Date: 2014 01 23
File: T-1-CR-2013-001025

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

BRANDON JAMES LAROCQUE

REASONS FOR DECISION
of the
HONOURABLE JUDGE GARTH MALAKOE

Heard at:	Yellowknife, Northwest Territories September 17, 2013
Date of Decision:	January 23, 2014
Counsel for the Crown:	M. Feldthusen
Counsel for the Accused	T. Amoud

[s. 253(1)(b) of the *Criminal Code*]

[Ruling on a *voir dire*]

Date: 2014 01 23
File: T-1-CR-2013-001025

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

BRANDON JAMES LAROCQUE

A. BACKGROUND AND ISSUES

A.1 Introduction

[1] Brandon Larocque is charged with operating a motor vehicle while the alcohol level in his blood was over 80 mg. of alcohol per 100 ml. of blood contrary to section 253(1)(b) of the *Criminal Code*.

[2] At the commencement of the trial, the Defence admitted the jurisdiction of the Court, the identity of the accused and the date of the events. Prior to trial, the accused had filed a Notice of Motion alleging a breach of his rights under section 8 and section 9 of the *Canadian Charter of Rights and Freedoms*. The accused seeks the exclusion of the results of his breath sample tests.

[3] As the initial step in the trial, the Court has completed a *voir dire* in which the Court heard from one Crown witness, Cst. Ben Fage. This decision is with respect to the *voir dire* and the accused's application to exclude the breath sample test results. Counsel have agreed that, upon resumption of the trial, the Crown will call no further evidence and that the defence does not wish to cross-examine Cst. Fage any further. If I rule that the breath sample results are admissible, all evidence from the *voir dire* will be applied to the trial.

[4] In the decision that follows, a reference to a section number without mention of a specific statute means a section of the *Criminal Code*.

A.2 Background

[5] Brandon Larocque was the driver of a motor vehicle which was stopped by Cst. Fage at 02h40 on June 1, 2013 in Yellowknife. Cst. Fage saw the vehicle travelling slowly and then watched it stop for what the officer felt was an extended period of time at a four way stop. As a result, Cst. Fage activated his emergency lights and pulled the vehicle over. Cst. Fage and his partner arrested the driver and passenger for having open liquor in the car. In addition, Cst. Fage took Brandon Larocque to his police vehicle where he gave him a demand to blow into an approved screening device (ASD). Mr. Larocque's breath sample registered as a fail and Mr. Larocque was subsequently taken to the RCMP detachment where he gave two breath samples which were over the legal limit.

A.3 Issues in the *Voir Dire*

[6] The defence opposition to the admission of the breath results targets the motor vehicle stop and the grounds for the ASD demand. In plain terms, the defence position is as follows. Firstly, there was no legal basis for Cst. Fage's stop of the motor vehicle and secondly, Cst. Fage only formed the reasonable suspicion that Brandon Larocque had alcohol in his system after he had already illegally arrested Mr. Larocque and the passenger for possessing open liquor.

[7] I will deal with the application by addressing the following issues:

(a) Was the initial traffic stop an arbitrary detention and hence, a breach of section 9 of the *Charter*?

(b) Was the arrest under the *Liquor Act* legal?

(c) At what point did Cst. Fage form the grounds for the ASD demand?

(d) Was there a breach of section 8 of the *Charter?*

(e) Should the results of the ASD demand and consequently, the results of the breathalyzer test, be excluded?

B. OUTLINE OF THE FACTS

[8] As indicated earlier, the evidence on the voir dire is based on the testimony of Cst. Ben Fage, an RCMP officer in his 9th year of service and a trained breathalyzer technician. The following is an outline of his testimony.

[9] Cst. Fage was working the night shift in Yellowknife on June 1, 2013. He was in a fully marked police unit with Cst. John Young. Cst. Fage was in full duty

uniform. At approximately 02h40, he observed a blue car travelling quite slowly in front of him. The car stopped for what the officer felt was an extended period of time at a stop sign given the late hour, the slow travel and there being no other traffic at the intersection of the four way stop. In Cst. Fage's experience, a stop for an extended period of time could be a sign of distracted driving, fatigue or alcohol.

[10] The officer turned on his emergency lights and stopped the vehicle, which pulled over immediately. The officer's intent was to check for the driver's licence, registration, insurance and sobriety. Cst. Fage advised the driver why he stopped him.

