TOP FIVE 2018

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LAW SOCIETY OF BRITISH COLUMBIA v TRINITY WESTERN UNIVERSITY, 2018 SCC 32

Date released: July 15, 2018

https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17140/index.do

(Note: companion case is *Trinity Western University v Law Society of Upper Canada,* 2018 SCC 33. Available here: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17141/index.do)

Facts

Trinity Western University (TWU) is a private Evangelical Christian university located in British Columbia. As part of its religious mandate, Trinity Western requires that all students sign a 'Community Covenant' or a code of conduct based on rules from their religion. All members of the school community must agree to and follow the Community Covenant. One requirement of the Covenant is that students abstain from all sexual activity outside of marriage between a man and a woman.

In 2010, TWU submitted a proposal to the Federation of Law Societies (the body regulating legal education in Canada) to open its own law school and in 2013 the Federation approved the proposed school. However, every province has a Law Society – a body created by law whose broad purpose is to regulate lawyers and the legal profession in the public interest. One of the Law Society's roles is to accredit law schools so that law degrees from that school qualify law school graduates to practice law. Therefore, for graduates of TWU's proposed law school to be able to practice law, the school also had to be accredited by the law societies.

TWU applied for accreditation in both British Columbia and Ontario. The controversy was whether TWU's Community Covenant violated equality rights, particularly those of the LGBTQ community, so that accrediting the school would violate the public interest. At the same time, an opposing issue was whether not accrediting the law school would violate TWU students' religious freedom. The Law Society of Upper Canada ("LSUC" as it was then, now known as the Law Society of Ontario or "LSO") and the Law Society of British Colombia (LSBC) each came to the conclusion that the Community Covenant infringed upon equality rights and risked damaging diversity in the legal profession, and denied accreditation to TWU in their respective provinces.

Background

Section 2(a) of the *Canadian Charter of Rights and Freedoms* ("*Charter*") states that, "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion."

Section 15 of the *Charter* states that: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Section 1 of the *Charter* states that, "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

In *Doré v Barreau du Québec*, a Supreme Court case from 2012, the Court decided that when regulatory bodies (like Law Societies) are making decisions that limit *Charter* rights they must follow certain steps to "demonstrably justify" any decision that violates *Charter* rights. The decision maker must proportionally balance their objective (like the public interest) with the right at stake (like religious freedom).

Procedural History

Trinity Western University and one of its students asked the British Columbia Supreme Court (BCSC) to review the LSBC's decision not to accredit the law school. The Court held that because the LSBC relied on an all-membership vote, they did not properly consider all the issues. Therefore, the decision not to accredit was not valid.

The LSBC appealed this decision to the British Columbia Court of Appeal (BCCA). The appeal court agreed with the BCSC that the Law Society did not choose the right decision method and did not properly consider the issues. The BCCA also concluded that the Law Society did not properly balance the competing religious freedom and equality rights. The Court of Appeal held that not accrediting the law school would severely infringe the TWU student's religious freedom. Further, accrediting the law school would have a limited negative effect on equality rights.

Notably, the Ontario courts decided differently. Both the Ontario Superior Court of Justice and the Court of Appeal for Ontario found in favour of the LSUC.

The LSBC appealed the BCCA's decision to Supreme Court of Canada (SCC).

Issues

1. The primary issue in the case was whether the Law Society's decision not accredit was reasonable, meaning whether that decision was a legally valid option. However, within this question of reasonableness, the Supreme Court also considered the following questions:
    a. Does governing the legal profession in the public interest include taking into consideration diversity, minority rights and potential harm to LGBT students?
    b. Is Trinity Western University students' freedom of religion, as guaranteed by s.2(a) of the *Charter*, infringed by not accrediting the law school?
    c. If the right to religious freedom is violated, is not accrediting TWU a proportionate balance between the competing interests - equality and religious freedom?

Decision

Appeal allowed (with Justices Côté and Brown dissenting). The Law Society of British Columbia's decision not to accredit was reasonable. It is within the definition of the public interest to consider minority rights and sexual diversity in the legal profession. In this case, it was reasonable to conclude that the covenant will have a negative impact on equality rights.

Furthermore, while not accrediting the law school may restrict religious freedom, the Court held that that restriction is minor because studying in a religious environment is a preference and not a religious obligation. According to the majority of the Court, not accrediting the law school, even though it restricts religious freedom, is an appropriate balance between religious and minority rights at issue.

