



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

Judgment of June 30, 2023 | On appeal from the Court of Appeal of New Brunswick
Neutral citation: 2023 SCC 18

The Supreme Court rules that an offender who was prohibited from driving for 21 months while waiting to be sentenced had already served the mandatory minimum punishment.

On the night of October 7, 2017, Ms. Basque was stopped in downtown Moncton, New Brunswick, for driving her vehicle erratically. She was charged with impaired driving and released on November 30 of the same year on the condition that she not drive a motor vehicle while awaiting trial. She eventually pleaded guilty. It was her first offence in 10 years, so it was treated as a first offence. Between her initial appearance and the date she was sentenced, 21 months passed.

Under section 259(1)(a) of the *Criminal Code* (now section 320.24(2)(a)), a first offence is punishable by an order prohibiting the offender from driving a motor vehicle for a minimum of one year. Furthermore, section 719(1) of the *Code* states that, except where otherwise provided, a sentence commences when it is imposed. However, there is also a rule under the common law — the body of law that is not written down as legislation but is instead based on precedent — that gives judges a discretion to grant credit for the time an offender has spent subject to a driving prohibition before being sentenced, that is, a “pre-sentence prohibition”. The interaction between these *Code* provisions and the common law rule is at the heart of this appeal.

The Provincial Court judge imposed a \$1,000 fine and a one-year driving prohibition on Ms. Basque, in accordance with section 259(1)(a). He then considered the 21 months she had already been prohibited from driving and credited them against her sentence. He also backdated the order to November 30, 2017, the first day of the pre-sentence prohibition, which meant that Ms. Basque had already served the entire sentence by the date of the judge’s decision and was not subject to any further driving prohibition. The Crown appealed that judgment. The Court of Queen’s Bench appeal judge sided with the first judge.

On appeal to the New Brunswick Court of Appeal, a majority of the judges allowed the appeal, stating that the law does not allow such credit to be granted if this results in a prohibition being imposed for less than the minimum period required. It varied the appeal judge’s decision to include a new one-year driving prohibition.

Ms. Basque then appealed that decision to the Supreme Court. The Court has allowed the appeal.

Ms. Basque could be credited for the driving prohibition period she had already served, notwithstanding the one-year mandatory minimum provided for in the *Criminal Code*.

Writing for a unanimous Court, Justice Kasirer stated that granting credit based on the common law discretion is perfectly consistent with the application of sections 259(1)(a) and 719(1). He explained that this coexistence rests on the well-known distinction between the concepts of “punishment”, which refers to the total punishment imposed on an offender, and “sentence”, which refers to the decision rendered by the court and which commences the day it is handed down by that court.

Justice Kasirer determined that section 259(1)(a) requires the court to impose a total punishment of one year to be served, not to hand down a sentence imposing a one-year prohibition that must be served prospectively. This interpretation is in keeping with the objectives of deterrence and punishment that underlie the provision. As he explained, “Parliament’s intention is respected whether the punishment is served before or after the offender is sentenced, because the effect on the offender is the same in either case”.

The sentencing judge was therefore correct in granting credit for the pre-sentence prohibition, but his decision to backdate the sentence was an error. According to Justice Kasirer, the judge could have imposed the one-year mandatory minimum driving prohibition on Ms. Basque, stated that a sentence commences when it is imposed, and then granted credit for the pre-sentence prohibition period she had already served. In her case, because that period exceeded the one-year minimum, the objectives of the minimum punishment were already met, and even surpassed. For these reasons, Justice Kasirer concluded that no further prohibition was required.

Breakdown of the decision: *Unanimous*: Justice [Kasirer](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Rowe](#), [Martin](#), [Jamal](#) and [O'Bonsawin](#) agreed)

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