

# Equating Example

## **Subsection 135(1) - *South Africa Road Traffic Ordinance***

The driver of a vehicle on a public road at the time when such vehicle is involved in or contributes to any accident in which any other person is killed or injured or suffers damage in respect of any property or animal shall:

- (a) Immediately stop the vehicle
- (b) Ascertain the nature and extent of any damage sustained

## **Section 252 - *Criminal Code***

### **Failure to stop at scene of accident**

252. (1) Every person commits an offence who has the care, charge or control of a vehicle, vessel or aircraft that is involved in an accident with

- (a) Another person
- (b) A vehicle, vessel or aircraft
- (c) In the case of a vehicle, cattle in the charge of another person, and with intent to escape civil or criminal liability fails to stop the vehicle, vessel or, if possible, the aircraft, give his or her name and address and, where any person has been injured or appears to require assistance, offer assistance

## **Details of the Case**

The person concerned stated to the CBSA that she did not stop at the scene because the other driver did not. The facts outlined in the judge's decision indicate that the other driver did stop and that she did not.

Foreign provision		Canadian provision	Comments
The driver of a vehicle	<	Everyone who has the care, charge or control of a vehicle	The Canadian element is broader. This is not a problem.
on a public road	<	(not a stated element in the Canadian provision)	When an element of the foreign offence is not in the Canadian one, it simply means that the Canadian element is broader, which is not a problem.
at the time when such vehicle is involved in or contributes to any accident	=	that is involved in an accident	These elements would appear to be equivalent
in which any other person suffers damage in respect of any property	<	(not stated)	
(not a stated element in the foreign provision)	>	with intent to escape civil or criminal liability	The non-existence of this element in the foreign offence is a problem. See conclusion.

## Conclusion

The Canadian offence includes an element that the foreign offence does not. This means that, on a straight comparison of the elements, the foreign offence is broader. From what is known about the actual offence that was committed, there is no evidence that the South African driver failed to stop “with intent to escape civil or criminal liability.” Unless evidence could be obtained to satisfy this element, you have to conclude that the two offences are not equivalent. In other words, if the South African driver had done in Canada what she did in South Africa, on the basis of the facts known, she would not have been convicted of this offence.