

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

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant  
(Respondent)

-and-

DAVID SULLIVAN

Respondent  
(Appellant)

AND BETWEEN:

HER MAJESTY THE QUEEN

Appellant  
(Respondent)

-and-

THOMAS CHAN

Respondent  
(Appellant)

-and-

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(Pursuant to Rules 37 and 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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## PART I – OVERVIEW AND STATEMENT OF FACTS

1. This appeal concerns the constitutionality of s. 33.1 of the *Criminal Code*, Parliament’s amendment of the common law<sup>1</sup> to hold individuals criminally responsible for violent acts committed while in a state of self-induced extreme intoxication. The Court of Appeal for Ontario found that s. 33.1 infringes ss. 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*<sup>2</sup> in a decision that largely tracked the majority reasons of this Court in *R. v. Daviault*. When Parliament enacted s. 33.1, however, it heard evidence and considered issues not raised in *Daviault*. This evidence concerned the gendered nature of violence, particularly sexual and domestic violence;<sup>3</sup> the links between intoxication and such violence; and the policy reasons why those who consume intoxicants to the point where they lose control and harm others should be held accountable. Parliament’s response to *Daviault* sought to balance the accused’s ss. 7 and 11(d) rights with the equality, dignity, and security rights of women and children guaranteed under ss. 7, 15 and 28.

2. LEAF intervenes to argue that courts assessing the constitutionality of legislation enacted with a goal of striking a balance between different *Charter* rights must take *all* of those rights into consideration in their analysis. This requires courts to consider both the rights of the accused *and* the rights of women and children in their s. 7 analysis, as this Court has done in cases such as *R. v. Mills*.<sup>4</sup> All of these rights must also be given due weight in any s. 1 justification.

3. The Court of Appeal for Ontario failed to give full consideration to the ss. 7, 15, and 28 rights of women and children. These rights are not simply other societal interests that should be relegated to s. 1 justification. In finding there was no scope to consider all the rights that Parliament

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<sup>1</sup> Bill C-72, which enacted s. 33.1 of the *Criminal Code*, was Parliament’s response to this Court’s decision in *R. v. Daviault*, [\[1994\] 3 S.C.R. 63](#).

<sup>2</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c. 11* (the “*Charter*”).

<sup>3</sup> While the two cases do not involve sexual violence, the leading Canadian cases on extreme intoxication all involved sexual assault (or rape): *Daviault*, *supra* note 1; *R. v. Bernard*, [\[1998\] 2 S.C.R. 833](#); and *R. v. Leary*, [\[1978\] 1 S.C.R. 29](#). These cases both involve targeting family members – or domestic violence – a key concern of Parliament when enacting s. 33.1.

<sup>4</sup> *R. v. Mills*, [\[1999\] 3 S.C.R. 668](#).

sought to balance when deciding whether s. 33.1 of the *Criminal Code* infringes s. 7 of *Charter*,<sup>5</sup> the Court privileged individual rights over those of vulnerable groups, including women and children who disproportionately bear the risks of intoxicated violence. Endorsing this analysis would undermine Parliament’s ability to legislate on complex issues involving the safety of vulnerable populations.

4. The majority judgment in the court below creates further barriers to governments seeking to justify a s. 7 infringement, by refusing to accept that the accountability purpose could be a proper objective – let alone a pressing and substantial objective.<sup>6</sup> This Court has recognized Parliament’s ability to legislate and strike a constitutionally permissible balance between the rights of the accused and those of victims in criminal proceedings.<sup>7</sup> The approach adopted by the court below risks jeopardizing the hard-won rights of women and girls in other cases involving the balancing of “similarly deserving” *Charter* rights,<sup>8</sup> as well as their right to the full protection of the law.<sup>9</sup>

## **PART II – POSITION WITH RESPECT TO APPELLANT’S QUESTIONS**

5. The questions in this appeal are whether s. 33.1 of the *Criminal Code* infringes ss. 7 and 11(d) of the *Charter*, and if so, whether this infringement can be justified under s. 1. LEAF submits that, in resolving these questions, this Court must give full consideration to *all* of the rights Parliament contemplated when enacting this provision, at all stages of the constitutional analysis. LEAF also submits that accountability is a legitimate, pressing and substantial objective.

