Citation: *R. v. Stinson*, 2019 YKTC 53

Date: 20191213
Docket: 18-00316
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

WALTER ELDON STINSON

Appearances:
Ludovic Gouaillier — Counsel for the Crown
Jason Tarnow — Counsel for the Defence

RULING ON *VOIR DIRE*

Introduction

[1] Mr. Walter Stinson is charged with possession of cocaine for the purpose of trafficking on August 11, 2018, in Whitehorse.

[2] The defence alleges breaches of Mr. Stinson's *Charter* rights pursuant to ss. 8, 9, 10(a) and 10(b), and seeks a remedy to exclude evidence pursuant to s. 24(2).

[3] The Crown called the three police officers in this *voir dire*, two of whom were the investigating officers. The Defence called no evidence.

[4] On November 22, 2019, I found that police breached Mr. Stinson's *Charter* rights and that the evidence should be excluded. I indicated that written reasons would follow. These are my reasons.

Summary of the relevant facts

[5] On the evening of August 11, 2018, two police officers were driving to a complaint when they noted a newer model vehicle travelling on Hamilton Boulevard without any headlights or rear lights. The police affected a traffic stop pursuant to the *Motor Vehicle Act*, RSY 2002, c. 153 ("*MVA*"). Cst. Reid attended to the driver's side of the vehicle to speak to the driver and only occupant, who was identified as Walter Stinson. Mr. Stinson explained that he was driving his wife's vehicle.

[6] At the same time, the second officer, Cst. Hutton, proceeded to the passenger side of the vehicle. He shone his flashlight into the vehicle and observed a score sheet on the back passenger seat, an empty Ziploc bag on the floor of the front passenger seat, and two cellphones on the front passenger seat.

[7] From the passenger side of the vehicle, Cst. Hutton stated to Cst. Reid over the roof of the vehicle, the acronym "*CDSA*", meaning *Controlled Drugs and Substances Act*, and, additionally stated, "score sheet". After hearing this, Cst. Reid asked Mr. Stinson about who else had access to the vehicle. Mr. Stinson replied that one of his children may have had access to the vehicle.

[8] Cst. Reid took possession of Mr. Stinson's driver's licence and the two officers returned to the police vehicle where they spoke about what Cst. Hutton had observed in

the vehicle. Cst. Reid requested Telecoms to perform computer checks of Mr. Stinson. The officer learned that his licence was valid and that he had two convictions, one for drugs and another for drinking and driving, both from 1999.

[9] The officers decided to remove Mr. Stinson from his vehicle and ask him questions. Cst. Reid advised him that the officers were aware of his dated criminal history. Also, the officer asked about the two cellphones. This line of questioning resulted in Mr. Stinson advising the police that there were two people staying at his home, a young woman, who grew up with his children, and her boyfriend. He stated that the second cell phone might belong to the boyfriend.

[10] The officers continued to ask Mr. Stinson questions, including whether he is still involved in drugs and whether he uses drugs. He replied in the negative to both questions. In response to further questioning, Mr. Stinson told the police that his wife does not use or sell drugs.

[11] After further questioning, the police asked Mr. Stinson whether they would find drugs in the car if they searched it and whether he had any drugs on him. Mr. Stinson answered both questions in the negative.

[12] Subsequent to additional questions, the police arrested Mr. Stinson. They searched his car but did not find any drugs. They did locate a crack pipe.

[13] The police transported Mr. Stinson to the police detachment where he was strip-searched. The police located a pouch with 78 individually wrapped packages of cocaine, with a total weight of 33.6 grams.

[14] The police neglected to file a Report to a Justice with respect to the items seized until approximately three months after their seizure.

Position of the parties

[15] The defence submits that although the initial traffic stop was lawful, the further detention of Mr. Stinson by the police to investigate a *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, ("*CDSA*") matter required the police to provide the accused his rights. Specifically, the police failed to advise him that they were detaining him for investigative purposes, that he had the right to speak to counsel, and that he had the right to remain silent.

[16] As a result of this breach of the accused's right to counsel, the subsequent search of the vehicle that Mr. Stinson was driving and, ultimately, of his person were in breach of s. 8 of the *Charter*.

[17] Additionally, Mr. Stinson submits in his Application that the police did not have sufficient grounds to arrest the accused/applicant, in breach of s. 495 of the *Criminal Code* and s. 9 of the *Charter,* however this argument was not pursued orally.

[18] Finally, the defence submits that the police failed to comply with ss. 489.1 and 490 of the *Code*, in breach of s. 8 of the *Charter*.

