NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Ankur; R. v. Chandran*, 2023 NSCA 55

Date: 20230802
Docket: CAC 517706
CAC 520120
Registry: Halifax

Between:

Anas Islam Ankur

Applicant

v.

His Majesty the King

Respondent

-and-

Between:

Jithin Chandran

Applicant

v.

His Majesty the King

Respondent

Judge:	The Honourable Justice Peter M. S. Bryson
Appeal Heard:	June 16, 2023, in Halifax, Nova Scotia
Legislation Cited:	ss. 253(1)(b), 255(1)(a)(i), 320.14(1)(a), 430(4) and 839 of the *Criminal Code*; *Immigration and Refugee Protection Act*, S.C. 2000, c. 27; s. 12 of the *Canadian Charter of Rights and Freedoms*;
Cases Cited:	*R. v. Pottie*, 2013 NSCA 68; *R. v. MacNeil*, 2009 NSCA 46; *R. v. Nur*, 2015 SCC 15; *R. v. Lloyd*, 2016 SCC 13; *Revell v. Canada (Citizenship and Immigration)*, 2019 FCA 262; *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711; *R. v. Pham*, 2013 SCC 15; *R. v. Lacasse*, 2015 SCC 64; *R. v. Boudreault*, 2018 SCC 58; *R.*

	v. Gejdos, 2017 ABCA 227; *R. v. Ankur*, 2023 NSCA 2; *R. v. Fox*, 2022 ABQB 132; *Khan c. R.*, 2020 QCCQ 4199; *R. c. Videgaray Latulippe*, 2022 QCCQ 8114; *R. v. Cheema*, 2022 ONCJ 364; *R. v. Sandhu*, 2022 MBKB 22;
Subject:	Criminal law – Impaired driving – Sentencing – Minimum sentence – *Charter of Rights* – Cruel and unusual punishment – Collateral consequences of sentence
Summary:	Applicants applied for leave to appeal Summary Conviction Appeal Court imposition of minimum sentence of $1,000 for impaired driving. SCAC had overturned Provincial Court judges' decisions granting conditional sentence orders so as to avoid possible deportation orders which they found offended s. 12 of the *Charter of Rights and Freedoms* against cruel and unusual punishment.
Result:	Leave to appeal denied. The SCAC did not err in law by imposing mandatory minimum sentences. Conditional sentences were inappropriate for these offenders and these offences. The possible collateral consequence of return of the applicants to their own countries did not elevate the sentences to cruel and unusual punishment.

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Respondent

Judges:	Farrar, Fichaud and Bryson JJ.A.
Appeal Heard:	June 15, 2023, in Halifax, Nova Scotia
Held:	Application for leave to appeal dismissed, per reasons for judgment of Bryson J.A.; Farrar and Fichaud JJ.A. concurring
Counsel:	Joshua Nodelman, for the appellants Mark A. Scott, K.C., for the respondent

Reasons for judgment:

Introduction

[1] Two young students pleaded guilty to drinking and driving offences. Because neither is a Canadian, convictions would likely result in each being deported. So they were given conditional discharges. The Provincial Court judges who sentenced each, thought the prospect of deportation resulted in "cruel and unusual treatment or punishment" contrary to s. 12 of the *Charter of Rights and Freedoms*.

[2] The Crown appealed. The appeals were heard together before the Honourable Justice Denise Boudreau, sitting as a Summary Conviction Appeal Court. Justice Boudreau allowed the Crown's appeals because conditional discharges were totally inappropriate sentences. Nor was the collateral consequence of deportation alone "cruel and unusual treatment or punishment", proscribed by s. 12 of the *Charter* (*R. v. Chandran*, 2022 NSSC 250, at ¶55 and *R. v. Ankur*, 2022 NSSC 251, at ¶54).

[3] Now there are applications to this Court for leave to appeal, alleging Justice Boudreau erred in finding the mandatory minimum sentences of $1,000 fines, prescribed by s. 255(1)(a)(i) of the *Criminal Code*, R.S.C. 1985, c. C-46 and successor amendments, did not violate s. 12 of the *Charter*.

[4] Both applicants request the sentences imposed by Justice Boudreau be quashed and the original conditional discharges reinstated.

[5] The applicants must first be granted leave to appeal.

