Citation: *R. v. Klein,* 2026 YKTC 5

Date: 20260212
Docket: 25-00045
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Phelps

REX

v.

NATASHA KRISTEN KLEIN

Appearances:
Karlena Koot — Counsel for the Crown
Jennifer Budgell — Counsel for the Defence

RULING ON *CHARTER* APPLICATION

[1] Natasha Kristen Klein proceeded to trial on a single count alleging that on or about January 9, 2025, she committed an offence contrary to s. 320.14(1)(b) of the *Criminal Code*.

[2] The trial began with a *voir dire* on application by Ms. Klein alleging violations of her rights contrary to ss. 8, 9, and 10(b) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). The parties agreed to proceed with a blended *voir dire*.

[3] The allegations are that on January 9, 2025, at approximately 6:25 p.m., Whitehorse RCMP received a call from an individual reporting that there was a motor vehicle in the ditch on the Alaska Highway within the City of Whitehorse. The caller indicated that the driver may be intoxicated. RCMP arrived at the location of the report at 6:47 p.m. and observed Ms. Klein as the sole occupant positioned in the driver's seat of the motor vehicle. After a brief interaction, the RCMP member read the s. 320.27(1)(b) *Criminal Code* demand ("ASD Demand") to Ms. Klein requiring a breath sample in an approved screening device ("ASD"). The ASD test was conducted, and the outcome was a fail. The investigation continued and Ms. Klein provided samples of her breath pursuant to a s. 320.28 *Criminal Code* demand, giving rise to the s. 320.14(1)(b) *Criminal Code* charge.

[4] The Crown called one RCMP officer, Cst. Isabelle (the "Officer"), on the *voir dire* and Ms. Klein testified on her own behalf.

[5] Ms. Klein's alleged *Charter* right violations can be addressed by answering the following two questions:

1. Did the Officer breach Ms. Klein's ss. 8, 9 and 10(b) *Charter* rights by failing to make the ASD Demand immediately upon forming the requisite reasonable grounds to suspect that Ms. Klein had alcohol in her body?

2. Did the Officer breach Ms. Klein's s. 10(b) *Charter* rights by failing to provide her with a reasonable opportunity to contact her counsel of choice?

[6] The remaining steps taken in the investigation by the Officer are not the subject of Ms. Klein's arguments. A Certificate of a Qualified Technician was entered as an exhibit and sets out the readings recorded from Ms. Klein. She seeks to have the evidence contained in the certificate excluded pursuant to s. 24(2) of the *Charter* should the Court find there was a breach of her *Charter* rights.

Did the Officer breach Ms. Klein's ss. 8, 9 and 10(b) *Charter* rights by failing to make the ASD Demand immediately upon forming the requisite reasonable grounds to suspect that Ms. Klein had alcohol in her body?

[7] In addition to the testimony of the Officer, the video and audio captured by his body camera worn during the investigation was played in court and entered as an exhibit. The video depicts the date of the investigation and is time stamped.

[8] Upon exiting his police vehicle at the scene of the reported incident, the Officer approached the driver's side of the vehicle. As he approached, Ms. Klein opened the driver's side door and she can be seen on the video in the driver's seat of the motor vehicle. The time stamp when she opened the door is 18:47:03. As she opened the door she apologized to the officer for wasting his time. The Officer immediately informed her that his body camera was activated and recording.

[9] The motor vehicle had been driven off the highway and into the ditch where it became stuck. Ms. Klein was repeatedly turning the key which was in the motor vehicle ignition, the wipers were turned on and the dash lights were on. As she did this, she stated in an upset voice: "I just want to go home". The Officer asked her for the keys, which she did not immediately comply with, and she attempted to leave by exiting the

vehicle. She was prevented from leaving and informed that she was being detained for an impaired driving investigation. This was at 18:47:36.

[10] Ms. Klein settled back into the driver's seat and confirmed that she understood she was being detained, then the Officer reached in to remove the key from the ignition. He was unsuccessful and Ms. Klein complied by removing the key from the ignition and handing it to the Officer at 18:47:53.

[11] The Officer next asked Ms. Klein if she had her driver's license, insurance and registration. She indicated that she did not have them, which was confirmed through follow-up questioning. She was also asked if she required medical attention as the report was for an accident and an ambulance had been called by dispatch and arrived at the scene. She confirmed that she did not require medical attention. This exchange ended at 18:48:30.

