

CASE NO.**VOL. NO.****PAGE****HER MAJESTY THE QUEEN**
(Appellant)

- and -

MURIEL IVA NICKERSON
(Respondent)**CAC172152**

Halifax, NS

Saunders, J.A.

[Cite as: *R. v. Nickerson*, 2001 NSCA 161]

APPEAL HEARD: November 13, 2001**JUDGMENT DELIVERED:** November 15, 2001**SUBJECT:** Refusing the breathalyzer. Right to counsel. Exclusion of evidence. Section 10(b) and section 24(2), **Canadian Charter of Rights and Freedoms**.**SUMMARY:** Following trial in the Provincial Court the respondent was convicted of refusing the breathalyzer. She appealed her conviction and was acquitted on the basis that the police denied her her rights to counsel guaranteed by s. 10(b) of the **Charter**. Pursuant to s. 839, the Crown sought leave to appeal and appealed the decision of the summary conviction appeal court, asking that a conviction be entered and the original sentence restored.**RESULT:** Leave granted but appeal dismissed. The advice given by the police officer was deficient in that it failed to satisfy the informational component of s. 10(b) of the **Charter**. The distinction between a right to “apply” for legal aid or accessing free, immediate, preliminary legal advice using the 24-hour 1-800 duty roster system available in Nova Scotia was never explained to the respondent.

The summary conviction appeal court judge was correct in finding a violation of the respondent’s right to counsel and a breach of her **Charter** rights. While he erred in failing to consider whether the evidence of her refusal to comply with the breathalyzer demand ought to be admitted under s. 24(2), this court, applying **R. v. Cobham**, [1994] 3 S.C.R. 360, finds that to admit the respondent’s refusal would adversely affect the fairness of her trial and thus it should be excluded on the basis that its admission would bring the administration of justice into disrepute.

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 6 pages.