SUPREME COURT OF YUKON

Citation: *H.M.Q.* v. *Anderson*, 2010 YKSC 10

Date: 20100325
S.C. No. 09-01506
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

CHARLES LESLIE ANDERSON

Publication of information that could disclose the identity of the complainant has been prohibited by court order pursuant to section 486.4 of the *Criminal Code.*

Before: Mr. Justice R.S. Veale

Appearances:

Judy Bielefeld — Counsel for her Majesty the Queen
Malcolm Campbell — Counsel for Charles Leslie Anderson

REASONS FOR JUDGMENT
(Application to exclude DNA Evidence)

INTRODUCTION

[1] Charles Leslie Anderson has been charged with committing a sexual assault against the complainant on April 30, 2008. A DNA warrant to obtain a bodily substance from Mr. Anderson for the purpose of forensic DNA analysis was applied for on April 6, 2009, and was granted by a Territorial Court judge pursuant to s. 487.05 of the *Criminal Code*.

[2] Counsel for Mr. Anderson seeks to have the DNA sample obtained excluded from the trial pursuant to s. 24(2) of the *Charter of Rights and Freedoms* on the grounds that the RCMP have breached Mr. Anderson's s. 8 right to be secure against

unreasonable seizure. Counsel for Mr. Anderson submits that the Information to Obtain ("ITO") affidavit does not provide a full and frank disclosure and contains inaccurate, misleading and false statements.

[3] This Court held a *voir dire* and heard evidence from Constable Fenske (now Corporal) and Constable Thur to determine whether the seizure was unreasonable within the meaning of s. 8 of the *Charter*. The applicable test is to review the evidence presented and determine if the ITO affidavit, stripped of any errors and misleading evidence, still provides sufficient credible and reliable evidence to have permitted the authorizing judge to make the DNA warrant order. If it is concluded that sufficient credible and reliable evidence remains to make the DNA warrant order, the DNA evidence will be admitted. On the other hand, if the seizure is found to be unreasonable on the evidence, the Court must consider whether the admission of such evidence would bring the administration of justice into disrepute pursuant to s. 24(2) of the *Charter*.

FACTS

[4] The ITO affidavit was sworn by Constable James Fenske on April 6, 2009, by the Telewarrant procedure under s. 487.05 (3) of the *Criminal Code*. The incident occurred in a community outside Whitehorse and no issue arises from the use of the Telewarrant procedure.

[5] Constable Fenske was not the primary investigating officer. His role was to assist Constable Ryan Smith. However, Constable Fenske took charge of the file for four to five months during which time he swore the ITO affidavit.

[6] Constable Fenske attended at the community nursing station on April 30, 2008, with Constable Smith after being notified of a sexual assault complaint received by the nurses. A sexual assault kit was utilized and a foreign bodily fluid (later discovered to be semen) was recovered from the complainant's vagina. The ITO stated that the complainant had been drinking and partying on April 29, 2008, and in the morning of April 30, 2008, with a number of people including Anderson. The ITO continues:

> "During the investigation that followed a number of witnesses provided statements and a primary suspect came to light, Charles Anderson. [The complainant] eventually provided a statement [in] which she said that Anderson was the last person she remembered speaking to and seeing the morning of the complaint of sexual assault. [The complainant] remembers Anderson sitting across the kitchen table from her before she passed or blacked out. [The complainant] was positive that she did not consent to having sex with Anderson.
>
> Other witnesses have stated that Anderson was observed placing [the complainant] in his truck and driving to [the complainant's] house. Anderson's truck was observed at [the complainant's] residence the morning of the complaint."

[7] At this point, the ITO affidavit states that on April 3, 2009, Constable Fenske was notified by the forensic laboratory that the unknown bodily fluid taken from the complainant was a positive match to a DNA sample of Anderson in the national DNA data bank. The ITO states that Anderson is currently on probation as a result of a sexual assault conviction on January 15, 2009. It further states that he was convicted of two counts of sexual assault in 1991 and continues:

> "PROS checks of Anderson reveal that he was under investigation on two other sexual assault matters.
>
> Anderson has failed to report to the National Sex Offender Registry as required by law."

[8] In his examination in chief, Constable Fenske testified that he reviewed and summarized all the evidence on the file in addition to his own personal involvement. He also took one statement from a witness.