Ratio

Law societies have broad authority to regulate the profession in the public interest, and this includes considering law school admission policies and minority rights. When a court reviews a decision made by the Law Society, they should ask whether the decision maker properly balanced the *Charter* rights at issue. Because not accrediting TWU's law school only has a minor impact on religious freedom, the Law Society's decision proportionally balances the equality and religious rights at stake.

Reasons

The Supreme Court justices were deeply split on the issues in this case, so there are many sets of reasons.

Five justices wrote the majority opinion that held that the Law Society's decision was reasonable. First, they held that the LSBC is entitled to consider law school admission policies as part of their responsibility for regulating the profession in the public interest. Regulating the profession means more than ensuring that the law school graduates meet all the technical requirements to become lawyers. Rather, the Law Society is also responsible for ensuring that the profession is diverse and respect minority rights and equality.

Next, the majority asked whether the decision violated freedom of religion. Religious freedom is violated when a decision interferes with a person's sincerely held belief in a substantial way. In order to demonstrate that religious freedom has been violated, the claimant has to show that they have a sincerely held religious belief that has been seriously violated by state action. In this case, the majority said that because the Law Society's decision prevents TWU's students from studying law in a religious environment, not accrediting the law school violates students' freedom of religion.

Since TWU students' religious freedom was violated, the next question was whether this violation is reasonable. The majority noted that the Law Society was faced with one of two options: either to accredit or not. The majority held that accrediting TWU's law school would not have advanced the Law Society's goal of promoting the public interest. Further, while not accrediting violates freedom of religion, the majority considered the violation minor because studying in a religious environment is a religious preference (and not a requirement of their faith). The majority also decided that freedom of religion can be limited when it harms others. Because not accrediting the law school would advance the public interest, and the violation was minor, the Law Society's decision is a proportionate balancing of interests and hence, is reasonable.

Both Chief Justice McLachlin and Justice Rowe wrote concurring opinions, meaning they agreed with the majority's outcome but not their reasons. Chief Justice McLachlin found that not accrediting TWU's law school was a serious infringement of religious freedom. Nevertheless, it is important for the Law Society not to support discriminatory practices and therefore the decision remains reasonable. Justice Rowe, on the other hand, held that TWU's religious freedom was not infringed in this case. According to Justice Rowe, there was no infringement because religious freedom only protects an individual's right to

believe and to express those beliefs through practice. This means that freedom of religion does not include any communal aspect of religion.

Justices Côté and Brown disagreed with the majority. According to Justices Côté and Brown, the Law Society's role is to ensure that law school graduates are qualified to practice law. The Law Society should not consider law school admission policies when deciding whether or not to accredit a law school. Furthermore, regulating the profession in the public interest means that the Law Society should consider the interests of all minorities, including religious minorities. Because the Law Society took into account considerations beyond professional qualifications when deciding whether to accredit TWU, the decision was invalid.

DISCUSSION

1. What are the main *Charter* arguments raised in this case?

2. What kinds of intimate personal relationships other than those between members of the LGBTQ community might be affected by TWU's Community Covenant?

3. Is studying in a religious environment part of practicing one's religion? Should it be protected by the Constitution?

4. Why might the SCC have determined the there was a greater public interest in protecting the minority rights of LGBTQ people than the religious rights of TWU?

5. How should the public interest be defined and who is responsible for defining what is in the public interest?

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RANKIN (RANKIN'S GARAGE AND & SALES) v J.J., 2018 SCC 19

Date released: May 11, 2018
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17085/index.do

Facts

In July 2006, two young men – J, age 15 and C, age 16 – were drinking alcohol and smoking cannabis at C's mother's house. Some of the alcohol was provided by C's mother. C and J left the house sometime after midnight and walked around their neighbourhood looking to steal items from unlocked cars. They came upon Rankin's Garage, a local car repair shop and discovered some cars unlocked with the keys inside. C convinced J to join him in stealing one of the cars, with C driving the car and J sitting in the passenger seat. Shortly after stealing the car, C crashed it on the highway and J suffered a catastrophic brain injury.