[12] The Officer next asked Ms. Klein for her name and as he did the radio dispatch provided the name of the registered owner for the vehicle, being Ms. Klein. She confirmed her name and the Officer provided that confirmation to the dispatch operator. This exchange ended at 18:49:00.

[13] The Officer again asked if Ms. Klein had any ID, to which she said "My mom was supposed to come and get me". He declined her subsequent request to leave and asked her if she had anything to drink that night. She responded that she did but was not responsive to his question about how much she drank and when her last drink was. This exchange ended at 18:49:50.

[14] The Officer then explained that based on his observations he held a suspicion that Ms. Klein had consumed alcohol. He told her that he had an ASD, and that he had something to read to her. She again asked him to let her go which he declined. He explained that she was driving and intoxicated and he was required to investigate. This exchange ended at 18:50:43.

[15] The Officer then retrieved the ASD from the hood of his police vehicle parked nearby and prepared his notebook for starting the process, including having Ms. Klein spell her last name and provide her date of birth. He was recording the ASD number in his notebook from the device when Ms. Klein's mother attended and was approaching the Officer and his colleague at the scene. Ms. Klein was asked to identify the individual as her mother and the second officer left to deal with her mother. The Officer also asked her what are considered to be standard pre-screening questions for administering the ASD test, including whether she drank alcohol in the preceding 15 minutes. Finally, he retrieved the RCMP issued wording for the ASD Demand from the inside of his notebook. She again pleaded with the Officer to be released, and he explained that he could not do so. This ended at 18:52:55.

[16] The Officer made the ASD Demand from the prepared card and Ms. Klein confirmed that she understood. She pleaded with him again to release her, which was declined, and he proceeded to explain the ASD test process and administer the test. The fail result was received from the sample at 18:55:42.

[17] In his testimony, the Officer clarified that his observations in relation to alcohol consumption up to the point of detaining Ms. Klein for the impaired driving investigation

were slurred speech, issues with fine motor control in relation to removing the keys from the vehicle ignition, the initial call to the RCMP referencing alcohol being involved, and the single vehicle accident. While he had a suspicion at this point, he had not yet formed his reasonable suspicion to make the ASD Demand. When she admitted to drinking, and he smelled alcohol coming from her, he formed the reasonable suspicion and proceeded with the ASD Demand.

[18] Ms. Klein argues that the observations made at the time of detaining her were sufficient to form a reasonable suspicion and that the ASD Demand should have been made at that time. That is, the grounds should have been formed at 18:47:53, rather than at 18:49:50, and the resulting delay of two minutes and 57 seconds breached her *Charter* rights. She further argues that the time from forming the grounds to make the demand and commencing with reading the ASD Demand at 18:52:55, an additional three minutes and three seconds, did not meet the immediacy requirement of the demand.

[19] It is well established in jurisprudence that the Officer was required to have both a subjective and objectively reasonable suspicion that Ms. Klein had alcohol in her body before making the ASD Demand. There have been numerous cases litigated over whether an officer held an objectively reasonable suspicion that a driver had alcohol in their body, and I note that objective reasonableness is assessed from the perspective of a reasonable person placed in the position of the officer, with the officer's training, knowledge and experience (See: *R. v. Golebeski*, 2019 YKTC 50).

[20] Here, Ms. Klein is not arguing that the Officer did not have the reasonable suspicion required to make the ASD Demand, rather that it was objectively reasonable to have been formed earlier in time and that it should have been subjectively formed earlier. The test to determine if an officer has the requisite reasonable grounds to suspect that a person has alcohol in their body was set out by this Court in *R. v. Sidney*, 2018 YKTC 37, at paras. 19 and 20:

> 19 The decision in *R. v. Loewen*, 2009 YKTC 116, considered the requirements for making a demand:
>
> > [6] The test, obviously, is not a demanding or high level one. There must only be a reasonable suspicion that there is alcohol in the accused's body. A mere suspicion without a reasonable evidentiary basis or a hunch that the driver has had something to drink is insufficient to justify a demand to provide a screening sample.
>
> 20 As stated in *R. v. Chehil*, 2013 SCC 49:
>
> > [26] Reasonable suspicion derives its rigour from the requirement that it be based on objectively discernible facts, which can then be subjected to independent judicial scrutiny. This scrutiny is exacting, and must account for the totality of the circumstances. In *Kang-Brown*, Binnie J. provided the following definition of reasonable suspicion, at para. 75:
> >
> > > The "reasonable suspicion" standard is not a new juridical standard called into existence for the purposes of this case. "Suspicion" is an expectation that the targeted individual is possibly engaged in some criminal activity. A "reasonable" suspicion means something more than a mere suspicion and something less than a belief based upon reasonable and probable grounds.

