

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Goleski, 2015 SCC 6, [2015] 1 S.C.R. 399 | **Date:** 20150211  **Docket:** 35862 |

Between:

Grant Anthony Goleski

Appellant

and

Her Majesty The Queen

Respondent

**Attorney General of Ontario and**

**Attorney General of Alberta**

Interveners

**Coram:** Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner and Gascon JJ.

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| **Reasons for Judgment:**  (paras. 1 to 2) | The Court |

r. *v.* goleski, 2015 SCC 6, [2015] 1 S.C.R. 399

Grant Anthony Goleski Appellant

v.

Her Majesty The Queen Respondent

and

Attorney General of Ontario and

Attorney General of Alberta Interveners

**Indexed as: R. *v.* Goleski**

2015 SCC 6

File No.: 35862.

2015: February 11.

Present: Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner and Gascon JJ.

on appeal from the court of appeal for british columbia

*Criminal law — Motor vehicles — Failure to provide breath sample — Burden of proof applicable to demonstration of “reasonable excuse” for refusal to provide breath sample — Accused bears persuasive burden of proving excuse — Criminal Code, R.S.C. 1985, c. C-46, s. 794(2).*

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, s. 794(2).

APPEAL from a judgment of the British Columbia Court of Appeal (Newbury, Frankel and Garson JJ.A.), 2014 BCCA 80, 307 C.C.C. (3d) 1, 64 M.V.R. (6th) 254, 10 C.R. (7th) 188, [2014] B.C.J. No. 347 (QL), 2014 CarswellBC 490 (WL Can.), setting aside the accused’s acquittal and reinstating his conviction. Appeal dismissed.

Amandeep Jaswal, for the appellant.

Mary T. Ainslie, Q.C., and John Caldwell, for the respondent.

Philip Perlmutter and Karen Papadopoulos, for the intervener the Attorney General of Ontario.

Matthew David Dalidowicz, for the intervener the Attorney General of Alberta.

The following is the judgment delivered orally by

1. The Court — In our view, the British Columbia Court of Appeal correctly concluded that s. 794(2) of the *Criminal Code*, R.S.C. 1985, c. C-46, properly interpreted, imposes a persuasive burden on the accused to prove an “exception, exemption, proviso, excuse or qualification prescribed by law”. We do not think it appropriate to deal with the new issues raised by the interveners.
2. The appeal is dismissed.

*Judgment accordingly.*

Solicitor for the appellant: Vincent Michaels Law Corporation, Vancouver.

Solicitor for the respondent: Attorney General of British Columbia, Vancouver.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitor for the intervener the Attorney General of Alberta: Attorney General of Alberta, Calgary.