Federal Court  Cour fédérale

Date: 20090828

Docket: IMM-1014-09

Citation: 2009 FC 854

Ottawa, Ontario, August 28, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

ASITKUMAR HARKI GANDHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of the Immigration Appeal Division of the Immigration and Refugee Board (the Board) dated February 4, 2009, where the Board decided that the Applicant was ineligible to sponsor pursuant to subparagraph 133(1)(*e*)(ii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations), having been convicted of an offence which constituted an attempt or threat of bodily harm against his wife.

Issues

[2] This application raises the following issues:

a) Did the Board err in finding that subparagraph 133(1)(*e*)(ii) of the Regulations bars sponsors from being approved for family class sponsorships when they have engaged in actions which constitute a threat of bodily harm against a family member, notwithstanding there being no conviction in this regard?

b) Did the Board err in its assessment of the facts in the case at bar?

[3] The application for judicial review shall be allowed.

Factual Background

[4] The Applicant, Asitkumar Kharki Gandhi, was born on January 20, 1975 in India and became a permanent resident of Canada on May 14, 2002. The Applicant's father, Harkishan Gandhi, was born on May 16, 1945 in India and his spouse Hiragauri Gandhi was born on October 25, 1948 in India. The Applicant and his wife Megha Gandhi have a daughter, Diya Gandhi, born July 25, 2005 and they were expecting their second child in March or April 2009.

[5] Pursuant to subsection 63(1) of the Act, the Applicant appealed a refusal to issue a permanent resident visa to his father, Harkishan Gandhi and his father's dependent spouse. The refusal had been made on February 20, 2007 because the Applicant had been convicted on July 25, 2006 of assault on his wife under section 266 of the *Criminal Code of Canada*, R.S.C.,

1985, c. C-46. Consequently, he did not meet the requirements to sponsor his parents as stipulated by subparagraph 133(1)(*e*)(ii) of the Regulations.

[6] The Applicant submits he applied to sponsor his parents before the conviction, on January 27, 2005, but the Respondent argues that the Applicant applied to sponsor his parents subsequent to his conviction.

[7] The Applicant appealed the decision to the Board based on two arguments: the refusal was not legally valid and there were sufficient humanitarian and compassionate (H&C) factors to warrant granting special relief. The Board dismissed the appeal on February 4, 2009 and this application relates to the Board's decision.

Impugned Decision

[8] The Board found the refusal was valid in law and the Applicant had not succeeded in demonstrating the existence of sufficient H&C considerations so as to warrant special relief.

[9] The Applicant challenged the legal validity of the refusal on two grounds. Firstly, the "bodily harm" required under section 133 of the Regulations was not present and secondly, the victim in the assault was not his wife but his wife's aunt. The Applicant asserts the wife's aunt is not covered by section 133 of the Regulations.

[10] The Applicant argued the requirement for “bodily harm” in section 133 was not met because he had not actually swung his stick at the victim and he did not strike her. The Board found the wording of subparagraph 133(1)(*e*)(ii) extends to include an attempt or threat to cause bodily harm but does not require that bodily harm actually result from the assault. The Applicant testified his intention was to threaten his wife’s aunt that he would strike her if she did not surrender the baby to him. This threat was carried out using a five-foot piece of wood (2 x 2), which, in the opinion of the Board, constitutes a threat to cause bodily harm.

[11] There was a discrepancy between the police report and the oral evidence at the hearing regarding who was the intended victim of the attack. One version stated the aunt was the victim whereas the other stated the Applicant’s wife as the victim. According to the Applicant, the victim was his wife’s aunt, but the Board noted the fact that the Applicant was charged with and convicted of assault on his wife, which is the version confirmed by the police report. The Board concurs with the Respondent’s view that the fact the aunt was holding the Applicant’s infant daughter in her arms at the time of the incident when the Applicant wielded a stick (as per the version offered in testimony by the Applicant) also posed a threat to the Applicant’s infant daughter. The Board concludes that threatening to strike his wife in the presence of his infant daughter demonstrates, on the part of the Applicant, a blatant disregard for his daughter’s safety. As the Applicant was in fact charged with and convicted of assault on his wife, the Applicant’s actions fall within the ambit of subparagraph 133(1)(*e*)(ii) and the Board concludes the refusal is valid in law.