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

6. In assessing the constitutionality of s. 33.1, this Court must consider all of the rights that Parliament sought to balance when it enacted this provision – both in the s. 7 analysis and, if required, in any s. 1 justification. The Court of Appeal’s decision singularly focused on the individual rights of the accused and failed to give due consideration to the other *Charter* rights at

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<sup>5</sup> *R. v. Sullivan*, [2020 ONCA 333](#) at paras. 56-58 (majority); see also paras. 201, 204 (concurring).

<sup>6</sup> *Ibid*, at paras. 112-114.

<sup>7</sup> See, e.g. *R. v. Mills*, *supra* note 4 and *R. v. Darrach*, [\[2000\] 2 S.C.R. 443](#).

<sup>8</sup> *R. v. Mills*, *supra* note 4 at para. 61.

<sup>9</sup> *R. v. Barton*, [2019 SCC 33](#) at paras. 200, 210.

stake, or to Parliament's recognition of the importance of the accountability purpose in this context.

**A. Where protected *Charter* rights are potentially in conflict, courts must seek to strike a balance that respects the importance of all rights engaged**

7. The Court of Appeal found that it was not appropriate to internally balance rights when deciding whether the deprivation of an accused person's s. 7 liberty interest accords with the principles of fundamental justice. This approach runs counter to the longstanding jurisprudence of this Court cautioning against privileging some *Charter* rights over others. When rights appear to conflict, courts must strive to find a balance that can respect both sets of rights. As Chief Justice Lamer explained in *Dagenais v. Canadian Broadcasting Corporation*:

A hierarchical approach to rights, which places some over others, must be avoided, both when interpreting the *Charter*, and when developing the common law. When the protected rights of two individuals come into conflict . . . *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.<sup>10</sup>

8. In *Dagenais*, this Court modified the pre-*Charter* common law rule governing publication bans to strike a better balance consistent with *Charter* principles and the "equal status given by the *Charter* to ss. 2(b) and 11(d)."<sup>11</sup> This Court adopted a similar approach in *R. v. Mills* when assessing the constitutionality of legislation enacted to further different rights that may be in conflict. In *R. v. Mills*, this Court balanced the privacy, security, and equality rights of complainants in sexual assault proceedings with those of accused persons when finding that the right to full answer and defence was a principle of fundamental justice, but that it was not unlimited.<sup>12</sup> The Court explained why this internal balancing was necessary:

No single [*Charter*] principle is absolute and capable of trumping the others; all must be defined in light of competing claims. . . This illustrates the importance of interpreting rights in a contextual manner - not because they are of intermittent importance but because they often inform, and are informed by, other similarly deserving rights or values at play in particular circumstances.<sup>13</sup>

<sup>10</sup> *Dagenais v. CBC*, [1994] 3 S.C.R. 835, at p. 877.

<sup>11</sup> *Ibid.* See also *R. v. Mentuck*, 2001 SCC 76.

<sup>12</sup> *R. v. Mills*, *supra* note 4, at paras. 71-76, 94. See also *R. v. Darrach*, *supra* note 7 at para. 29-31; 42-43; 69-70.

<sup>13</sup> *R. v. Mills*, *supra* at note 4 at para. 61 [reference to *Dagenais* omitted].

This approach to interpreting the scope of s. 7 protection when other rights are at stake is also consistent with the fact that s. 7, unlike most other *Charter* rights, is internally limited.<sup>14</sup>

9. In this case, the Court of Appeal sought to distinguish *Mills* on the basis that s. 33.1 “is not about the constitutionality of a legislated compromise between protected interests.”<sup>15</sup> In fact, Parliament engaged in *exactly* that process of compromise in enacting s. 33.1, by balancing the ss. 7 and 11(d) rights of accused persons with the ss. 7, 15, and 28 rights of women and children. The evidence and issues Parliament examined in Committee hearings leading to s. 33.1 make it clear that a balancing of rights is at the heart of this provision.