[19] The Crown responds by submitting that in the circumstances of this investigation the police properly questioned Mr. Stinson. The police faced a fluid situation that morphed slowly from a traffic stop to a *CDSA* investigation. The questions posed by police were to assist them in understanding what was happening.

[20] The Crown contends that the police officers had the right to question Mr. Stinson until such time as their grounds for arrest crystallized.

[21] The Crown concedes the breach under s. 8 for not filing the Form 5.2 Report, but submits that it is a minor breach in all the circumstances.

Analysis

Whether the questioning of Mr. Stinson resulted in a detention

[22] The Crown contends that police officers have the authority to question individuals and that this authority is more or less unfettered up to the point where grounds for arrest solidify.

[23] It is true that police are entitled to question citizens while investigating matters. At the same time, as the Supreme Court of Canada held in *R. v. Turcotte*, 2005 SCC 50, at para. 51:

> …In general, absent a statutory requirement to the contrary, individuals have the right to choose whether to speak to the police, even if they are not detained or arrested. The common law right to silence exists at all times against the state, whether or not the person asserting it is within its power or control. Like the confessions rule, an accused's right to silence applies any time he or she interacts with a person in authority, whether detained or not. It is a right premised on an individual's freedom to choose the extent of his or her cooperation with the police, and is animated by a recognition of the potentially coercive impact of the state's authority and a concern that individuals not be required to incriminate themselves. These policy considerations exist both before and after arrest or detention. There is, as a result, no principled basis for failing to extend the common law right to silence to both periods.

[24] In speaking of the purpose of the right to silence under the *Charter*, the Supreme Court of Canada in *R. v. Hebert*, [1990] 2 S.C.R. 151, at para. 63, stated:

> In a broad sense, the purpose of ss. 7-14 is two-fold to preserve the rights of the detained individual, and to maintain the repute and integrity of our system of justice. More particularly, it is to the control of the superior power of the state vis-à-vis the individual who has been detained by the state, and thus placed in its power, that s. 7 and the related provisions that follow are primarily directed. The state has the power to intrude on the individual's physical freedom by detaining him or her. The individual cannot walk away. This physical intrusion on the individual's mental liberty in turn may enable the state to infringe the individual's mental liberty by techniques made possible by its superior resources and power.

[25] In the matter before me, I find that there are two distinct and separate events. The initial traffic stop of Mr. Stinson, although an arbitrary detention, is justifiable pursuant to s. 1 of the *Charter* (see *R. v. Hufsky*, [1988] 1 S.C.R. 621; *R. v. Ladouceur*, [1990] 1 S.C.R. 1257; and *R. v. Mellenthin*, [1992] 3 S.C.R. 615). It is the events that occur soon after this initial detention that are at the heart of the argument.

[26] The Crown suggests that the decision in *R. v. Grunwald*, 2010 BCCA 288, is good precedent for the actions of the police when dealing with Mr. Stinson.

[27] In that case, the police had set up a motor vehicle check stop to investigate possible motor vehicle infractions. Mr. Grunwald was driving a pick-up truck with a canopy on the truck bed. The officer who requested the driver’s motor vehicle licence smelled marijuana, but did not see anything untoward. The second officer walked to the back of the truck to check the insurance decal on the licence plate. He, too, smelled marijuana. After confirming the decal was current, he looked into the back of the truck with his flashlight, where he noted garbage bags, one of which was open with a Ziploc bag of marijuana visible.

[28] The first officer arrested Mr. Grunwald and provided him with his right to counsel. Police searched the vehicle incident to arrest and found $400,000 and 42 lbs. of marijuana bud.

[29] The British Columbia Court of Appeal found that the legitimate road check detention continued during the time that the second officer observed the marijuana. The initial detention was lawful and the fact that the second officer undertook a new and very short-lived investigation while the initial investigation was ongoing "did not transform the detention into one which [was] arbitrary" (para 23).

[30] In those fact-specific circumstances, there was never a second detention and the police were not required to provide Mr. Grunwald with his right to counsel. The nature of his detention only changed when the second police officer saw the marijuana.

[31] The facts in the matter before me differ from those in *Grunwald*. Cst. Hutton did not arrest Mr. Stinson after he observed a score sheet and other items inside the vehicle, because he did not have reasonable grounds to do so.

[32] Instead, the police pursued a second avenue of investigation which included having Mr. Stinson exit the vehicle and move to its rear, in order that the police could question him. This questioning was not "preliminary investigative questioning falling short of detention" (*R. v. Suberu*, 2009 SCC 33, at para. 29).

[33] The exchange between counsel for Mr. Stinson and Cst. Hutton is illuminating in this regard.