[12] On that day, August 10, 2005, the Applicant was charged with assault with a weapon, pursuant to section 267 of the *Criminal Code* and he was required to not reside with his spouse. On July 25, 2006, the Applicant pled guilty to assault against his wife (pursuant to section 266 of the *Criminal Code*) and he received a suspended sentence and one year probation. He returned to live with his spouse.

[13] The Applicant argues that even if the refusal is valid in law, the appeal should nevertheless be granted on the basis of H&C considerations. Consequently, the Board had to determine whether, taking into account the best interests of the child directly affected by the decision, sufficient H&C considerations exist so as to warrant the granting of special relief in light of all the circumstances of the case, pursuant to paragraph 67(1)(*c*) of the Act.

[14] Under the former *Immigration Act*, R.S.C. (1985), ch. I-2, the criteria to determine if special relief should be granted for H&C considerations in a case such as this were established in *Chirwa v. Canada (Minister of Manpower and Immigration)* (1970), 4 A.I.C. 338 (I.A.B.) at page 350. The Board considered the relationship of the sponsor to the sponsorship applicants, the reasons for the sponsorship and the overall situation of both the sponsor and his parents. In light of the Applicant's criminal history, the Board also considered the seriousness of the offence, whether or not there was evidence of remorse or rehabilitation and evidence of good character. The Board also considered the best interests of the Applicant's child as well as the Applicant's grandchildren who reside with them in India, as these are children who will be directly affected by this decision. These considerations

are not exhaustive but do represent some of the appropriate considerations for the exercise of special relief.

[15] After reviewing the sequence of events and the particular circumstances of this case, the Board found there were insufficient H&C factors to warrant granting special relief.

[16] Regarding the incident leading to the charge and conviction, in keeping with her cultural traditions, the Applicant's wife went to recuperate with family members at her aunt's house following the difficult birth of their child. The Applicant disapproved of this decision and he did not visit his wife while she was recuperating, claiming he was too busy with his new job and too nervous to drive to see her. The Board acknowledged this was a stressful time for the Applicant and his wife who were first-time parents.

[17] The Applicant's wife recuperated at her aunt's home for approximately ten days and the Applicant called his wife after a week because he wanted to bring her home. When he arrived at the aunt's house, his wife was not feeling well and explained she wanted to remain where she was. The Applicant argued with the aunt and he then put the infant into a car seat. The aunt followed the Applicant and removed the child from him. The Applicant responded by removing a five-foot piece of wood from the trunk of his car which he claims he wielded at the aunt, threatening to strike her if she did not return his child to him.

[18] The Board considers that the Applicant' s threat to strike his wife’s aunt while she was carrying the child in her arms is a negative factor as it demonstrates a blatant disregard for the safety of his family and most importantly, his infant child. It does not retain the Applicant’s version of the events and concludes the victim of his attack was in fact his wife.

[19] The Applicant explained he disapproved that his child was living in a basement apartment because he felt it was inappropriate for a newborn and he stated he had made arrangements for a nurse to provide care at his own home. The Applicant testified he hired the nurse when his wife was discharged from the hospital for one to two days. The Applicant then revised his testimony and stated he had hired the nurse three to four days after his wife was discharged from the hospital. The Board does not find the Applicant credible on this point as it is standard procedure for the hospital to offer such nursing care so the Applicant did not actually make any. Furthermore, when a nurse went to the Applicant’s home, his wife was not there and when the hospital called the Applicant, he informed them that his wife was at her aunt’s home. The Board notes that if he was concerned by the environment in which his child was living, he could have asked the nurse to look in on her at the aunt’s home. When questioned as to why he did not make such arrangements, the Applicant explained he lived in Toronto while the aunt lives in Brampton. The Board believes the Applicant is entitled to the benefit of the doubt on this point.

[20] Subsequent to the assault, the Applicant complied with the probation order and completed the requisite anger management programs. In a letter dated October 12, 2007, the Applicant was informed he was eligible for Phase II. Asked why he did not complete any further courses, the

Applicant stated it had never been suggested to him. The Board concludes the Applicant only completed the anger management course as required but he had no desire to attend any further courses on his own initiative. When questioned, the Applicant's wife had difficulty providing concrete examples of ways in which her husband had changed following completion of the anger management program but she testified he was able to walk away from arguments.

[21] The Applicant's wife returned to live with him in July 2006 after the end of his probation. The relationship between the Applicant and his wife is a positive element, as she has put this incident behind her and has forgiven him.

