Citation: *R. v. Blanchard,* 2025 YKTC 52

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Docket: 20-00674A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

LEVY FREDRICK MICHEAS BLANCHARD
AND CELIA WRIGHT

Appearances:
Kathryn Laurie — Counsel for the Crown
Vincent Larochelle — Counsel for Levy Blanchard
Mark Chandler — Counsel for Celia Wright

RULING ON *CHARTER* APPLICATION

[1] Pursuant to s. 24(2) of the *Charter of Rights and Freedoms* (the "*Charter*"), Mr. Blanchard and Ms. Wright (the "applicants") bring an application to exclude evidence obtained in breach of their s. 8 *Charter* rights from their trial on various charges.

[2] By way of background, the applicants are co-accused in relation to charges contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, (the "*CDSA*") and s. 354(1)(a) of the *Criminal Code of Canada* (the "*Code*"). Mr. Blanchard also faces 12 counts contrary to the following sections of the *Code*: ss. 86(1), 86(2) x 2,

88, 91(1), 91(2), 92(2) x 2, 95(a), 96(2), 354(1)(b) x 2, and one count contrary to s. 4(1) of the *CDSA*. The charges arose following the execution of three search warrants at the shared residential property of Mr. Blanchard and Ms. Wright. The search resulted in the seizure of cocaine, psilocybin, drug trafficking paraphernalia (scale, money counter, score sheets), multiple cell phones, electronic devices, cash, prohibited weapons, firearms, ammunition, stolen items (a loaded restricted handgun, two chainsaws), vehicles, and other miscellaneous items described in an Agreed Statement of Facts.

Application to Exclude Evidence

[3] I previously ruled that Mr. Blanchard and Ms. Wright's s. 8 *Charter* rights were breached, finding that the Information to Obtain ("ITO") sworn in support of the search warrants failed to provide reasonable grounds to believe that the things sought would be found at the location of the proposed search, namely, the applicants' shared residential property, all buildings on the property, and all vehicles on the property (*R. v. Blanchard*, 2025 YKTC 42). As search warrants are "place specific", it is essential that the information supporting a search warrant provide reasonable grounds to believe that the things which will afford evidence will be in a specific place (*R. v. Sanchez* (1994), 20 O.R. (3d) 468 (Ont.Ct. Gen.Div.), at para. 41). Counsel for the applicants now argue that the evidence obtained through the execution of those search warrants should be excluded pursuant to s. 24(2) of the *Charter*.

[4] In support of the s. 24(2) *Charter* application, the applicants filed affidavits describing impacts on them and various family members allegedly linked to the

execution of the warrants and steps taken by the RCMP in the aftermath of the search. Counsel argue that:

- The affidavits are relevant to the analysis I must conduct pursuant to *R. v. Grant*, 2009 SCC 32, particularly the first and second inquiry of the three-part test.

- The applicants and their family were negatively impacted by the way the search was carried out and they suffered reputational damage due to an RCMP social media post publicly detailing the illicit items seized during the search of their residential property.

- The search resulted in ongoing trauma for the applicants, and their family members, and the significance of these impacts is heightened because the applicants are Indigenous. The impacts alleged should be placed in the context of the well-known over-policing and overrepresentation of Indigenous people in the criminal justice system.

- The admission of evidence obtained through a search that led to this trauma, coupled with the alleged RCMP conduct after the search, would bring the administration of justice into disrepute.

[5] The Crown opposes the admission of the affidavits on three main grounds. In the alternative, the Crown argues that little weight should be given to this evidence. The Crown's position is:

- First, the appropriate time for receiving evidence was during the hearing into the s. 8 *Charter* breach. As none of this material was before the Court when the s. 8 *Charter* breach was found, it should not now be considered as a factor in the s. 24(2) *Charter* analysis. The s. 24(2) *Charter* hearing is intended for legal submissions, not evidence.

