

IN THE ONTARIO COURT (PROVINCIAL DIVISION)
REGIONAL MUNICIPALITY OF DURHAM

5

HER MAJESTY THE QUEEN

against

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KRISHINAN CHARITAR

RULING ON MOTION

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BEFORE THE HONOURABLE JUDGE R.J. RICHARDS
on Thursday, April 25, 1996

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CHARGES: - Over 80, C.C.C.

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APPEARANCES

MR. G. REGIS

MR. M. HIGGINS

Counsel for the Crown
Agent for the accused

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Transcript Ordered: ..May 24, 1996.....
Order Received:May 24, 1996.....
10 Transcript Completed:June 1, 1996.....
Counsel Notified:June 3, 1996.....

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LEGEND

<u>symbol</u>	<u>interpretation</u>
...	interrupted sentence/continuation of sentence.
....	incomplete thought.
20 ^--^	change of thought in mid-sentence.
^--^	parenthetical statement.

(^ used in legend to indicate a space)

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REASONS FOR JUDGEMENT

5 THE HONOURABLE JUDGE R.J. RICHARDS (Orally):

This matter was set over to today's date on agreement of counsel that the motion would be dealt with, and depending on the outcome of the motion, another date for trial would be set or perhaps it would come to an end if the decision was contrary to the Crown.

10 The motion is a motion under section 10(b) of the Charter, and more specifically, the denial of the opportunity to contact counsel of choice.

15 The evidence as it emanated from the application was that the accused was stopped on a roadside screening process. When stopped, he was asked by the officer if he had anything to drink, if he wished to blow into the roadside device. He indicated at that time "I'd like to speak to 'my lawyer'," and that is confirmed by the police officer who also testified the accused said "my lawyer". The officer indicated to the accused that there was no need at this point in time to talk to "your lawyer", and that "you're not charged". He subsequently failed the test. He was charged, given his rights to counsel and returned to the station.

25 There was evidence given by the accused that while at the station he indicated to the officer, "I'd like to speak to my lawyer". This is where the difficulty arises, I submit, from the Crown's perspective. It is not denied

5 by the police officer this may have occurred. There is no notation by the officer that the accused said at the station "my lawyer". It is not argued by either side of the issue as to whether or not the accused gave the name of his lawyer. I'm satisfied that the accused did not give the name of his lawyer to the police officer.

10 There seems to be an unexplained period of time in terms of the accused sitting in the police station and when duty counsel phones. He's brought to the room to talk to duty counsel. He sits in a room with a telephone that only has the capacity to ring into the room. He then leaves the room and takes the appropriate tests.

15 The fundamental issue I think in this case here is the fragile situation that an accused individual is in at this point in time and I do not think it would have been very difficult for the police officer to ask a very
20 simplistic question: "Who is your lawyer?" which obviously from that point on may have changed the whole set of circumstances. The officer never asked that question. I don't accept the argument put forward that perhaps the accused should have shown greater
25 diligence in supplying the name. He explained, "I never gave it. I was never asked". A very simple set of circumstances.

30 Secondly, another point here that I think is important as to why duty counsel was ever

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called? The accused had always indicated "I
want to speak to my lawyer". It would be a
very difficult situation if individuals wished
to contact a lawyer of choice and instead they
were only given the opportunity to contact
duty counsel.

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I find that there is a breach of section
10(b) and I find the breach is significant
enough that the evidence flowing from the time
he was stopped on the road until the
completion of the tests will be excluded
under section 24(2) which includes the
admission of the Certificates of Analysis and
the breath readings from the breathalyser
15 technician. That's my ruling on the motion,
which then obviously leaves the Crown with, I
would submit, no evidence at trial.

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THIS IS TO CERTIFY that the
foregoing is a true and accurate
transcription from the record
made by sound recording apparatus,
to the best of my skill and ability.

(This is not a certified
transcript unless
originally signed in
blue ink.)

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ELKE MORRIS
Certified Court Reporter