[21] The observations of the Officer leading to the detention were very brief. It is clear that he knew he was proceeding with an impaired driving investigation at the time of

detention, but he had not satisfied himself that he had formed the requisite grounds for the ASD Demand. The period of observation at that time was 33 seconds, which could be sufficient time to form a reasonable suspicion, but the Officer felt that he required more information. What followed over the next two minutes, and 14 seconds can be described as standard policing: removal of the key from the ignition for safety; ensuring that Ms. Klein did not require medical attention; requesting her driver's license and vehicle documentation; and properly identifying Ms. Klein. This culminated in the question about drinking that evening that led the Officer to conclude he held the requisite grounds for the ASD Demand. I note that one contributor to the lapsed time was the slow response of Ms. Klein to the questions, her offering of statements unrelated to the questions, and her pleas to be released.

[22] The Officer was not being indecisive in his decision making. He was clear in his testimony that he had a suspicion earlier, but not a reasonable suspicion, a higher standard than a mere suspicion, until he informed Ms. Klein at 18:49:50.

[23] The Ontario Court of Appeal decision of *R. v. Quansah*, 2012 ONCA 123, addressed the forthwith requirement for making an ASD Demand, and states at para. 25:

> Section 254(2) does not explicitly require that the police officer's demand be made "forthwith"; rather, it only specifically requires that the motorist provide a breath sample "forthwith". However, Arbour J.A. in *R. v. Pierman*; *R. v. Dewald* (1994), 19 O.R. (3d) 704 (C.A.), at para. 5, held that "it is implicit that the demand must be made by the police officer as soon as he or she forms the reasonable suspicion that the driver has alcohol in his or her body." In that same paragraph she reasons that:
>
> > This is the only interpretation which is consistent with the judicial acceptance of an infringement on the right to counsel

> provided for in s. 10(b) of the *Charter*. If the police had discretion to wait before making the demand, the suspect would be detained and therefore entitled to consult a lawyer.

[24] The Court in *Quansah* continues at para. 46:

> Second, the demand must be made by the police officer promptly once he or she forms the reasonable suspicion that the driver has alcohol in his or her body. The immediacy requirement, therefore, commences at the stage of reasonable suspicion.

[25] The Yukon Supreme Court reviewed *Quansah* in *R. v. Smarch*, 2014 YKSC 27, while assessing delay in making an ASD Demand, adopting the trial judge's findings at para. 38:

> ...
>
> > ...Interestingly enough, the officer proceeded to go back to his patrol vehicle and there was a five-minute delay from initially speaking to her and when he gave her the demand. He claims that he was reflecting on whether or not he had the requisite grounds for this reasonable suspicion, as opposed to just having a hunch. The five-minute delay from initially speaking to her I believe does fall within the forthwith because the police officer did have the instrument available and he was not unduly delaying the process. It was reasonable for him to go back to the patrol car and check out her licence status and, indeed, her identity when she was unable to produce the licence. In the process of doing so, the officer was also looking for priors and a history while in the patrol car, but, again, according to his evidence, he was continuing to weigh his suspicions but admitted that he could have given the ASD demand at an earlier point.

[26] The Court in *Smarch* concluded at para. 47:

> The trial judge found that Constable Baceda's conduct in checking the appellant's identity, licence status and history before making the demand was reasonable . . . Again, I agree. In my view, Constable Baceda's practice in this regard simply amounts to a prudent police officer doing his

> duty to identify a suspect for a driving offence, who is not in possession of a driver's licence. As such, it falls squarely within the third consideration in *Quansah*, i.e. the time between the formation of the reasonable suspicion to the making of the demand and then to the detainee's response "must be no more than is reasonably necessary to enable the officer to discharge his or her duty as contemplated by s. 254(2)."...

[27] On the formulation of the subjective component of reasonable suspicion, the Supreme Court of Yukon in *R. v. Schmidt*, 2024 YKSC 18, stated at para. 39:

> ...However, as noted above, reasonable suspicion is composed of both an objective and a subjective component. Here, Constable Fox believed that he could not form a reasonable suspicion until he himself asked Mr. Schmidt about his alcohol consumption. He was not correct in this belief. He could have relied on what he overheard. However, the subjective component does not concern itself with the accuracy of the police officer's belief; it concerns itself with the honesty of the belief (*R v Tim*, 2020 ABCA 469 at para. 60 (minority, but not on this issue)). Thus, the subjective component of reasonable suspicion was only satisfied once Constable Fox took steps he believed were required of him to have reasonable suspicion.

