

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
GERALD JOSEPH DENNIS	- and -	HER MAJESTY THE QUEEN
Appellant		Respondent
C.A.C. No. 158700	Halifax	CHIPMAN, J.A.

[Cite as: R. v. Dennis, 2000 NSCA 37]

APPEAL HEARD: February 16, 2000

JUDGMENT DELIVERED: February 25, 2000

SUBJECT: **CRIMINAL LAW - SUMMARY CONVICTION APPEAL - REFUSAL TO PROVIDE A BLOOD SAMPLE**

SUMMARY: On February 9, 1997 at 12:23 a.m. two police officers encountered the appellant behind the steering wheel of a vehicle stuck in a ditch. The engine was running, the wheels were spinning and he was attempting to move the vehicle out of the ditch. An R.C.M.P. Constable arrived at the scene and the two police officers advised him of their observations and the time thereof. The appellant was removed to the hospital by ambulance. The R.C.M.P. Constable attended at the hospital and within two hours of 12:23 a.m., administered a demand for a blood sample and **Charter** rights. The appellant refused. He was charged with refusal and impaired driving.

The Provincial Court judge acquitted the appellant on both charges finding that he was not in care or control of a motor vehicle, and that the Crown had produced no evidence respecting the demand.

On a summary conviction appeal by the Crown, Edwards, J. observed that the sole issue was whether the trial judge erred in finding that due to the fact that the vehicle was not capable of being driven, the officer did not have reasonable and probable grounds to make the blood sample demand. There was, he said, evidence that the accused had the care or control of the motor vehicle and that the officer had reasonable and probable grounds to make the demand. A conviction was entered on the refusal charge. The appellant appealed to the Court of Appeal.

ISSUE: Whether Edwards, J. erred on a question of law alone.

RESULT: The appeal was dismissed. The Court of Appeal held that Edwards, J. did not err in holding that the Crown had proved that the officer had reasonable and probable grounds to make the demand. The Court of Appeal discussed the issue of care or control of a motor vehicle citing authorities. In the circumstances, the fact that the motor vehicle could not be driven was irrelevant.

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