> Q. So really at this point of your dealings with Mr. Stinson, this was really a *Controlled Drug and Substance* (sic) *Act* investigation; correct?
>
> A. At that stage, yes.
>
> Q. Yes. So when you go back to the motor vehicle, it was the intention of yourself to, as you say, pull him out of the vehicle for a discussion; correct?
>
> A. Yes.
>
> Q. Mr Stinson wasn't free to leave?
>
> A. Correct.

[34] Similarly, Cst. Reid agreed in his testimony that when Mr. Stinson was at the back of the vehicle with the police officers, he was not free to leave.

[35] The initial questioning by police focused on why Mr. Stinson had two cell phones in the vehicle. His subsequent answers obviously heightened the police officers suspicions. This led to a prolonged questioning that focused on the drug investigation. At one point, Cst. Hutton asks, "Is there anything in the car that shouldn't be in there?"

[36] At another point, after being told again that the vehicle belongs to Mr. Stinson's wife, the officer asks:

> Q. Does your wife use drugs?
>
> A. No.
>
> Q. Does your wife sell drugs?
>
> A. No.

[37] Later, Cst. Hutton pursues his pointed questioning:

> Q. No, fair enough but, so, my concern is what else is in this car? If someone is using this car to sell drugs, what else is in this car? And I

> don't know if you know what's in this car or not, of if you're just playing dumb with me.
>
> A. No, I'm not, I just took it tonight; it's a nice car.
>
> Q. Yeah. So, if we did a search in this car, what's gonna be in it?
>
> A. I couldn't tell you.
>
> Q. O.k. Do you have any drugs on you right now?
>
> A. No, I don't.

[38] During the five minutes of questioning after having Mr. Stinson exit his vehicle, the police, at no time, advised him that he was under investigative detention.

Right to Counsel

[39] In *Suberu*, the Supreme Court of Canada addressed the issue of whether the police had a duty to inform an individual at the beginning of an investigative detention of their right under s. 10(b) of the *Charter* to retain and instruct counsel. The Court answered that question in the affirmative and stated at para. 2:

> …The concerns regarding compelled self-incrimination and the interference with liberty that s. 10(*b*) seeks to address are present as soon as a detention is effected. Therefore, from the moment an individual is detained, s. 10(*b*) is engaged and, as the words of the provision dictate, the police have the obligation to inform the detainee of his or her right to counsel "without delay". The immediacy of this obligation is only subject to concerns for officer or public safety, or to reasonable limitations that are prescribed by law and justified under s. 1 of the *Charter*.

[40] Cst. Hutton testified that he had no issues with respect to officer safety when dealing with Mr. Stinson. Although the initial traffic stop led to a limitation on Mr. Stinson's right to counsel, that limitation did not extend to the *CDSA* investigation. The

situation before me does not come under the limitations to the right to counsel as outlined in *R. v. Orbanski; R. v. Elias,* 2005 SCC 37.

[41] In *Orbanski*, the police questioned the driver of a motor vehicle about earlier alcohol consumption and subsequently requested him to perform sobriety tests. In the accompanying case of *Elias*, after pulling over Mr. Elias, the investigating officer questioned him about alcohol consumption after detecting an odour of alcohol. This led to an approved screening device demand.

[42] In each case, the Court held that the driver was detained by police. Neither was provided with the s. 10(b) right to counsel. However, the Court found that the suspension of the detained driver's right to counsel was reasonable and demonstrably justified under s. 1 of the *Charter*.

[43] As stated earlier, the police initially detained Mr. Stinson in this vein, pursuant to the *MVA*. However, the roadside check ended when the police confirmed Mr. Stinson's sobriety, his possession of a valid driver's licence, as well as valid registration and insurance documents.

[44] As in *Grunwald*, there was some overlap between the roadside check and the *CDSA* investigation. However, once police conversed about their plan of action and had Mr. Stinson exit his motor vehicle, the *CDSA* investigation had clearly overtaken the initial roadside check and became the sole focus of the police. The officers were intent on gathering information and did so through their questioning of Mr. Stinson. Cst. Hutton, the arresting officer, agreed that it was based on this questioning that he developed sufficient grounds to arrest Mr. Stinson.

[45] Also, it is of note that both officers appeared to agree with defence counsel that this is one of those fact situations in which Mr. Stinson should have received his right to counsel.

[46] When defence counsel asked Cst. Reid if he believed Mr. Stinson should have been informed of his right to counsel. Cst. Reid stated "given how the outcome of the questioning went, hindsight is 20/20, yeah, we probably should have done that, but at the time, like I said, I really just wanted to ask him who had been driving his car and what was going on".