10. Committee hearings and Parliamentary debate on Bill C-72, which amended the *Criminal Code* by adding s. 33.1, focused on the disproportionate impact of violence, particularly sexual and domestic violence, on women and girls – and their equality rights.<sup>16</sup> Committee witnesses emphasized the strong correlation between alcohol use and violent offences against women, highlighting how alcohol use was often connected to more severe violence.<sup>17</sup> The Minister of Justice specifically raised concerns about the connection between domestic assault and intoxicated assailants when speaking about the proposed bill.<sup>18</sup> Enacting s. 33.1 was seen as sending an important message – that intoxicated violence against women would not be tolerated, thus

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<sup>14</sup> Not every deprivation of life, liberty or security of the person will infringe s. 7, only those deprivations that are not in accordance with the principles of fundamental justice will breach s. 7.

<sup>15</sup> *R. v. Sullivan*, *supra* note 5 at para. 58.

<sup>16</sup> See, for example, *House of Commons Debates*, 35-1, vol 8 (27 March 1995) at 11040 (Hon Allan Rock); *House of Commons Debates*, 35-1, no 224, vol 12 (22 June 1995) at 14474 (Hon Pierrette Venne), referencing Statistics Canada’s 1993 *Violence Against Women Survey*, as published in Karen Rogers, “Wife assault: findings of a national survey,” *Juristat*, vol 14, no 9 (March 1994).

<sup>17</sup> See *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs* [“*Minutes*”], No 97 (5 April 1995) at 5 (Prof Patrick Healy), at 22 (Prof Christine Boyle), *Minutes* No 161 (13 June 1995) at 11, 14, 17; *Minutes*, No 158 (6 June 1995) at 15 (Susan Bazilli), and at 10, 12 (Prof Elizabeth Sheehy).

<sup>18</sup> *House of Commons Debates*, 35-1 vol 8 (27 March 1995) at 11039 (Hon Allan Rock); *Minutes*, No 98 (6 April 1995) at 16 (Hon Allan Rock).

encouraging reporting.<sup>19</sup> The preamble to Bill C-72 is consistent with the concerns raised in Committee hearings. Large parts of the preamble also mirror the language in the preamble to Bill C-46, which brought into effect the regime governing access to records in sexual assault cases that was the subject of constitutional scrutiny in *Mills*.<sup>20</sup> In the circumstances, it was an error to find that the internal balancing approach from *Mills* was not applicable in assessing the constitutionality of s. 33.1 of the *Criminal Code*.

11. The Court of Appeal also erred in finding that this Court had already “authoritatively determined” the scope of the principles of fundamental justice in this context.<sup>21</sup> In *Daviault*, this Court was only asked to determine whether the common law rule infringed the rights of the accused. There was no assessment of competing rights or whether the principles of fundamental justice needed to be delineated with an eye to the equality and security rights of those who are disproportionately subject to intoxicated violence. When Parliament amended the common law and chose a regime different from that proposed by the majority in *Daviault*, it did so in large part because it considered a broader range of *Charter* rights than those contemplated by this Court.

12. The Court of Appeal’s finding that *Daviault* was the final word on the scope of the principles of fundamental justice is also inconsistent with the roles assigned to courts and legislatures in our constitutional democracy. As this Court stated in *Mills*, “Courts do not hold a monopoly on the protection and promotion of rights and freedoms; Parliament also plays a role in this regard and it is often able to act as a significant ally for vulnerable groups. This is especially important to recognize in the context of sexual violence.”<sup>22</sup>

13. Parliament explicitly sought to prioritize the equality, security, and dignity of women and children when enacting s. 33.1. Because the reasoning in *Daviault* gave no consideration to those

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<sup>19</sup> See, for example, *House of Commons Debates*, 35-1, vol 8 (27 March 1995) at 11044 (Hon Christiane Gagnon), and at 11039 (Hon Allan Rock); *Minutes*, No 158 (6 June 1995) at 7 (Prof Elizabeth Sheehy).

<sup>20</sup> *An Act to amend the Criminal Code (self-induced intoxication)*, S.C. 1995, c. 32, [Preamble](#); *An Act to amend the Criminal Code (production of records in sexual offence proceedings)*, S.C. 1997, c. 30, [Preamble](#).

<sup>21</sup> *R. v. Sullivan*, *supra* note 5 at para. 58.