Procedural History

Acting through a litigation guardian, J sued Rankin's Garage, C and C's mother for the tort of negligence. In tort law, to be negligent means that if you owe a duty of care to someone else and you fail to properly meet your responsibility, you are responsible for the harm another person suffers because of your carelessness. If one party owes a duty of care to another party, then the person owing a duty of care must take reasonable steps to avoid reasonably foreseeable harm to the other party.

The question as to whether there was negligence and who was responsible for J's injuries went to trial with a jury. The jury decided that Rankin's Garage was 37% responsible, C was 23% responsible and C's mother was 30% responsible and J himself was 10% responsible for his injuries. During the trial, the judge decided that Rankin's Garage owed a duty of care to J. This means that the judge found it was reasonably foreseeable that leaving cars unlocked with the keys inside it could result in someone stealing the car and becoming injured. Therefore, Rankin's Garage could be held responsible for the injuries J suffered.

Rankin's Garage appealed the decision to the Court of Appeal for Ontario. The appellate court upheld the trial judge's

decision. Rankin's Garage appealed to the Supreme Court of Canada (SCC).

Issues

Was Rankin's Garage partly responsible for J's injuries? Within this question, the Court had to decide:

1. Did Rankin's Garage owe a duty of care to J?
2. Was the harm to J reasonably foreseeable, meaning could it have been expected?

Decision

Rankin's Garage did not owe a duty of care to J and was not responsible for his injuries.

Ratio

A business owner cannot reasonably expect that intoxicated minors will attempt to steal unlocked cars. Because the harm is not reasonably foreseeable, the business does not owe a duty of care to minors who may steal property from the business and be injured.

Reasons

When deciding whether a party owes a duty of care to another, the question is not whether another person may be harmed but whether the specific type of harm suffered can be expected. So in this case, the question was not whether it is foreseeable that an unlocked car may be stolen. Instead the question is whether it can be expected that leaving a car unlocked will lead to the car being stolen by intoxicated minors and driven dangerously so one of those minors will be injured. After reviewing the evidence, the SCC held that such a scenario was not reasonably foreseeable.

The Court also considered whether the garage was legally required to lock its vehicles. The Court noted that unlike something like a loaded gun, vehicles are not inherently dangerous. Garages are generally not considered negligent for leaving vehicles unlocked and the fact that minors may be injured (like J was) doesn't create an obligation to lock vehicles.

Because the risk of harm was not foreseeable, and garages are not required to secure their vehicles, Rankin's Garage did not owe a duty of care to J and was not responsible for J's injuries.

In a dissenting opinion, Justice Brown held that it was reasonably foreseeable that someone would steal the car and might be injured as a result. He would have found that Rankin's Garage owed a duty of care to J and was responsible for some of his injuries.

DISCUSSION

1. In this case J suffered a life-altering injury and required expensive medical care for the rest of his life. Who do you think, instinctively, should be responsible for his injury? Do you think that the law, as stated in this case, reflects your instincts?

2. Using percentages, as the trial judge did, assign a share of the responsibility for J's injuries to each party: J, C, C's mother and Rankin's Garage.

3. Is it inherently dangerous to leave an unlocked vehicle with the keys inside?

4. Should the outcome be different based on the age of the person who stole the car?

5. What other kinds of businesses might have to consider issues of duty of care and the risk of harm?

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GROIA v LAW SOCIETY OF UPPER CANADA, 2018 SCC 27

Date released: June 1, 2018
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17113/index.do

Facts

Mr. Groia was a lawyer hired by John Felderhof to defend him against charges brought by the Ontario Securities Commission (OSC). At various points in the trial, there were disputes that took place between Mr. Groia and OSC prosecutors. These disputes included personal attacks, sarcastic outbursts, and allegations of professional impropriety by Mr. Groia. The issues that arose between the parties at trial were connected to Mr. Groia's honest but clearly mistaken understanding of evidence and the role which a prosecutor has at a trial. The trial judge initially took a hands-off approach but was forced to interfere as the altercations intensified. Mr. Groia was directed to correct his behaviour by the trial judge, and did so.

Procedural History

After the trial concluded, the Law Society of Upper Canada (LSUC), now the Law Society of Ontario (LSO), brought disciplinary proceedings against Mr. Groia because of his behaviour. Mr. Groia was found guilty of professional misconduct and had his license suspended for two months. He was also ordered to pay $270,000 in costs. He appealed the decision. The internal LSO Appeal Panel concluded that he was guilty but reduced his suspension to one month and costs to $200,000.

