consumption of a particular intoxicant by a

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<sup>30</sup> *R v Dow*, 2010 QCCS 4276 at [paras 97](#) and [101-102](#), see also generally [paras 81-92](#); Senate Legal Committee, *Proceedings* (28 June 1995), **AGC Auth., Tab 8** at p. 151; House of Commons, Standing Committee on Justice and Legal Affairs, *Evidence* (13 June 1995), **AGC Auth., Tab 7** at pp. 126 (Dr. Bradford), 128 (Dr. Kendall), 130 (Dr. Kalant)

<sup>31</sup> *King* at [764](#); *Weening* at [para 30](#); *Domb*, at [paras 73](#) and [88](#); *Cobban* at [para 15](#); *Blayone* at [paras 35-37](#) (Prov Ct), **AGC Auth., Tab 1**; *Wentzell* at [paras 61-62](#) (Prov Ct), **AGC Auth., Tab 5**; *Barrett* at [paras 33-34](#).

<sup>32</sup> Appellant's Factum at para. 23.

particular accused in a particular case *in fact* caused a loss of awareness of, or capacity to consciously control, their behaviour. It is only on this latter question of factual causation that expert evidence is required, according to *Daviault*.<sup>33</sup>

19. Before taking an intoxicant, reasonable persons inform themselves of its potential negative impacts, including the risk of loss of conscious control of one’s behaviour.<sup>34</sup> As this Court noted in *Bouchard-Lebrun*, “toxic psychosis is unfortunately a fairly frequent phenomenon that seems to result from the high toxicity of chemical drugs”.<sup>35</sup> In *Creighton*, this Court referred to cocaine as being a drug that a reasonable person would know to be dangerous. In recent years, psychosis caused by the consumption of mind-altering drugs like crystal methamphetamine<sup>36</sup> or psilocybin,<sup>37</sup> alone or in combination with other drugs, have led to tragic violent outcomes in cases across the country. Although what a reasonable person may know about a particular intoxicant’s potential dangerous effects may shift over time, it is certainly open to a trial court today to conclude that reasonable Canadians would know about the potential dangers of mind-altering drugs like crystal methamphetamine or psilocybin, or would at least inform themselves of the potential dangerous effects if they intended to ingest such drugs.<sup>38</sup>

### **C. Making dangerous intoxication an essential element is within Parliament’s power to tackle a vexing social problem**

20. The unique nature of intoxication within criminal law cannot be ignored when considering the constitutionality of s. 33.1. Intoxication can be an aspect of the blameworthiness of behaviour, such as under s. 33.1 and under the impaired driving regime. However, it also has features that can

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<sup>33</sup> *R v Daviault*, [1994] 3 SCR 63 at [101](#) and [103](#).

<sup>34</sup> See e.g. *Creighton* at [75a](#).

<sup>35</sup> *R v Bouchard-Lebrun*, 2011 SCC 58 at [para 79](#).

<sup>36</sup> See e.g. *R v Belyk*, [2021 MBQB 12](#); *R v McCormick*, [2017 BCSC 145](#); *R v Hipkin*, [2019 BCPC 243](#).

<sup>37</sup> In addition to the appeal before the Court: *R v Wells*, [2013] NJ No 37, 2013 CanLII 2932 at [para 42](#) (NL Prov Ct); *R v Chan*, 2020 ONCA 333 at [para 15](#).

<sup>38</sup> *R v Brown*, 2021 ABCA 273 (*Brown*) at [para 198](#) (per Khullar JA), **Appellant’s Record (AR), Vol. I, Tab 5, p 97**.



be exculpatory because of its effects on mental processes. This dual nature of intoxication has created vexing challenges for the criminal law for centuries.<sup>39</sup>

21. Parliament has the power to define the elements of an offence, including the power to provide for multiple definitions of the same offence and different modes of criminal liability more generally.<sup>40</sup> This Court in *Daviault* invited Parliament to exercise its power to address the gap left by the common law, whereby those who engage in dangerous intoxication to the point of automatism were left unaccountable for the violence they inflicted on others. Through s. 33.1, Parliament created an alternative mode of liability for general-intent crimes involving interpersonal violence, offences which are not of such high stigma and fixed penalty as requiring a *mens rea* reflecting the particular nature of the crime.<sup>41</sup>