<sup>22</sup> *Mills*, *supra* note 4 at para. 58.

rights, it cannot be viewed as the final word on the scope of the principles of fundamental justice. This Court has held that an accused person’s ss. 7 and 11(d) fair trial rights are not unlimited, but need to be understood and interpreted in a manner that respects other *Charter* rights.<sup>23</sup> In *Mills*, this Court considered the privacy, security, and equality rights of complainants in sexual assault proceedings when deciding that although an accused’s right to full answer and defence was a principle of fundamental justice, this right was not unlimited.<sup>24</sup> In *R. v. N.S.*, this Court had to decide whether a woman should be required to remove her niqab when testifying in criminal court. The majority chose not to adopt a fixed rule for all cases, finding that courts should strike “a just and appropriate balance” between the accused’s *Charter* rights and those of complainants.<sup>25</sup>

14. The delineation of the principles of fundamental justice considered in *Daviault* must be reconsidered with the security, dignity, and equality rights of women and children in mind. In particular, the scope of the principles of fundamental justice should be interpreted through an equality lens. This is consistent with this Court’s repeated recognition of equality as an important *Charter* value in constitutional interpretation.<sup>26</sup> As Justice McIntyre emphasized in *Andrews v. Law Society of British Columbia*, “The section 15(1) guarantee is the broadest of all guarantees. It applies to and supports all other rights guaranteed by the *Charter*.”<sup>27</sup> The equality guarantee in ss. 15 and 28 has been recognized as an “interpretive lens” with particular significance for determining “the scope of protection offered by s. 7”, helping ensure the *Charter*’s responsiveness to the “realities and needs of all members of society”.<sup>28</sup> As Professor Hogg has noted, this Court has relied on equality values both to expand – and to narrow – the scope of fundamental justice. The

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<sup>23</sup> *Dagenais*, *supra* note 10; *Mills*, *supra* note 4; *Darrach*, *supra* note 7; *R. v. N.S.*, [2012 SCC 72](#).

<sup>24</sup> *Mills*, *supra* note 4.

<sup>25</sup> *R. v. N.S.*, *supra* note 23 at para. 46.

<sup>26</sup> See Peter W. Hogg, “[Equality As a Charter Value in Constitutional Interpretation](#)” (2003) 20 S.C.L.R. (2d) 113. See also Suzy Flader, “[Fundamental Rights for All: Toward Equality as a Principle of Fundamental Justice Under Section 7 of the Charter](#)” (2020) 25 Appeal 43.

<sup>27</sup> *Andrews v. Law Society of British Columbia*, [\[1989\] 1 S.C.R. 143 at 185](#).

<sup>28</sup> *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [\[1999\] 3 S.C.R. 46](#) at paras. 112, 115 *per* L’Heureux-Dubé concurring. See also *R. v. Darrach*, *supra* note 7 at para. 70; *R. v. Mills*, *supra* note 4 at paras. 61, 90.

requirements of fundamental justice may be narrowed where the equality rights of others are in conflict with the interests of those claiming the s. 7 rights.<sup>29</sup>

15. In recent years, this Court has held that societal interests are more the fare of s. 1 than of s. 7. However, it has stated this in cases where the principles of fundamental justice are concerned with “instrumental rationality” – namely arbitrariness, overbreadth, or gross disproportionality.<sup>30</sup> Where, as here, the principles of fundamental justice have not been fully delineated, or there is some debate as to the boundaries of the *Charter* rights or the principles of fundamental justice in question, this Court has held that the balancing of individual and societal interests remains relevant to “elucidating the principles of fundamental justice”.<sup>31</sup> Recent decisions of this Court have re-affirmed that some freestanding principles of fundamental justice, such as the right to full answer and defence, are not without limit and can be modified to balance the *Charter* interests of accused persons and complainants.<sup>32</sup>

16. The Court of Appeal’s failure to re-assess the boundaries of the principles of fundamental justice privileges an individualistic approach to s. 7 rights. Endorsing this approach would undermine legislative attempts to establish rules restricting risky conduct in the interest of public safety, both in the regulatory and the criminal law context.<sup>33</sup> It would pose a barrier to introducing legislation to protect vulnerable groups, such as women and children.

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<sup>29</sup> [Hogg](#), *supra* note 26 at p. 127.

<sup>30</sup> See e.g. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#) at paras. 124-127 [“*Bedford*”]; *Carter v. Canada (Attorney General)*, [2015 SCC 5](#) at paras. 78-80 [“*Carter*”].