[9] In cross-examination, he acknowledged that no witness observed Anderson placing the complainant in his truck and driving to the complainant's house. The actual evidence, based on information and belief, was that Anderson and the complainant had left the bar together. There was no evidence that the complainant was assisted by Anderson.

[10] Constable Fenske also admitted that the observation of Anderson's truck at the complainant's residence was based upon information and belief rather than personal knowledge. The ITO affidavit did not disclose the source. The statement that Anderson's truck was observed at the complainant's residence the morning of the complaint came from Constable Fenske reading a summary of the statement Constable Drover took from the complainant. That evidence was not confirmed until November 16, 2009, over six months after Constable Fenske swore his ITO affidavit.

[11] Further cross-examination of Constable Fenske indicated that he and Constable Smith had tried on several occasions to obtain a statement from the complainant. He stated in the *voir dire* that he thought it had taken a year to obtain the complainant's statement which was taken by Constable Drover, a female police officer, when in fact, the statement was taken on May 30, 2008. At the *voir dire*, Constable Fenske said that on reflection, he felt that the complainant preferred to give her statement to a female police officer. Nevertheless, Constable Fenske did not disclose that he and Constable Smith had several conversations with the complainant before May 30, 2008, that

indicated she wasn’t sure she wanted to go through with the complaint and that there may have been a group of people that took advantage of her. The complainant also indicated in conversation that she didn’t know if she had consented to sex that night.

[12] Constable Fenske stated that he didn’t think it was relevant to disclose every conversation that he and Constable Smith had had with the complainant prior to her statement. Constable Fenske also revealed that he was aware that the complainant had had convulsions and a blackout from alcohol consumption on the day preceding the incident. He was aware that the complainant had attended the nursing station as a result of her convulsions on the day preceding the incident and that she had no memory of the attendance. In her statement, the complainant said that she remembered sitting at home drinking a beer across the table from Anderson but that she blacked out after that. She was awakened by the phone in the morning with her pants and panties thrown on the floor beside her and bruises on her ribs, legs, and arms. She thought that Anderson dragged her from the kitchen table to the couch. In her statement, she said that she did not consent to anything and didn’t know if he took advantage of her but she felt like he did.

[13] Constable Fenske admitted that the complainant never used the word “positive” in reference to her lack of consent although she did state that she did not consent to anything.

[14] I conclude the following from the evidence of the *voir dire*:

1. there was no disclosure of the state of intoxication of the complainant, her earlier convulsions or the uncertainty about her lack of consent;

2. the statement that she was “positive” about her lack of consent was an exaggeration and misleading to the personal knowledge of Constable Fenske;
3. the statement that other witnesses stated that Anderson was observed placing the complainant in his truck at the bar and driving to her home was false;
4. despite the boilerplate paragraph that Constable Fenske had personal knowledge of the facts deposed to, except where stated to be on information and belief, the ITO affidavit did not clearly identify when the evidence was based upon information and belief or the source;
5. The source of Constable Fenske’s statement that Anderson’s truck was observed at the complainant’s residence the morning of the complaint is without a named source and at best hearsay on hearsay.

[15] The *voir dire* also included evidence from Constable Thur and a videotape of the taking of a blood sample from Mr. Anderson by pricking his skin’s surface on one finger with a sterile lancet. This evidence was led solely for the purpose of demonstrating the minimally invasive intrusion on his privacy and dignity.

THE LAW

[16] The requirements to obtain a DNA warrant are set out in ss. 487.05(1) and (2) of the *Criminal Code* as follows:

> “487.05 (1) A provincial court judge who on ex parte application made in Form 5.01 is satisfied by information on oath that there are reasonable grounds to believe
>
> (a) that a designated offence has been committed,

> (b) that a bodily substance has been found or obtained
>
> > (i) at the place where the offence was committed,
> > (ii) on or within the body of the victim of the offence,
> > (iii) on anything worn or carried by the victim at the time when the offence was committed, or
> > (iv) on or within the body of any person or thing or at any place associated with the commission of the offence,
>
> (c) that a person was a party to the offence, and
>
> (d) that forensic DNA analysis of a bodily substance from the person will provide evidence about whether the bodily substance referred to in paragraph (b) was from that person
>
> and who is satisfied that it is in the best interests of the administration of justice to do so may issue a warrant in Form 5.02 authorizing the taking, from that person, for the purpose of forensic DNA analysis, of any number of samples of one or more bodily substances that is reasonably required for that purpose, by means of the investigative procedures described in subsection 487.06(1).
>
> (2) In considering whether to issue the warrant, the provincial court judge shall have regard to all relevant matters, including
>
> > (a) the nature of the designated offence and the circumstances of its commission; and
> >
> > (b) whether there is
> >
> > > (i) a peace officer who is able, by virtue of training or experience, to take samples of bodily substances from the person, by means of the investigative procedures described in subsection 487.06(1), or
> > > (ii) another person who is able, by virtue of training or experience, to take, under the direction of a peace officer, samples of bodily substances from the person, by means of those investigative procedures."