22. The unique problem of intoxicated violence required Parliament to grapple with the social harm of violence committed by non-rational persons who brought on that state through their own prior fault. Traditional doctrines which presume basic capacity and rationality could not be rigidly applied in this context. That is because the state of automatism is an intervening event that makes it impossible to draw a direct foreseeability link from the ingestion of the intoxicant to subsequent violence. Parliament carefully considered alternatives and settled on s. 33.1, which achieves the legislative objectives of accountability and protection of victims in a manner that alternatives would not. Parallels can be drawn between aspects of s. 33.1 and those of other substantive liability rules:

- it is like modes of participation in that it offers an alternative set of elements from the traditional pathway, but which lead to conviction for the same offence;<sup>42</sup>

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<sup>39</sup> *DPP v Majewski*, [1976] 2 All ER 142 (UK HL), **AGC Auth., Tab 6**; *R v Brown*, 2021 ABCA 273 at [para 208](#) (per Khullar JA) **AR, Vol 1, Tab 5, p 98**.

<sup>40</sup> *R v Martineau*, [1990] 2 SCR 633 (*Martineau*) at [643c](#).

<sup>41</sup> *Martineau* at [645e-646e](#); *R v Vaillancourt*, [1987] 2 SCR 636 at [paras 26-28](#).

<sup>42</sup> *Criminal Code*, [s. 21](#); *R v Briscoe*, 2010 SCC 13 at [paras 13-18](#); *R v Pickton*, 2010 SCC 32 at [paras 53-54](#).



- it is like impaired driving in that intoxication is a liability element and therefore cannot be a defence;<sup>43</sup> and
- it is like criminal negligence in that dangerous behaviour is not criminalized unless the harm to persons materializes.<sup>44</sup>

Section 33.1 is also unique in comparison to these other liability rules because of the unique harm it targets: the unpredictable violent conduct of a dangerously intoxicated automaton, where automatism itself is what creates the danger to others.

23. It is not unheard of for the Court to adjust how criminal law principles apply when interpreting a law that aims to address a pressing social problem that has long challenged the criminal justice system. For example, in the context of sexual assault, this Court affirmed a different meaning of consent as it arises in the *actus reus* as compared to the *mens rea*, whereas fault normally relates to an *actus reus* element without any change to its meaning.<sup>45</sup> While this context is very different, modifying normal criminal law principles to protect those who are at risk of harm while ensuring that the morally innocent are not punished is within this Court's power.

#### **D. Section 1 of the Charter**

24. In the alternative, if s. 33.1 limits either s. 7 or s. 11(d) of the *Charter*, the limitation is reasonable and justified. In particular, the Court below correctly (and unanimously) found that even if s. 33.1 ran afoul of ss. 7 and 11(d), a proper interpretation of its purpose rendered it a reasonable and justified limitation under s. 1.

25. Both the “accountability” purpose and the “protective” purpose of s. 33.1 are pressing and substantial. Section 33.1 aims to hold individuals accountable for their voluntary dangerous intoxication resulting in automatism and violence. It seeks to deter individuals by holding them to account for choosing to intoxicate in a manner that risks unleashing upon the public a non-rational actor with the capacity for uncontrollable violence. A proper interpretation of the accountability objective must consider the context of the threat to public safety that Parliament sought to address

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<sup>43</sup> *Penno* at [899a](#) per McLachlin J; also at [899h](#) and [904c](#) per McLachlin J and [885f](#) per Wilson J. See also *R v Blanchard*, 2018 QCCA 1069 at [para 53](#).

<sup>44</sup> *Criminal Code*, [ss. 219-221](#).

<sup>45</sup> *Barton* at [paras 89-90](#).

by holding persons who engage in the risk of voluntary dangerous intoxication criminally responsible where they depart from a reasonable standard of care.

26. Section 33.1 also aims to protect potential victims of violence, a disproportionate number of whom are women and children. It critically closes the gap left by *Daviault* by criminalizing the full spectrum of intoxicated violence, thereby promoting and protecting the equality rights of victims.<sup>46</sup>

27. The Court below correctly found that the majority in *Sullivan* erred in collapsing the pressing and substantial purposes served by s. 33.1 with the effect of the provision in respect of s. 7 rights.<sup>47</sup> This resulted in redefining the purpose away from accountability and protection to the impermissible purpose of removing lack of voluntariness or *mens rea* as a defence.