[11] There were two people in the stopped vehicle. Cst. Fage approached the driver, Brandon Larocque and asked him for his driver's licence, registration and insurance. Immediately upon walking up to the vehicle, Cst. Fage observed an open case of Budweiser beer with some of the cans missing. The case was on the floor in the back behind the centre console.

[12] In speaking to the driver, Cst. Fage detected an odour of alcohol emanating from his breath and noted that his eyes were red and watery. His speech was good and there were no other overt driving problems. The accused stated that he had not had anything to drink. Cst. Fage advised both occupants that they were under arrest pursuant to the *Liquor Act* for open liquor. Because Cst. Fage determined that there was alcohol in Mr. Larocque's system based on the odour of alcohol emitting from his breath as well as observing that he had red, watery eyes, he also advised Mr. Larocque that he was going to be detained for an approved screening device test in his police vehicle. This was done while Mr. Larocque was seated in the driver's seat of the vehicle that had been stopped. Both occupants were asked to exit the vehicle.

[13] Cst. Young dealt with the passenger. Later in the investigation, the officers searched the vehicle and found nine unopened cans of beers as well as one opened can of beer under the passenger seat.

[14] Cst. Fage escorted the accused from the stopped vehicle to the police vehicle. Cst. Fage observed that the accused's speech was fine and his walking was normal. Cst. Fage continued to smell an odour of alcohol.

[15] Cst. Fage read the approved screening device demand to Mr. Larocque at 02h44. Mr. Larocque gave a sample of his breath at 02h46. The ASD provided a "F" or fail indication. This indicated a blood alcohol concentration in excess of 100 milligrams percent.

[16] Cst. Fage arrested the accused for impaired operation of a motor vehicle and read him a breath demand at 02h52. He then read the *Charter* warning at 02h52 and the police caution at 02h55. Mr. Larocque said he did not wish to contact legal counsel. Later on at the detachment at 03h16, Mr. Larocque was asked again if he wished to contact legal counsel and said that he did. He spoke with legal aid counsel in private and concluded his call while Cst. Young monitored. Cst. Young was with Mr. Larocque during the 15 minutes prior to the taking of the first breath sample. At 03h31, Cst. Fage asked Mr. Larocque if he was satisfied with the legal advice that he received and Mr. Larocque indicated that he was.

[17] Mr. Larocque provided breath samples at 03h44 and at 04h04. Paperwork was prepared and served on Mr. Larocque and Cst. Fage dropped him off at the residence of his grandparents at 05h11.

C. ISSUES

C.1 Was the initial traffic stop an arbitrary detention and hence, a breach of section 9 of the *Charter*?

[18] Cst. Fage made the decision to stop the vehicle driven by Brandon Larocque because it was 02h40, because the vehicle had been travelling slowly, and because it had stopped for an extended period of time at a four way stop sign when there was no other traffic around. Cst. Fage did not elaborate as to how long the "extended period" was; however, he did testify that he had stopped the motor vehicle within a minute of encountering it on the road.

[19] The power of the police to stop motor vehicles has been the subject of a number of Supreme Court of Canada cases. The Supreme Court in *R. v. Dedman*, [1985] 2 S.C.R. 2 (S.C.C.) at p. 35 recognized that freedom of movement while in a motor vehicle involves a "liberty" interest which is qualified. It is not the same as the freedom of movement of an individual who is on foot. In order for an individual to drive a motor vehicle, he or she must be licensed and the vehicle must be registered and insured. The regulation of the driving of a motor vehicle involves territorial legislation such as the *Motor Vehicles Act*, R.S.N.W.T. 1988, c.M-16, as amended and federal legislation such as the *Criminal Code*.

[20] A police officer acts lawfully only when he or she is exercising the authority conferred upon him or her by statute or the common law. The Supreme Court of Canada in *Dedman* held that a random stop of a motor vehicle fell within the general scope of police duties to prevent crime and to protect life and property by the control of traffic. In other words, there is common law authority for such a random stop.

[21] In *R. v. Ladouceur*, [1990] 1 S.C.R. 1257, the Supreme Court of Canada held that the police could stop motor vehicles under the general statutory power in the Ontario *Highway Traffic Act* for the purpose of checking for driver's licence, registration and insurance, the mechanical fitness of the vehicle and the sobriety of the driver. Such a stop is an arbitrary detention and hence, a breach of section 9 of the *Charter*; however, it is justified pursuant to section 1 of the *Charter.*

[22] The Northwest Territories *Motor Vehicles Act* states:

> 285. (1) An officer may direct a person operating a vehicle on a highway to stop and park the vehicle to determine if the person operating the vehicle and the vehicle and its equipment comply with the requirements of this Act and the regulations.
>
> (2) A person operating a vehicle on a highway who is directed to stop and park the vehicle by an officer under subsection (1) shall comply with the direction.