[17] These specific sections were challenged as being unconstitutional in the case of *R. v. B. (S.A.)*, 2003 SCC 60. The Supreme Court of Canada concluded that the DNA

warrant provisions do not infringe on s. 8 of the *Charter of Rights and Freedoms* based upon the reasonable safeguards in the specific provisions and the fact that the taking of bodily samples, which clearly interferes with bodily integrity, is a relatively modest interference with the physical integrity of the person (paras. 38 and 44).

[18] It is significant that the application must be made to a provincial court judge rather than a justice of the peace. Arbour J. in *R.* v. *B.(S.A.)* concluded that this indicated “Parliament’s attentiveness to the seriousness of the interests at stake in obtaining a DNA warrant” (para. 38). The Supreme Court of Canada was satisfied that s. 487.05 accommodated the balance between the truth-seeking interests of law enforcement and the equally essential respect for human rights (para. 43). It was noted that the judge may require notice in some circumstances to ensure fairness and reasonableness (para. 56).

[19] It is also important to note that s. 487.05 requires that the provincial court judge be satisfied that issuing the DNA warrant “is in the best interests of the administration of justice” and “have regard to all relevant matters, including the nature of the designated offence and the circumstances of its commission ...”.

[20] There is no dispute that the standard of proof for “reasonable grounds to believe” is not mere suspicion but “credibly-based probability.”

[21] The test for judicial review of an ITO was first stated in *R. v. Garofoli*, [1990] S.C.J. No. 115, a wiretap authorization case, at para. 56 as follows:

> “The reviewing judge does not substitute his or her view for that of the authorizing judge. If, based on the record which was before the authorizing judge as amplified on the review, the reviewing judge concludes that the authorizing judge could have granted the authorization, then he or she should not interfere. In this process, the existence of fraud, non-

> disclosure, misleading evidence and new evidence are all relevant, but, rather than being a prerequisite to review, their sole impact is to determine whether there continues to be any basis for the decision of the authorizing judge."

[22] The Garofoli test was further refined in *R. v. Araujo*, 2000 SCC 65, where the contents of an affidavit to obtain an authorization to wiretap were considered. In stating that the legal obligation on anyone seeking an *ex parte* authorization is full and frank disclosure of material facts, the court stated at para. 46:

> "... All that it must do is set out the facts fully and frankly for the authorizing judge in order that he or she can make an assessment of whether these rise to the standard required in the legal test for the authorization. Ideally, an affidavit should be not only full and frank but also clear and concise. It need not include every minute detail of the police investigation over a number of months and even of years."

[23] However, the court goes on to state that police officers submitting materials to obtain wiretapping authorizations should not allow themselves to be led into the temptation of misleading the authorizing judge, either by the language used or strategic omissions (para. 47). As a practical matter, the court stressed that much of the litigation could be avoided by having the major players swear their own ITO affidavits (para. 49). In reviewing previous case law, the court noted that errors and even fraudulent errors do not automatically invalidate the warrant. However, errors are not irrelevant to the review process. In *R*. v. *Araujo*, the Supreme Court of Canada stated the following at para. 54:

> "The authorities stress the importance of a contextual analysis. The Nova Scotia Court of Appeal, while reviewing the cases from our Court cited above, explains this in a judgment dealing with problems arising out of errors committed in good faith by the police in the material submitted to the authorizing justice of the peace:

