

# TOP FIVE 2022

Each year at OJEN's Toronto Summer Law Institute, a leading jurist identifies five cases (or in this year's resource, six cases) that are of significance in the educational setting. The 2022 cases were selected and discussed by Mr. Justice Lorne Sossin, then of the Ontario Superior Court of Justice and currently of the Court of Appeal for Ontario. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

## ***R v. Brown*, 2022 SCC 18**

**Date released: May 13, 2022**

<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19389/index.do>

### **Note**

2022 was an interesting year for our Top 5 cases, in that, well... it's actually our Top 6! Let us explain.

*R v. Brown* is a decision of the Supreme Court of Canada on the constitutionality of section 33.1 of the *Criminal Code*, which prohibited an accused from raising self-induced intoxication as a defence to criminal charges. The Court unanimously held that the section violated the *Charter of Rights and Freedoms* and struck it down as unconstitutional. The Court delivered the *Brown* decision at the same time as another related case, *R v. Sullivan*, which is also included in this resource. Because they delivered together, we've included them both here for your convenience.

### **Facts**

One night at a party in January 2018, Matthew Brown consumed alcohol and magic mushrooms. Mr. Brown was in a

state of extreme intoxication when he broke into the house of Janet Hamnett and violently attacked her, causing her grave and permanent injuries. Brown later broke into another home, which belonged to Mr. and Mrs. Varshney. They were able to take shelter in their bedroom. When Mr. Brown was arrested, he was nude and said that he had no memory of what had taken place during the previous few hours. Mr. Brown was charged with one count of breaking and entering into Ms. Hamnett's home and committing the indictable offence of aggravated assault of Ms. Hamnett. He was also charged with one count of breaking and entering into the Varshney's home and committing the indictable offence of mischief to property over \$5,000.

In court, Mr. Brown argued he was not guilty because he was in a state of automatism due to his consumption of magic mushrooms in combination with alcohol.



In response, the Crown raised section 33.1 which says that an accused cannot rely on self-induced intoxication that is akin to automatism when they are charged with a general intent offence, like aggravated assault. Mr. Brown brought a constitutional challenge against section 33.1.

## Procedural History

At the Alberta Court of Queen’s Bench, the court found that section 33.1 was unconstitutional because it violated Mr. Brown’s presumption of innocence and principles of fundamental justice. It could not be saved by section 1 of the *Charter*. Because of this finding by the court, Mr. Brown was able to raise the defence of “extreme intoxication akin to automatism”. At his trial, experts testified that Mr. Brown’s acts on the night of the incident were not those of someone acting voluntarily. The court found that the consumption of magic mushrooms had left Mr. Brown in a state of delirium. It acquitted Mr. Brown.

However, the Alberta Court of Appeal overturned the trial court’s finding of unconstitutionality. Court of Appeal Justices Slater and Hughes found that section 33.1 did not violate any sections of the *Charter*. Meanwhile, Justice Khullar did find a

violation but determined that section 33.1 could be saved under section 1. As a result of this, the court set aside Mr. Brown’s acquittal. Mr. Brown appealed to the Supreme Court of Canada.

## Issue

Does section 33.1 violate sections 7 and 11(d) of the *Charter* and, if so, can it be saved under section 1?

## The Decision

In a unanimous decision, the Supreme Court found that section 33.1 breached sections 7 and 11(d) of the *Charter* because it allowed Mr. Brown to be convicted without proof of a guilty mind (the legal term is “mens rea”) or proof that Mr. Brown had acted voluntarily.

## Ratio

Extreme intoxication that is akin to automatism is a defence to crimes of general intent.<sup>1</sup>

## Reasons

Case law which has developed over the years has made it clear that intoxication is not a defence to crimes of general intent. However, when somebody is intoxicated

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<sup>1</sup> General intent offences require the offender to have intended to perform the illegal action, without the need to intend specific consequences or act for a specific purpose.



to the point of automatism, this results in a person losing voluntary control of their actions. The Supreme Court explained that automatism results in involuntary movements over which the person has no control. Involuntary movements can also arise out of conditions like delirium, sleepwalking, seizures, and heart attack. If somebody is not acting voluntarily, it is impossible for them to have a guilty mind (“mens rea”) or commit the guilty act (“actus reus”). When a person is in an intoxicated state which is akin to automatism, they cannot act voluntarily.

### **Section 7**

The *Charter* requires that the mens rea be proven in order for somebody to be guilty of a crime. This is a principle of fundamental justice under section 7 of the *Charter*. The intention required by section 33.1 is an “intention to become intoxicated.” Section 33.1 did not consider whether the person foresaw a loss of awareness or control arising out of the consumption of the intoxicant, or in other words, instances of sudden and unexpected onset of involuntariness. It therefore allows for a conviction without proof of mens rea. Section 7 also requires voluntariness but because intoxication akin to

automatism results in involuntary acts, section 33.1 criminalizes somebody who is not acting voluntarily, which is also contrary to section 7.

### **Section 11(d)**

The second section of the *Charter* that the court looked at was 11(d). Section 11(d) ensures that an accused is presumed innocent until proven guilty. The court said that section 33.1 improperly substitutes proof of self-induced intoxication for proof of voluntariness and fault. What this means is that conviction is possible under section 33.1 even if there is a reasonable doubt as to whether the person committed the crime.

For these reasons, section 33.1 was found to violate both sections 7 and 11(d) the *Charter*. The court then considered whether section 33.1 could be saved under section 1.<sup>2</sup>

### **Section 1**

The Supreme Court applied the *Oakes* test to determine whether section 33.1 could be saved under section 1. The first question of the test is whether the law has a pressing and substantial objective. The court said that section 33.1 passes this part of the test because one of its goals is the protection

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<sup>2</sup> Otherwise known as the “Oakes” test. If a law limits somebody’s constitutional rights, the law can still be valid if it passes this 2-part test.

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of vulnerable populations, like children and women, from extreme intoxicated violence, which is pressing and substantial. The second pressing and substantial objective of the law is to hold people accountable who voluntarily put themselves at risk of extreme intoxication and try to escape liability for any violent actions committed while in that state.

The second part of the test is called the "proportionality analysis". First, the law must be rationally connected to its objective. The court said section 33.1 passed this part as well. The next part is whether the law "minimally impairs" a person's rights, and this is where section 33.1 failed. The law was not minimally impairing because there were other ways of achieving the government's goals that wouldn't have violated the accused's rights. The court also said that section 33.1 failed the final part of the test, because the benefits of the law did not outweigh its costs.

Section 33.1 was thus found to not be saved under section 1 and was declared unconstitutional and of no force or effect. Mr. Brown's acquittal was restored by the Supreme Court of Canada.



## Discussion

1. What does "extreme intoxication" mean in the law?
2. What is the difference between mens rea and actus reus?
3. Voluntariness is a really important concept in this case. Can you think of other legal examples where somebody would not be acting voluntarily?
4. Can you think of a situation where a person could be extremely intoxicated, but are not entitled to use the defence that was used in this case?
5. What options could the government have taken to achieve its goals (like protecting vulnerable people) while passing the proportionality analysis?