Leave to Appeal

[6] Because this is an appeal under s. 839 of the *Criminal Code*, it is restricted to questions of law on leave. The standard of review is correctness (*R. v. Pottie*, 2013 NSCA 68, at ¶14; *R. v. MacNeil*, 2009 NSCA 46, at ¶8).

[7] Leave to appeal in accordance with s. 839 of the *Criminal Code* is sparingly granted. This Court will consider the significance of the legal issues raised to the general administration of criminal justice and the merits of the proposed grounds of appeal. If issues significant to the administration of justice transcend the particular case, leave may be granted, even if the merits are not strong although

they must be arguable. Alternatively, where the merits appear very strong, leave to appeal may be granted, even if the issues are of no general importance, particularly if the convictions are serious and the applicant faces a significant deprivation of his or her liberty (*Pottie*, at ¶18-19).

[8] In *Pottie*, the Court endorsed the Crown's submissions, summarizing the principles from the case law when deciding whether to grant leave:

> [21] The Crown, in its factum, has accurately summarized the principles that have emerged from the case law to guide provincial appellate courts when deciding whether to grant leave to appeal from a SCAC decision. They are:
>
> 1. Leave to appeal should be granted sparingly. A second appeal in summary conviction cases should be the exception and not the rule. [see *R. R.* at ¶25 and ¶37; *R. v. Chatur*, 2012 BCCA 163 at ¶18; *R. v. Paterson*, 2009 ONCA 331 at ¶1]
>
> 2. Leave to appeal should be limited to those cases in which the appellant can demonstrate exceptional circumstances that justify a further appeal. [see *R.R.*, ¶27; *R. v. Dickson*, 2012 MBCA 2, ¶14; *R. v. M. (R.W.)*, 2011 MBCA 74, ¶32]
>
> 3. Appeals involving well-settled areas of law will not raise issues that have significance to the administration of justice beyond a particular case. [see *R. v. Zaky*, 2010 ABCA 95 at ¶10; *R. v. Im*, 2009 ONCA 101 at ¶17; *R. v. Hengeveld*, 2010 ONCA 60 at ¶5; *R.R.* at ¶31]
>
> 4. If the appeal does not raise an issue significant to the administration of justice, an appeal that is merely "arguable" on its merits should not be granted leave to appeal. Leave to appeal should only be granted where there appears to be a clear error by the SCAC. [see *M. (R.W.)* at ¶37; *R.R.* at ¶32]
>
> 5. A second level of appeal is an appeal of the SCAC justice. It is to see if he or she made an error of law. The second level of appeal is not meant to be a second appeal of the provincial court decision. [see R.R. at ¶24; Chatur at ¶17]
>
> 6. The fitness or leniency of a sentence is a factor a provincial appellate court can consider when deciding whether to grant leave. [see *Chatur* at ¶19; *Im* at ¶22]

[9] The issues raised by Messrs. Ankur and Chandran are questions of law to which correctness standards apply. But leave should not be granted because the proposed grounds do not raise arguable issues of law.

Factual Overview of the Offences

Mr. Ankur

[10] In the early hours of February 17, 2018, Mr. Ankur nearly struck a pedestrian in a crosswalk in downtown Halifax. Although the police turned on their lights, Mr. Ankur did not stop and proceeded the wrong way on a one-way street. Mr. Ankur persisted even after the police turned on their sirens. He damaged the door to a parking garage while forcing it open with his car. After being taken into custody, Mr. Ankur failed two breathalyser tests with readings of 120 mg and 110 mg per 100 ml of blood.

[11] On May 6, 2019, Mr. Ankur pleaded guilty to over 80 contrary to s. 253(1)(b) of the *Criminal Code* and mischief contrary to s. 430(4) of the *Criminal Code*.

[12] Under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, convictions for these offences constitute "serious criminality" with potential consequences for deportation and non-readmission to Canada. A discharge would avoid these prospects.

[13] At his sentencing, Mr. Ankur challenged the mandatory minimum fine and the mandatory minimum sentence prescribed by s. 255(1)(a)(i) of the *Criminal Code* ($1,000). He advised the court that he was a foreign exchange student from Bangladesh who was studying in Canada on a student visa. He explained the embarrassing consequences for his family of his conviction and the awkward personal implications for himself. He called an expert witness in immigration law who opined Mr. Ankur would have a "more than a 95 percent chance" of removal from Canada if convicted.