[28] The Court in *Schmidt* continued at paras. 43 and 44:

> 43 In my opinion, as well, there is a danger in basing the determination of delay on a calculation of seconds. The police should work expeditiously, but they should also have the time to consider different factors and potential issues when proceeding through a drinking and driving investigation. In the case at bar the investigation was not complex. Nevertheless, the police should not feel that they are racing the clock to fulfill the requirements of s. 320.27(1) of the *Criminal Code*.
>
> 44 What is required of the police is that they act diligently, without being unnecessarily diverted from their task, and with the necessary equipment at hand. Here the police were focused on the investigation. Their actions were directed at determining whether they had grounds for seeking a breath sample, and then obtaining it. ... [emphasis added]

[29] I find that the time from the initial detention of Ms. Klein to the time the Officer formed his subjective reasonable suspicion to make the ASD Demand was no more than was reasonably necessary for him to discharge his duties.

[30] The time lapse of three minutes and three seconds, as described above, involved continuous action on the part of the Officer to prepare to make the demand. There is no identifiable period of delay unrelated to his intention to proceed with the demand, except to confirm the identification of Ms. Klein's approaching mother and responding to Ms. Klein's pleas to be released. None of the Officer's actions amount to delay that was more than reasonably necessary to enable him to discharge his duty.

[31] Ms. Klein has failed to establish a breach of her *Charter* rights caused by delay on the part of the Officer in forming his grounds to make the ASD Demand or the delay in making the ASD Demand.

Did the Officer breach Ms. Klein's s. 10(b) *Charter* rights by failing to provide her with a reasonable opportunity to contact her counsel of choice?

[32] Ms. Klein was arrested and provided the informational component of her right to counsel at the roadside, following which she was taken to the Whitehorse detachment. At the detachment the Officer looked up Ms. Klein's requested lawyer, Lenore Morris, in the RCMP lawyer list that was available at the detachment to contact counsel.

[33] The Officer asked Ms. Klien where her lawyer worked, and Ms. Klein advised at the Whitehorse Correctional Centre ("WCC"). He then found the number on the list and advised Ms. Klein that he would try to reach her.

[34] The Officer placed a call to the number for Ms. Morris and left a detailed voice mail message regarding the purpose of the call. Ms. Klein was in close proximity to the Officer when the message was left on the voicemail. The Officer then made a note in his notebook, after which he walked over to her and explained the options available regarding accessing a lawyer. That is, he told her:

1. She could wait to see if the lawyer called back.

2. She could provide another name of a lawyer or review the RCMP list of lawyers and call another lawyer from the list.

3. She could call duty counsel.

[35] She asked the Officer what she should do, and he properly advised her that he could not give her advice, but she could look at the list or call duty counsel, and duty counsel always calls back.

[36] The exchange between them following the voice mail message to Ms. Morris was as follows:

> Q: So, I left a voice mail.
>
> A: (Indiscernible)
>
> Q: Ok. A Couple options here. We can see if she calls back. If you want to speak to another lawyer, you can give me another name, or legal aid too I can call. It's really up to you. I called the number here and it came to her voice mail office.
>
> Do you wish to speak to another lawyer right now? Do you want me to put you on the phone at least to legal aid?
>
> A: I don't know what I should do, I don't know.

Q: I cannot give you any advice, it's just your right to speak to a lawyer.

A: I guess I'll speak to a lawyer.

Q: Which one?

A: Any lawyer I guess.

Q: Any one?

A: (Indiscernible)...never called a lawyer.

Q: So do you want me...do you want to check out the list? Do you want me to call legal aid for you? Legal aid will answer. It's up to you.

A: Yes.

Q: Legal aid?

A: Yes.

[37] The Officer returned to the phone and called the duty counsel number. Ms. Klein was placed into the phone room for privacy and shortly thereafter the duty counsel lawyer phoned and spoke with Ms. Klein.

[38] Ms. Klein is 37 years old and employed as a nurse in home care with the territorial government. She has never been charged with a criminal offence prior to the incident before the Court and has never had to exercise her right to counsel while under investigation.

