

Citation: *R. v. Harry*, 2022 YKTC 18

Date: 20220413  
Docket: 20-00377  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Chief Judge Cozens

REGINA

v.

PHILLIP ROY HARRY

Appearances:

Mina Connelly (by videoconference)  
Amy Steele (by telephone)

Counsel for the Crown  
Counsel for the Defence

**RULING ON *CHARTER* APPLICATION AND  
REASONS FOR JUDGMENT**

[1] COZENS C.J.T.C. (Oral): Phillip Harry has been charged with having committed an offence contrary to s. 320.15(1) of the *Criminal Code*. Counsel for Mr. Harry filed an application alleging breaches of Mr. Harry's s. 10(b) *Charter* right to counsel. The trial commenced on September 24, 2021, with the evidence being heard in a *voir dire*. Submissions of counsel were made on January 28, 2022. Judgment was reserved until today's date. This is my judgment.

[2] Cst. Parent testified. In addition to his testimony, a video/audio recording of the interaction Cst. Parent had with Mr. Harry was played. The video/audio recording was

clear, detailed, and provided an accurate representation of the interaction between Cst. Parent and Mr. Harry, and I have placed considerable reliance on it.

[3] Cst. Parent stated that, on July 25, 2020, at about 4:30 a.m., he received a telephone call from Mr. Harry stating that Mr. Harry's wife, Joy, was in distress, possibly having been taken forcefully, and that she was with criminals. Cst. Parent, accompanied by Cst. Conway, was able to go to Ms. Harry's location in Whitehorse where a residential party was going on, and to speak with her. She stated that she was fine. Cst. Parent arrived at this location at approximately 5:00 a.m.

[4] While Cst. Parent was at this location, he observed a Toyota Corolla drive by on two occasions. He observed it slip its clutch and rev its engine loudly at a stop sign before leaving the intersection. He did not observe the turning light being on when the vehicle turned on to Lazulite Drive. The Corolla had a non-functioning front and rear taillight.

[5] Ms. Harry told Cst. Parent that the driver of the Corolla was Mr. Harry, and that he was intoxicated. Cst. Parent left the scene in his police cruiser at approximately 5:15 a.m. Within the next five minutes, he observed the Corolla, which he confirmed was registered to Mr. Harry. He followed the Corolla and confirmed that the left rear taillight was not working. Cst. Parent then pulled the Corolla over at the intersection of Falcon Drive and Hamilton Boulevard. The vehicle was in the traffic turning lane. He advised Mr. Harry that he had been stopped for both the non-functioning taillight, and as a result of a complaint that he was driving while intoxicated.

[6] Mr. Harry produced his vehicle documentation when asked to do so. Mr. Harry was alone in the Corolla. Cst. Parent stated that he detected an odour of liquor on Mr. Harry's breath. The odour of liquor became stronger when Mr. Harry spoke. Cst. Parent stated that Mr. Harry was slurring his words moderately. He concluded that Mr. Harry had alcohol in his body. As a result, Cst. Parent made the approved screening device ("ASD") demand while Mr. Harry was in the driver's seat. Cst. Parent made the ASD demand twice. The first time, Mr. Harry stated that he did not understand the demand. He said he could not understand with Cst. Parent's accent. The second time Mr. Harry said that he understood parts of it, so Cst. Parent stated the demand in layman's terms. Mr. Harry asked if he had other options than providing a breath sample, and Cst. Parent responded that he did not. Mr. Harry was asked to exit his vehicle and go and sit in the police cruiser. Mr. Harry repeatedly asked Cst. Parent if he was arrested. Cst. Parent repeatedly told Mr. Harry that he was not arrested, only detained.

[7] Mr. Harry asked Cst. Parent why he was putting his hands on him, and Cst. Parent responded that he did not want Mr. Harry to fall. Cst. Parent then placed Mr. Harry into his police cruiser and, with the door open, explained to him the consequences of refusing to provide a breath sample.

[8] Ms. Harry arrived at the scene at this time. She was raising her voice, confrontational, and argumentative throughout the video/audio recording that could be heard when the police cruiser door was open. She could only be heard somewhat after the police cruiser door was closed. Cst. Conway dealt with Ms. Harry at this time and throughout while Cst. Parent dealt with Mr. Harry.