[23] The *Motor Vehicles Act* also refers to section 254 of the *Criminal Code* and what is to be done if the ability of a person operating a motor vehicle "is adversely affected because the person has consumed or otherwise introduced alcohol or a drug into his or her body, or is fatigued."

[24] The sobriety of the driver is one of the factors that an officer can check for since a driver whose ability to drive is impaired by alcohol or who is driving with a blood alcohol level in excess of the legal limit is not complying with the requirements of the *Motor Vehicles Act* and its regulations.

[25] The Supreme Court in the Northwest Territories has already dealt with the issue of random stops pursuant to section 285 of the *Motor Vehicles Act.* In *R. v. Sanguez*¸[1992] N.W.T.R. 273, Justice Richard stated:

> On the basis of *Hufsky* and *Ladouceur*, while the statutory authority given to peace officers in the Northwest Territories by s. 285 of the *Motor Vehicles Act* can constitute an arbitrary detention in violation of s. 9 of the *Charter*, the infringement is one that is reasonable and justified in a free and democratic society.

[26] The police cannot use their powers to randomly stop a motor vehicle to check for driver's licence, registration, insurance, mechanical fitness and sobriety as a pretext for other reasons. The Supreme Court of Canada in *R. v. Nolet*, [2010] S.C.J. No. 24 stated:

> 3 Clearly random checks of vehicles for highway purposes must be limited to their intended purpose and cannot be turned into "an unfounded general inquisition or an unreasonable search": *R. v. Mellenthin*, [1992] 3 S.C.R. 615, at p. 624.

[27] Counsel for the accused submits that the vehicle stop initiated by Cst. Fage was not "random" and that he stopped the vehicle as a result of the "stop for an extended period of time." The Defence argues that once the officer has developed a reason for stopping the vehicle, it is necessary that the grounds for the stop be reasonable. In support of this proposition, the accused makes reference to *R. v. Wilson*, [1990] S.C.J. No. 54 and in particular, ¶ 13, where Justice Cory states:

> 13 Second, in this case the stopping of the appellant was not random, but was based on the fact that the appellant was driving away from a hotel shortly after the closing time for the bar and that the vehicle and its occupants were unknown to the police officer. While these facts might not form grounds for stopping a vehicle in downtown Edmonton or Toronto, they merit consideration in the setting of a rural community. In a case such as this, where the police offer grounds for stopping a motorist that are reasonable and can be clearly expressed (the articulable cause referred to in the American authorities), the stop should not be regarded as random. As a result, although the appellant was detained, the detention was not arbitrary in this case and the stop did not violate s. 9 of the *Charter*.

[28] Were I to accept the defence submission, the legal landscape of motor vehicle stops would have two distinct legal horizons with a vast illegal tract in between. On one side is the legal motor vehicle stop which is completely random and arbitrary. On the other side is the legal motor vehicle stop for which there are reasonable grounds that a motor vehicle offence is occurring. In between, are illegal motor vehicle stops where the officer has a suspicion based on an observation that a motor vehicle offence is occurring.

[29] In my view, the logic of cases like R. v. *Ladouceur, supra* and *R. v. Orbanski*, [2005] S.C.J. 37 are applicable to any case where an officer stops a motor vehicle for the purpose of checking for proper compliance with respect to laws related to the operation of a motor vehicle, whether it be completely random or based on something less than "reasonable grounds" and the stop is therefore justified under section 1 of the *Charter*. The cases relied upon by the Defence deal with motor vehicle stops where the Court determined that the stop "involved a stop for investigative purposes not related to the operation of the motor vehicle stopped." [*R. v. Simpson*, 12 O.R. (3d) 182 (Ont.C.A.)]. The Court in *Simpson* goes on to refer to *Ladouceur* to point out why this distinction is important:

