

Citation: *R. v. Tizya*, 2026 YKTC 34

Date: 20260818
Docket: 25-00713
Registry: Whitehorse

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

REX

v.

HELEN PATRICIA TIZYA

Appearances:
Karlena Koot
James Barsby
Lynn MacDiarmid

Counsel for the Crown

Counsel for the Defence

This decision was delivered from the Bench in the form of Oral Reasons. The Reasons have since been edited without changing the substance.

REASONS FOR JUDGMENT

[1] PHELPS C.J.T.C. (Oral): Helen Patricia Tizya proceeded to trial on a two-count Information alleging that on or about September 14, 2025, she committed offences contrary to s. 320.14(1)(a) and 320.14(1)(b) of the *Criminal Code*.

[2] The trial began with a *voir dire* on application by Ms. Tizya alleging the violation of her rights contrary to the *Canadian Charter of Rights and Freedoms*, (the “*Charter*”). The parties agreed to proceed with a blended *voir dire*.

[3] The circumstances leading up to the charges are that the RCMP responded on September 14, 2025, in the early morning hours, to a complaint regarding a vehicle parked in the parking lot of a downtown Whitehorse apartment building continuously honking the horn. RCMP attended to find Ms. Tizya in the driver's seat of the vehicle and a s. 320.27(2) *Criminal Code* approved screening device ("ASD") sample was collected and the result was a fail. She was arrested and subsequently provided two samples of her breath pursuant to s. 320.28(1) of the *Criminal Code*, registering 140 and 130 milligrams of alcohol in 100 millilitres of blood.

[4] Ms. Tizya argues that there was a delay after her arrest of approximately seven minutes before she was informed of her s. 10(b) *Charter* rights and the s. 320.28 *Criminal Code* breath demand was made, resulting in the breach of her *Charter* rights.

[5] The Crown called one witness on the *voir dire*, the lead investigating RCMP officer ("Lead Officer"), and entered his body worn camera video from the investigation into evidence. He has been an RCMP member since January of 2025 and this was his third impaired driving investigation as the lead officer.

[6] Ms. Tizya did not present evidence on the *voir dire*.

The Seven-Minute Delay

[7] Ms. Tizya was arrested immediately after the ASD registered a fail from her breath sample. She did not immediately understand what was happening and the Lead Officer explained to her again the result of the ASD test and that she was under arrest. He then removed her from the vehicle and a female RCMP officer assisting at the scene

(the “Female Officer”) conducted a safety search of Ms. Tizya before she was placed into the rear seat of his police vehicle. This process took approximately two minutes.

[8] The Lead Officer was assisted at the scene by the Female Officer and another male officer (“Male Officer”). Once Ms. Tizya was placed in the police vehicle the Male Officer proceeded to call a tow truck for Ms. Tizya’s vehicle. The Lead Officer was unsure if towing the vehicle was required in the circumstances, and there was a discussion between the two officers on this point. The Male Officer was more experienced than the Lead Officer, but was a relatively new member himself. The Lead Officer is ultimately responsible for the making the decisions and was discussing the authority to do so as he preferred to exercise the discretion not to tow if available to him. This discussion took approximately 90 seconds.

[9] The Lead Officer had not made an arrest previous to this occasion based on care and control of a vehicle and wanted to check with his Watch Commander, a more experienced member than those on scene, regarding the arrest for care and control, and the requirement to tow. He provided a brief description of events to the Watch Commander over the phone, was advised that there were no concerns with the arrest, and that the vehicle should be towed. This discussion took approximately two minutes.

[10] The remaining time of approximately 90 seconds involved the Lead Officer retrieving Ms. Tizya’s driver’s license from the Male Officer, entering his police vehicle, reviewing the particulars of the driver’s license, and retrieving the language to provide the s. 10 *Charter* rights, police caution, and to make the s. 320.28(1) *Criminal Code* demand.

Did the seven-minute delay in providing Ms. Tizya with her s. 10(b) *Charter* rights result in a breach of her *Charter* rights?

[11] Section 10(b) of the *Charter* states:

Everyone has the right on arrest or detention . . . (b) to retain and instruct counsel without delay and to be informed of that right . . .