- Second, the characterization of the police conduct in the affidavit material is disputed. The affidavits contain hearsay, neither applicant being home during the search, and, as such, the observations included in the affidavits are not firsthand. As well, the affidavits set out inadmissible opinion evidence about the mental health impacts of the search on the applicants and their children. Without taking issue with the impact on the applicants or their families, the Crown challenges whether a direct link can be found between the impacts alleged and the execution by the RCMP of the search warrants. In support of this argument, the Crown stresses the open court principle and the fact that it is a matter of public record when individuals are charged with criminal offences.

- Third, the Crown argues that the affidavits are not relevant to the three-part *Grant* inquiry. The *Grant* inquiry looks first at the seriousness of the state conduct – in this case, the execution of judicially authorized warrants later determined to be invalid. The Crown argues that, for example, the social media post was neither argued by the applicants

> nor determined by the Court to be *Charter*-infringing state conduct.
>
> The Crown goes on to argue that the second part of the *Grant* inquiry looks at the impact of the C*harter* breach on the *Charter*-protected rights of the applicants, not the applicants' children or extended family.

[6] While I have some sympathy for the adverse impacts experienced by the applicants and their family members allegedly flowing from the execution of the search warrants and the social media publication of the illicit items seized from the applicants' home, I do not find the affidavit material of assistance to the s. 24(2) *Charter* analysis.

[7] In carrying out the s. 24(2) *Charter* analysis, I must consider the state conduct that was found to breach the applicants' s. 8 *Charter* rights, and consider the impact of that conduct of the applicants' *Charter*-protected rights. Evidence of impacts flowing from other state conduct (e.g., the post-search social media post) and describing impacts to individuals other than the applicants is of little assistance in conducting that analysis. Further, in my s. 8 *Charter* ruling, I found that the ITO made a strong case that Mr. Blanchard and, to a lesser extent, Ms. Wright were connected to and involved with a drug trafficking organization in some capacity over a period of years (*Blanchard,* at para. 14). That finding undermines the applicants' argument that Mr. Blanchard and Ms. Wright were the subject of over-policing because they are Indigenous. As a result, I decline to give weight to the applicants' affidavit evidence.

Issues

[8] The issue is whether the admission of evidence obtained in breach of Mr. Blanchard and Ms. Wright's s. 8 *Charter* rights would bring the administration of

justice into disrepute. If so, pursuant to section 24(2) of the *Charter*, it must be excluded.

[9] Section 24(2) of the *Charter* reads as follows:

> 24(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[10] The onus is on the applicants to establish, on the balance of probabilities, that the admission of the evidence would bring the administration of justice into disrepute.

[11] As set out in *Grant,* there are three components to the test under section 24(2) of the *Charter*. Each component will be considered in turn.

1. *The seriousness of the Charter-infringing state conduct.*

[12] The first factor for consideration is the seriousness of the *Charter*-infringing state conduct. As stated in *Grant*, at para. 74:

> State conduct resulting in *Charter* violations varies in seriousness. At one end of the spectrum, admission of evidence obtained through inadvertent or minor violations of the *Charter* may minimally undermine public confidence in the rule of law. At the other end of the spectrum, admitting evidence obtained through a wilful or reckless disregard of *Charter* rights will inevitably have a negative effect on the public confidence in the rule of law, and risk bringing the administration of justice into disrepute.

[13] Drawing further from *Grant*, at para. 72*:*

> ...The more severe or deliberate the state conduct that led to the *Charter* violation, the greater the need for the courts to dissociate

> themselves from that conduct, by excluding evidence linked to that conduct, in order to preserve public confidence in and ensure state adherence to the rule of law.

[14] At para. 75 of *Grant,* the Supreme Court of Canada went on to say:

> ..."Good faith" on the part of the police will also reduce the need for the court to disassociate itself from the police conduct. However, ignorance of *Charter* standards must not be rewarded or encouraged and negligence or wilful blindness cannot be equated with good faith. ...