[9] Cst. Parent explained to Mr. Harry, in layman's terms, why he was making the ASD demand. When asked whether he had consumed a drink in the last 15 minutes, Mr. Harry stated that he had not consumed a drink in the last three hours. Mr. Harry told Cst. Parent on several occasions that he was not consenting to providing a breath sample. Cst. Parent then informed Mr. Harry of the consequences of refusing to provide a breath sample. Mr. Harry then stated that he understood some things, but because of Cst. Parent's strong accent, he did not understand all of it.

[10] Cst. Parent again started to explain the consequences of refusing to provide a breath sample. Mr. Harry said that he wanted to talk to a lawyer before he did anything else. Mr. Harry then stated that he would not provide a sample of his breath into the ASD.

[11] Cst. Parent closed the door to the police cruiser in order to make it quieter. Cst. Parent then spoke to Mr. Harry and said that he would not be able to speak to a lawyer before he complied with the ASD demand. Mr. Harry again stated he would not provide a sample of his breath. He told Cst. Parent to charge him with something. Cst. Parent then again explained the consequences of a refusal to comply with the breath demand.

[12] Mr. Harry asked to be brought to the RCMP Detachment. Mr. Harry told Cst. Parent to charge him right then. Cst. Parent again explained the consequences of a refusal, to which Mr. Harry responded, "Okay." He told Mr. Harry that if he blew, he may blow under. Mr. Harry again stated that he was refusing to provide a breath sample.

[13] Cst. Parent was taking notes. He advised Mr. Harry that he would read him his rights after he finished making his notes. Mr. Harry was arguing with Cst. Parent. Cst. Parent began to read Mr. Harry's *Charter* rights, telling him that he was under arrest for a refusal to provide a breath sample and for impaired driving.

[14] Cst. Parent asked Mr. Harry if he understood, to which Mr. Harry responded, "Sure." Mr. Harry was read his *Charter* right to counsel. As this was occurring, Mr. Harry was interrupting Cst. Parent, so Cst. Parent started over.

[15] Mr. Harry then stated that he wanted to contact a lawyer right now. Cst. Parent responded that he could. He then asked Mr. Harry who he wanted to call. Cst. Parent continued to finish reading Mr. Harry's *Charter* right to counsel.

[16] After Cst. Parent finished reading this, Mr. Harry responded that he understood and that he was contacting a lawyer right now. Mr. Harry had brought his cell phone into the police cruiser. Cst. Parent said to Mr. Harry, "I'm going to provide you another one because I don't know who you're calling on your phone."

[17] Cst. Parent testified that he said this because he did not know who Mr. Harry was trying to call. He wanted to ensure that Mr. Harry was actually speaking to a lawyer.

[18] Cst. Parent did not want Mr. Harry to call others to come to the scene. Cst. Parent, however, did not ask Mr. Harry to put his phone away. Cst. Parent again asked Mr. Harry if he wanted to call a lawyer right now. Mr. Harry again stated that he was calling one right now. Cst. Parent then called for an appearance notice to be brought to the scene, as he had none in his police cruiser.

[19] He read Mr. Harry the police warning. Mr. Harry stated that he understood the police warning.

[20] Mr. Harry asked to be transported to a cell while he was waiting to be in touch with a lawyer. Cst. Parent then called for a tow truck to come to the scene. He asked Mr. Harry if he had his own lawyer. Mr. Harry stated that he did. When asked who this lawyer was, Mr. Harry replied that it was confidential, and it was his right to keep this information confidential.

[21] Mr. Harry again asked if he was charged and, if so, to bring him to his cell. Cst. Parent told Mr. Harry that he was being charged. Cst. Parent stated that it was his intention to drive Mr. Harry to his residence and not take him to the Detachment. Cst. Parent was waiting for a tow truck to arrive, and for an appearance notice to be brought to him. He did not feel that he could abandon Mr. Harry's vehicle. He also did not feel that it was safe to leave Cst. Conway alone on foot while he was dealing with Ms. Harry. Cst. Parent said that he would have left Cst. Conway if Cst. Conway had had his own police cruiser.

[22] While waiting, Cst. Parent again asked Mr. Harry if he had a lawyer. Mr. Harry responded that he did, however he would not tell Cst. Parent who the lawyer was. Cst. Parent asked Mr. Harry which phone number Mr. Harry wanted him to call for a lawyer. He told Mr. Harry that he would allow him to use his (Cst. Parent's) phone to speak to a lawyer if Mr. Harry would provide him a number to call.