28. The question of whether s. 33.1 *prima facie* violates ss. 7 or 11(d) by holding people accountable for violence committed while in a state of automatism is unrelated to, and begs the question, whether it can be upheld under s. 1. As Justice Slatter observed, the flawed approach in *Sullivan* “underlies every branch of the majority’s s. 1 analysis”.<sup>48</sup> Such an approach ought not to be replicated in the current appeal. A proper and correct analysis must still be undertaken based on a proper purposive interpretation of an impugned objectives’ provisions.

#### PART IV - SUBMISSIONS ON COSTS

29. The AGC does not seek costs and costs should not be ordered against him.

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<sup>46</sup> *Brown*, at [para 185](#) (Khullar JA), **AR, Vol 1, Tab 5, p 94**; Bill C-72, *An Act to amend the Criminal Code (self-induced intoxication)*, [SC 1995, c 32, Preamble](#), clause 6

<sup>47</sup> *Brown*, at [paras 61-63](#) (Slatter JA), **AR, Vol 1, Tab 5, p 60, 183-185** (Khullar JA), **AR, Vol 1, Tab 5, p 94**.

<sup>48</sup> *Brown*, at [para 62](#) (Slatter JA), **AR, Vol 1, Tab 5, p 60**.

**PART V - NATURE OF ORDER SOUGHT**

30. The AGC makes no submissions respecting the outcome of the appeal.
31. The AGC requests permission to present oral argument not exceeding 10 minutes.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at Toronto, Ontario, this 26th day of October, 2021.



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MICHAEL H. MORRIS

ROY LEE

REBECCA SEWELL

Of Counsel for the Attorney General of  
Canada

## PART VI - TABLE OF AUTHORITIES

REFERENCE	Paragraph cited
<b>Canadian Statutes and Regulations</b>	
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<i>R v Barrett</i> , <a href="#">2012 NLCA 12</a>	8, 17
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<i>R v Blanchard</i> , <a href="#">2018 QCCA 1069</a> , rev'd <a href="#">2019 SCC 9</a>	22
<i>R v Blayone</i> , [2012] OJ No 2191 (Prov Ct)	8, 17
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<i>R v Briscoe</i> , <a href="#">2010 SCC 13</a> , [2010] 1 SCR 411	22
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<i>R v Chaulk</i> , <a href="#">[1990] 3 SCR 1303</a>	8

<b>REFERENCE</b>	<b>Paragraph cited</b>
<i>R v Chaulk</i> , <a href="#">2007 NSCA 84</a>	8
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<i>R v Helsdon</i> , <a href="#">2007 ONCA 54</a>	11
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<i>R v Honish</i> , <a href="#">1991 ABCA 304</a> , aff'd <a href="#">[1993] 1 SCR 458</a>	8
<i>R v Hundal</i> , <a href="#">[1993] 1 SCR 867</a>	11
<i>R v JF</i> , <a href="#">2008 SCC 60</a>	11
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<i>R v LB</i> , <a href="#">2011 ONCA 153</a>	11
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<i>R v Machushek</i> , <a href="#">2016 SKCA 41</a>	11
<i>R v Martineau</i> , <a href="#">[1990] 2 SCR 633</a>	21
<i>R v McCormick</i> , <a href="#">2017 BCSC 145</a>	19
<i>R v McSween</i> , <a href="#">2020 ONCA 343</a>	11
<i>R v Murray</i> , [1985] OJ No 217 (CA)	8

<b>REFERENCE</b>	<b>Paragraph cited</b>
<i>R v Pappajohn</i> , <a href="#">[1980] 2 SCR 120</a>	11
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<i>R v Weening</i> , <a href="#">2013 ONCJ 408</a>	8, 17
<i>R v Wells</i> , [2013] NJ No 37, <a href="#">2013 CanLII 2932</a> (NL Prov Ct)	19
<i>R v Wentzell</i> , [2019] NJ No 330 (Prov Ct)	8, 17
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<b><i>LEGISLATIVE AND SECONDARY SOURCES</i></b>	
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<i>Senate Legal Committee</i> , Proceedings (28 June 1995), at p 151	17
<i>Crankshaw's Criminal Code of Canada</i> , at 253§10	8
The Hon. Mr. Justice Joseph F. Kenkel, <i>Impaired Driving in Canada</i> , 5th Ed. (LexisNexis Canada, looseleaf), esp. ch. 4.1(3)-(5)	8