[15] I find that the state conduct in this case, while not egregious, was serious and cannot be equated with good faith. In *R. v. Tim*, 2022 SCC 12, at para. 85, the Court said:

> ...Good faith cannot be claimed if the *Charter* breach arises from a police officer's negligence, unreasonable error, ignorance as to the scope of their authority, or ignorance of *Charter* standards (see *Grant*, at para. 75; *Buhay*, at para. 59; *Le*, at para. 147; *Paterson*, at para. 44). ...

[16] While the state conduct appears not to have been deliberate or intentionally misleading – in the sense of setting out to breach the *Charter* – it is very concerning that the requirement for a warrant to be "place specific" was overlooked or ignored (*Sanchez,* at para. 41). This was not a technical or minor deficiency. I find that it reveals either ignorance of *Charter* standards, negligence, or carelessness as to the scope of police authority. Although wilful violations are undoubtedly more serious than unintentional ones, reckless or careless violations that demonstrate insufficient regard for *Charter* rights also inevitably undermine the public's confidence in the rule of law (*R. v. Harrison*, 2009 SCC 34, at para. 24; *Grant,* at paras. 74 and 75). Courts have held that significant carelessness on the part of the police that leads to the issuance of an invalid warrant must be placed on the serious side of the spectrum of state conduct

(*R. v. Dhillon*, 2010 ONCA 582, at para. 51). Where the breach arises from a failure to conform to well-established rules, such as the constitutional requirements of reasonable grounds, this factor increases the seriousness of the breach. The requirement for warrants to be "place specific" is not a novel area of law, nor does it involve an area of legal uncertainty, either of which could attenuate the seriousness of the breach (*Grant,* at para. 140).

[17] In relation to the seriousness of the *Charter*-infringing state conduct, the applicants also urge me to find that the violation of their *Charter* rights is part of a broader pattern of RCMP misconduct in obtaining judicial authorizations in Yukon. In advancing this argument, the applicants refer to three decisions of the Yukon Territorial Court where breaches of s. 8 of the *Charter* led to the exclusion of evidence (*R. v. Grini-Blanchard*, 2022 YKTC 35, *R. v. Denechezhe,* 2021 YKTC 45, and *R. v. Wing*, 2009 YKTC 113).

[18] I acknowledge that the caselaw holds that evidence that the *Charter*-infringing conduct is part of a pattern of abuse tends to support exclusion. I also acknowledge that, for every *Charter* breach that comes before the courts, many others may go unidentified and unaddressed (*Grant,* at para. 75). However, in my view, reference to three cases over 14 years is not evidence of a pattern of abuse.

[19] With reference to *R. v. Morelli,* 2010 SCC 8, *R. v. Rocha,* 2012 ONCA 707, and *R. v. Blake,* 2010 ONCA 1, the Crown argues that the seriousness of the state conduct is mitigated because the officers believed they were acting under the authority of a judicially authorized warrant. I acknowledge that applying for and obtaining a search

warrant from a judicial officer has been described as the "antithesis of wilful disregard of *Charter* rights" (*Rocha,* at para 28). However, in this case, I find that the RCMP were either careless or ignorant of well-established *Charter* standards when drafting the ITO in support of the warrant and, as such, the *Charter*-infringing state conduct was serious.

2. *The impact of the breach on the Charter-protected rights of the applicants.*

[20] As described in *R. v. McColman*, 2023 SCC 8, at para. 66:

> The second line of inquiry is aimed at the concern that admitting evidence obtained in violation of the *Charter* may send a message to the public that *Charter* rights are of little actual avail to the citizen. Courts must evaluate the extent to which the breach "actually undermined the interests protected by the right infringed": *Grant*, at para. 76. Like the first line of inquiry, the second line envisions a sliding scale of conduct, with "fleeting and technical" breaches at one end of the scale and "profoundly intrusive" breaches at the other: para. 76.