> At the conclusion of his s. 1 analysis, Cory J. again made it very clear that he was concerned only with vehicular stops made for particular purposes. He said at p. 1287 S.C.R., p. 44 C.C.C.:
>
> > Finally, it must be shown that the routine check does not so severely trench upon the s. 9 right so as to outweigh the legislative objective. The concern at this stage is the perceived potential for abuse of this power by law enforcement officials. In my opinion, these fears are unfounded. There are mechanisms already in place which prevent abuse. Officers can stop persons only for legal reasons, in this case reasons related to driving a car such as checking the driver's licence and insurance, the

> sobriety of the driver and the mechanical fitness of the vehicle. Once stopped the only questions that may justifiably be asked are those related to driving offences. Any further, more intrusive procedures could only be undertaken based upon reasonable and probable grounds. Where a stop is found to be unlawful, the evidence from the stop could well be excluded under s. 24(2) of the *Charter*.

[30] Cst. Fage had a concern that the extended stop by Mr. Larocque, given the time of day and the traffic conditions could be related to distracted driving, fatigue or sobriety. These are not reasonable and probable grounds to believe that a motor vehicle offence was occurring. These are, however, valid "reasons related to driving a car" to stop a motor vehicle. As the Ontario Superior Court said in *R. v. Nguyen*, [2007] O.J. 4148:

> [14] Putting it differently, even if the vehicle stop in this case was completely without cause (which was the finding of the trial judge) the stop was lawful because the purpose was lawful. The police officer was not required to show articulable cause (or reasonable grounds.) By imposing this requirement, the trial judge erred in law.

[31] The stop of Mr. Larocque's vehicle was an arbitrary detention justified pursuant to section 1 of the *Charter*.

C.2 Was the arrest under the *Liquor Act* legal?

[32] When Cst. Fage stopped the car, he noted that there was a case of beer in the back seat area on the floor behind the centre console of the front seat. The cardboard case itself was ripped and a number of cans of beer were missing. Based on this observation, the officers arrested the two individuals in the car for having "open" liquor under the Northwest Territories *Liquor Act*. At the time of the arrest, the officers were not aware that there was an open can of beer under the passenger's seat.

[33] Counsel for Mr. Larocque argues that this arrest was illegal since the *Liquor Act* does not prohibit the possession of a cardboard case of beer which has been opened but which contains sealed cans of beer. I accept the arguments of defence in this regard. In the end, however, as will be explained in the next section of this decision, the validity of this arrest has no bearing on the section 253(a) charge.

[34] Although Cst. Fage did not specify (nor was he asked) which section of the *Liquor Act* he was relying upon, presumably it was either section 85 dealing with possession or section 38 dealing with transportation of liquor.

> 85. (1) Except as provided by this Act and the regulations, no person shall consume liquor in a public place.
>
> (2) The possession by a person in a public place of liquor in any container other than
>
> (a) a bottle that, because of the condition of any seal or covering on the neck or cap, appears not to have been opened,

> (b) a beer bottle from which the cap has not been removed,
> (c) a beer can that has not been punctured or opened in any way, or
> (d) a bottle of wine that has been resealed at a licensed premises,
>
> is, in the absence of evidence to the contrary proof that the person has been consuming liquor in a public place.
>
> 38. Subject to the regulations, a person may transport liquor from a place where it may be lawfully possessed to another such place if the container holding the liquor is unopened.

[35] The term "container" is not defined in the *Liquor Act*. It is also a term that is used in section 119 of the *Liquor Act Regulations*, R-069-2008:

> 119. No person shall transport in a vehicle a container of liquor that has been opened unless it is
>
> (a) a bottle of wine that has been firmly re-corked; or
> (b) a container of liquor that has been resealed with a replaceable screw cap or replaceable cork.

[36] It is clear from the use of the word "container" in the regulations that it is referring to a receptacle which encloses and touches the actual liquor (i.e., a bottle or can) and not a carton or case containing the bottles or cans of liquor. In my view, the ripped cardboard case containing sealed cans of beer was not an opened container of liquor for the purposes of the *Liquor Act.*

[37] Section 122 of the *Liquor Act* authorizes a peace officer to arrest without a warrant a person he or she finds committing an offence under the act or its regulations. Although Cst. Fage may have subjectively felt that he had the authority to arrest Brandon Larocque and his passenger under the *Liquor Act*, objectively, no offence was being committed. Cst. Fage had no authority to make the arrest under the *Liquor Act*

C.3 At what point did Cst. Fage form the grounds for the ASD demand?