[39] She described how she had been employed as a nurse at WCC for approximately seven years and had been the first responder to an in-custody death. The matter ultimately went to a coroner's inquest and she was a required witness.

Ms. Morris was counsel on behalf of WCC for the inquest and that is how Ms. Klein knew her. She indicated that she trusts Ms. Morris.

[40] Ms. Klein described a mental health incident related to post partem depression in June 2024 and that the Officer was a member of the team that conducted a wellness check on her, ultimately escorting her to the hospital for an assessment. She thought the Officer would know she previously worked at WCC.

[41] Ms. Klein had plead with the Officer multiple times not to take her to WCC during this investigation. She explained to the Court that she did not want to have to face her former co-workers at WCC. The Officer assured her each time that she would not be going to WCC. One of these times was immediately before she spoke to duty counsel.

[42] Ms. Klein testified that she understood the options given to her by the Officer regarding access to counsel, including the option to wait. However, she feared that he would get mad if she chose to wait and that he would take her to WCC. She said she would do “anything” not to go to WCC.

[43] Her impression from working at WCC, based on overhearing the discussions, was that legal aid lawyers were not good lawyers. She wanted to speak to Ms. Morris but felt she had to do what the Officer was saying. That is, she felt she had to speak to legal aid and that she did not have an option.

[44] In cross-examination she said that she did not have any concerns regarding the legal advice she received. She also conceded that the Officer never placed a time limit on how long she could wait for Ms. Morris to call.

[45] The Officer testified that he gave the options to Ms. Klein because it was her *Charter* right to speak to counsel without delay. He wanted to make sure she had that opportunity and understood her options.

[46] The Officer agreed that there were other steps that could have been considered to locate Ms. Morris, such as conducting an online search. However, Ms. Klein chose to call duty counsel and his next step was to facilitate her request.

[47] The leading decision on this issue from the Supreme Court of Canada is *R. v. Willier*, 2010 SCC 37, which addressed the following trial Judge's decision summarized at para. 3:

> ...In the trial judge's view, after Mr. Willier's unsuccessful attempt to contact his preferred lawyer and before he spoke to duty counsel, s. 10(b) required the police to inform him of his right to a reasonable opportunity to contact counsel of choice and of their duty to refrain from questioning him until he had been afforded that opportunity. Without such a warning, he could not waive his right to counsel of choice. ...

[48] The Alberta Court of Appeal disagreed with the trial judge, as explained in *Willier* at para. 4:

> ...s. 10(b) does not, as held on *voir dire*, impose an additional informational obligation on the police when a detainee is unsuccessful in contacting a specific lawyer and opts to speak with another. The trial judge also erred in basing a s. 10(b) breach upon the inferred inadequacy of Mr. Willier's legal advice. Given the privileged nature of the solicitor-client relationship, the police are not responsible for ensuring that legal advice satisfy a particular qualitative standard. Mr. Willier had been afforded his s. 10(b) right.

[49] The Court in *Willier* agreed with the conclusion of the Court of Appeal, and distinguished the decision of a detainee to call a different lawyer from a waiver by the

detainee of their right to counsel. In the case of a waiver, the Court describes the corresponding obligation on the police at para. 38:

> The circumstances prompting this Court to articulate the additional informational duty in *Prosper* are fundamentally different from those in the case at hand. As noted above, a *Prosper* warning is warranted in circumstances where a detainee is diligent but unsuccessful in contacting a lawyer and subsequently declines *any* opportunity to consult with counsel...The *Prosper* warning ensures that detainees are aware that their right to counsel is not exhausted by their unsuccessful attempts to contact a lawyer. ...

[50] The Court then distinguishes the facts before the Court in *Willier* from that of a waiver in *R. v. Prosper*, [1994] 3 S.C.R. 236, stating in para. 39:

> The circumstances of this case are not analogous. The concerns animating the provision of a *Prosper* warning do not arise when a detainee is unsuccessful in contacting a specific lawyer and simply opts to speak with another. In no way did Mr. Willier attempt to relinquish his right to counsel and thus any opportunity to mitigate his legal disadvantage. He made no attempt to waive his s. 10(b) right. Instead, unsuccessful in contacting Mr. Royal, he exercised his right to counsel by opting to speak with Legal Aid. As such, the police were under no obligation to provide him with a *Prosper* warning, and its absence fails to establish a *Charter* breach.