The *Federal Courts Act* (FCA) allows LSO disciplinary proceedings to be appealed. This appeal occurs through a legal process called a "judicial review". A judicial review occurs when there is an error of law, error of fact, or mix of the two. An error of law may occur when the wrong legal test is applied, evidence is ignored, or there is bias of the decision-maker. Errors of fact occur when there is an incorrect decision made based on the facts that have been available.

When a judicial review takes place, there are two ways to review a decision. The first way is to consider the reasonableness of the decision. The second is to consider the correctness of the decision. The standard of review for reasonableness focuses on whether there is a reasonable decision, supported by evidence and reasons. The standard of review for correctness focuses more on procedural fairness, legal questions, and jurisdiction issues.

The LSO disciplinary proceedings were reviewed by three judges in Ontario's Divisional Court, who upheld the LSO's decision as reasonable based on the evidence. Mr. Groia further appealed to the Court of Appeal for Ontario, but that Court also upheld the LSO's decision. Mr. Groia appealed to the SCC.

Issues

1. Should Mr. Groia be held guilty of professional misconduct?

Decision

The decision of professional misconduct made by the Appeal Panel was set aside as it was unreasonable.

Ratio

A lawyer's professional obligation includes advocating strongly for their clients, and the duty to act civilly in their advocacy.

In determining a finding of professional misconduct, there is a three-step test:

1. What did the lawyer say?
2. How did they say it, and how frequently?
3. How did the trial judge interpret what was said?

Reasons

To avoid the chilling effect on advocacy, the SCC had to grapple with what it means to act civilly. If there were regulators constantly watching over lawyers, would this impact the extent of a lawyer's advocacy for their client? And in cases where the lawyer has acted out of line, who decides that there has been incivility: the trial judge presiding over the case or the Law Society?

The majority ultimately decided Mr. Groia had an honest, but mistaken, understanding of the law. Thus, the finding of professional misconduct was unreasonable and may cause lawyers to alter how they defend their clients. Mr. Groia had a basis to accuse the prosecution of misconduct, even though it was rooted in a mistaken understanding.

Moreover, for much of the trial, the trial judge's reaction did not give him reason to alter his litigation strategy. Finally, when he was given direction by the trial judge to alter his behaviour, he complied.

Justice Côté agreed with the majority, but emphasized the importance of maintaining judicial independence. She stated that courts should be more vigilant in how they view law society disciplinary decisions, particularly because those decisions may impact the role and independence judges have at trial. Regulating a judge at trial can impede judicial independence.

Three dissenting judges would have upheld the finding of professional misconduct, holding that the LSO's decision was correct and Mr. Groia's behaviour was out of line. In their view, Mr. Groia's honest but mistaken belief should not be an excuse for his behaviour during the trial. Lawyers should be held to a certain standard, and to allow such behaviour may impact that standard.

DISCUSSION

1. Mr. Groia made various comments to the prosecutors, including personal attacks and sarcastic outbursts. How might these be connected to a lawyer's duty to represent their client?

2. In this case, the trial judge directed Mr. Groia to change his aggressive strategy, and he complied. Why might the law society have sought to discipline Mr. Groia after the conclusion of the trial?

3. How might judicial independence and strong client advocacy be threatened by the prospect of disciplinary hearings for lawyers who act uncivilly towards one another?

4. Do you agree with the SCC's finding of the LSO's decision being unreasonable?

5. If the SCC's finding was wrong, was the punishment of $200,000 and a month's suspension appropriate?

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WILLIAMS LAKE INDIAN BAND v CANADA (ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT), 2018 SCC 4

Date released: February 2, 2018
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16969/index.do

Facts

The traditional territory of the Williams Lake Indian Band ("Band") includes a village near Williams Lake in British Columbia ("Village Lands"). When settlers began to arrive to the Colony of British Columbia ("Colony"), they pre-emptively took parts of this unsurveyed land. In other words, settlers who arrived took land from the Village Lands before other settlers had the opportunity to, and without acknowledging that this land belonged to the Band. In response to this, the Colony enacted the *Proclamation relating to acquisition of Land, 1860 (Proclamation No. 15)*. This Proclamation was an attempt to ensure that settlers could not pre-emptively take land from bands. However, when land was taken from the Band by settlers, officials responsible for protecting the Band took no steps to prevent it. When British Columbia joined Confederation in 1871, Canada inherited this history. In 1881, the Federal Crown acknowledged that pre-emptively taking land from bands was a mistake but they were not prepared to interfere with the rights of settlers. The Band was allocated another piece of land.