[23] Cst. Parent testified that his usual practice was to put his phone on speaker and step outside of the police cruiser. When the accused was finished the phone call, they

would wave, and he would re-enter the vehicle. He testified that he would have allowed Mr. Harry to speak to a lawyer this way if he had been able to learn who Mr. Harry wished to speak to. Mr. Harry did not at any time respond to Cst. Parent's request for the name or number of a lawyer by providing any such information.

[24] Cst. Parent stated that he had been prepared to allow Mr. Harry to use his (Cst. Parent's) cell phone previously, had Mr. Harry told him who he wanted to speak to. He was aware that Mr. Harry had possession of his own cell phone while he was in the police cruiser. He observed Mr. Harry dialing on a cell phone and holding it to his ear while in the police cruiser. He did not believe that Mr. Harry ever reached a lawyer, however, or anyone, as he did not hear any ringtones. He also did not hear Mr. Harry speaking to anyone.

[25] Cst. Parent left the police cruiser and returned briefly to Mr. Harry's vehicle. While waiting for a tow truck, Cst. Parent asked Mr. Harry if he wanted him to call Legal Aid for him while they were waiting. He testified that he did so because Mr. Harry would not provide him another number. Mr. Harry responded by asking whether this was a usual "native question". Cst. Parent told Mr. Harry that he was just offering to contact Legal Aid, and that this was because Legal Aid was the only phone number he had for a lawyer. He again asked Mr. Harry if he wanted him to call a lawyer for him while they were waiting. Mr. Harry told Cst. Parent to "call the one they call for the native people all the time".

[26] Mr. Harry again asked Cst. Parent if he was being arrested. When told that he was, he stated that he wanted to be taken to his cell. Cst. Parent told Mr. Harry that he

was not going to be going to jail and that he would be released, but that he needed to give him his lawyer call at the office first, as well as to give him some documents.

[27] Cst. Parent told Mr. Harry that he was unable to release him until after he provided Mr. Harry with an opportunity to speak to a lawyer.

[28] After a delay, Mr. Harry asked Cst. Parent if he was contacting a lawyer for him. Cst. Parent asked Mr. Harry which lawyer he wanted him to call. Mr. Harry responded by telling Cst. Parent that he thought he (Cst. Parent) was contacting a lawyer for him. Cst. Parent told Mr. Harry that he wanted to call the lawyer Mr. Harry wanted him to call.

[29] Mr. Harry then stated that he wished for Cst. Parent to call Legal Aid for him, “I guess.” Cst. Parent then asked if Mr. Harry wanted him to call Legal Aid for him. When Mr. Harry did not appear to give him a clear response to his question, Cst. Parent again asked Mr. Harry if he wanted him to call Legal Aid for him. Mr. Harry responded by saying, “If that’s who you got to call, sir, yes, please.” Cst. Parent then asked, “That’s who I have to phone for you?” Mr. Harry responded, “That would be great.”

[30] Cst. Parent then said to Mr. Harry, “So you want to call Legal Aid?” And Mr. Harry responded, “I would like to contact a lawyer.” Cst. Parent then asked, “Do you want to phone Legal Aid, though?” Mr. Harry then asked Cst. Parent whether Legal Aid was a lawyer. Cst. Parent told Mr. Harry that he was just doing it on purpose now. He again told Mr. Harry that he was offering him Legal Aid and asked if he wanted him to call Legal Aid and Mr. Harry said that he would appreciate that.



[31] As the tow truck had now arrived and was at the front of Mr. Harry's vehicle, Cst. Parent believed that they should return to the Detachment, and provide Mr. Harry the opportunity to contact counsel from there. Cst. Parent testified that he felt that he could prepare Mr. Harry's release documents at the Detachment while Mr. Harry was speaking to legal counsel. He also was aware that Legal Aid could take a while to call back, and that he wanted to be able to get Mr. Harry to his residence as soon as he could.

[32] Cst. Parent was then detained briefly answering questions from Ms. Harry. He had offered to call her a cab home, but she declined the offer.

[33] Cst. Parent asked Cst. Conway to put Mr. Harry in contact with a Legal Aid lawyer once they arrived at the Detachment. There was no discussion en route to the Detachment between either officer and Mr. Harry.