> ‘These cases stress that errors, even fraudulent errors, do not automatically invalidate the warrant.
>
> This does not mean that errors, particularly deliberate ones, are irrelevant in the review process. While not leading to automatic vitiation of the warrant, there remains the need to protect the prior authorization process. The cases just referred to do not foreclose a reviewing judge, in appropriate circumstances, from concluding on the totality of the circumstances that the conduct of the police in seeking prior authorization was so subversive of that process that the resulting warrant must be set aside to protect the process and the preventive function it serves’. [Emphasis added.] (R. v. Morris (1998), 134 C.C.C. (3d) 539, at p. 553)
>
> An approach based on looking for sufficient reliable information in the totality of the circumstances appropriately balances the need for judicial finality and the need to protect prior authorization systems. Again, the test is whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued, not whether in the opinion of the reviewing judge, the application should have been granted at all by the authorizing judge.” [Emphasis already added]

[24] The court concluded at para. 56 that only erroneous information needs to be excluded and that material, provided it is not part of a deliberate attempt to mislead, may be amplified by evidence on review showing the true facts. Because the issue of amplification looms large in this case, it is useful to consider both the usefulness and the inherent danger of amplification. The Supreme Court of Canada said the following in *Araujo*, at para. 59:

> “…The danger inherent in amplification is that it might become a means of circumventing prior authorization requirement. Since a prior authorization is fundamental to the protection of everyone's privacy interests (Hunter v. Southam Inc., supra, at p. 160), amplification cannot go so far as to remove the requirement that the police make their case to the issuing judge, thereby turning the authorizing procedure into a sham. On the other hand, to refuse

> amplification entirely would put form above substance in situations where the police had the requisite reasonable and probable grounds and had demonstrated investigative necessity but had, in good faith, made some minor, technical error in the drafting of their affidavit material. Courts must recognize (along with investigative necessity) the two principles of prior authorization and probable grounds, the verification of which may require a close examination of the information available to the police at the time of the application for a wiretap, in considering the jurisprudence on amplification. The approach set out earlier to erroneous information in an affidavit on a wiretap application attempts to reconcile these principles. Courts should take a similar approach to amplification." (My emphasis)

[25] In a further refinement, the case of *R.* v. *Pires*; *R.* v. *Lising*, 2005 SCC 66, states at para. 30:

> "However, the *Garofoli* review hearing is not intended to test the merits of any of the Crown's allegations in respect of the offence. The truth of the allegations asserted in the affidavit as they relate to the essential elements of the offence remain to be proved by the Crown on the trial proper. Rather, the review is simply an evidentiary hearing to determine the *admissibility* of relevant evidence about the offence obtained pursuant to a presumptively valid court order. … The reviewing judge on a *Garofoli* hearing only inquires into whether there was any basis upon which the authorizing judge could be satisfied that the relevant statutory preconditions existed. …
>
> Hence, there is a relatively narrow basis for exclusion. Even if it is established that information contained within the affidavit is inaccurate, or that a material fact was not disclosed, this will not necessarily detract from the existence of the statutory pre-conditions. The likelihood that the proposed challenge will have an impact on the admissibility of the evidence will depend on the particular factual context. In the end analysis, the admissibility of the wiretap evidence will not be impacted under s. 8 if there remains a sufficient basis for issuance of the authorization."

[26] The case of *R. v. Ling*, 2009 BCCA 70, provides an example of where the court found an affidavit in support of a search warrant so deficient that it decided to exclude

the evidence obtained in the search warrant from the trial without which the convictions could not be sustained. In *Ling*, the police were investigating a marihuana grow operation. The police officer, while playing golf, noticed what appeared to be marihuana plants growing on the lands nearby. The nearby property owner was identified as Mr. Ling and after filing an ITO affidavit, a search warrant under the Telewarrant provisions of the *Criminal Code* was authorized with respect to certain properties owned by Mr. Ling. The search revealed an indoor marihuana grow operation, the outdoor marihuana plants noted by the officer on the golf course as well as scales, guns and ammunition.

[27] The British Columbia Court of Appeal had a number of concerns with the ITO affidavit:

1. the officer failed to comply with the mandatory requirements of the Telewarrant provisions of the *Criminal Code* in that he failed to determine the availability of a local Justice of the Peace;
2. the officer failed to disclose Source A, which tended to support the issuance of the warrant, thereby breaching his duty to make full and frank disclosure of the material facts to the authorizing justice;
3. the officer swore in the ITO affidavit that he had reasonable and probable grounds to believe that there were scales, packaging materials, score sheets, and currency in the dwelling house to be searched. He had no information to support such a belief;
4. the original marihuana plants observed from the golf course were in fact on Crown land adjacent to the property owned by Mr. Ling;

5. in executing the search warrant, the officers had to cross property owned by Mr. Ling but not included in the warrant.