<sup>31</sup> *R. v. Malmö-Levine*, [2003 SCC 74](#) at para. 98.

<sup>32</sup> See e.g. *R. v. Goldfinch*, [2019 SCC 38](#) at para. 39; *R. v. R.V.*, [2019 SCC 41](#) at paras. 35, 40; *R. v. Quesnelle*, [2014 SCC 46](#) at paras. 62-65.

<sup>33</sup> This concern has been raised following this Court’s decision in *Bedford* – which has been described as now focusing “relentlessly on the individual claimant” at least when assessing rules of instrumental rationality: see, e.g. *R. v. Michaud*, [2015 ONCA 585](#) at paras. 78-80; 146-154.

See also Colton Fehr, “[Rethinking the Instrumental Rationality Principles of Fundamental Justice](#)” (2020) 58:1 *Alberta Law Review* 133 at p. 134, 140-143.

**B. Accountability is a pressing and substantial objective**

17. The Court of Appeal erred by finding that accountability is not a pressing and substantial objective. Without analysis, the majority asserted that “overrid[ing] principles that deny accountability, for the purpose of imposing accountability” is an unconstitutional purpose.<sup>34</sup> The majority appeared to view accountability as a simple desire to secure a conviction. In doing so, it failed to consider the extensive evidence before Parliament about the need for accountability *as a means to redress the inequality experienced by women and children* in the context of intoxicated gender-based violence. Both the Committee hearings and Parliamentary debates highlighted the pressing social reasons for holding intoxicated offenders accountable for violence against women, and its connection to protecting the ss. 7, 15, and 28 *Charter* rights of women and girls.<sup>35</sup>

18. The Committee was concerned that failing to hold such offenders accountable would perpetuate the inequality of women and girls, requiring them to bear the risk of extreme intoxicated violence. Many Parliamentarians worried that the availability of the defence telegraphed that intoxicated male violence was acceptable or excusable.<sup>36</sup> Parliament heard that holding offenders accountable would convey that violence against women is not tolerated, thereby encouraging the reporting of these crimes and affecting decisions about their “founding” and prosecution when women choose to report.<sup>37</sup> This was particularly important because, as one of the Committee members noted, only 10% of sexual assaults were being reported.<sup>38</sup> In this way, Parliament was attuned to the link between accountability and promoting access to justice for women and girls, as well as its role in redressing the inequality they experience because of intoxicated violence.

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<sup>34</sup> *R. v. Sullivan*, *supra* note 5, at para. 113.

<sup>35</sup> See e.g. *Minutes*, No 97 (5 April 1995) at 10 (Prof Christine Boyle); *Minutes*, No 158 (6 June 1995) at 12 (Prof Elizabeth Sheehy); see also National Association of Women and the Law’s brief [“NAWL Brief”] (6 June 1995), at 10; *Minutes*, No 98, at 6 (per Hon Allan Rock); *Minutes* No 163 (15 June 1995), at 3 (Hon Russell MacLellan).

<sup>36</sup> See e.g. *House of Commons Debates*, 35–1, vol 8, (27 March 1995) at 11037–11039 (Hon Allan Rock); 11043–11044 (Hon Christiane Gagnon); 11048 (Hon Myron Thompson).

<sup>37</sup> NAWL Brief, at 10–11; *Minutes*, No 158 (6 June 1995) at 7 (Prof Elizabeth Sheehy).

<sup>38</sup> *Minutes*, No 98 (6 April 1995) at 16 (Hon Sue Barnes).

19. If there is no room to internally balance rights in the s. 7 analysis, societal interests (and the *Charter* rights of women and girls that were contemplated by Parliament when enacting s. 33.1) must be given proper consideration under s. 1, including under the assessment of whether Parliament’s objectives were pressing and substantial. The Court of Appeal failed to do so. This Court has opined that a law that violates s. 7 could be justified under s. 1, particularly if it involves an important legislative goal and competing societal interests that are themselves protected under the *Charter*.<sup>39</sup> Those are the circumstances present in this case.