**APPENDIX “A” – STATUTES RELIED ON**

1. *Criminal Code*, s 33.1, as amended by *An Act to amend the Criminal Code (self-induced intoxication)*, [SC 1995, c 32](#) (Bill C-72)
2. *Criminal Code*, RSC, 1985, c C-46, [s. 21](#), [33.1](#), [153.1\(5\)\(a\)\(i\)](#), [219-222](#), [273.1](#), [273.2](#)

<i>Criminal Code</i> , s 33.1, as amended by <i>An Act to amend the Criminal Code (self-induced intoxication)</i> , <a href="#">SC 1995, c 32</a> (Bill C-72)	
<p><b>CHAPTER 32</b></p> <p>An Act to amend the Criminal Code (self-induced intoxication)</p> <p>[Assented to 13th July, 1995]</p> <p>Preamble</p> <p>WHEREAS the Parliament of Canada is gravely concerned about the incidence of violence in Canadian society;</p> <p>WHEREAS the Parliament of Canada recognizes that violence has a particularly disadvantaging impact on the equal participation of women and children in society and on the rights of women and children to security of the person and to the equal protection and benefit of the law as guaranteed by sections 7, 15 and 28 of the <i>Canadian Charter of Rights and Freedoms</i>;</p> <p>WHEREAS the Parliament of Canada recognizes that there is a close association between violence and intoxication and is concerned that self-induced intoxication may be used socially and legally to excuse violence, particularly violence against women and children;</p> <p>WHEREAS the Parliament of Canada recognizes that the potential effects of alcohol and certain drugs on human behaviour are well known to Canadians and is aware of scientific evidence that most intoxicants, including alcohol, by</p>	<p><b>CHAPITRE 32</b></p> <p>Loi modifiant le Code criminel (intoxication volontaire)</p> <p>[Sanctionnée le 13 juillet 1995]</p> <p>Préambule</p> <p>Attendu : Préambule que la violence au sein de la société canadienne préoccupe sérieusement le Parlement du Canada;</p> <p>que le Parlement du Canada est conscient que la violence entrave la participation des femmes et des enfants dans la société et nuit gravement au droit à la sécurité de la personne et à l'égalité devant la loi que leur garantissent les articles 7, 15 et 28 de la <i>Charte canadienne des droits et libertés</i>;</p> <p>que le Parlement du Canada est conscient des liens étroits qui existent entre la violence et l'intoxication et est préoccupé du fait que l'intoxication volontaire puisse être utilisée socialement et légalement pour justifier la violence, plus particulièrement contre les femmes et les enfants;</p> <p>que le Parlement du Canada est conscient, d'une part, que les Canadiens connaissent les effets potentiels de l'alcool et de certaines drogues sur le comportement et, d'autre part, de l'existence de preuves scientifiques selon lesquelles la consommation de la plupart des</p>