[12] The Supreme Court of Canada assessed the meaning of "without delay" in s. 10(b) of the *Charter* in *R. v. Suberu*, 2009 SCC 33, at paras. 41 and 42:

41 A situation of vulnerability relative to the state is created at the outset of a detention. Thus, the concerns about self-incrimination and the interference with liberty that s. 10(b) seeks to address are present as soon as a detention is effected. In order to protect against the risk of self-incrimination that results from the individuals being deprived of their liberty by the state, and in order to assist them in regaining their liberty, it is only logical that the phrase "without delay" must be interpreted as "immediately". If the s. 10(b) right to counsel is to serve its intended purpose to mitigate the legal disadvantage and legal jeopardy faced by detainees, and to assist them in regaining their liberty, the police must immediately inform them of the right to counsel as soon as the detention arises.

42 To allow for a delay between the outset of a detention and the engagement of the police duties under s. 10(b) creates an ill-defined and unworkable test of the application of the s. 10(b) right. The right to counsel requires a stable and predictable definition. What constitutes a permissible delay is abstract and difficult to quantify, whereas the concept of immediacy leaves little room for misunderstanding. An ill-defined threshold for the application of the right to counsel must be avoided, particularly as it relates to a right that imposes specific obligations on the police. In our view, the words "without delay" mean "immediately" for the purposes of s. 10(b). Subject to concerns for officer or public safety, and such limitations as prescribed by law and justified under s. 1 of the *Charter*, the police have a duty to inform a detainee of his or her right to retain and instruct counsel, and a duty to facilitate that right immediately upon detention.

[13] The Ontario Court of Justice decision of *R. v. Foster*, 2017 ONCJ 624, addressed the delay of informing an accused person of their s. 10(b) *Charter* rights at paras. 25 to 27:

25 I have carefully reviewed the cases relied upon by defence . . . The majority of those cases can be easily distinguished from this case. In some instances . . . the pre-rights delay far exceeded the four minutes in this case. In other instances . . . the arresting officers performed purely administrative tasks before getting around to furnishing rights to counsel. In my view, handcuffing and searching a detainee incident to arrest, are not administrative tasks.

...

27 Recently, in *R. v. Rossi*, 2017 ONCJ 443, Henschel J. considered whether a seven-minute delay between arrest and the provision of rights to counsel breached Mr. Rossi's 10(b) rights. The arresting officer spent those seven minutes searching Mr. Rossi incident to his arrest, ensuring that Mr. Rossi was settled in the rear of the cruiser and situated in such a way that he could properly hear, and retrieving Mr. Rossi's cell phone at his request. While acknowledging the obligation of the officer to confer rights to counsel immediately upon detention, Henschel J. also acknowledged the coinciding need to take certain safety precautions prior to providing those rights. Henschel J. concluded that notwithstanding the seven-minute delay, Mr. Rossi's s. 10(b) rights were not violated.

[14] The Judge in *Foster* concluded that a four-minute delay, which involved a search and handcuffing of Mr. Foster, as well as the briefing of an officer who had just arrived at the scene, did not constitute a breach of his s. 10(b) *Charter* rights.

[15] The Ontario Court of Justice in *R. v. Danyliuk*, [2024] O.J. No. 844, addressed administrative delay after securing the detainee in the police vehicle at paras 115-116:

115 Once the defendant was secured in the car, PC Mayer continued to delay the s. 10(b) informational component. This confirmed that the preceding delay had no root in safety concerns. With the scene and the defendant firmly under control, PC Mayer went onto various administrative, organizational tasks. He did not feel they were

unreasonably lengthy tasks, so he did them before telling the defendant about her s. 10(b) right.

116 The mindset that led to this delay, and that led to similar delay in cases like *R. v. Bogdanic* and *R. v. Davis*, must change. *Suberu* was decided fifteen years ago. Rights to counsel must be provided immediately upon arrest or detention. Not as soon as practicable. Not after short administrative tasks. Immediately.

[16] This kind of mindset regarding the importance of providing the s. 10(b) *Charter* rights was not the case with Ms. Tizya. There was no pause in activity where the provision of the rights was clearly being ignored. The Lead Officer was trying to pause the tow truck and confirm that the charge was appropriate before proceeding further with the investigation. He was responding to the circumstances and not simply proceeding with other tasks rather than providing the rights.

[17] The decision of *R. v. Turcotte*, 2017 ONCJ 716, provides an analysis of *Suberu* considering that the case involved providing rights before an investigative interview, while the court in *Turcotte* was dealing with an impaired driving investigation. Of note, the Justice stated at para. 16:

16 In my view, an important consideration in determining whether a short delay runs afoul of the obligation to effect s. 10(b) "without delay" is whether and to what extent this purpose is engaged on the facts of the case. It is, of course, far more directly and clearly engaged by an investigative interview than by an officer leaving an arrestee in the back seat of the cruiser for a short number of minutes while she attends to other pressing tasks.