[14] Provincial Court Judge Ann Marie Simmons ruled the mandatory minimum of a $1,000 fine and a one-year driving prohibition would be a grossly disproportionate sentence because the near certain deportation consequences would contravene s. 12 of the *Charter*. She granted a conditional discharge, with three years probation with conditions, and 100 hours of community service.

Mr. Chandran

[15] In the early hours of August 17, 2019, police were informed a male sitting in a nearby parked car had been drinking at a bar. An officer spoke to the man who

was later identified as Mr. Chandran. The officer tried to demand a breath sample. Mr. Chandran was uncooperative. He was slurring his words. He tried to leave. Mr. Chandran was arrested for impaired operation of a motor vehicle and refusal to provide a breath sample.

[16] On December 3, 2020, Mr. Chandran pleaded guilty to the summary charge of operating a vehicle while unable to do so from impairment contrary to s. 320.14(1)(a) of the *Criminal Code*. Like Mr. Ankur, he challenged the constitutionality of the mandatory minimum sentence of a $1,000 fine because he alleged it was "cruel and unusual treatment or punishment" thereby violating s. 12 of the *Charter*.

[17] Sentencing proceeded by way of written argument and submissions of counsel. There was uncertainty about the prospect of deportation under the *Immigration and Refugee Protection Act*. Counsel informed the court Mr. Chandran would not face persecution in his home country of India.

[18] Although Provincial Court Judge Aleta Cromwell (as she then was) acknowledged the uncertainty of potential deportation for Mr. Chandran, nevertheless, she concluded a conviction and risk of deportation created a situation "that is abhorrent and intolerable". She granted a conditional discharge on the same terms imposed on Mr. Ankur.

The Summary Conviction Appeal

[19] As described in the Introduction, the Crown appealed both decisions to Justice Boudreau sitting as a Summary Conviction Appeal Court. The Crown claimed the Provincial Court judges erred in law by deciding that the mandated minimum fine of $1,000 violated s. 12 of the *Charter*.

[20] Justice Boudreau allowed both appeals. She concluded the Provincial Court judges had used the risk of collateral consequences of deportation as a reason to find a conviction would constitute "cruel and unusual" punishment.

[21] By overemphasizing collateral immigration consequences, the applicants received manifestly unfit sentences simply to avoid removal from Canada. Conditional discharges were not appropriate sentences for these offenders and these offences.

[22] Justice Boudreau quashed the conditional sentences and imposed the mandatory minimum $1,000.00 fine. She left intact the probation orders imposed in the Provincial Court.

Messrs. Ankur and Chandran Apply for a Stay

[23] Both Messrs. Ankur and Chandran applied for a stay of Justice Boudreau's convictions. In dismissing the applications, Justice Beveridge explained why that request was problematic. Even so, he was satisfied there was no arguable issue for appeal. In doing so, he provided background to the conditional sentencing regime, while endorsing Justice Boudreau's determination that a conditional discharge was a completely inappropriate sentence:

> [57] While I do not disagree with the SCAC judge's comments about the seriousness of impaired driving offences, and the legions of caselaw that have emphasized the need to deter and denounce these crimes, **the whole exercise whether a discharge is within the appropriate range of sentence is actually quite artificial in these circumstances.**
>
> [58] **That is because a conditional or absolute discharge has *never* been an available sentence for the offences of impaired care or control, refusing a breathalyzer demand, or care or control having a blood alcohol level of more than 80 mg of alcohol in 100 ml of blood.**
>
> [59] A discharge is a legal invention. It permits a finding of guilt but if an offender were granted a discharge, they can truthfully answer they have never been "convicted" of that offence.
>
> [60] Discharges first became available when Parliament enacted the *Criminal Law Amendment Act*, S.C. 1972, c. 13, s. 57. It provided:
>
> > 662.1(1) Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable, in the proceedings commenced against him, by imprisonment for fourteen years or for life or by death, the court before which he appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or upon the conditions prescribed in a probation order.
> >
> > ...
> >
> > (3) Where a court directs under subsection (1) that an accused be discharged, the accused shall be deemed not to have been convicted of the offence to which he pleaded guilty or of which he was found guilty and to which the discharge relates except that

> (*a*) the accused or the Attorney General may appeal from the direction that the accused be discharged as if that direction were a conviction in respect of the offence to which the discharge relates or, in the case of an appeal by the Attorney General, a finding that the accused was not guilty of that offence; and
>
> (*b*) the accused may plead autrefois convict in respect of any subsequent charge relating to the offence to which the discharge relates. [Now numbered as s. 730(1) and (3) with inconsequential amendments.]

