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TC CR 84 03E

1 IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

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3  
4 IN THE MATTER OF:

5  
6 HER MAJESTY THE QUEEN

7  
8 VS

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10 DONALD CADIEUX

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Transcript of reasons for judgment delivered by His Honour  
15 Judge T.B. Davis, sitting at Yellowknife, in the Northwest  
16 Territories, on Friday, the 24th day of August, 1984.  
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20 APPEARANCES:

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22 J. SUTTON: Appeared on behalf of the Crown.  
23 K. PETERSON: Appeared on behalf of the Accused.  
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1 THE CLERK: Donald Cadieux.

2 MS. PETERSON: Good morning, sir. I appear as agent  
3 this morning for Mr. Cadieux.

4 THE COURT: Thank you. Before I review the  
5 decision I have come to in this matter on an objection with  
6 regard to admission of exhibits, I wish to congratulate  
7 counsel on the excellent briefs that had been presented to  
8 me in written form. I found that they were very  
9 straightforward, clear and easy to understand in form of  
10 argument, and I appreciate also the reference to various  
11 cases that seem to have been looked through and sent to me by  
12 counsel.

13 Mr. Cadieux had been charged under Section 236 of the  
14 Criminal Code, and during the trial, defence counsel, Miss  
15 Peterson, filed an objection to the admissibility of the  
16 exhibits and evidence in the form of a blood sample and its  
17 certificate of analysis. The admissibility was issued on the  
18 ground that the evidence was obtained following an  
19 infringement of the accused's rights under Section 10(b) of  
20 the Charter because he was not informed of his right to  
21 counsel, and also on the ground that he did not provide a full  
22 and informed consent to taking of the blood sample.

23 The Court has, therefore, been asked to rule on the  
24 admissibility of the blood sample and the resultant  
25 certificate.

26 The facts, as presented by the Crown's case, in which  
27 there appears to be no disagreement, showed that the accused



1 was observed partially in and partially out of the window of  
2 his overturned motor vehicle, which was off the road about  
3 ten miles from Providence, in the Northwest Territories. The  
4 police officer and a nurse checked the accused before the  
5 officer physically assisted the accused from the accident to  
6 the police vehicle up on the highway where a breathalyzer  
7 demand was made after the accused became fully awake and  
8 fully conscious.

9 Before accompanying the accused to the nursing station  
10 for examination and treatment, the officer found a whiskey  
11 bottle about 12 feet from the vehicle of the accused. The  
12 accused was in the presence of the officer for over an hour,  
13 during which time the accused signed a consent form for the  
14 taking of the blood sample for the purpose of alcohol  
15 analysis. After examination and some X-rays by the nurse,  
16 and after the blood sample was taken, the accused was  
17 released. At no time did the police officer advise the  
18 accused of his right to counsel.

19 At the trial, Crown introduced the blood sample and a  
20 certificate of analysis as exhibits. The accused's solicitor  
21 has argued that because the accused was detained for a period  
22 and had not been advised under Section 10(b) of the Charter,  
23 that the Court should exclude the evidence under Section  
24 24(2) of the Charter.

25 I will deal first, I believe, with the second argument.  
26 On the other argument presented by defence counsel, that  
27 being the lack of consent, I make a finding that the accused



1 knew of the intended use to be made of the sample and that he  
2 was informed that he was not, by law, required to provide  
3 such blood sample. His obvious agreement and signing of the  
4 consent form, in my opinion, satisfy all the legal  
5 requirements to find that the sample was given voluntarily,  
6 thus eliminating any right to exclude the sample or  
7 certificate on that ground.

8 We, therefore, are to deal now only with the objection  
9 based on the Canadian Charter of Rights. For the purposes of  
10 Section 24, I feel bound by those cases which have determined  
11 that subsection (2) must be the guide to determine if  
12 evidence is excluded after it has been determined that the  
13 Charter of Rights had been infringed. My interpretation of  
14 the authoritative cases does not allow the courts any  
15 discretion to grant an appropriate or just remedy under  
16 subsection (1) if the remedy being sought is the exclusion of  
17 evidence, unless the Court finds that, having regard to the  
18 circumstances, the admission of the evidence would bring the  
19 administration of justice into disrepute. And just as a  
20 sideline, I am not saying by that notation on restriction of  
21 evidence, that there are not other remedies that would be  
22 available that would be just and appropriate, but when it is  
23 a question of introduction of evidence, I find that it must  
24 be controlled by subsection (2).

25 Now, the first question to be answered before Section  
26 24 would apply, is whether or not the accused was arrested or  
27 detained. The authorities are divided on the finding of when



1 a person becomes detained by police officers.

2 Chief Justice Howland and Mr. Justice Tarnopolsky, had  
3 made a complete and thorough review of the cases relating to  
4 the meaning of detention and the Charter requirements to  
5 advise a detained person on the right to retain and instruct  
6 counsel without delay.

7 In the case of the Q v. Laura Mary Simmons, heard on  
8 November the 24th and 25th, 1983, and released on April 11,  
9 1984, the case dealt with actions of Customs inspectors at  
10 the Canadian Border, but referred to and analyzed all the  
11 written and reported Canadian cases as well as a number of  
12 the appellate decisions of the United States Courts.