20. There are several examples where “accountability” has been found to be a pressing and substantial objective<sup>40</sup> – even for unintended consequences of one’s actions.<sup>41</sup> Moreover, where the legislative objective is the protection of another constitutional right – here, the ss. 7, 15, and 28 rights of women and children – it has been found to be of “exceptional importance.”<sup>42</sup>

21. The need for accountability – and the ways in which it reduces the inequality experienced by women and girls – remains as pressing today as it was when Parliament enacted s. 33.1. In 2015, almost 90 percent of victims of police-reported sexual assaults were women. Women impacted by violence were most likely victimized by someone they knew, either intimate partners (42%) or other family members and acquaintances (43%).<sup>43</sup> In 2018, only about 5% of the most serious incidents of sexual assault came to the attention of police.<sup>44</sup> In 2019 (25 years after

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<sup>39</sup> *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486 at p. 518; *Bedford*, *supra* note 30 at para. 129; *Carter*, *supra* note 30 at para. 95.

<sup>40</sup> *R. v. Chaulk*, [1990] 3 S.C.R. 1303, at 1339 (purpose of reverse onus in s. 16(4) of *Criminal Code* is to avoid placing an impossible burden on the Crown and thereby secure the conviction of the guilty); *R. v. Penno*, [1990] 2 S.C.R. 865, at pp. 882-83 (per Lamer C.J., concurring in result but dissenting on the s. 7 issue) (purpose of eliminating defence of intoxication in drunk driving regime is to secure the conviction of impaired persons who commit such offences).

<sup>41</sup> See e.g. *R. v. DeSousa*, [1992] 2 S.C.R. 944; *R. v. Creighton*, [1993] 3 S.C.R. 3.

<sup>42</sup> *Dagenais*, *supra* note 10 at 890.

<sup>43</sup> Tina Hotton Mahony, Joanna Jacob and Heather Hobson, “[Women and the Criminal Justice System](#)”, *Women in Canada: A Gender-Based Statistical Report*, Statistics Canada, 6 June 2017, at 6.

<sup>44</sup> Adam Cotter and Laura Savage, “[Gender-based violence and unwanted sexual behaviour in Canada, 2018: Initial findings from the Survey of Safety in Public and Private Spaces](#)” *Juristat*, 5

*Daviault*), this Court recognized that “eliminating myths, stereotypes, and sexual violence against women is one of the more pressing challenges we face as a society” and that sexual violence against women, particularly Indigenous women, remains “tragically common” and results in “devastating” consequences.<sup>45</sup>

22. Given this reality, it is significant that alcohol and drugs remain closely linked to violence against women. Between 2007 and 2017, 63% of women and girls who were killed died at the hands of an intoxicated aggressor.<sup>46</sup> The World Health Organization has also recently raised concerns about the link between alcohol and sexual violence.<sup>47</sup>

23. Just as it was when s. 33.1 was enacted, the harm caused to women as a result of intoxicated violence is devastating and infringes on their right to security and equality. Holding individuals accountable for violent crimes committed in a state of self-induced intoxication is a pressing and substantial objective, given that a failure to do so excuses such violence and discourages reporting as an option for survivors.

#### **PART IV - SUBMISSIONS RESPECTING COSTS**

24. LEAF is a non-profit organization represented on this appeal by counsel acting *pro bono*. LEAF does not seek costs and asks that no costs be ordered against it.

#### **PART V - ORDER REQUESTED**

25. LEAF requests that this appeal be determined in accordance with the above submissions.

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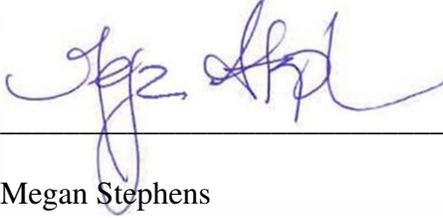
December 2019, at 20. While women may have various reasons for choosing not to report to police, their decision to should not be encumbered by concerns that there is no point in doing so since their perpetrator will not be accountable due to self-induced intoxication.

<sup>45</sup> *R. v. Barton*, *supra* note 9 at para. 1. In *R. v. Goldfinch*, *supra* note 32 at para. 37, the court recognized the “shattering consequences” of sexual offending.

<sup>46</sup> Shana Conroy, “[Police Reported Violence Against Girls and Young Women in Canada, 2017](#)” (Canadian Centre for Justice Statistics, Statistics Canada: 2017), at 16.