[34] Once at the Detachment, Mr. Harry was able to speak privately with legal counsel. This occurred between 6:08 a.m. and 6:14 a.m., and the documents were completed by 6:35 a.m.

[35] Cst. Parent took Mr. Harry back to his residence, arriving at 6:48 a.m. Mr. Harry had not been placed in cells while at the Detachment.

[36] Cst. Parent agreed that, at the outset of his interactions with Mr. Harry, it was clear that Mr. Harry wished to speak with a lawyer. Cst. Parent said that part of the approximately 30-minute delay between the arrest of Mr. Harry at 5:30 a.m. and his contacting counsel at 6:08 a.m. was his trying to get Mr. Harry to say who he wanted

Cst. Parent to call. Cst. Parent said that Mr. Harry did not provide him with any clear answers.

[37] Cst. Conway testified. He stated that he put Mr. Harry in contact with Legal Aid, as that was what Cst. Parent had told him to do. He did not have any conversation with Mr. Harry about who Mr. Harry wanted to call and speak to. Other than that, however, his testimony was not of any particular assistance on the issues to be decided.

[38] Mr. Harry testified. He states that he was doing Google searches on his phone for a lawyer while in the police cruiser. He said that he reached an answering service only, and that he was unable to contact a lawyer. He said that he stopped trying to call a lawyer because he did not know who to call. Mr. Harry stated that he believed it was inappropriate for Cst. Parent to ask him who his legal counsel was. He said that he was uncertain of Cst. Parent's motive in asking him for this information.

[39] Mr. Harry agreed that he understood most of what Cst. Parent was telling him, although it was a lot of information provided quickly. While stating that Cst. Parent's very strong accent made it difficult for him to understand everything Cst. Parent said to him, Mr. Harry agreed that he did not ask Cst. Parent to stop and explain it to him. He said that he was aware of his rights to some extent, that Cst. Parent was respectful for the most part, and that he now knows what Legal Aid is, but not so much then.

[40] Mr. Harry said that he felt cornered. He testified that he wanted to contact a lawyer but that he did not have any lawyers in his contact list. He agreed that Cst. Parent did not prevent him from using his own phone. He also agreed that Cst. Parent asked him if he wanted to call a lawyer and that he offered to let Mr. Harry

use his (Cst. Parent's) phone, although, in cross-examination, he said that, while Cst. Parent told him that he (Cst. Parent) had a private phone, he never offered it to him to use.

[41] In redirect examination, when the video/audio was played back and Cst. Parent can be heard stating, "I'm going to provide you another one because I don't know who you're calling on your phone", Mr. Harry said that he did not know what Cst. Parent was doing or offering to him when he said that. He stated that he was able to conduct a Google search on his phone and reach an answering service. He never spoke to a lawyer while in the police cruiser, and he did not leave any voice message for anyone to call him back. He stated that he did not keep trying to call because he did not have a number or know who was available. He agreed he did not have a lawyer's number in his contact list. He said he agreed to use a Legal Aid lawyer because he felt that was his only option. Mr. Harry agreed that he had not asked to speak to any other lawyer specifically. He agreed that he had his cell phone on him throughout his interactions with Cst. Parent.

[42] Counsel for Mr. Harry asserts that his s. 10(b) *Charter* right to counsel was breached when Cst. Parent did not allow Mr. Harry to contact a lawyer immediately upon his arrest after being informed of his s. 10(b) rights.

[43] Counsel also asserts that Mr. Harry's 10(b) *Charter* rights were breached because Cst. Parent tried to steer Mr. Harry towards contacting Legal Aid counsel.

[44] Counsel submits that Cst. Parent should have stepped out of his police cruiser and allowed Mr. Harry to use his own cell phone to call whichever lawyer he wanted,

and that Mr. Harry was under no obligation to tell Cst. Parent the name of the lawyer he wished to call.

[45] Counsel submits that Cst. Parent was discouraging Mr. Harry from contacting a lawyer of his choice, and was steering Mr. Harry towards calling a Legal Aid lawyer.

[46] The s. 10(b) *Charter* right to counsel has both an informational and implementational component. Counsel is not challenging Cst. Parent's actions with respect to providing Mr. Harry the informational component of his s. 10(b) right. It is clear to me that Cst. Parent did so, although he had to work around Mr. Harry's interruptions in order to do so.