[21] Section 8 of the *Charter* protects an individual's reasonable expectation of privacy. An unwarranted search of a residence constitutes a serious infringement of an individual's right to privacy. A residence is the place where a person's "most intimate and private activities are most likely to take place"; there is "no place on earth where persons can have a greater expectation of privacy than within their dwelling house (*R. v. Tessling*, 2004 SCC 67, at para. 22). Where there is a high expectation of privacy, as there was in this case, the impact of the breach on the *Charter*-protected rights is more serious.

3. *Society's interests in a trial on its merits.*

[22] This inquiry examines whether the truth-seeking function of the trial would be better served by the admission of the evidence, or its exclusion. Courts are to consider

not only the negative impact of the admission of evidence on the public's confidence in the administration of justice but also the impact of failing to admit the evidence. The exclusion of relevant and reliable evidence can impact the truth-seeking function of trials and bring the administration of justice into disrepute.

[23] The factors to be considered are the reliability of the evidence, the importance of the evidence to the Crown's case, and the seriousness of the offence, although this consideration has the potential to cut both ways (*Grant*, at paras. 81, 83, and 84). While the charges the applicants face are serious – society has a strong interest in the prosecution of drug trafficking and firearms offences – this factor must not be allowed to overwhelm the analysis. The focus of s. 24(2) of the *Charter* is the long-term repute of the justice system. As stated in *Grant,* at para. 84:

> ...[While] the seriousness of the alleged offence may be a valid consideration, it has the potential to cut both ways. Failure to effectively prosecute a serious charge due to excluded evidence may have an immediate impact on how people view the justice system. Yet, as discussed, it is the long-term repute of the justice system that is s. 24(2)'s focus. …The short-term public clamour for a conviction in a particular case must not deafen the s. 24(2) judge to the longer-term repute of the administration of justice. Moreover, while the public has a heightened interest in seeing a determination on the merits where the offence charged is serious, it also has a vital interest in having a justice system that is above reproach, particularly where the penal stakes for the accused are high.

[24] In this case, the evidence obtained through the unwarranted search is highly reliable and probative of the charges. Exclusion of the evidence is likely to cause the Crown's case to collapse and would therefore undermine the truth-seeking function of the trial. Society's interest in a trial on the merits strongly favours admission of the evidence.

Balancing

[25] In balancing the factors above, I must consider whether the admission of the evidence obtained in breach of the applicants' s. 8 *Charter* rights would, having regard to all the circumstances, bring the administration of justice into disrepute. If so, it must be excluded.

[26] The cumulative weight of the first two factors must be balanced against the weight of the third (*McColman*, at para. 74). If the first and second inquiries make a strong case for exclusion, the third inquiry will seldom, if ever, tip the balance in favour of admissibility (*Morelli*, at paras. 98 to112). I pause to note that the Crown has argued that the first inquiry is attenuated significantly by the existence of a lawfully issued warrant to search and, as such, favours admission of the evidence. However, in *R. v. Zacharias*, 2023 SCC 30, at para. 75, Rowe and O'Bonsawin JJ. clarified that the first two factors can never favour admission; at most they can weakly favour exclusion.

[27] In this case, the first *Grant* inquiry, being the evaluation of the seriousness of the state conduct, places that conduct towards the more serious end of the spectrum and it strongly favours exclusion. The second *Grant* inquiry, the impact of breach on the *Charter*-protected rights of the applicants, was very serious and also strongly favours exclusion. Third, while society's interest in a trial on the merits favours admission, this factor does not overwhelm the first two inquiries.

[28] In balancing these factors, I am mindful that I am required by *Grant* to bear in mind "the long-term and prospective repute of the administration of justice, focussing less on the particular case than on the impact over time of admitting the evidence

obtained by infringement of the constitutionally protected rights" of an accused (*Morelli*, at para. 108). The public must have confidence that serious invasions of privacy will only be justified in advance if the legal requirements, including that search warrants have a nexus to place, are met. To admit the evidence in this case would undermine that confidence in the long term.

Conclusion

[29] I find that admission of the fruits of the search warrants would bring the administration of justice into disrepute. In the result, s. 24(2) of the *Charter* mandates that the evidence be excluded.

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CAIRNS T.C.J.