

Session: Sources of Canadian Law

Topic: Common Law and Civil Law Traditions

Sub Topic – Precedents and Stare Decisis (2)

Recommended time: 70 Minutes

Score: 38 Marks

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Question

You are an articling student with the British Columbia Prosecution Service. Your principal notified you of a pending criminal matter at the BC Supreme Court where Merlin, the accused person has filed an application challenging his indictment on grounds that it violates his Charter right to personal liberty and discloses no reasonable cause of action against him. He argues that the Supreme Court of Canada had in the case of **Canada v. Youssef (1985)** decided on and invalidated a similar provision of the Criminal Code under which he was charged as a violation of Charter rights, and that since the judgment has not been set aside, the BC Supreme Court has no other option than to strike the indictment. The accused concluded his arguments with quotes from the Supreme Court in **Youssef's** case as follows:

“...‘vertical *stare decisis*’ is a constitutional principle that requires all lower courts to rigidly follow this Court’s Charter precedents unless and until this Court sets them aside.”

Your principal has requested you to provide her with a detailed legal analysis of this quote against the background of recent judicial pronouncements. She wants you to specifically address the following questions:

Has there been any change in the attitude of the Court?

- If yes, what has been the result of such changes in recent decisions of trial courts?
- If no, what is the current state of this constitutional principle?

(Please assume that the case of **Canada v. Youssef** is fictional and your answer may not include Charter arguments.)

Note:

This is another question on precedents and *stare decisis*. It is different from the first one which is also fact-based. This question requires you to provide an opinion on contemporary judicial disposition towards precedents and *stare decisis*.

Your answer will require you to make sufficient and abundant references to authorities as well as the opinions of writers and jurists. This is the only way to answer this type of question and earn sufficient marks.

In our sample answer, please take note of the way we have made good and wide use of the required articles in the current syllabus to support our answer. This is vital too.