[47] With respect to the implementational component of his right to counsel, I am satisfied that Cst. Parent did all that he could reasonably be expected to do to allow Mr. Harry to speak with legal counsel. It is apparent to me that Cst. Parent was aware of his obligation in this regard, and that he attempted to fulfil this obligation.

[48] First, Cst. Parent was under no legal obligation to provide Mr. Harry's *Charter* right to speak to counsel prior to requiring Mr. Harry to comply with the ASD demand and provide a sample of his breath. Mr. Harry was not under arrest at the time and the case law is clear that, with one notable exception, the *Charter* right to counsel does not come into play during this brief period of investigative detention. If, however, there is a delay at roadside waiting for the ASD to be brought to the scene, then the case law does support the legal obligation for a lawyer to provide the detainee with the opportunity to contact counsel, assuming that there is a phone, including the detainee's phone, readily available.

[49] That is not the case here. The *Charter* right to counsel arose after Mr. Harry was arrested for refusing to provide a breath sample and for impaired driving. Cst. Parent would have been well within his rights to transport Mr. Harry directly to the RCMP Detachment after his arrest in order to allow him to contact legal counsel. In the circumstances, however, it was reasonable for Cst. Parent to delay doing so. The delay at roadside waiting for a tow truck is a legitimate one. Mr. Harry's vehicle was obstructing a lane of traffic on a roadway with traffic on it, as is seen by the vehicles passing by while he is detained in the police cruiser at the scene. With no certainty as to when another police cruiser would arrive at the scene, Cst. Parent was not unreasonable in choosing not to leave Cst. Conway alone at the scene with Ms. Harry without a police cruiser available to him.

[50] This said, in the interim, because there was delay, albeit justifiable, Cst. Parent was required to make efforts to put Mr. Harry into contact with legal counsel and provide him the required privacy to speak to counsel.

[51] During this delay, Cst. Parent made numerous efforts to provide Mr. Harry an opportunity to contact counsel of his choice, or Legal Aid counsel if Mr. Harry chose to do so. It was not a requirement that Cst. Parent have a list of all available lawyers with him in his police cruiser for this purpose.

[52] I am satisfied that Cst. Parent was prepared to let Mr. Harry speak to counsel at the scene on a cell phone, including any counsel Mr. Harry would have indicated that he wished to speak to. Mr. Harry did not provide Cst. Parent with the names or contact numbers of any lawyers he wished to speak to. Cst. Parent did ask Mr. Harry whether

he wanted to contact Legal Aid counsel while they were waiting. He suggested Legal Aid because that was the only number he had with him. Cst. Parent did not pursue this matter further until Mr. Harry subsequently asked if Cst. Parent was contacting a lawyer for him. At this point, Mr. Harry agreed that he wished to speak to a Legal Aid lawyer. Cst. Parent reaffirmed this several times.

[53] I am satisfied that there was no attempt by Cst. Parent to steer Mr. Harry away from contacting counsel other than Legal Aid. Cst. Parent was simply not provided any information that would allow him to facilitate any such contact while at the scene in the police cruiser. In the absence of any successful attempt by Mr. Harry, either on his own, or through providing Cst. Parent with sufficient information to contact counsel of choice, Cst. Parent had a legal obligation to ensure that Mr. Harry had the ability to contact a Legal Aid lawyer if he wished to.

[54] I am satisfied, at this point in time, that Mr. Harry's request to speak to Legal Aid counsel was a waiver of his right to wait until he had an opportunity to speak to counsel of his choice. Mr. Harry had been advised he had a right to speak to counsel of choice, and that he would be provided an opportunity to do so. He was not pressured to do otherwise. Mr. Harry initiated a further conversation in which he told Cst. Parent that he wished to speak to Legal Aid.

[55] There remains an obligation on Mr. Harry to be duly diligent in exercising his right to contact legal counsel. He was asked repeatedly who the counsel was that Mr. Harry wished to speak to. Mr. Harry would not say, citing confidentiality reasons. Mr. Harry's evidence is that he did not have any contact information for lawyers on his cell phone.

Therefore, allowing Mr. Harry to use his cell phone was not of assistance in this regard.

There is no evidence to support a finding that Cst. Parent prevented Mr. Harry from conducting a Google search on his phone or calling a lawyer. In fact, the evidence would support a finding that, notwithstanding Cst. Parent's concerns, Mr. Harry remained free to use his own phone to do so.