[38] The accused asks the Court to find that Cst. Fage did not form the grounds for the ASD demand until after he and his partner had placed the two occupants of the car under arrest pursuant to the *Liquor Act*.

[39] During examination in chief, when Cst. Fage gave an uninterrupted description of the vehicle stop, he stated as follows:

> Cst. Fage: In speaking with the driver, he hasn't stated anything in particular about his slow stop, but in talking to him I did detect an odour of alcohol emanating from his breath. I also noted that his eyes were red and watery. His speech was good, no other overt driving problems. I did observe in the back seat of the vehicle there to be a case of Budweiser beer which was open. Also a partial Budweiser beer and then some amount remaining in the case in the back seat of the driver. Pursuant to the *Liquor Act* at that

> point I did advise that both occupants would be arrested cursory arrest pursuant to the *Liquor Act*.
>
> The Court: Did you say cursory arrest?
>
> Cst. Fage: Yes, Your Honour. Cursory arrest – sorry. My term for the initial arrest. I advise that they were both under arrest having liquor in the vehicle contrary to the *Liquor Control Act* for the open liquor and ask them both exit the vehicle.
>
> I further advised – this was certainly to enable my assisting officer to deal with the passenger who had easy access to the liquor in the vehicle. To get him away from, you know, the evidence from other offences. The officer dealing with the passenger arrested that passenger pursuant to the *Liquor Act* while I escorted the accused from the vehicle. I advised him that he was going to be detained for an approved screening device test roadside at my police vehicle.
>
> As he was escorted from the vehicle, I observed that again his speech was fine. His walking was normal. Didn't detect any other problems with his walking.

[40] Later on in the same description, the officer testified:

> I had formed the opinion after smelling his breath and certainly after having the grounds with the open liquor that, you know, his breath would need to be checked pursuant to the *Motor Vehicle Act* to ensure that he was operating below the legal limit.

[41] Finally, Cst. Fage was asked if at any time during his initial conversation or interaction, he had any suspicions about whether Mr. Larocque had alcohol in his body. His response was:

> Yes, Your Honour. As I previously testified, upon detecting an odour of alcohol emitting from his breath as well observing that he had red, watery eyes, I came to the determination that there was alcohol in his system, and I certainly provided my grounds for a lawful approved screening device demand. In addition to there being open liquor in terms of lawful grounds for that demand.

[42] Cst. Fage was cross-examined at some length about his notes which stated, "Driver eyes red, watery. Odour of liquor on breath. Denied consuming since yesterday. Advised LA arrest, escort to PC. Again odour on his breath, speech walk good." The purpose of the cross-examination was to obtain an admission that Cst. Fage did not become aware of the odour on Brandon Larocque's breath until after he was placed under arrest for the *Liquor Act* offence and while escorting him to the police vehicle. Such an admission would imply that Cst. Fage did not detain Mr. Larocque for the purpose of an ASD demand until after Mr. Larocque had exited the stopped car. This would mean that the grounds for the ASD demand were developed by Cst. Fage as the result of an illegal arrest.

[43] Cst. Fage was adamant that he smelled the odour of alcohol on the initial stop and confirmed the odour again while walking with the accused. He stated that

it was his practice to confirm the odour outside of the vehicle. Further Cst. Fage testified that it would not be normal practice to remove the accused individuals from the vehicle after an arrest for a *Liquor Act* offence. There would normally be no need to take an individual back to the police vehicle if it was only a *Liquor Act* offence.

[44] Again, in cross-examination, Cst. Fage confirmed that:

> I advised him of his – of the approved screening device while he was still seated in the driver's seat of this vehicle, and prior to his exiting the vehicle I advise of the screening device test. I would never – I would never escort someone, I guess, from a police vehicle – from their vehicle to my police vehicle without advising them of a reason for them leaving their vehicle.

[45] Defence is asking me to reject Cst. Fage's testimony that he advised Brandon Larocque that he was being arrested under the *Liquor Act* at the same time that he advised Brandon Larocque that he was being detained to make the ASD demand. In my view, there is no basis to reject Cst. Fage's testimony. He was consistent in his recollection of when he advised Mr. Larocque that he was being detained. With respect to the Defence submission that Cst. Fage did not have a good memory of the events and had to rely excessively on his notes, I disagree. Cst. Fage's style of testifying to the Court and addressing his testimony to "His Honour" while turning toward the judge ensured that it was obvious when he was consulting his notes. In observing the officer testifying, I did not feel that he was relying on his notes except for certain specific details.

