



Case in Brief: ***R. v. Sullivan***

Judgment of May 13, 2022 | On appeal from the Court of Appeal for Ontario  
Neutral citation: 2022 SCC 19

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***The Supreme Court confirms a man’s acquittals and the Court of Appeal’s order for a new trial for another man in cases involving automatism.***

These cases are about two Ontario men, David Sullivan and Thomas Chan, who committed violent acts while extremely intoxicated from drugs they had voluntarily taken. The events are unrelated, but both men argued that the drugs left them in states of “automatism”. Automatism is when someone claims to have been so intoxicated or impaired that they lost complete control of themselves.

Mr. Sullivan took an overdose of a prescription drug, fell into an impaired state and attacked his mother with a knife, gravely injuring her. He was charged with several offences, including aggravated assault and assault with a weapon.

Mr. Chan took “magic mushrooms”, which contain a drug called psilocybin. He fell into an impaired state, attacked his father with a knife and killed him, and seriously injured his father’s partner. Mr. Chan was tried for manslaughter and aggravated assault. In addition to the defence of automatism, he said an underlying brain injury was also to blame for his actions.

Section 33.1 of the *Criminal Code* prevents a person from using automatism as a defence for crimes involving assault or interference with the bodily integrity of another person. At their respective trials, Mr. Sullivan and Mr. Chan argued that section 33.1 violates sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms* (*Charter*). Section 7 guarantees everyone the right to life, liberty and security of the person, whereas section 11(d) guarantees everyone the right to be presumed innocent until proven guilty.

In Mr. Sullivan’s case, the trial judge accepted that he was acting involuntarily, but said section 33.1 prevented the defence of automatism and convicted him. In Mr. Chan’s case, a different trial judge said he did not have to follow previous decisions of the same court declaring section 33.1 unconstitutional. He also said Mr. Chan’s brain injury was not the cause of his actions. As a result, he convicted Mr. Chan.

Both men appealed to the Ontario Court of Appeal, which heard the appeals together. The Court of Appeal acquitted Mr. Sullivan and ordered a new trial for Mr. Chan since no actual finding of fact had been made about automatism in his case. The Crown then appealed both rulings to the Supreme Court of Canada.

The Supreme Court has dismissed the appeals.

**In *R. v. Brown*, the Supreme Court decided section 33.1 of the *Criminal Code* was unconstitutional.**

Writing for a unanimous Supreme Court, Justice Nicholas Kasirer said the Supreme Court’s ruling in *R. v. Brown*, which was heard together with these appeals and whose judgment is being rendered at the same time, is applicable to this case. In *R. v. Brown*, the Court says section 33.1 of the *Criminal Code* violates sections 7 and 11(d) of the *Charter* in a way that cannot be justified in a free and democratic society and is unconstitutional. In this case, Mr. Sullivan can be acquitted because he had proven that he was intoxicated to the point of automatism and the trial judge had found he was acting involuntarily. For his part, Mr. Chan can argue the automatism defence at his new trial, Justice Kasirer explained.

**The effect of a declaration of unconstitutionality by one trial court on another within the same province**

In this case, the Supreme Court also addressed the question of whether a declaration of unconstitutionality by a trial court is binding on other courts within the same province. The Court said a decision is indeed binding on other trial courts, unless the facts are very different or if the court had no practical way of knowing the decision existed.

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**Breakdown of the decision: *Unanimous*:** Justice [Kasirer](#) dismissed the appeals (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Côté](#), [Brown](#), [Rowe](#), [Martin](#), and [Jamal](#) agreed)

**More information (case # 39270):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** judgment regarding Mr. Sullivan (Ontario Superior Court of Justice – unreported) | [judgment regarding Mr. Chan](#) (Ontario Superior Court of Justice) | [appeal](#) Court of Appeal for Ontario

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