R. v. Pinonneault

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Court Case Assignment – Impaired Driving

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On February 18th, 2013, I attended a criminal court case trial held at Toronto's Old City Hall, located on Queen's Street West. The honourable Judge Cavlon presided over the case of *R. v. Pinonneault,* where the accused was on trial for impaired driving. The accused was charged with two summary offences under s. 253 of the *Criminal Code* involving driving while impaired and driving with over 80 Mg of alcohol in 100L of blood. The Crown Attorney had to prove that Pinonneault was under the influence of alcohol while voluntarily in care and control and had a blood alcohol level above legal standards while the defence attorney had to prove otherwise. I was able to witness the roles of the Judge, Crown attorney, defence attorney; witness oaths, witness testimonies and a sentencing. The case itself primarily focused on the admissibility of evidence and the meaning of impaired which are discussed in the *Criminal Code* and *Charter of Rights and Freedom.*

In *R. v. Pinonneault*, the accused, Eric Pinonneault, was charged on December 10, 2011 for impaired driving by Officer Stafford. At around 9P.M. Officer Harnegan was notified over police radio that a witness noticed a blue cube van that a possibly impaired driver was driving slowly on Queen's Street. Harnegan pulled up behind the vehicle, which pulled over after stopping fifteen seconds with its emergency lights on. Harnegan asked Pinonneault for his license and noticed that he fumbled for his wallet, dropping it a few times, which he took to be a sign of possible impairment. However, Harnegan suspected another person in the passenger seat and called for back-up assistance from Stafford. Stafford arrived at the scene, did an assessment and found reason for an impaired driving arrest, giving Pinonneault his legal rights and a demand for a breathalyzer test. Pinonneault was handcuffed and driven to the police station where a breathalyzer test was administered twice between a seventeen minute time interval by a certified

technician, Scott Matthews. The results showed that Pinonneault had a blood alcohol level above legal standards and he was charged for over 80 offence.

During the trial, Stafford, Harnegan and Matthews were called to the stand as witnesses by the Crown attorney. The defence counsel had no witnesses to call upon so the defence made its submissions last. The witnesses stated their names and were sworn in before giving their testimony as learned in class. Stafford and Harnegan gave their recounts of the events leading up to the charges made on Pinonneault as questioned by the Crown. Afterwards, the defence was given the chance to cross-examine each witness and ask questions that supported the claim of the accused. The witnesses were instructed to only answer the questions provided for them by the Crown, defence or Judge.

The Crown attorney's job is to prove the guilt of an accused in a case presented before the courts by persons who reasonably state that an offence has been committed (Chapman: 2014, 223). The Crown had to prove its case beyond a reasonable doubt or else the judge could dismiss the action for lack of evidence (Chapman: 2014, 276). In *Pinonneault*, the Crown attorney took the claims of Stafford and Harnegan against the accused and prosecuted based on resources provided by the state. The Crown had testimonies from the officers and breathalyzer technician, as well as video surveillance from the police station that depicted the events that occurred once Pinonneault was arrested and brought in.

The defence attorney's job is to raise every issue, advance very argument and ask every question that the defence believes will support the client's case as stated in Rule 4.01 (1) of the *Rules of Professional Conduct* (Chapman: 2014, 226). In *Pinonneault*, the defence had no evidence to utilize to aid the accused, however; the defence counsel brought into question the

admissibility of evidence based on the police proceedings for the arrest. The defence was able to question and use the statements of the Crown's witnesses during the cross-examination in order to work in favor of the accused.

The role of the judge is to maintain impartial during the trial and decide on a ruling that is unbiased (Chapman: 2014, 227). Judges are able to assert what can occur within a courtroom, from who can view the trial to deciding what evidence is admissible (Chapman: 2014, 227). In *Pinonneault,* Judge Cavlon presided over the trial and determined guilt and sentence for the accused as there was no jury. Judge Cavlon was able to interject both the Crown and defence attorneys to ask questions or give a statement. There were many times when Judge Cavlon stopped the Crown attorney from proceeding with a questioning stance as he found that it was irrelevant to the case and would have no impact on the decision. The Crown had to immediately stop pursuing the area of interest and switch the focus of the questioning. Judge Cavlon also interposed the defence attorney's argument to ask questions and clarify uncertain statements. The judge's role is very versatile as they are able to control anything that occurs within the courtroom, which *Pinonneault* depicted clearly.