[56] Cst. Parent's concerns about allowing Mr. Harry to use his phone to call unknown numbers is not unusual or unreasonable. In my experience, rarely do police officers allow an accused to call a number or numbers from their cell phone when they are unsure who the person is calling. These concerns are legitimate. As stated earlier, Cst. Parent was prepared to allow Mr. Harry the opportunity to use his cell phone at the scene in order to contact legal counsel.

[57] Due to the arrival of the tow truck, and Cst. Parent now being able to leave, he made the decision to transport Mr. Harry to the Detachment for the purpose of contacting counsel and to prepare the release documents. This was also reasonable in the circumstances. The Detachment was only a few minutes away. This had the potential to actually reduce Mr. Harry's time in police custody, as potentially waiting for Legal Aid to call back would have been dead time, so to speak, as Cst. Parent did not have the appearance notice that he had requested and it did not appear to be en route. Therefore, Mr. Harry was going to be taken back to the Detachment in any event.

[58] This said, it would make some sense for police officers to have copies of an appearance notice in the police cruiser for situations such as these. Potentially, Mr. Harry could have spoken to Legal Aid at the scene, as he willingly agreed to do,

been served his court documents, and be taken straight home. As it was, Mr. Harry was then not given the opportunity to speak to Legal Aid at the scene and was transported to the Detachment.

[59] To ensure that Mr. Harry's implementational right to counsel was *Charter* compliant, perhaps the best practice at this point would have been to ensure that Mr. Harry had the counsel list pointed out to him in the room used for him to speak to counsel, so that he could reassess his decision to speak to Legal Aid counsel at a time when all the numbers for contact were readily available to him. There is no evidence that this was done, however.

[60] This said, Cst. Parent was clearly satisfied that Mr. Harry had expressed a final decision to speak to Legal Aid counsel, and he relied on this belief when he directed Cst. Conway to put Mr. Harry in contact with Legal Aid counsel. Cst. Conway did not inquire further.

[61] This is potentially somewhat problematic. Is it problematic enough, however, that it amounts to a s. 10(b) *Charter* breach? I find that it is not and does not amount to a *Charter* breach.

[62] Had Mr. Harry been able to speak to Legal Aid counsel at the scene on a cell phone, whether his own phone or Cst. Parent's phone, there would clearly have been no breach of his s. 10(b) *Charter* rights. Mr. Harry had been informed of his right to contact counsel of choice, and that numbers would be available to him if he wished them to be. Mr. Harry waived his right to speak to counsel of choice and agreed to speak to a Legal Aid lawyer. I am satisfied that he did so willingly.



[63] The fact that this could have been revisited at the RCMP Detachment does not, in these circumstances, change my opinion. Mr. Harry did not ask again to speak to counsel other than Legal Aid en route to, or while at the Detachment. He could have easily done so. He had been told several times before deciding he wanted to speak to Legal Aid counsel, that he had the right to speak to counsel of choice.

[64] I find that the circumstances here are different from those that existed in the **R. v. Edzerza-MacNeill**, 2019 YKTC 3 case. It is clear from the video/audio recording that at numerous times Mr. Harry was not listening to what Cst. Parent was trying to tell him. This was particularly apparent with respect to what Cst. Parent was saying to Mr. Harry prior to his arrest about what Mr. Harry was required to do in order for Cst. Parent to continue his impaired driving investigation. Mr. Harry was not apparently overly intoxicated by any means, but rather was somewhat mildly confrontational with Cst. Parent.

[65] I find that Cst. Parent demonstrated considerable patience with Mr. Harry, and took all the reasonable steps that he could to ensure that Mr. Harry's *Charter* rights were respected.

[66] As such, I find there was no breach of Mr. Harry's s. 10 *Charter* rights.

[67] In the event that I am subsequently determined to have been wrong on this finding, in particular on the basis that Mr. Harry should have been directed to the list of counsel and phone numbers once he was at the RCMP Detachment, I would, under the **R. v. Grant**, 2009 SCC 32 analysis, not have excluded any evidence or provided any remedy under s. 24 of the *Charter* in any event.

[68] So that is my decision on the *voir dire*.

[DISCUSSIONS]

[69] Your submissions, Ms. Connelly, would be that obviously the refusal is made out and Ms. Steele is not contesting that the elements of the offence have been proven, so I will make a finding of guilt.

[DISCUSSIONS]

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COZENS C.J.T.C.