[28] The court concluded that the actions of the police officer did not amount to bad faith but rather to an absence of good faith. In particular, the British Columbia Court of Appeal found that the failure to disclose material facts and the information of Source A which would have supported the search warrant application resulted in a breach of s. 8 of the *Charter of Rights and Freedoms*. The British Columbia Court of Appeal was not prepared to permit the Crown to amplify the evidence it failed to disclose. It concluded that the evidence gathered in the warrant would bring the administration of justice into disrepute and therefore could not be admitted pursuant to s. 24(2) of the *Charter of Rights and Freedoms*.

[29] I have also had the benefit of reading the recent Supreme Court of Canada decision in *R*. v. *Morelli*, 2010 SCC 8, which counsel in the case before me did not have. In that case, a warrant was issued to seize and search the accused's computer with the result that pornographic pictures involving children were found on the computer and the accused was convicted of possession of child pornography. The court reviewed the ITO affidavit in support of the search warrant to determine whether it was a breach of s. 8 of the Canadian *Charter of Rights and Freedoms*. In a close decision, Fish J., for the majority, found that the accused's s. 8 rights were infringed and since there was no possibility that the accused could have been convicted without the illegally obtained evidence, the accused was acquitted.

[30] To a considerable extent, the decision turned on the fact that the ITO was limited to allegations of possession of child pornography rather than a charge of accessing

child pornography. Simply put, the majority found that the ITO, stripped of its defects and deficiencies, established that two Internet links, entitled “Lolita Porn” and “Lolita XXX”, seen four months earlier in the “Favourites” menu of a web browser of a computer that was subsequently formatted deleting both links (para 5). In effect, the majority decided that sharing a link to a website did not amount to possession

[31] In paras. 40 - 43, Fish J. repeats the principles for reviewing the sufficiency of a warrant application previously stated in *R.* v. *Araujo*. However, it is interesting from the perspective of the case at bar, to review how those principles are applied to the various erroneous statements and numerous omissions. To that end, it is useful to review the following paras. in Fish J.’s Reasons for Judgment:

> “[44] The deficiencies of the ITO in this case must be addressed in some detail before determining whether it could support the issuance of the warrant. In particular, there are erroneous statements that must be excised, and there are numerous omissions that violate “[t]he legal obligation on anyone seeking an *ex parte* authorization [to make] *full and frank* disclosure of *material facts*” (*Araujo*, at para. 46 (emphasis in original)). Once these flaws are taken into account, it becomes clear that the ITO, as reduced and amplified, could not possibly have afforded reasonable and probable grounds to believe that the accused possessed child pornography and that evidence of that crime would be found on his computer at the time the warrant was sought or *at any time*.
>
> ...
>
> [58] In failing to provide these details, the informant failed to respect his obligation as a police officer to make full and frank disclosure to the justice. When seeking an *ex parte* authorization such as a search warrant, a police officer — indeed, any informant — must be particularly careful not to “pick and choose” among the relevant facts in order to achieve the desired outcome. The informant’s obligation is to present *all material facts, favourable or not*. Concision, a laudable objective, may be achieved by omitting irrelevant or

> insignificant details, but not by material non-disclosure. This means that an attesting officer must avoid incomplete recitations of known facts, taking care not to invite an inference that would not be drawn or a conclusion that would not be reached if the omitted facts were disclosed.
>
> [59] The relevant question here is whether the ITO was misleading, not whether it was *intentionally* misleading. Indeed, in the Court of Queen's Bench, the judge who had the benefit of observing the Crown's witnesses on the *voir dire* found no deliberate attempt to mislead. That conclusion should not be disturbed. It is nonetheless evident that the police officer's selective presentation of the facts painted a less objective and more villainous picture than the picture that would have emerged had he disclosed all the material information available to him at the time.
>
> [60] The facts originally omitted must be considered on a review of the sufficiency of the warrant application. In *Araujo*, the Court held that where the police make good faith errors in the drafting of an ITO, the warrant authorization should be reviewed in light of amplification evidence adduced at the *voir dire* to correct those mistakes. Likewise, where, as in this case, the police fail to discharge their duty to fully and frankly disclose material facts, evidence adduced at the *voir dire* should be used to fill the gaps in the original ITO." (My emphasis)

[32] In considering *R.* v. *Ling*, it appears that the court was reluctant to amplify for the purpose of enhancing an application that was misleading and failing to provide full and frank disclosure of the material facts. In effect, the court found that the warrant must be set aside to protect the *ex parte* authorizing process. On the other hand, in *R.* v. *Morelli* where the amplification evidence demonstrates the inadequacy and misleading nature of the affidavit, it can be used to correct the evidence on review.