In order for a criminal offence to be proven, it has to include the *actus rea, mens rea*, a union of the two, and punishment must be provided in the law (Chapman: 2014, 230). The *actus reus* is the voluntary physical act or omission of a crime while the *mens rea* is the mental state of the accused including intention, recklessness, or wilful blindness (Chapman: 2014, 230). The *mens rea* of impaired driving occurs when the accused party voluntarily became impaired with alcohol while the *actus reus* occurs when said party assumes care and control while voluntarily impaired (Barnhorst & Barnhorst: 2009, 246). In *Pinonneault*, the accused consumed more alcohol than the legal limit and proceeded to operate a motor vehicle voluntarily there afterwards

which is a *mala prohibita*, or "prohibited evil" (Chapman: 2014, 231). By doing so, the accused had an objective *mens rea* as impaired driving is deemed as public endangerment and is below the standard of a reasonable driver (Chapman: 2014, 235).

In the 1955 case of *R. v. McKenzie*, it was determined that there was no single test that could be inevitably conclusive, but rather a series of tests or observations that could suggest impairment (Barnorst & Barnhorst: 2009, 249, see Appendix B). The proof of impairment can be based off of many factors including actual driving behaviour, breathalyser test, appearance, and behaviour such as slurred speech or the smell of alcohol on the breath (Barnhorst & Barnhorst: 2009, 249). The Crown attorney in *Pinonneault*, had to prove that the accused was in fact impaired.

According to the testimony of Officer Harnegan, the accused was driving slowly on a busy street which gave reason for him to pull the van over. While obtaining the licence of the accused, he noticed behaviour that suggested impairment which caused him to call in for backup. Officer Stafford testified that when he arrived at the scene, he noticed that the accused spoke rather rapidly and asked him to step out of the vehicle, where the accused stumbled while doing so. The defence was given his right to counsel, but did not express a desire to speak to a lawyer allowing the police to administer the test (Barnhorst & Barnhorst: 2009, 255). The breath technician also stated that he noted bloodshot and glassy eyes, slurred speech, unkempt hair, unsteadiness, and a red face, all of which strongly suggested intoxication. When the breathalyzer tests were conducted, it was noted that on the first test, the results showed a 174mL of alcohol in 100L of blood. Seventeen minutes later, the second test results showed 172mL of alcohol in 100L of blood. Surveillance videos were also shown of Pinonneault being brought in and having the tests administered which depicted rapid speech, some unsteadiness, and some behaviour set-

offs such as random giggling. This was the evidence presented by the Crown to argue beyond a reasonable doubt that the accused was driving while impaired.

Though the defence had no evidence, two main arguments were made in order to support the accused. Based on the two officer's statements about the events regarding the arrest, the defence declared that the *Charter of Rights and Freedoms* was violated and thus, some evidence should be ruled as inadmissible. The defence firstly pointed out inconsistencies in the two officer's recounts of the events of the arrest, questioning the credibility and reliability of the witnesses and bringing up the hearsay rule where the court is not allowed to treat statements said out of court as the equivalent of a testimony (Paciocco & Stuesser: 2011, 3). The defence counsel referred to the testimonies of the officers where there was a period of ten to fifteen minutes that was not accounted for before the accused was driven to the police station for the breathalyzer test. The defence stated that under the statutory regime s. 258 (1)(c) of the *Criminal Code,* breath samples of the accused should not be admissible based on the fact that the breathalyzer tests were not conducted forthwith (*Canadian Criminal Code,* s. 258 (1)(c), see Appendix A). According to the rules of admissibility, evidence may be excluded in discretion of the judge if its probative value is overshadowed by its potential for prejudice (Paciocco & Stuesser: 2011, 4). The defence argued that there was a breach of the rights of the accused and the evidence of the breathalyzer test should be deemed inadmissible.

The evidentiary burden fell upon the accused to prove on a balance of probabilities that a violation occurred (Chapman: 2014, 273). In *Pinonneault,* Crown argued that although there were some inconsistencies in the two officer's testimonies, the recounts of major events were consistent in that there were obvious signs that suggested impairment which allowed for an

arrest. The Crown stated that the difference of a few minutes did not have a large impact on the case and the evidence should be ruled admissible.

