

**PROVINCIAL COURT OF NOVA SCOTIA**  
**Citation: R. v. Austin George MacInnis, 2003 NSPC 63**

**Date:** 20041218  
**Docket:** 1324191  
**Registry:** Kentville

**Between:**

Her Majesty the Queen

v.

Austin George MacInnis

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**LIBRARY HEADING**

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**Judge:** The Honourable Judge Alan T. Tufts

**Heard:** December 4, 2003 at Kentville, Nova Scotia

**Written Decision:** May 11, 2004

**Subject:** **Criminal Code of Canada, s. 253(b)**  
**Samples taken "as soon as practicable"**  
**Presumption under s. 258(1)(c)(ii) Criminal Code of Canada**

**Summary:** **Police noticed defendant when they saw him near his vehicle after exiting same. As the police pulled in behind his vehicle it appeared the defendant had just finished urinating and was getting back into the driver's side of the vehicle. Police noticed glassy eyes and strong smell of alcohol. Defendant fumbled for his papers when asked to produce the usual documentation. The vehicle was still running.**

**Police read demand at 8:10 p.m. Defendant then taken to police station, arriving at approximately 8:20 p.m. Defendant called counsel at 8:22 p.m., ending at 8:25 p.m. Not taken to breath technician until 9:00 p.m. First sample completed at 9:17 p.m. When asked if the defendant could have been brought to the technician before 9:00 p.m. the officer replied "Not that I recall."**

**Issue:** Whether the arresting officer had reasonable and probable grounds to make the demand for a breath sample.

Whether the samples were not taken as soon as practicable and therefore the presumption under s. 258(1)(c)(ii) cannot be relied upon by the Crown.

**Result:** Police must be reasonably diligent in their efforts to take the samples. Longer periods of time between the demand and the taking of the samples do require some explanation on the part of the police. Without there being any incidents where the court may take judicial notice or make inferences regarding certain procedures which require necessarily a certain expenditure of time there is nothing to explain the delay or any evidence from which reasonable inferences can be made to explain the delay. The tests were not taken as soon as practicable.

Although the Certificate is admissible and the readings demonstrate the blood alcohol level at the time of testing there is no other evidence that the blood alcohol concentration was above the allowable limit at the time the defendant was found in care and control of the vehicle and he is found not guilty.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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