[22] Despite having expressed remorse for his actions, the Board notes that the Applicant testified he never apologized to his wife's aunt for the incident, although he has had the opportunity to see her at family functions. The Applicant's failure to apologize to his wife's aunt is not indicative of sincere and significant remorse for his actions and this constitutes a negative factor in this appeal.

[23] The Board acknowledges the Applicant has no other charges or convictions and the incident in question does appear to be an isolated event as a positive factor.

[24] The Applicant and his wife work split shifts in order to alternate caring for their child. Consequently, they only spend time together with their child on weekends. The Applicant claims if his parents are allowed to come to Canada, they could assist with childcare and allow the Applicant

and his wife to spend more time together with their children and also allow for a more flexible work schedule. The Board admits this would facilitate their lives and might be in the best interests of the children, but the Board notes the Applicant's situation is not unique. The Board does not find these circumstances to be extenuating, but acknowledges that to deprive the Applicant of the assistance which could be offered by his parents does impose a certain hardship on him.

[25] The Applicant's parents are semi-retired and have family living in India, including one son who lives with them. The Applicant's parents have young grandchildren who live in India and their best interests are an equally valid consideration in this appeal. If the Applicants were to come to Canada, these grandchildren would be deprived of the presence of their grandparents and consequently, their best interests are served by the grandparents remaining in India.

[26] The Applicant last saw his parents in February 2008 when he visited them for a month on the occasion of his wife's brother's wedding. He speaks to his parents on the telephone two or three times a week. The Board concludes there is no reason why the Applicant cannot maintain the same relationship with his parents in the future. The Board concludes the Applicant has not presented any evidence he would suffer undue hardship if his appeal were to be dismissed. Childcare needs are an issue with which many couples are confronted, and while it would unquestionably be beneficial for the Applicant to have access to free childcare and even more beneficial for the grandchildren to benefit from their presence, these considerations are not sufficient to overcome the negative elements of this case.

[27] The Applicant may also choose to seek a pardon for his actions and subsequently reapply to sponsor his parents. The Board acknowledges this entails a certain delay in being able to sponsor his parents, but the fact of the matter is that this delay is attributable to the Applicant's own actions. The Board considers the Applicant's actions, which constitute domestic violence, are very serious in nature and this factor is a negative consideration.

[28] The Board considers that the Applicant complied with his probation order and completed the requisite anger management course. Nevertheless, the Board recognizes that despite his expressions of remorse, the Applicant never apologized to his wife's aunt. This also is a negative consideration as it indicates he is not truly remorseful. In his testimony before the Board, the Applicant sought to minimize his actions although he never denied responsibility for them.

[29] Based on the evidence and testimonies, the Board is of the view that the Applicant has not succeeded in meeting his burden as he has not presented a compelling case so as to warrant the exercise of the Board's discretion to provide relief on H&C grounds. The appeal is dismissed.

Relevant Legislation

[30] The relevant legislative provisions are contained in Appendix A at the end of this document.

Did the Board err in finding that subparagraph 133(1)(e)(ii) of the Regulations bars sponsors from being approved for family class sponsorships when they have engaged in actions which constitute a threat of bodily harm against a family member, notwithstanding there being no conviction in this regard?

Standard of Review

[31] The Applicant submits that errors of law are generally covered by the correctness standard (*Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100 at paragraph 37). In the case at bar, the Board clearly erred in law in incorrectly applying the legal standard against which it determined the Applicant was caught by subparagraph 133(1)(*e*)(ii) of the Act. Accordingly, the Board's decision in this regard cannot stand.

[32] The Respondent agrees that the standard of review on questions of law is correctness and the standard of review on questions of fact is reasonableness. The Respondent submits that the issue of the legal validity of the refusal is a question of law and the Board correctly interpreted the law.

[33] The issue here involves the way the Board interpreted subparagraph 133(1)(*e*)(ii) of the Regulations in relation to the *Criminal Code*. The Applicant argues that the interpretation should be restrictive as the respondent maintains that it should be broad.

[34] Interestingly as this debate may be, I leave this question for another day because I am of the opinion that this matter should be sent back for a redetermination for the following reasons.

Did the Board err in its assessment of the facts in the case at bar?