In 2008, Canada enacted the *Specific Claims Tribunal Act*. This Tribunal was focused on resolving issues that arose from the Crown's failure to honour its historical legal obligation to Indigenous people by awarding monetary compensation. After repeated but failed attempts to negotiate with Canada, the Band filed a claim with the Tribunal. In 2014, the Tribunal found that the pre-Confederation Colony and Canada breached their legal obligations to the Band, and that modern Canada was responsible for this breach.

Procedural History

Canada filed for judicial review before the Tribunal reached a decision on compensation. The judicial review effectively halted proceedings before compensation was determined.

When a judicial review takes place, there are two ways to review a decision. The first way is to consider the reasonableness of the decision. The second is to consider the correctness of the decision. The standard of review for reasonableness focuses on whether there is a reasonable decision, supported by evidence and reasons. The standard of review for correctness focuses more on procedural fairness, legal questions, and jurisdiction issues.

On a standard of reasonableness, the Federal Court of Appeal dismissed the Band's claim. The Band appealed to the Supreme Court of Canada (SCC).

Issues

There were two main issues that arose at the SCC:

1. Was the Tribunal's decision reasonable?
2. Should the Band be awarded monetary compensation?

Decision

The majority held that the standard of review in this case was reasonableness, and ruled in favour of the band. According to the SCC, the Tribunal's decision was reasonable. The SCC re-instated the Tribunal's decision. The damages were to be determined by the Tribunal.

Ratio

Canada has an inherited legal obligation to Indigenous peoples, and can be held in breach in the place of the Colony. The approach to Crown liability is "backward-looking," which is both consistent with Indigenous views of continuity and Canada's acceptance of its historical wrongs.

Reasons

The SCC had to assess whether a special duty, known in law as a *fiduciary duty,* existed between the Colony and the Band. In general, a fiduciary relationship exists when one party has assumed control or direction over the interests of another, creating a duty to look out for those interests. The Colony took discretionary control over a particular Indigenous interest through enactments and policies around collective use and occupation of land. This means that the Colony's obligation to protect the Band's land was broader than of *Proclamation 15*. This obligation towards the Band created a particular and higher standard of care; the Colony fell below this standard and ultimately failed to protect the Band when settlers pre-emptively took land. On this basis, the Tribunal's finding was reasonable against the Colony.

The SCC then had to assess whether Canada inherited that fiduciary duty. Given that the Canadian government has the responsibility to create reserves as per the Constitution, there exists a continuation of discretionary control. This means that a special fiduciary duty exists. Had Canada been in the place of the Colony at the time the settlers were pre-emptively taking land, Canada would have breached their duty to the Band. As a result of this, the SCC found that the Tribunal was reasonable in its finding against Canada.

The SCC decided that the legal obligation to the band was one that continued post-Confederation. Canada passively allowed settlers to occupy the Village Lands while acknowledging a mistake had occurred, and thus, a clear breach had taken place. Ultimately, they ruled that the relationship between Canada and Indigenous communities is one unlike any other relationship in the law – a fact that must be remembered in assessing legal obligations to their communities and rectifying historical wrongs.

The dissent agreed with the majority in that the standard of review should be reasonableness, and that there was a breach by the Colony. However, they were not persuaded that a breach had taken place post-Confederation. The dissent would send the issue back to the Tribunal to assess how Canada assumed the liability of this particular historical wrong.

DISCUSSION

1. What was the purpose of the *Proclamation relating to acquisition of Land, 1860* ?

2. Was it effective?

3. Do you think that Canada should have been found to owe a duty to Williams Lake Indian Band post-Confederation?

4. Should Canada have returned the land to the Band when British Colombia joined Confederation in 1871?

5. What is the advantage to the government in honouring its fiduciary commitments? What advantage is there in not paying attention to them?

6. This particular Tribunal awards monetary compensation based on historical wrongs the Indigenous community has faced at the hands of the Canadian government. What other ways might exist to correct these historical wrongs?