ANALYSIS

[33] It is important at the outset to characterize the ITO affidavit of Constable Fenske in the overall context of this alleged sexual assault. While I do not find any intent to de-

fraud or intentionally mislead, there is no doubt that Constable Fenske did not provide full and frank disclosure to the authorizing judge. The affidavit was prepared in a careless and slipshod manner that did not permit the authorizing judge to fully appreciate all the circumstances of the alleged offence. It is a classic example of the problems that may arise when an ITO affidavit is prepared by an officer, other than the primary investigating officer or the officer that took the complainant's statement.

[34] The first task is to strip the ITO affidavit of Constable Fenske of its errors and deficiencies without permitting the amplification of the affidavit on matters of substance as opposed to minor details. In my view, the reference to investigation into other sexual assault matters and the reference to failing to report to the National Sex Offender Registry should all be struck from the affidavit. In addition, the statement that other witnesses observed Anderson placing the complainant in his truck and driving to the complainant's residence should be struck as false. Further, the word "positive" should be deleted with reference to the complainant's statement about her lack of consent. Some correction is required to indicate that she had previously expressed some lack of knowledge or doubt about her lack of consent.

[35] In my view, the evidence about the accused's vehicle being observed at her residence must also be excised as it failed to disclose that it was based upon information and belief and the source.

[36] The removal of all the errors and deficiencies and the misleading statements leaves the authorizing judge with the following:

1. the complainant was partying and drinking with a number of people including Anderson on April 29 and 30, 2008;

2. she had experienced convulsions and did not remember attending the nursing station on April 29, 2008, as a result of the convulsions;
3. the complainant left the bar with Anderson;
4. the complainant remembers seeing Anderson at her residence across the table from her before she passed out or blacked out;
5. although she has expressed some uncertainty, the complainant does not believe that she consented to have sex with Anderson;
6. the complainant attended the community nursing station where a sexual assault examination kit was utilized revealing a foreign bodily fluid in her vagina;
7. the foreign bodily fluid taken from the complainant was a positive match to Anderson's DNA sample held in the national DNA databank.

[37] The question is whether this ITO affidavit is so subversive of the best interests of the administration of justice that it cannot support the authorization of the DNA warrant.

[38] While the ITO affidavit of Constable Fenske is extremely troubling with its falsehood and deficiencies, I do not find that it is so subversive of the administration of justice that the authorization should be set aside. The ITO affidavit does, at a minimum, identify the accused both from the surrounding circumstances and the match to his DNA in the national DNA databank. While the police officer has failed in his duty to make full and frank disclosure and made errors, I am of the view that the authorization could have been made. I am also mindful of the fact that the purpose for the review of the decision is not to punish the police but rather to ensure that the statutory preconditions in s. 487.05 exist and I am satisfied that they do.

[39] In my view, considering that no consent is obtained where the complainant is incapable of consenting to the activity pursuant to s. 273.1(2)(b), the authorizing judge could have granted the warrant to take the DNA sample from Anderson.

[40] I find the facts in *R.* v. *Ling* and *R.* v. *Morelli* to be distinguishable from the facts before me. In *R.* v. *Ling*, there was a breach of the *Criminal Code* Telewarrant procedure, an error in that the marihuana was not even on the property that the search warrant identified as Ling's as well as a falsehood in reference to the scales and packaging material. In *R.* v. *Morelli*, after extensive correction, deletion and amplification, the majority found no evidence for the offence of possession of child pornography.

CONCLUSION

[41] I conclude that there is no breach of Mr. Anderson's s. 8 rights to be secure against unreasonable search or seizure. There is therefore no requirement to consider whether the admission of the evidence in the proceeding would bring the administration of justice into disrepute pursuant to s. 24(2) of the C*harter of Rights and Freedoms*. The DNA sample will be admitted.

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VEALE J.