[18] See also: *R. v. Braich*, 2022 ONCJ 81.

[19] As I previously decided in *R. v. Rumbolt*, 2024 YKTC 24, I agree that the time required to safely secure a detainee in a police vehicle, including the time to conduct a

safety search and apply handcuffs as necessary, does not result in a breach of the detainee's s. 10(b) *Charter* Rights.

[20] In this case, I find that the approximately two minutes to explain the charges to Ms. Tizya, escorting her to the police vehicle, and conducting the safety search did not result in a breach of her s. 10(b) *Charter* rights.

[21] In *Rumbolt*, I also addressed time spent by the officer sorting out the correct charges before proceeding with the s. 10(b) *Charter* rights, finding at para. 36:

The background check was then provided over the radio by dispatch, after which Cst. Beglaw can be overheard "thinking out loud" as he formulates the charge, considering possible infractions to both the *Motor Vehicles Act*, RSY 2002, c. 153, and the *Criminal Code*, for Mr. Rumbolt. He then re-arrested Mr. Rumbolt for "impaired operation causing bodily harm" followed immediately by reading him the s. 10(b) *Charter* informational component. The time spent sorting out what charge Mr. Rumbolt would be facing was to ensure he understood his current jeopardy. Cst. Beglaw can clearly be overheard thinking this through out loud, and I find that this process was necessary and appropriate in the circumstances amounting to justifiable delay. This time amounts to the remaining one minute and 30 seconds.

[22] The approximate two minutes to call the Watch Commander to make sure the charge of care and control was made out similarly results in justifiable delay. The Lead Officer required this confirmation to satisfy himself that the investigation was to continue and that the continued detention of Ms. Tizya was warranted.

[23] The approximately 90 seconds in relation to the decision to tow the vehicle involved the Lead Officer responding to the actions of the Male Officer to proceed with the tow. The Lead Officer wanted to exercise discretion, if available, to avoid towing the vehicle in the circumstances. If he had the discretion, Ms. Tizya would have benefited

from the decision not to tow. The Male Officer requested the tow truck and the Lead Officer was reacting to that action.

[24] Taking time to address the towing of a detainee's vehicle before providing them their *Charter* rights could, depending on the circumstances, result in unreasonable delay. Here, the Lead Officer was responding to the actions of the Male Officer in the moment, and I find that the short duration of this conversation put in context does not give rise to a s. 10(b) *Charter* breach.

[25] Similarly, the 90 seconds it took the Lead Officer to settle into the police vehicle, retrieve and review Ms. Tizya's identification, and locate the prepared wording for the *Charter* rights did not give rise to a breach. Actions such as this do not create unwarranted delay as the actions were necessary, continuous, and undertaken without unnecessary delay up to the reading of the *Charter* rights.

[26] I find that Ms. Tizya has not met the burden to establish the breach of her s. 10(b) *Charter* rights on a balance of probabilities.

Did the seven-minute delay in providing Ms. Tizya with the s. 320.28 *Criminal Code* breath demand result in a breach of her *Charter* rights?

[27] The s. 320.28 *Criminal Code* demand is to be made "as soon as practicable". The demand to Ms. Tizya was made immediately following the provision of her s. 10(b) *Charter* rights and the police caution. The time that elapsed in the s. 10(b) *Charter* rights analysis is the same here, being approximately seven minutes. The test itself is not as strict as that for provision of the s.10(b) *Charter* rights.

[28] The Ontario Superior Court of Justice addressed an 11-minute delay in *R. v. Duong*, 2015 ONSC 5676, stating the following with respect to the “as soon as practicable” requirement at para. 15:

15 It is well established that the phrase "as soon as practicable" in this particular statutory context does not require that the demand for breath samples be made "as soon as possible," but only that the demand for breath samples be made "within a reasonably prompt time under the circumstances." The recognized touchstone for determining whether or not the demand was made as soon as practicable in the circumstances is whether the police acted reasonably having regard to the entire chain of events.

[29] The analysis set out for the delay in providing the s. 10(b) *Charter* rights applies to this assessment. I find that the actions of the Lead Officer were continuous and diligent, and that the demand was made “as soon as practicable in the circumstances”.

[30] I find that Ms. Tizya has not met the burden to establish that the s. 320.28 demand was not made as soon as practicable resulting in the breach of her *Charter* rights.

PHELPS C.J.T.C.