[46] I find that Cst. Fage formed the grounds for the ASD demand and advised Brandon Larocque that he was being detained for the purpose of the ASD test while Mr. Larocque was still in the stopped car.

[47] Having found that the arrest under the *Liquor Act* had no legal basis, what effect does this arrest have on the validity of the detention for the ASD demand? In my view, given the facts of this case, there is no effect. Cst. Fage stopped the car to check for the driver's licence, registration, insurance and sobriety. As he approached the car, he noted the open case of beer. When the driver rolled down the window and Cst. Fage spoke to him, Cst. Fage detected an odour of alcohol coming from his breath. The arrest under the *Liquor Act* and the detention for the ASD demand occurred within seconds of each other.

[48] Cst. Fage was not obliged to choose one course of action over the other. He could maintain both a *Liquor Act* arrest and a detention for an ASD demand. Both developed as a result of a valid motor vehicle stop. The Supreme Court of Canada in *R. v. Nolet*, [2010] S.C.J. No. 24 stated:

> 4. Nevertheless, roadside stops sometimes develop in unpredictable ways. It is necessary for a court to proceed step-by-step through the interactions of the police and the appellants from the initial stop onwards to determine whether, as the situation developed, the police stayed within their authority, having regard to the information lawfully obtained at each stage of their inquiry.

[49] Had Cst. Fage developed the grounds for the ASD demand after and as a result of the *Liquor Act* arrest, my analysis would have been different. In such a case, the invalidity of the *Liquor Act* arrest may very well have tainted the actions of the police afterwards. However, this was not the case in this instance and I have found that the ASD demand was not connected to the *Liquor Act* arrest.

C.4 Was there a breach of section 8 of the Charter?

[50] My finding in the previous section was that Cst. Fage noted that Brandon Larocque had an odour of alcohol emitting from his breath as well as red, watery eyes while Mr. Larocque was seated in the stopped vehicle. Section 254(2) of the *Criminal Code* requires that the officer have "reasonable grounds to suspect that a person has alcohol in their body." As the Ontario Court of Appeal stated in *R. v. Lindsay*, [1999] O.J. No. 870, "There need only be a reasonable suspicion and that reasonable suspicion need only relate to the existence of alcohol in the body. The officer does not have to believe that the accused has committed any crime."

[51] A warrantless search must be reasonable. It will be reasonable if it is authorized by law, the law itself is reasonable and the manner in which the search was carried out is reasonable (*R. v. Collins*, [1987] 1 S.C.R. 265 at ¶ 23). As stated by Sopinka J. for the majority in *R. v. Bernshaw*, [1994] SCJ 87 at ¶ 51:

> The requirement in s. 254(3) that reasonable and probable grounds exist is not only a statutory but a constitutional requirement as a precondition to a lawful search and seizure under s. 8 of the *Canadian Charter of Rights and Freedoms*. Section 8 requires that reasonable and probable grounds exist in fact and not that their presence can be deemed to exist notwithstanding the evidence.

[52] In this case, the officer's suspicion was reasonable and the grounds existed to make a demand under section 254(2) of the *Criminal Code*. Further, I find that the demand was made "forthwith" as required by the section.

[53] The breath sample for the ASD and the breath samples for the breathalyzer were authorized by law and therefore, the accused has failed to establish that there was a breach of his section 8 *Charter* right.

C.5 Should the results of the ASD demand and consequently, the results of the breathalyzer test be excluded?

[54] Since it has not been established that there has been a breach under either section 8 or section 9 of the *Charter*, there is no requirement to determine if the results of either the ASD test or the breathalyzer test should be excluded pursuant to section 24(2) of the *Charter*.

D. CONCLUSION

[55] Brandon Larocque has not established that there has been a breach of his rights under the *Charter*. The results of the ASD test and the breathalyzer test and specifically, the Certificate of Analysis which was marked as Exhibit 1 during the *voir dire* are admissible in the trial.

Garth Malakoe
J.T.C.

Dated at Yellowknife, Northwest Territories, this 23rd day of January, 2014.

Date: 2014 01 23
File: T-1-CR-2013-001025

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

BRANDON JAMES LAROCQUE

REASONS FOR DECISION
of the
HONOURABLE JUDGE GARTH MALAKOE

[Section 253(1)(b) of the *Criminal Code*]

[Ruling on a *voir dire*]