[47] Defence counsel questioned Cst. Hutton about the right to counsel.

> Q. Cst. Hutton, you're a very experienced police officer: twelve years, between 100 and 200 drug investigations and other invesigations. What's your understanding of your obligations as a police officer under the *Charter* to someone who you suspect is involved in a criminal offence?
>
> A. Their right to a lawyer and let them know that they don't have to speak to police.
>
> Q. Because this had now changed into a drug investigation, I'm going to suggest you had a responsibility in law to inform Mr. Stinson that he was under investigative detention, that he did have a right to speak and instruct – immediately to speak to legal counsel and that he was under no obligation to answer any of your questions. Wouldn't you agree with that?
>
> A. In hindsight, I definitely could have done that. At the time, things weren't making sense to me and I believed the vehicle was being used and I didn't think it was necessarily Mr. Stinson selling drugs.

[48] As stated above, by the time that the officers had finished questioning or as Cst. Hutton stated, "challenging" Mr. Stinson, Cst. Hutton's suspicions had solidified into his reasonable grounds to arrest.

[49] In the result, the police detained Mr. Stinson for a *CDSA* investigation, however, they breached his s. 10 rights by not informing him promptly for the reasons of his detention, and by not informing him of his right to retain and instruct counsel without delay.

Whether the detention of Mr. Stinson was arbitrary

[50] I now consider the question of whether Mr. Stinson's detention was lawful. In *R. v. Mann*, 2004 SCC 52, the Supreme Court of Canada recognized a common law power for police to detain an individual for investigation if the police have reasonable grounds to suspect that the person is involved in a recent or on-going criminal offence.

[51] The Court stated at para. 34:

> …The detention must be viewed as reasonably necessary on an objective view of the totality of the circumstances, informing the officer's suspicion that there is a clear nexus between the individual to be detained and a recent or on-going criminal offence. Reasonable grounds figures at the front-end of such an assessment, underlying the officer's reasonable suspicion that the particular individual is implicated in the criminal activity under investigation. The overall reasonableness of the decision to detain, however, must further be assessed against all of the circumstances, most notably the extent to which the interference with individual liberty is necessary to perform the officer's duty, the liberty interfered with, and the nature and extent of that interference, in order to meet the second prong of the *Waterfield* test.

[52] For such an investigative detention, the police must possess "reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that such a detention is necessary" (para. 45).

[53] Binnie, J. defined reasonable suspicion in *R. v. Kang-Brown*, 2008 SCC 18, at para. 75 as:

> "Suspicion" is an expectation that the targeted individual is possibly engaged in some criminal activity. A "reasonable" suspicion means something more than a mere suspicion and something less than a belief based upon reasonable and probable grounds. …

[54] Reasonable suspicion must be based on "objectively discernible facts, which can then be subjected to independent judicial scrutiny" (*R. v. Chehil*, 2013 SCC 49, at para. 26).

[55] In direct examination, Cst. Hutton explained why he told Cst. Reid that they would ask Mr. Stinson about his children's names:

> Q …But you say something like, we'll get the kids' names. Maybe it'll make more sense. Do you remember saying that?
>
> A. I do.
>
> Q. Okay. What did you mean by that at that time?
>
> A. At that time, we weren't really sure what was going on. And Mr. Stinson wasn't really displaying what I would say is normal for a drug trafficker. He wasn't – he didn't fit what we normally – the people we normally stopped. He was – he was older than most of the drug traffickers in town. He wasn't nervous. But to me it was obvious that someone in – was using that car to traffic drugs. So we were trying to see if there was something else going on, if someone else had been using the car to traffic drugs.

[56] By his own explanation, Cst. Hutton did not reasonably suspect when they decided to question Mr. Stinson further that he, himself, was connected to drug trafficking. Mr. Stinson was driving his wife's car, he was not nervous and as fairly set out by Cst. Hutton, he, otherwise, did not fit the profile of drug traffickers they usually encounter in the City of Whitehorse. According to Cst. Hutton's own words, the police detained Mr. Stinson, not because they suspected him of being engaged in drug

trafficking, but because they wanted to gather information about who else may have been using the car to traffic drugs.

[57] Even if Cst. Hutton thought that Mr. Stinson was possibly engaged in criminal activity, based on the information he possessed at that time, that suspicion was not objectively reasonable in my view.

[58] The investigative detention of Mr. Stinson was therefore arbitrary.

[59] Additionally, as a result of the breaches of ss. 9 and 10, the subsequent search of the vehicle that Mr. Stinson was driving and the search of his person at the detachment breached his s. 8 rights.