Standard of Review

[35] The standard of review of an H&C matter has been held to be reasonableness (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 646, 167 A.C.W.S. (3d) 974). Given

the highly discretionary nature of the decision, the Court must accord deference to the factual findings and weighing of factors.

[36] The issue of the assessment of H&C grounds is a question of fact (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 53; *Khosa v. Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at paragraphs 59-62).

[37] I find that the Board committed reviewable errors which are determinative.

[38] First, the Board writes at paragraph 9 of the decision:

> … The tribunal concurs with the Minister's counsel's view that the fact that the aunt was holding the appellant's infant daughter in her arms at the time of the incident when the appellant wielded a stick (as per the version offered in testimony by the appellant) also posed a threat to the appellant's infant daughter. The tribunal concludes that threatening to strike his wife in the presence of his infant daughter, demonstrates, on the part of the appellant, a blatant disregard for his daughter's safety. …

[39] This Court does not know who was considered by the Board as the victim of the assault, the aunt or the wife. In this particular instance, the aunt was the Applicant's mother-in-law's sister in law.

[40] Second, the Board concluded that the Applicant had not presented a compelling case so as to warrant the exercise of the Board's discretion to provide relief on H&C grounds (paragraph 26 of the decision). This conclusion relies mainly on the fact that the Applicant had no desire to attend

any further courses on anger management programs and also on the fact that the Applicant had never apologized to his wife's aunt (paragraphs 17 and 19 of the decision).

[41] Those determinations are not supported by the evidence. Contrary to the Board's assertion, the Applicant never said that he had no desire to attend any further courses. He testified that he completed the Counterpoints Partner Assault Response Program (Phase I) and nobody suggested that he enter Phase II. Even his probation officer never made that suggestion (page 304, tribunal's record).

[42] On the question of remorse, the transcript shows that he apologized to the aunt at the Court hearing and also at the time of the incident (pages 272, 246, 270).

[43] The Court's intervention is warranted.

[44] No questions for certification were proposed and none arise in this case.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed. The matter is remitted back to a different Board for redetermination. No question is certified.

"Michel Beaudry"
Judge

APPENDIX A

Relevant Legislation

Immigration and Refugee Protection Act, S.C. 2001, c. 27:

Serious criminality **36.** (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	Grande criminalité **36.** (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;
(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or	b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.	c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.
Disposition **66.** After considering the appeal of a decision, the Immigration Appeal Division shall	Décision **66.** Il est statué sur l'appel comme il suit :
(a) allow the appeal in accordance with section 67;	a) il y fait droit conformément à l'article 67;
(b) stay the removal order in accordance with section 68; or	b) il est sursis à la mesure de renvoi conformément à l'article 68;
(c) dismiss the appeal in accordance with section 69.	c) il est rejeté conformément à l'article 69.

Appeal allowed
67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

(a) the decision appealed is wrong in law or fact or mixed law and fact;

(b) a principle of natural justice has not been observed; or

(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

Fondement de l'appel
67. (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :

a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;

b) il y a eu manquement à un principe de justice naturelle;

c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

Immigration and Refugee Protection Regulations, SORS/2002-227:

Requirements for sponsor
133. (1) A sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor

(e) has not been convicted under the Criminal Code of

(ii) an offence that results in bodily harm, as defined in section 2 of the Criminal Code, to any of the following persons or an attempt or a threat to commit such an offence against any of the following persons, namely,

(A) a relative of the sponsor, including a dependent child or other family member of the sponsor,

(B) a relative of the sponsor's spouse or of the sponsor's common-law partner, including a

Exigences : répondant
133. (1) L'agent n'accorde la demande de parrainage que sur preuve que, de la date du dépôt de la demande jusqu'à celle de la décision, le répondant, à la fois :

e) n'a pas été déclaré coupable, sous le régime du Code criminel :

(ii) d'une infraction entraînant des lésions corporelles, au sens de l'article 2 de cette loi, ou d'une tentative ou menace de commettre une telle infraction, à l'égard de l'une ou l'autre des personnes suivantes :

(A) un membre de sa parenté, notamment un enfant à sa charge ou un autre membre de sa famille,

(B) un membre de la parenté de son époux ou de son conjoint de fait, notamment un enfant à

dependent child or other family member of the sponsor's spouse or of the sponsor's common-law partner, or

charge ou un autre membre de la famille de son époux ou de son conjoint de fait,

(C) the conjugal partner of the sponsor or a relative of that conjugal partner, including a dependent child or other family member of that conjugal partner;