When both the Crown and defence counsels called upon and cross-examined all the witnesses and evidence, the Judge has to make a decision and find the accused guilty or not before deciding on a sentencing. Judge Cavlon's final ruling was that on both the charge of impaired driving and the charge of over 80, the accused was found guilty. However, in reference to the case of *Kienapple v. Regina*, charges for the same offense should result in only one sentence. Judge Cavlon stated that slight inconsistencies in testimonies were to be expected and identical testimonies would have raised more concern. Judge Cavlon also stated that time difference of a few minutes was not uncommon and had no major affect on the breathalyzer test as it was fairly conducted within the two hours of the alleged offence as required in s. 258 (1)(c)(ii) of the *Criminal Code*. Fines and terms of imprisonment for penalties for impaired driving and drivng-over-80 offences are under s. 255 of the *Criminal Code* while court-ordered driving prohibitions are under s. 259 (Barnhorst & Barnhorst: 2009, 258). The minimum penalties for a first offence include a find of not less than $1000 and prohibition from driving for at least one year and not more than three years as stated in s. 255(1)(a)(i) and s. 259(1)(a) (Barnhorst & Barnhorst: 2009, 249). Judge Cavlon sentenced Pinonneault to a $1200 fine to be paid within one year and a one year prohibition from driving.

The case of *Pinonneault* depicted the roles of various members of courts effectively. The proceedings of the criminal court trial case accurately reflected upon the topics discussed in class. The order of events from the witnesses being sworn in, giving their testimony, being questioned by the attorney that called upon them and then cross-examined by the other side followed exactly what was stated in the textbook and class. The Crown effectively utilized

testimonies and evidence to prove beyond a reasonable doubt that the accused was impaired while driving, and the defence raised reasonable arguments based on the admissibility of evidence in accordance to s. 258(1)(c) of the *Criminal Code.* It was noted that when a defence attorney argues a charge against the accused, there is a strong focus on breach of rights and the correct procedure to follow. In reference to many of the cases studied in class, many accused are ruled not guilty simply because the proper legal proceedings were not conducted according to protocol, but in *Pinonneault*, it was found that there was no breach of s. 8 of the *Charter of Rights and Freedom* as procedures were reasonably followed. I strongly agreed with the judge's ruling and found that the sentencing was reasonable as the accused did not technically harm anyone and imprisonment would have been too severe a punishment. The various ways that a Judge could intervene during a trial while maintaining impartiality was not discussed extensively in class and was interesting to see first-hand. Being able to witness this court class allowed for lessons taught in class to be seen applied physically and I noticed that while there were many accurate realistic depictions.

Bibliography

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The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

Appendix A

Canadian Criminal Code, s. 258 (1)(c):

258. (1) In any proceedings under subsection 255(1) in respect of an offence committed under section 253 or subsection 254(5) or in any proceedings under any of subsections 255(2) to (3.2),

- (*c*) where samples of the breath of the accused have been taken pursuant to a demand made under subsection 254(3), if
    - (i) [Repealed before coming into force, 2008, c. 20, s. 3]
    - (ii) each sample was taken as soon as practicable after the time when the offence was alleged to have been committed and, in the case of the first sample, not later than two hours after that time, with an interval of at least fifteen minutes between the times when the samples were taken,
    - (iii) each sample was received from the accused directly into an approved container or into an approved instrument operated by a qualified technician, and
    - (iv) an analysis of each sample was made by means of an approved instrument operated by a qualified technician,

  evidence of the results of the analyses so made is conclusive proof that the concentration of alcohol in the accused's blood both at the time when the analyses were made and at the time when the offence was alleged to have been committed was, if the results of the analyses are the same, the concentration determined by the analyses and, if the results of the analyses are different, the lowest of the concentrations determined by the analyses, in the absence of evidence tending to show all of the following three things — that the approved instrument was malfunctioning or was operated improperly, that the malfunction or improper operation resulted in the determination that the concentration of alcohol in the accused's blood exceeded 80 mg of alcohol in 100 mL of blood, and that the concentration of alcohol in the accused's blood would not in fact have exceeded 80 mg of alcohol in 100 mL of blood at the time when the offence was alleged to have been committed;

Appendix B

R. v. McKenzie (1955, 111 C.C.C. 317 Alta. Dis. Ct.):

"There appears to be no single test or observation of impairment of control of faculties, standing alone, which is sufficiently conclusive. There should be consideration of a combination of several tests and observations such as general conduct, smell of the breath, character of the speech, manner of walking, turning sharply, sitting down and rising, picking up objects, reaction of the pupils of the eyes, character of the breathing."