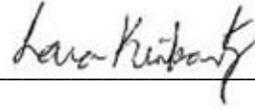
<sup>47</sup> World Health Organization, [Violence Against Women](#) (29 November 2017), at 3; World Health Organization, [Global Status Report on Alcohol and Health 2018](#) (2018), at 7.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of June 2021.



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Megan Stephens



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Lara Kinkartz

Counsel for the Intervener Women's Legal Education and Action Fund

## PART VI – TABLE OF AUTHORITIES

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	Authority	Paragraph Referenced
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2.	<i>Andrews v. Law Society of British Columbia</i> , <a href="#">[1989] 1 S.C.R. 143</a>	14
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11.	<i>R. v. Darrach</i> , <a href="#">[2000] 2 S.C.R. 443</a>	4, 8, 13, 14
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16.	<i>R. v. Marmo-Levine</i> , <a href="#">2003 SCC 74</a>	15
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18.	<i>R. v. Michaud</i> , <a href="#">2015 ONCA 585</a>	16
19.	<i>R. v. Mills</i> , <a href="#">[1999] 3 S.C.R. 668</a>	2, 4, 8, 12, 13, 14
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21.	<i>R. v. Penno</i> , <a href="#">[1990] 2 S.C.R. 865</a>	20
22.	<i>R. v. Quesnelle</i> , <a href="#">2014 SCC 46</a>	15
23.	<i>R. v. R.V.</i> , <a href="#">2019 SCC 41</a>	15
24.	<i>Re B.C. Motor Vehicle Act</i> , <a href="#">[1985] 2 S.C.R. 486</a>	19

### Parliamentary Record

	Source Document	Paragraph Referenced
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2.	<i>House of Commons Debates</i> , 35–1, no 224, vol 12 (22 June 1995)	10
3.	<i>Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs</i> , No 97 (5 April 1995)	10, 17
4.	<i>Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs</i> , No 98 (6 April 1995)	10, 17, 18
5.	<i>Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs</i> , No 158 (6 June 1995)	10, 17
6.	<i>Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs</i> , No 161 (13 June 1995)	10
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2.	Colton Fehr, " <a href="#">Rethinking the Instrumental Rationality Principles of Fundamental Justice</a> " (2020) 58:1 <i>Alberta Law Review</i> 133	16
3.	Peter W. Hogg, " <a href="#">Equality As a Charter Value in Constitutional Interpretation</a> " (2003) 20 <i>S.C.L.R.</i> (2d) 113	14
4.	Shana Conroy, " <a href="#">Police Reported Violence Against Girls and Young Women in Canada, 2017</a> " (Canadian Centre for Justice Statistics, Statistics Canada: 2017)	22
5.	Suzy Flader, " <a href="#">Fundamental Rights for All: Toward Equality as a Principle of Fundamental Justice Under Section 7 of the Charter</a> " (2020) 25 <i>Appeal</i> 43	14
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	Statute, Legislation, Rule, Etc.	Rule, Section	Paragraph Referenced
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	<i>Loi constitutionnelle de 1982</i> , Annexe B de la <i>Loi de 1982 sur le Canada (R-U)</i> , 1982, c 11	<a href="#">Généralement</a>	1

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2.	<i>An act to amend the Criminal Code (self-induced intoxication), S.C. 1995, c. 32</i>	<a href="#">Preamble</a>	10
	<i>Loi modifiant le Code criminel (intoxication volontaire), S.C. 1995, c. 32</i>	<a href="#">Préambule</a>	10
3.	<i>An Act to amend the Criminal Code (production of records in sexual offence proceedings), S.C. 1997, c. 30</i>	<a href="#">Preamble</a>	10
	<i>Loi modifiant le Code criminel (communication de dossiers dans les cas d'infraction d'ordre sexuel), S.C. 1997, c. 30</i>	<a href="#">Préambule</a>	10
4.	<i>Criminal Code, R.S.C., 1985, c. C-46</i>	<a href="#">s. 33.1</a>	1
	<i>Code criminel, L.R.C. (1985), ch. C-46</i>	<a href="#">s. 33.1</a>	1

**PART VII – STATUTORY PROVISIONS**

See Part VI above