<p>themselves, will not cause a person to act involuntarily;</p> <p>WHEREAS the Parliament of Canada shares with Canadians the moral view that people who, while in a state of self-induced intoxication, violate the physical integrity of others are blameworthy in relation to their harmful conduct and should be held criminally accountable for it;</p> <p>WHEREAS the Parliament of Canada desires to promote and help to ensure the full protection of the rights guaranteed under sections 7, 11, 15 and 28 of the <i>Canadian Charter of Rights and Freedoms</i> for all Canadians, including those who are or may be victims of violence;</p> <p>WHEREAS the Parliament of Canada considers it necessary to legislate a basis of criminal fault in relation to self-induced intoxication and general intent offences involving violence;</p> <p>WHEREAS the Parliament of Canada recognizes the continuing existence of a common law principle that intoxication to an extent that is less than that which would cause a person to lack the ability to form the basic intent or to have the voluntariness required to commit a criminal offence of general intent is never a defence at law;</p> <p>AND WHEREAS the Parliament of Canada considers it necessary and desirable to legislate a standard of care, in order to make it clear that a person who, while in a state of incapacity by reason of self-induced intoxication, commits an offence involving violence against another person, departs markedly from the standard of reasonable care that</p>	<p>substances intoxicantes, dont l'alcool, n'a pas en soi pour effet de faire en sorte qu'une personne agisse de façon involontaire;</p> <p>que le Parlement du Canada considère, comme les Canadiens, que celui qui porte atteinte à l'intégrité physique d'autrui alors qu'il est dans un état d'intoxication volontaire est blâmable et qu'une telle conduite devrait engager sa responsabilité criminelle;</p> <p>que le Parlement du Canada entend promouvoir et assurer la protection des droits que les articles 7, 11, 15 et 28 de la Charte canadienne <i>des droits et libertés</i> garantissent à tous, notamment aux victimes et aux victimes potentielles des actes de violence;</p> <p>que le Parlement du Canada estime nécessaire de fonder, dans la législation, la responsabilité criminelle par rapport à l'intoxication volontaire et aux infractions d'intention générale mettant en cause la violence;</p> <p>que le Parlement du Canada reconnaît le principe de common law selon lequel l'intoxication à un degré moindre que celui qui empêche une personne d'avoir l'intention de base ou la volonté requise pour la perpétration d'une infraction criminelle d'intention générale ne constitue pas un moyen de défense reconnu en droit;</p> <p>que le Parlement du Canada estime nécessaire et souhaitable que la loi prévoit une norme de diligence qui permette d'établir clairement que toute personne qui, alors qu'elle est dans un état d'intoxication volontaire, commet une infraction mettant en cause la violence contre autrui s'écarte d'une façon marquée de la norme de diligence raisonnable</p>
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<p>Canadians owe to each other and is thereby criminally at fault;</p> <p>NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:</p>	<p>acceptée dans la société canadienne et, de ce fait, est criminellement responsable,</p> <p>Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :</p>
<p><b>1. The <i>Criminal Code</i> is amended by adding the following after section 33:</b></p> <p><b>1. Le <i>Code criminel</i> est modifié par adjonction, après l'article 33, de ce qui suit :</b></p> <p><i>Self-induced Intoxication Intoxication volontaire</i></p> <p><b>33.1</b> (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).</p> <p>(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.</p> <p>(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.</p>	<p><b>1. Le <i>Code criminel</i> est modifié par adjonction, après l'article 33, de ce qui suit :</b></p> <p><i>Intoxication volontaire</i></p> <p><b>33.1</b> (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).</p> <p>(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.</p> <p>(3) Le présent article s'applique aux infractions créées par la présente loi ou</p>

<p><b>2. This Act shall come into force on a day to be fixed by order of the Governor in Council.</b></p>	<p>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.</p> <p><b>2. La présente loi entre en vigueur à la date fixée par décret.</b></p>
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<p><i>Criminal Code, RSC, 1985, c C-46, <a href="#">s. 21</a>, <a href="#">153.1(5)(a)(i)</a>, <a href="#">219-221</a>, <a href="#">273.1</a>, <a href="#">273.2</a></i></p>	
<p><b>Parties to offence</b></p> <p><b>21 (1)</b> Every one is a party to an offence who</p> <ul style="list-style-type: none"> <li>(a) actually commits it;</li> <li>(b) does or omits to do anything for the purpose of aiding any person to commit it; or</li> <li>(c) abets any person in committing it.</li> </ul> <p><b>Common intention</b></p> <p><b>(2)</b> Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.</p>	<p><b>Participants à une infraction</b></p> <p><b>21 (1)</b> Participant à une infraction :</p> <ul style="list-style-type: none"> <li>a) quiconque la commet réellement;</li> <li>b) quiconque accomplit ou omet d'accomplir quelque chose en vue d'aider quelqu'un à la commettre;</li> <li>c) quiconque encourage quelqu'un à la commettre.</li> </ul> <p><b>Intention commune</b></p> <p><b>(2)</b> Quand deux ou plusieurs personnes forment ensemble le projet de poursuivre une fin illégale et de s'y entraider et que l'une d'entre elles commet une infraction en réalisant cette fin commune, chacune d'elles qui savait ou devait savoir que la réalisation de l'intention commune aurait pour conséquence probable la perpétration de l'infraction, participe à cette infraction.</p>