[51] The Court in *Willier* went on to address the issue of the adequacy of legal advice, concluding that there is not a requirement on the police to confirm that a detainee is satisfied with the advice received. On this issue the Court stated at para. 42:

> As noted, s. 10(b) aims to ensure detainees the opportunity to be informed of their rights and obligations, and how to exercise them. However, unless a detainee indicates, diligently and reasonably, that the advice he or she received is inadequate, the police may assume that the detainee is satisfied with the exercised right to counsel and are entitled to commence an investigative interview...A s. 10(b) *Charter* breach cannot be founded upon an assertion of the inadequacy of Mr. Willier's legal advice.

[52] The Court in *Willier* concludes at para. 43:

> ...In no way did the police interfere with Mr. Willier's right to a reasonable opportunity to consult with counsel of choice by simply reminding him of the immediate availability of free Legal Aid after his unsuccessful attempt to call Mr. Royal. When Mr. Willier stated his preference to wait, Cst. Lahaie reasonably informed him that it was unlikely that Mr. Royal would be quick to return his call given that it was a Sunday, and reminded him of the immediate availability of duty counsel. Mr. Willier was not told that he could not wait to hear back from Mr. Royal, or that Legal Aid was his only recourse. There is no indication that his choice to call duty counsel was the product of coercion. The police had an informational duty to ensure that Mr. Willier was aware of the availability of Legal Aid, and compliance with that duty did not interfere with his right to a reasonable opportunity to contact counsel of choice. Mr. Willier was properly presented with another route by which to obtain legal advice, an option he voluntarily chose to exercise.

[53] Ms. Klein argued that there was more that the Officer could have done to try and contact Ms. Morris on her behalf. Indeed, where the police take on the responsibility of contacting counsel on behalf of a detainee, as they do in the Yukon, they take on the responsibility of the detainee to exercise reasonable diligence in contacting their lawyer of choice. This was canvased in *R. v. Maceil*, 2016 ONCJ 563, wherein the Court provides a non-exhaustive list of the "sort of steps that should be undertaken to obtain counsel's contact details in order to satisfy the reasonable diligence standard". However, unlike here, that applies to a circumstance where the police assert that the reasonable opportunity to contact counsel expired and continue with their investigation.

[54] Ms. Klein also relied on the post *Willier* decision of *R. v. Vernon*, 2015 ONSC 3943, wherein the circumstances in relation to the s. 10(b) issue are summarized at para. 7:

> ...At 7:30 p.m., the officer called Mr. Carruthers and left a message on the answering service at his office. A minute later, at 7:31 p.m., the officer called duty counsel and left a message. Duty counsel called back at 7:44 p.m. The respondent was then advised by the officer that his lawyer had not called back and was offered an opportunity to speak with duty counsel, who was on the phone. The respondent accepted the offer and spoke with duty counsel...

[55] The Court in *Vernon* distinguishes the facts from *Willier* at para. 32:

> This is a very different case than *Willier*. Here, immediately after leaving a message for the respondent's lawyer, the arresting officer contacted duty counsel. Within 15 minutes of leaving that message, the respondent was provided with what seemed to him to be the only reasonable chance that he would get to speak to a lawyer. ...

[56] The facts in *Vernon* presented a very different case than in *Willier*, and similarly a very different circumstance than Ms. Klein was faced with. The Officer did not get duty counsel on the phone before speaking with Ms. Klein about her options, and he provided her with a range of options to consider, including waiting for Ms. Morris to call back.

[57] Other cases considered where a s. 10(b) *Charter* breach was argued in circumstances where the contact with a specific counsel was not adequately facilitated include: *R. v. Michael*, 2017 ONSC 4579; *R. v. Athwal*, 2017 ONSC 96; and *R. v. Gopalapillai*, 2017 ONCJ 247. The cases in this area where a breach is found tend to be determined on an assessment of facts that form either coercion or the exclusion of available options. That is not the case of the interactions between the Officer and Ms. Klein. Importantly, she was provided with the option to wait for her counsel of choice to call back.

[58] Ms. Klein's fear of being taken to WCC by the Officer had been clearly addressed with her, more than once, by the Officer stating that she was not being taken to WCC. The fact that she held this fear, which impacted her decision making, could not reasonably be expected to have been known by the Officer.

[59] I find that Ms. Klein has not established that there was a breach of her s. 10(b) *Charter* rights on a balance of probabilities.

_____

PHELPS C.J.T.C.