13 From the complete analysis done by the judge, it is  
14 obvious that there are two lines of cases with authorities,  
15 as noted by my brother Halifax as well, on September 23,  
16 1983, when he also reviewed the cases then available to him  
17 in the Q v. Terry Lee Haight.

18 The majority of the reported cases support the theory  
19 that a person is not detained unless he becomes subject to  
20 some form of compulsory restraint by process of law. Many  
21 cases also have concluded that a brief restraint, even under  
22 compulsory process, is not detention under the terms of  
23 Section 10 of the Charter.

24 The more voluminous line of cases also hold that  
25 evidence should be excluded only when to admit to it would be  
26 so repugnant to the community as a whole, that the  
27 administration of justice would be brought into disrepute.



1 Courts have also accepted the test for this categorization as  
2 something shocking to the community, although it is also  
3 stated and believed that a shock is not the only test for the  
4 wording of the statute.

5 The other line of cases seems to follow the jurisprudence  
6 enunciated by Mr. Justice Tallis in the Saskatchewan Court of  
7 Appeal decision, R v. Therens, reported 1983, 33CR (3d) at  
8 page 204, which decision is now under appeal to the Supreme  
9 Court of Canada. In that case, His Lordship gave the word  
10 "detention" its ordinary meaning so that, as he states, "the  
11 fundamental rights accorded to a citizen under the Charter  
12 should not be blunted or thwarted by technical or legislative  
13 interpretations."

14 The reported cases all refer to a different circumstance,  
15 and it is generally acknowledged that each case must be  
16 determined on its own merits, using as a basis for a decision  
17 the most appropriate, reasonable, proper and just  
18 interpretation of the law.

19 In the case at bar, the accused was in the presence of,  
20 and to some extent obeying the orders of and complying with  
21 the requests and directions of the police officer for so long  
22 a period that I must find that he was, in fact, detained  
23 under the meaning of Section 10 of the Charter.

24 Having found that the accused was detained, and he,  
25 therefore, became entitled to be advised of his right to  
26 counsel, does the admission of the voluntary blood sample and  
27 its certificate of analysis cause the administration of



1 justice to be brought into disrepute? That is, without  
2 having been advised of his right to counsel. Again, the case  
3 authorities are split on when, how and why the evidence is or  
4 is not to be admitted on this basis. The Charter of Rights,  
5 as also noted in the Young Offenders Act, specifies some  
6 fundamental rights that are accorded by the recent passage,  
7 both to the public generally, and under the Young Offenders  
8 Act, to young persons.

9 The implementation of the Charter, and the future  
10 implementation of the Young Offenders Act, must be effected  
11 in such a way that Canadian citizens will not be of the  
12 belief that the rights are in theory only. Unless the courts  
13 take the position that the rights must be enforced in a  
14 practical and authoritative way, then the words in the  
15 Charter will be of no benefit to our citizens. In the same  
16 way, I feel that the requirements in the Young Offenders Act  
17 must also be required to be enforced in a practical way or  
18 there will be no method of ensuring that young offenders get  
19 special treatment designated and directed by the Young  
20 Offenders Act. I am referring to the Young Offenders Act as  
21 a sideline, but it is going to be basically dealt with by me  
22 in the same way as the case before us today.

23 I agree with Mr. Justice Jean-Guy Boilard, an associate  
24 judge of the Northwest Territories Supreme Court, as  
25 expressed in Supreme Court No. 2863, when he quotes from  
26 R v. Nelson, 1982 case, reported in 3CCC (3d) at page 147,  
27 which says, "the proper information in the proper form should



1 be given to permit access to legal advice upon arrest or  
 2 detention of any person." He further quotes, "to make the  
 3 Charter of Rights effective, particularly in the case of an  
 4 unsophisticated and uneducated accused, the accused should  
 5 obviously be asked if he wishes to retain counsel and that a  
 6 reasonable opportunity must then, without delay, be given to  
 7 him to obtain counsel."

8 I feel this is the appropriate interpretation of the  
 9 Charter and its terms to be emphasized in the Northwest  
 10 Territories, where people are often so far removed by  
 11 distances and access to larger centers of population that we  
 12 must demand strict compliance with the terms of the Charter  
 13 to protect the rights of the people of the North. To do  
 14 otherwise would or could cause some persons to have less than  
 15 others and, therefore, less protection under the law, which  
 16 would, by so doing, put the administration of justice into  
 17 disrepute.

18 On that basis, and because I think this is the more  
 19 appropriate law in the Northwest Territories, I will order  
 20 that, in this instance, the case before me, the blood sample  
 21 and the certificate of analysis associated therewith, are to  
 22 be excluded and not accepted as evidence by the Court.

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I, Cindy Littlemore, Court Reporter, hereby certify that the above Transcript of Reasons for Judgment was taken by my faithful and accurate shorthand notes and the foregoing is a true and accurate transcript of my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 28th day of September, A.D. 1984.

*Cindy Littlemore / per KH.*  
Cindy Littlemore,  
Court Reporter

CL/mjp