(C) son partenaire conjugal ou un membre de la parenté de celui-ci, notamment un enfant à charge ou un autre membre de la famille de ce partenaire conjugal;

Criminal Code of Canada, R.S.C., 1985, c. C-46:

Uttering threats
264.1 (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

Proférer des menaces
264.1 (1) Commet une infraction quiconque sciemment profère, transmet ou fait recevoir par une personne, de quelque façon, une menace :

(a) to cause death or bodily harm to any person;

a) de causer la mort ou des lésions corporelles à quelqu'un;

(b) to burn, destroy or damage real or personal property; or

b) de brûler, détruire ou endommager des biens meubles ou immeubles;

(c) to kill, poison or injure an animal or bird that is the property of any person.

c) de tuer, empoisonner ou blesser un animal ou un oiseau qui est la propriété de quelqu'un.

Punishment
(2) Every one who commits an offence under paragraph (1)(a) is guilty of

Peine
(2) Quiconque commet une infraction prévue à l'alinéa (1)a) est coupable :

(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or

a) soit d'un acte criminel et passible d'un emprisonnement maximal de cinq ans;

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois.

Idem
(3) Every one who commits an offence under paragraph (1)(b) or (c)

Idem
(3) Quiconque commet une infraction prévue à l'alinéa (1)b) ou c) est coupable :

(a) is guilty of an indictable offence and liable to

a) soit d'un acte criminel et passible d'un

imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

emprisonnement maximal de deux ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

Assault
265. (1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

Application
(2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

Consent
(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

(a) the application of force to the complainant or to a person other than the complainant;

Voies de fait
265. (1) Commet des voies de fait, ou se livre à une attaque ou une agression, quiconque, selon le cas :

a) d'une manière intentionnelle, emploie la force, directement ou indirectement, contre une autre personne sans son consentement;

b) tente ou menace, par un acte ou un geste, d'employer la force contre une autre personne, s'il est en mesure actuelle, ou s'il porte cette personne à croire, pour des motifs raisonnables, qu'il est alors en mesure actuelle d'accomplir son dessein;

c) en portant ostensiblement une arme ou une imitation, aborde ou importune une autre personne ou mendie.

Application
(2) Le présent article s'applique à toutes les espèces de voies de fait, y compris les agressions sexuelles, les agressions sexuelles armées, menaces à une tierce personne ou infliction de lésions corporelles et les agressions sexuelles graves.

Consentement
(3) Pour l'application du présent article, ne constitue pas un consentement le fait pour le plaignant de se soumettre ou de ne pas résister en raison :

a) soit de l'emploi de la force envers le plaignant ou une autre personne;

(b) threats or fear of the application of force to the complainant or to a person other than the complainant;

b) soit des menaces d'emploi de la force ou de la crainte de cet emploi envers le plaignant ou une autre personne;

(c) fraud; or

c) soit de la fraude;

(d) the exercise of authority.

d) soit de l'exercice de l'autorité.

Accused's belief as to consent
(4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

Croyance de l'accusé quant au consentement
(4) Lorsque l'accusé allègue qu'il croyait que le plaignant avait consenti aux actes sur lesquels l'accusation est fondée, le juge, s'il est convaincu qu'il y a une preuve suffisante et que cette preuve constituerait une défense si elle était acceptée par le jury, demande à ce dernier de prendre en considération, en évaluant l'ensemble de la preuve qui concerne la détermination de la sincérité de la croyance de l'accusé, la présence ou l'absence de motifs raisonnables pour celle-ci.

Assault
266. Every one who commits an assault is guilty of

Voies de fait
266. Quiconque commet des voies de fait est coupable :

(a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or

a) soit d'un acte criminel et passible d'un emprisonnement maximal de cinq ans;

(b) an offence punishable on summary conviction.

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

Assault with a weapon or causing bodily harm

267. Every one who, in committing an assault,

Agression armée ou infliction de lésions corporelles
267. Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois quiconque, en se livrant à des voies de fait, selon le cas :

(a) carries, uses or threatens to use a weapon or an imitation thereof, or

a) porte, utilise ou menace d'utiliser une arme ou une imitation d'arme;

(b) causes bodily harm to the complainant,
is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

b) inflige des lésions corporelles au plaignant.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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