

UBC Moot Court Registry

**IN THE SUPREME MOOT COURT OF THE
UNIVERSITY OF BRITISH COLUMBIA**

On appeal from The Supreme Court of Canada

BETWEEN:

CATHIE GAUTHIER

APPELLANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

APPELLANT'S FACTUM

McCann, Sancho

Another, Name

Other, Name

Final, Name

Counsel for the Appellant

Counsel for the Respondent

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PART I—ATTRIBUTION

Except for this section, this document is an attempted reproduction of the factum at http://www.allard.ubc.ca/sites/www.allard.ubc.ca/files/uploads/moots/sample_appellants_factum_0.pdf. I'm using that content to test my custom authoring system. Where this document varies from that sample, it is because I'm trying to conform more closely to the 2018 rules (<http://www.allard.ubc.ca/sites/www.allard.ubc.ca/files/uploads/moots/first-year-moot-court-rules-2018.pdf>).

PART II—STATEMENT OF FACTS

1. The Appellant, Cathie Gauthier, was convicted after trial by jury of three counts of first degree murder. Her appeal to the Québec Court of Appeal was dismissed, as was her appeal to the Supreme Court of Canada. The Appellant appeals from that decision to this Court.

R v Gauthier, 2013 SCC 32 [*Gauthier SCC*].

R v Gauthier, 2011 QCCA 1395 [*Gauthier CA*].

2. On the evening of December 31, 2008, the Appellant's spouse, Marc Laliberté, served poisoned drinks to himself, the Appellant, and the couple's three children. The Appellant alone survived, and was convicted of three counts of first degree murder.

Gauthier SCC, *supra* para 1 at para 2.

Gauthier CA, *supra* para 1 at paras 5-6.

3. **The prosecution theory** was that the Appellant had participated in the offence by planning a murder-suicide pact with her spouse, by purchasing prescription medication four days before her husband ultimately put them in the drinks that killed the children, and by omitting to intervene when her spouse served those drinks. The Crown led evidence of a pact between the Appellant and her spouse through documents: a joint will, her spouse’s “life story”, and several letters.

Gauthier SCC, *supra* para 1 at para 18, 14.

Gauthier CA, *supra* para 1 at para 41.

PART III—ARGUMENT

A. Overview

4. This appeal raises the question of whether a woman who withdraws from a murder-suicide pact with her spouse and believes that he has also withdrawn should nonetheless be convicted of murder when he carries through with the offence on his own. The Appellant’s primary position is that the Supreme Court of Canada erred in reformulating the defence of abandonment so as to require that a party take reasonable steps to neutralize previous assistance or to prevent the commission of the offence. However, even if this court accepts this new element, it should not be applied retrospectively to the Appellant.

B. Argument

C. The majority of the Supreme Court of Canada erred in adding
a new element to the defence of abandonment

(1) Party liability

(2) The defense of abandonment until this case

PART IV—NATURE OF THE ORDER SOUGHT

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