<p><b>Sexual exploitation of person with disability</b></p> <p><b>153.1 (1)</b> Every person who is in a position of trust or authority towards a person with a mental or physical disability or who is a person with whom a person with a mental or physical disability is in a relationship of dependency and who, for a sexual purpose, counsels or incites that person to touch, without that person's consent, his or her own body, the body of the person who so counsels or incites, or the body of any other person, directly or indirectly, with a part of the body or with an object, is guilty of</p> <p>(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or</p> <p>(b) an offence punishable on summary conviction.</p> <p><b>Definition of consent</b></p> <p>(2) Subject to subsection (3), <b>consent</b> means, for the purposes of this section, the voluntary agreement of the complainant to engage in the sexual activity in question.</p> <p><b>Consent</b></p> <p>(2.1) Consent must be present at the time the sexual activity in question takes place.</p> <p><b>Question of law</b></p> <p>(2.2) The question of whether no consent is obtained under subsection (3) or (4) or 265(3) is a question of law.</p> <p><b>When no consent obtained</b></p> <p>(3) For the purposes of this section, no consent is obtained if</p>	<p><b>Personnes en situation d'autorité</b></p> <p><b>153.1 (1)</b> Toute personne qui est en situation d'autorité ou de confiance vis-à-vis d'une personne ayant une déficience mentale ou physique ou à l'égard de laquelle celle-ci est en situation de dépendance et qui, à des fins d'ordre sexuel, engage ou incite la personne handicapée à la toucher, à se toucher ou à toucher un tiers, sans son consentement, directement ou indirectement, avec une partie du corps ou avec un objet est coupable :</p> <p>a) soit d'un acte criminel passible d'un emprisonnement maximal de cinq ans;</p> <p>b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.</p> <p><b>Définition de consentement</b></p> <p>(2) Sous réserve du paragraphe (3), le consentement consiste, pour l'application du présent article, en l'accord volontaire du plaignant à l'activité sexuelle.</p> <p><b>Consentement</b></p> <p>(2.1) Le consentement doit être concomitant à l'activité sexuelle.</p> <p><b>Question de droit</b></p> <p>(2.2) La question de savoir s'il n'y a pas de consentement aux termes des paragraphes (3) ou (4) ou 265(3) est une question de droit.</p> <p><b>Restriction de la notion de consentement</b></p> <p>(3) Pour l'application du présent article, il n'y a pas de consentement du plaignant dans les circonstances suivantes :</p>
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<p>(a) the agreement is expressed by the words or conduct of a person other than the complainant;</p> <p>(a.1) the complainant is unconscious;</p> <p>(b) the complainant is incapable of consenting to the activity for any reason other than the one referred to in paragraph (a.1);</p> <p>(c) the accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority;</p> <p>(d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or</p> <p>(e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.</p> <p><b>Subsection (3) not limiting</b></p> <p>(4) Nothing in subsection (3) shall be construed as limiting the circumstances in which no consent is obtained.</p> <p><b>When belief in consent not a defence</b></p> <p>(5) It is not a defence to a charge under this section that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge if</p> <p>(a) the accused's belief arose from</p> <ul style="list-style-type: none"> <li>(i) the accused's self-induced intoxication,</li> <li>(ii) the accused's recklessness or wilful blindness, or</li> <li>(iii) any circumstance referred to in subsection (3) or (4) or 265(3) in which no consent is obtained;</li> </ul>	<p>a) l'accord est manifesté par des paroles ou par le comportement d'un tiers;</p> <p>a.1) il est inconscient;</p> <p>b) il est incapable de le former pour tout autre motif que celui visé à l'alinéa a.1);</p> <p>c) l'accusé l'engage ou l'incite à l'activité par abus de confiance ou de pouvoir;</p> <p>d) il manifeste, par ses paroles ou son comportement, l'absence d'accord à l'activité;</p> <p>e) après avoir consenti à l'activité, il manifeste, par ses paroles ou son comportement, l'absence d'accord à la poursuite de celle-ci.</p> <p><b>Précision</b></p> <p>(4) Le paragraphe (3) n'a pas pour effet de limiter les circonstances dans lesquelles il n'y a pas de consentement de la part du plaignant.</p> <p><b>Exclusion du moyen de défense fondé sur la croyance au consentement</b></p> <p>(5) Ne constitue pas un moyen de défense contre une accusation fondée sur le présent article le fait que l'accusé croyait que le plaignant avait consenti à l'activité à l'origine de l'accusation lorsque, selon le cas :</p> <p>a) cette croyance provient :</p> <ul style="list-style-type: none"> <li>(i) soit de l'affaiblissement volontaire de ses facultés,</li> <li>(ii) soit de son insouciance ou d'un aveuglement volontaire,</li> <li>(iii) soit de l'une des circonstances visées aux paragraphes (3) ou (4) ou 265(3) dans lesquelles il n'y a pas de consentement de la part du plaignant;</li> </ul>
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<p><b>(b)</b> the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; or</p> <p><b>(c)</b> there is no evidence that the complainant's voluntary agreement to the activity was affirmatively expressed by words or actively expressed by conduct.</p>	<p><b>b)</b> il n'a pas pris les mesures raisonnables, dans les circonstances dont il avait alors connaissance, pour s'assurer du consentement;</p> <p><b>c)</b> il n'y a aucune preuve que l'accord volontaire du plaignant à l'activité a été manifesté de façon explicite par ses paroles ou son comportement.</p>
<p><b>Criminal negligence</b></p> <p><b>219 (1)</b> Every one is criminally negligent who</p> <p><b>(a)</b> in doing anything, or</p> <p><b>(b)</b> in omitting to do anything that it is his duty to do,</p> <p style="padding-left: 40px;">shows wanton or reckless disregard for the lives or safety of other persons.</p> <p><b>Definition of duty</b></p> <p><b>(2)</b> For the purposes of this section, <b>duty</b> means a duty imposed by law.</p> <p><b>Causing death by criminal negligence</b></p> <p><b>220</b> Every person who by criminal negligence causes death to another person is guilty of an indictable offence and liable</p> <p><b>(a)</b> 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</p> <p><b>(b)</b> in any other case, to imprisonment for life.</p> <p><b>Causing bodily harm by criminal negligence</b></p>	<p><b>Négligence criminelle</b></p> <p><b>219 (1)</b> Est coupable de négligence criminelle quiconque :</p> <p><b>a)</b> soit en faisant quelque chose;</p> <p><b>b)</b> soit en omettant de faire quelque chose qu'il est de son devoir d'accomplir,</p> <p style="padding-left: 40px;">montre une insouciance déréglée ou téméraire à l'égard de la vie ou de la sécurité d'autrui.</p> <p><b>Définition de devoir</b></p> <p><b>(2)</b> Pour l'application du présent article, <b>devoir</b> désigne une obligation imposée par la loi.</p> <p><b>Le fait de causer la mort par négligence criminelle</b></p> <p><b>220</b> Quiconque, par négligence criminelle, cause la mort d'une autre personne est coupable d'un acte criminel passible :</p> <p><b>a)</b> s'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;</p> <p><b>b)</b> dans les autres cas, de l'emprisonnement à perpétuité.</p> <p><b>Causer des lésions corporelles par négligence criminelle</b></p>