[61] At the time of this enactment, the relevant *Criminal Code* offences (ss. 234, 235 and 236) all prescribed minimum mandatory penalties, even for a first offence. [R.S.C., 1970, c. C-34] Prior to 1972, a discharge was not part of the Canadian criminal law lexicon. The legislative bifurcation of guilt from conviction was a new Canadian invention.

[62] Before 1972, a plea or finding of guilt constituted a conviction. Martin J.A., writing for a five-member panel of the Ontario Court of Appeal in *R. v. McInnis* (1974), 1 O.R. (2d) 1, described the law as follows:

> A finding that the accused is guilty of the offence charged or a plea of guilty to an offence under ordinary circumstances constitutes a conviction for the offence although no sentence is imposed: *R. v. Blaby*, [1894] 2 Q.B. 170; *R. v. Sheridan*, [1937] 1 K.B. 223; *R. v. Grant* (1936), 26 Cr. App. R. 8; *Ex p. Johnston*, [1953] O.R. 207, 105 C.C.C. 161, 16 C.R. 93 ...

[63] Even a cursory examination of the relevant *Criminal Code* provisions prior to the 1972 *Criminal Law Amendment Act*, make clear a finding or plea of guilt constituted a conviction (*Criminal Code*, R.S.C. 1970, c. C-34, ss. 645(1)(2), 662(1), 663).

[64] **Every attempt to obtain a discharge for otherwise deserving offenders who had pled or been found guilty of drinking and driving offences has failed** (*R. v. Millen* (1973), 13 C.C.C. (2d) 395 (N.S.S.C.A.D.); *R. v. Poulin*, [1974] 4 W.W.R. 104 (Man. C.A.); In *Regina v. MacNeill* (1974), 8 N.B.R. (2d) 467 (N.B.S.C.A.D.); *R. v. Bradshaw*, [1976] 1 S.C.R. 162). [footnote omitted]

[65] The only avenue that has ever existed for a conditional discharge for a drinking and driving offence was through the curative discharge provision found in what was most recently numbered as s. 255(5) of the *Criminal Code*. [footnote omitted] This provision was in force at the time of Mr. Ankur's offence. He did not apply for it as he did not qualify.

[66] Parliament abolished the possibility of a curative discharge in 2018. [S.C. 2018, c. 21, s. 15] Instead, a court can elect not to impose the mandatory minimum punishment if an offender successfully completes a treatment program, but the Court is statutorily precluded from granting a discharge (s. 320.23(2)).

[*R. v. Ankur*, 2023 NSCA 2; bold emphasis added; italicized emphasis in original]

Did Justice Boudreau err by ruling that the mandatory minimum sentences do not violate s. 12 of the *Charter*?

[24] Justice Boudreau began her analysis with reference to s. 12 of the *Charter* which prohibits "cruel and usual treatment or punishment". To reach this standard a sentence must be "grossly disproportionate to the punishment that is appropriate, having regard to the nature of the offence and the circumstances of the offender" (*R. v. Nur*, 2015 SCC 15, at ¶39). The sentence must "outrage standards of decency" such that Canadians would find the punishment "abhorrent or intolerable" (*R. v. Lloyd*, 2016 SCC 13, at ¶87).

[25] Justice Boudreau then applied the two-step process of a s. 12 analysis described in *Nur* (at ¶46). First, the court must determine a proportionate sentence for the offence, taking into account the objectives and principles of sentencing in the *Criminal Code*. The court must then ask whether the mandatory minimum requires the judge to impose a sentence that is grossly disproportionate to a fit and proportionate sentence. A sentence can be grossly disproportionate either to the offender before the court or if it is reasonably foreseeable the mandatory minimum would impose cruel and unusual punishment on another person.

[26] Justice Boudreau summarily dismissed the argument that deportation or the risk of deportation would result in a "grossly disproportional" sentence. The court noted decisions of the Federal Court of Appeal and Supreme Court of Canada that have rejected immigration consequences in themselves as constituting cruel and unusual punishment (*Revell v. Canada (Citizenship and Immigration)*, 2019 FCA 262; *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711).

