

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. Sullivan, 2022 SCC 19

Date released: May 13, 2022

<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19390/index.do>

Facts

David Sullivan

David Sullivan, who was 43 years old at the time, took an overdose of a prescription drug in an attempt to end his life. Following the overdose, he became impaired and fell into a state of drug-induced psychosis. Mr. Sullivan violently attacked his mother (with whom he lived in a condominium) by stabbing her six times, leaving her with serious injuries. Mr. Sullivan was charged with aggravated assault and assault with a weapon. Following the attack, Mr. Sullivan was observed outside of his building, acting erratically and in an agitated manner. Mr. Sullivan had a history of mental illness and substance abuse problems prior to the attack.

Thomas Chan

The cross-appellant in this appeal, Thomas Chan, had been drinking at a bar with friends on the night of the incident. When they returned home from the bar, Mr. Chan

and his friends ingested magic mushrooms. Mr. Chan did not feel the effects of the mushrooms at first and took another dose. After that he became impaired. Mr. Chan left his house, ran over to his father's house and violently stabbed his father and his father's partner. Mr. Chan's father was killed in the attack, while his father's partner was seriously injured. Mr. Chan was charged with manslaughter and aggravated assault.

Procedural History

David Sullivan

At the Superior Court, the trial judge determined that Mr. Chan was in a state of non-mental disorder automatism caused by the voluntary ingestion of an intoxicant. However, he was precluded from using the defence of automatism due to section 33.1. Consequently, Mr. Sullivan was found guilty of aggravated assault and assault with a weapon, and sentenced to five years imprisonment.



Thomas Chan

In a pre-trial application, the constitutionality of section 33.1 was challenged by Mr. Chan. Mr. Chan argued that the trial judge was bound by the decisions of *R. v. Dunn* (1999), 28 C.R. (5th) 295 (Ont. C.J. (Gen. Div.)), and *R. v. Fleming*, 2010 ONSC 8022 in which section 33.1 of the *Criminal Code* was found to be unconstitutional. The judge decided they did not have to follow these decisions because the law around section 33.1 was "greatly unsettled". In their own analysis, the Superior Court found that although section 33.1 infringed both sections 7 and 11 of the *Charter*, it could be saved under section 1 of the *Charter*. The trial judge found Mr. Chan guilty of manslaughter and aggravated assault and sentenced him to five years imprisonment.

After Mr. Chan was sentenced, there was a ruling in *R v. McCaw*, 2018 ONSC 3464, 48 C.R. (7th) 359, which declared section 33.1 unconstitutional. Mr. Chan applied to re-open his case, but trial judge Justice Boswell dismissed Mr. Chan's application to re-open the case because they did not see *McCaw* as being "an accurate statement of the law".

Ontario Court of Appeal

Appeals to the Ontario Court of Appeal for both cases were allowed. Section 33.1 was

declared unconstitutional and, therefore, Mr. Sullivan was acquitted of the assault charges because of his intoxication akin to automatism at the time he committed the offences. The court ordered a new trial in the case of Mr. Chan.

Issue

One of the issues was related to the constitutionality of section 33.1. This question was settled in the decision of *R v. Brown* (released alongside this decision and summarized above) in which section 33.1 was found unconstitutional and of no force or effect. The other important issue in this case was:

1. Is a declaration of unconstitutionality by one trial court binding on another trial court in the same province?

Decision - Unanimous

A unanimous Supreme court dismissed the Crown's appeals, and upheld Mr. Sullivan's acquittal, as well as Mr. Chan's order for a new trial.

Ratio

The court said a trial court decision is indeed binding on other trial courts, unless the facts of the case are different enough, or if the court had no practical way of knowing the decision existed.



Reasons

The Supreme Court ruled that courts should follow precedents set by courts of coordinate jurisdiction (courts at the same level), unless the facts are very different, or the other court had no way of knowing about the decision. This is called "horizontal stare decisis". An example of horizontal stare decisis would be the Ontario Court of Justice following a decision made by the Ontario Superior Court of Justice, because they are both trial courts. This does not have the same strict effect as "vertical stare decisis". Vertical stare decisis is where precedents are set by higher courts, to be followed by lower courts (for example, The Ontario Superior Court of Justice following a precedent set at the Supreme Court of Canada, our country's highest court). A court can depart from binding decisions of courts of coordinate jurisdiction when: that decision has been overruled or is inconsistent with the decision of a higher court; when the coordinate court reached their decision without considering the law properly and this impacted the judgement; or when there was no chance for the court to consult other relevant authorities.

In Mr. Chan's case, the Supreme Court found that the trial judge should not have departed from precedent set in a coordinate jurisdiction. The Supreme Court made it clear: disagreement between trial

judges is not enough - a binding decision of a coordinate court must be followed unless one of the three exceptions apply.



Discussion

1. What is a court of “coordinate jurisdiction”?
2. Why do you think Mr. Sullivan was acquitted, whereas Mr. Chan must go through the trial process again?
3. Was the trial judge’s opinion that the law was “greatly unsettled” enough to depart from the principle of horizontal stare decisis? Why or why not?
4. The Supreme Court clarified that trial courts may depart from decisions made in other trial courts in the province if that decision is inconsistent with the decision of a higher court. Can you think of an example where this might happen?
5. This case talked about horizontal stare decisis. However, this principle is only applied to courts in the same province. Why do you think it would not apply to courts in different provinces?