<p><b>221</b> Every person who by criminal negligence causes bodily harm to another person is guilty of</p> <p>(a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or</p> <p>(b) an offence punishable on summary conviction.</p>	<p><b>221</b> Quiconque, par négligence criminelle, cause des lésions corporelles à autrui est coupable :</p> <p>a) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans;</p> <p>b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.</p>
<p><b>Meaning of consent</b></p> <p><b>273.1 (1)</b> Subject to subsection (2) and <a href="#">subsection 265(3)</a>, <b>consent</b> means, for the purposes of <a href="#">sections 271, 272</a> and <a href="#">273</a>, the voluntary agreement of the complainant to engage in the sexual activity in question.</p> <p><b>Consent</b></p> <p>(1.1) Consent must be present at the time the sexual activity in question takes place.</p> <p><b>Question of law</b></p> <p>(1.2) The question of whether no consent is obtained under <a href="#">subsection 265(3)</a> or subsection (2) or (3) is a question of law.</p> <p><b>No consent obtained</b></p> <p>(2) For the purpose of subsection (1), no consent is obtained if</p> <p>(a) the agreement is expressed by the words or conduct of a person other than the complainant;</p> <p>(a.1) the complainant is unconscious;</p> <p>(b) the complainant is incapable of consenting to the activity for any reason other than the one referred to in paragraph (a.1);</p>	<p><b>Définition de consentement</b></p> <p><b>273.1 (1)</b> Sous réserve du paragraphe (2) et du <a href="#">paragraphe 265(3)</a>, le consentement consiste, pour l'application des <a href="#">articles 271, 272</a> et <a href="#">273</a>, en l'accord volontaire du plaignant à l'activité sexuelle.</p> <p><b>Consentement</b></p> <p>(1.1) Le consentement doit être concomitant à l'activité sexuelle.</p> <p><b>Question de droit</b></p> <p>(1.2) La question de savoir s'il n'y a pas de consentement aux termes du <a href="#">paragraphe 265(3)</a> ou des paragraphes (2) ou (3) est une question de droit.</p> <p><b>Restriction de la notion de consentement</b></p> <p>(2) Pour l'application du paragraphe (1), il n'y a pas de consentement du plaignant dans les circonstances suivantes :</p> <p>a) l'accord est manifesté par des paroles ou par le comportement d'un tiers;</p> <p><a href="#">a.1</a>) il est inconscient;</p> <p>b) il est incapable de le former pour tout autre motif que celui visé à l'alinéa <a href="#">a.1</a>);</p>