[27] Justice Boudreau found both judges allowed the collateral consequences of deportation to overwhelm their analysis of an appropriate sentence, cautioned against by the Supreme Court in *R. v. Pham*, 2013 SCC 15. In both appeals Justice Boudreau quoted *Pham*:

> [15] The flexibility of our sentencing process should not be misused by imposing inappropriate and artificial sentences in order to avoid collateral consequences which may flow from a statutory scheme or from other legislation, thus circumventing Parliament's will.
>
> [16] These consequences must not be allowed to dominate the exercise or skew the process either in favour of or against deportation. Moreover, it must not lead

> to a separate sentencing scheme with a *de facto* if not a *de jure* special range of sentencing options where deportation is a risk.

[28] Justice Boudreau concluded with respect to each appeal:

> In her decision, in my view, the sentencing judge did exactly what the court in *Pham* said a sentencing court could not do; set up a separate sentencing scheme only for those persons in Mr. Ankur's [Chandran's] circumstances, i.e., a foreign national facing likely or probable deportation as a result of criminal convictions.
>
> [¶47 of 2022 NSSC 250; ¶48 of 2022 NSSC 251]

[29] The applicants concede that Justice Boudreau applied the correct test in *Nur*, but insist the judge was wrong to say a conditional discharge could not be an appropriate remedy because Parliament has emphasized the seriousness of the offence. The applicants argue that Parliament's view cannot shield a "grossly disproportionate sentence from *Charter* scrutiny". Quite so. But then the applicants say Justice Boudreau's claims about the seriousness of drinking and driving offences requires evidentiary support. They fault the prosecution for not leading evidence regarding the seriousness of drinking and driving in comparison to other offences and the effectiveness of financial penalties for low-end offences.

[30] The Crown's response is best captured by reference to jurisprudence in its factum:

> 73. With respect, ***appellate guidance is replete with references to "the scourge***" [*R. v. McColman*, 2023 SCC 8, para. 74; *R. v. Suter*, 2018 SCC 34, para. 93] ***of alcohol-related driving offences and the increasing Parliamentary response***. No better articulation can be found than in *R. v. Lacasse*, 2015 SCC 64:
>
> > [7] ***The increase in the minimum and maximum sentences for impaired driving offences shows that Parliament wanted such offences to be punished more harshly***. Despite countless awareness campaigns conducted over the years, ***impaired driving offences still cause more deaths than any other offences in Canada***: House of Commons Standing Committee on Justice and Human Rights, *Ending Alcohol-Impaired Driving: A Common Approach* (2009), at p. 5.
> >
> > [8] This sad situation, which unfortunately continues to prevail today, was denounced by Cory J. more than 20 years ago:
> >
> > > Every year, drunk driving leaves a terrible trail of death, injury, heartbreak and destruction. ***From the point of view of numbers alone, it has a far greater impact on Canadian society than any other crime***. In terms of the deaths and serious injuries resulting in

> hospitalization, drunk driving is clearly the crime which causes the most significant social loss to the country.
>
> (*R. v. Bernshaw*, 1995 CanLII 150 (SCC), [1995] 1 S.C.R. 254, at para. 16)
>
> ***
>
> [62] It should also be noted that ***Parliament has regularly raised the level of the minimum and maximum sentences applicable to impaired driving offences***. For example, in 2000, the maximum sentence for the crime of impaired driving causing death was raised from 14 years to imprisonment for life: *An Act to amend the Criminal Code (impaired driving causing death and other matters)*, S.C. 2000, c. 25.
>
> [63] Similarly, in 2008, the minimum sentences for all crimes related to impaired driving were increased to $1,000 for a first offence, imprisonment for 30 days for a second offence and imprisonment for 120 days for any subsequent offence: *Tackling Violent Crime Act*, S.C. 2008, c. 6. [paras. 7-8, 62-63; see, also *R. v. Bernshaw*, [1995] 1 SCR 254, paras. 16-19]

74. Two years later, the SCC in *R. v. Alex* stated very simply:

> [1] Each year, ***drunk drivers cause tremendous suffering and loss of life on Canada's roadways. Tragically, drinking and driving offences remain one of the most common crimes in Canada*** — and they place a substantial burden on the criminal justice system. [2017 SCC 37, para. 1]

