

CASE NO.

VOL. NO.

PAGE

HER MAJESTY THE QUEEN
(Appellant)

- and -

CHRISTOPHER BERNARD CHISHOLM
(Respondent)

CAC162408

Halifax, N.S.

SAUNDERS, J.A.

[Cite as: *R. v. Chisholm*, 2001 NSCA 32]

APPEAL HEARD:

January 30, 2001

JUDGMENT DELIVERED:

February 9, 2001

SUBJECT:

Refusing the breathalyser. Impaired driving. Right to counsel, s. 10(b) of the *Charter*. Judicial review for error of law following acquittal.

SUMMARY:

Crown appealed Mr. Chisholm's acquittal in Provincial Court on charges of refusing the breathalyser and impaired driving following the trial judge's decision to exclude evidence after finding that the accused's right to counsel pursuant to s. 10(b) of the **Charter** had been violated.

HELD:

Having determined that the accused was not informed of his right to duty counsel, nor provided a telephone number to access such counsel, nor told that it was free, there was no basis for disturbing the trial judge's conclusion that Mr. Chisholm had not been clearly and fully informed of his right to a lawyer. On the basis of **R. v. Cobham** (1994), 92 C.C.C. (3rd) 333, the evidence of the accused's alleged refusal to comply with the breathalyser demand was properly excluded pursuant to s. 24(2) of the **Charter**.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 13 pages.