<p>(c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;</p> <p>(d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or</p> <p>(e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.</p> <p><b>Subsection (2) not limiting</b></p> <p>(3) Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained.</p>	<p>c) l'accusé l'incite à l'activité par abus de confiance ou de pouvoir;</p> <p>d) il manifeste, par ses paroles ou son comportement, l'absence d'accord à l'activité;</p> <p>e) après avoir consenti à l'activité, il manifeste, par ses paroles ou son comportement, l'absence d'accord à la poursuite de celle-ci.</p> <p><b>Précision</b></p> <p>(3) Le paragraphe (2) n'a pas pour effet de limiter les circonstances dans lesquelles il n'y a pas de consentement de la part du plaignant.</p>
<p><b>Where belief in consent not a defence</b></p> <p><b>273.2</b> It is not a defence to a charge under <a href="#">section 271</a>, <a href="#">272</a> or <a href="#">273</a> that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where</p> <p>(a) the accused's belief arose from</p> <p>(i) the accused's self-induced intoxication,</p> <p>(ii) the accused's recklessness or wilful blindness, or</p> <p>(iii) any circumstance referred to in <a href="#">subsection 265(3)</a> or <a href="#">273.1(2)</a> or (3) in which no consent is obtained;</p> <p>(b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; or</p>	<p><b>Exclusion du moyen de défense fondé sur la croyance au consentement</b></p> <p><b>273.2</b> Ne constitue pas un moyen de défense contre une accusation fondée sur les <a href="#">articles 271</a>, <a href="#">272</a> ou <a href="#">273</a> le fait que l'accusé croyait que le plaignant avait consenti à l'activité à l'origine de l'accusation lorsque, selon le cas :</p> <p>a) cette croyance provient :</p> <p>(i) soit de l'affaiblissement volontaire de ses facultés,</p> <p>(ii) soit de son insouciance ou d'un aveuglement volontaire,</p> <p>(iii) soit de l'une des circonstances visées aux <a href="#">paragraphe 265(3)</a> ou <a href="#">273.1(2)</a> ou (3) dans lesquelles il n'y a pas de consentement de la part du plaignant;</p> <p>b) il n'a pas pris les mesures raisonnables, dans les circonstances dont il avait alors</p>

<p>(c) there is no evidence that the complainant's voluntary agreement to the activity was affirmatively expressed by words or actively expressed by conduct.</p>	<p>connaissance, pour s'assurer du consentement;</p> <p>c) il n'y a aucune preuve que l'accord volontaire du plaignant à l'activité a été manifesté de façon explicite par ses paroles ou son comportement.</p>
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