75. The gravity of the offences to which the MMP in question applies is informed by numerous factors. Driving is a privilege. [See, for example, *Khan c. R.*, 2020 QCCQ 4199, para. 68] The risks associated with mixing alcohol and driving are all too well-known. And***, alcohol-related driving is quite unlike other crimes***:

> …in the sense that nothing much can be offered to justify driving drunk. Crimes of theft may be motivated by poverty, crimes of assault may be motivated by fear, but what excuse can be offered for driving drunk, except that alcohol allowed the offender to lose all sense of judgment? It is for this reason that ***communities rightfully express outrage when victims are killed or injured as a result of such conduct. It is for this reason that both deterrence and denunciation are legitimate objectives*** to pursue for this type of offence. And it is for this reason that deterrence and denunciation ought to have been considered by the trial judge in this case.
>
> [Emphasis added.]

[31] The Crown persuasively describes how alcohol-related driving offences are integral to a broader scheme targeting drunk driving:

> 85. […] There are elevated fines for readings over 160. There are elevated, carceral [mandatory minimums] for second and subsequent offences. Notice to provide greater penalty removes any judicial discretion to move below those subsequent [mandatory minimums] and has been determined to be constitutionally compliant [*R. v.* Anderson, 2014 SCC 41], regardless of the background and circumstances of the offender.

[32] Justice Boudreau did not err by acknowledging the destructive effect of drinking and driving, which legislation proscribes and jurisprudence condemns.

[33] The applicants next fault Justice Boudreau for not conducting a "full proportionality analysis". The applicants emphasize their favourable personal circumstances of youth, remorse, and lack of criminal record, among other things. But it is clear from both the legislation and the case law that otherwise positive personal circumstances must recede before the moral blameworthiness of drinking and driving which is often committed by otherwise law-abiding citizens with no prior criminal history. Likewise, the mitigating circumstance of youth is diminished in these cases owing to the primacy of denunciation and deterrence. The mandatory minimum sentencing regime is also aimed at young people who are most affected by impaired driving (*R. v. Lacasse*, 2015 SCC 64, ¶78-79).

[34] The applicants fairly argue that mandatory minimum sentences in general have been set aside in recent years because they risk impairing the proportionality principle in sentencing. The applicants rely on a number of cases for this proposition, cumulating with *R. v. Boudreault*, 2018 SCC 58, in which the mandatory imposition of victim surcharges was found to offend s. 12 of the *Charter*. The universal imposition of surcharges could create grossly disproportionate impacts that would otherwise frustrate imposition of a fit sentence. The Crown rightly distinguishes *Boudreault* as a kind of a statutory overreach unnecessary to fulfil the statutory purposes of victim surcharges. The circumstances in *Boudreault* and similar cases bear no resemblance to the factors that target the moral blameworthiness and implement the sentencing goals of denunciation and deterrence involved in drinking and driving offences.

[35] Respectfully, it was the Provincial Court judges who failed to do a proper proportionality analysis because they failed to apply similar sentences for like offences, committed in similar circumstances. That analysis would have revealed conditional discharges were never available. By failing to do that analysis, they erred in law (*Lacasse*, at ¶43; *R. v. Gejdos*, 2017 ABCA 227, at ¶34).

[36] Other than invoking the former curative discharge (now abolished), no one has ever successfully argued for a conditional discharge for drinking and driving, despite sometimes compelling personal circumstances, including the prospect of deportation (*R. v. Ankur*, 2023 NSCA 2, at ¶57-66, quoted at ¶23 above; *R. v. Fox*, 2022 ABQB 132; *Khan c. R.*, 2020 QCCQ 4199; *R. c. Videgaray Latulippe*, 2022 QCCQ 8114; *R. v. Cheema*, 2022 ONCJ 364; *R. v. Sandhu*, 2022 MBKB 224).

Conclusion

[37] Justice Boudreau did not err in law by imposing the mandatory minimum sentences provided for by the *Code*. Nor did she err by faulting the Provincial Court judges for fashioning a sentence that avoided deportation, rather than one that was fit and proper. Those sentences did not constitute cruel and unusual treatment or punishment contrary to s. 12 of the *Charter*. The potential immigration consequences of the applicants being returned to their home countries did not elevate the "punishment" to cruel and unusual. The applicants raise no arguable issue.

[38] Leave to appeal should be denied.

Bryson J.A.

Concurred in:

Farrar J.A.

Fichaud J.A.