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R. v BINGLEY, 2017 SCC 12

Date released: February 23, 2017
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16417/index.do

Facts

In 2009, Mr. Bingley was pulled over by police for driving erratically. When he was pulled over, police noticed signs of impairment and conducted a roadside test to screen for alcohol. Mr. Bingley passed this test.

Unlike the test for alcohol in the bloodstream, there is no highly-reliable roadside device that screens for the presence of other potential intoxicants. Instead, when an officer suspects impairment by other means, they can request a less-objective roadside sobriety test be performed by a police drug recognition expert (DRE) certified under the *Criminal Code* and the *Evaluation of Impaired Operation (Drugs and Alcohol) Regulation*. The officer requested this evaluation and Mr. Bingley failed. He was arrested for driving while drug impaired and was taken into custody, where he received further evaluation through a 12-step detailed evaluation and urine analysis. Again, Mr. Bingley did not pass. During this series of tests, Mr. Bingley shared that he smoked cannabis and took two alprazolam in the past 12 hours. The tests concluded there was a presence of cannabis, cocaine, and alprazolam in his body. Alprazolam is a legal anti-depressant which can cause symptoms including extreme drowsiness.

Procedural History

At the first trial, the Crown called the DRE to explain the results of his evaluation as evidence against Mr. Bingley. This evidence was permitted without a *voir dire* – a type of hearing that assesses the evidence of an expert witness before it is presented in court. At his first trial, Mr. Bingley was acquitted. On appeal, the acquittal was overturned and a new trial was ordered. In the second trial that took place, the judge held that the *Criminal Code* does not automatically allow DRE

evidence as expert evidence, and that a *voir dire* is required at common law under *R v. Mohan [1994] 2 S.C.R 9*. On this basis, Mr. Bingley was again acquitted at his second trial.

The Crown appealed and the Ontario Court of Appeal ordered a new trial, agreeing that the DRE evidence was admissible without the *voir dire*. Mr. Bingley appealed to Supreme Court of Canada (SCC).

Issues

1. Can a drug recognition expert (DRE) testify about their determination under s. 254(3.1) of the *Criminal Code* without a *voir dire* to determine the DRE's expertise?

Decision

The SCC found that a *voir dire* was not required, dismissing the appeal and confirming the order of the Ontario Court of Appeal for a new trial.

Ratio

Special expertise can be a witness who possesses expertise outside the experience and knowledge of the judge. This expertise is of particular importance in cases of novel science.

Reasons

The SCC found that the intent of s. 254(3.1) of the *Criminal Code* was to provide "investigative tools" to enforce laws in relation to drug impaired driving. There is a difference between expert evidence and an expert opinion. The SCC found that the DRE forms an opinion about impairment, but that opinion is not evidence in itself.

However, according to the common law, expert opinion evidence must meet four factors through a *voir dire*. The evidence must be: relevant, necessary, not subject to exclusionary rule, and considered to be special expertise. In addition to this, the judge must weigh risks to benefits of admitting that evidence. The only issue at hand was whether DRE could count as "special expertise," and the SCC confirmed that it could because their opinion is based on special training, outside the experience and knowledge of the trier of fact, or judge. They found that ordering a trial judge to hold a *voir dire* would be unreasonable, and a waste of resources.

The dissent argued that novel science must be established in a courtroom, even if it is common outside of the courtroom. They argued that common law rules are in place to protect judicial discretion in novel circumstances. This decision could set a dangerous precedent.

Ultimately, the majority found that a *voir dire* was not necessary and that the evidence by a DRE is evidence that is reliable, necessary, not subject to exclusionary rule, and considered to be special expertise. The benefits of admitting this evidence outweigh the costs. The decision of the Court of Appeal for Ontario was upheld and a new trial ordered for Mr. Bingley.

DISCUSSION

1. Do you think the combination of substances confirmed in Mr. Bingley's blood explains his erratic driving?

2. Why are *voir dire* hearings sometimes useful in legal trials?

3. Could holding a *voir dire* hearing for all expert evidence present a problem for the administration of the justice system?

4. Why do you think expert evidence can be helpful in cases of drug impaired driving?

5. In 2018, cannabis was legalized. Do you think the finding of DRE opinion as expert evidence will make it easier to prosecute those convicted of drug impaired driving?