[60] Finally, as conceded by the Crown, the police breached Mr. Stinson's s. 8 rights by not filing a Report to a Justice form pursuant to s. 489.1 of the *Code*. (see *R. v. Backhouse*, [2005] 195 O. A.C. 80; *R. v. Craig*, 2016 BCCA 154; and *R. v. Reeves*, 2018 SCC 56).

[61] Section 489.1 stipulates that police must report a warrantless seizure to a justice "as soon as is practicable".

[62] In addition to the illegal drugs and paraphernalia, the police seized two cellphones, $620 dollars, and a notebook. The police also seized, as offence related property, the vehicle Mr. Stinson was driving. Over three months after the seizure of these items, the police filed a Form 5.2 Report to a Justice.

[63] The police explained that the untimely filing of this Report was the result of an oversight by and miscommunication between the two officers.

[64] The Supreme Court of Canada in *Reeves* stated at para. 63:

> In this case, the police only made a report to a justice as required by s. 489.1 of the *Criminal Code* after the computer was searched and almost five months after it was initially seized. These reporting requirements are important for *Charter* purposes, as they mandate police accountability for seizures that have not been judicially authorized (see *R. v. Tse*, 2012 SCC 16, [2012] 1 S.C.R. 531, at paras. 82 and 84).

Section 24(2) analysis

[65] As held in *R. v. Grant*, 2009 SCC 32, the Court is to assess the long-term effect of admitting evidence obtained in breach of an accused's *Charter* rights on public confidence in the justice system. There are three branches of analysis:

1. Seriousness of the *Charter*-infringing state conduct;
2. Impact of the breach on the *Charte*r-protected interests of the accused; and
3. Society's interests in an adjudication of the case on its merits.

Seriousness of the Charter-infringing state conduct

[66] The first line of inquiry involves evaluating the seriousness of the unlawful conduct. The main concern is preserving public confidence in the rule of law and its processes. The more serious the breach, the more a court should dissociate itself from this misconduct.

[67] The good faith of police is a relevant consideration when assessing the seriousness of the breach.

[68] However, as stated by Frankel, J. in *R. v. Caron*, 2011 BCCA 56 at para. 38:

> "Good faith" and its polar opposite, "bad faith" (or "flagrant" disregard), are terms of art in the s. 24(2) lexicon: *Kokesch* at 30. The absence of bad faith does not equate to good faith, nor does the absence of good faith equate to bad faith. To fall at either end of this spectrum requires a particular mental state. In discussing these two concepts in *R. v. Smith*, 2005 BCCA 334, 199 C.C.C. (3d) 404, Madam Justice Ryan stated:
>
> > [61] To sum up, good faith connotes an honest and reasonably held belief. If the belief is honest, but not reasonably held, it cannot be said to constitute good faith. But it does not follow that it is therefore bad faith. To constitute bad faith the actions must be knowingly or intentionally wrong. [Emphasis added.]

[69] The Crown submits that the officers in this matter did not act in bad faith, in that they were trying to exclude Mr. Stinson as a possible suspect. However, both officers agreed that once they directed Mr. Stinson to exit his vehicle and move to the back of the car, they were detaining him. At one point, when the police mention that there are some things in the back seat area of the vehicle that they are concerned about, Mr. Stinson moves towards the vehicle while indicating that he is unaware as to what is on the back seat. The officers advise him to stay where he is.

[70] Although the officers had a valid interest in pursuing whether this car was tied to the drug trade, they had other investigative means of doing so. Their detention of Mr. Stinson, without proper grounds, to further this investigation is clearly problematic.

[71] Of importance, the arbitrary detention is the beginning of a series of *Charter* breaches, which, in my view, demonstrate a sustained indifference to Mr. Stinson's *Charter* rights.

[72] Included in this pattern of indifference is the breach of Mr. Stinson's right to be informed promptly of the reasons for his detention, and his right to counsel. After he complies with the police direction to exit the vehicle, they question him for approximately five minutes prior to his arrest. The information obtained by police during this timeframe progressively heightens their suspicions to the point that Cst. Hutton concludes he has reasonable grounds to believe that Mr. Stinson is trafficking in drugs.

[73] As stated in *R. v. Strilec*, 2010 BCCA 198, at para. 73:

> The state conduct which deprived Mr. Strilec of his right to counsel was not the result of a good faith mistake. Mr. Strilec was deprived of his rights because of the police officer's negligent understanding of his authority and duties. The conduct in the case at bar falls, in my view, toward the middle or higher end of the spectrum of seriousness. While it was not willful or reckless, it cannot be categorized as inadvertent or minor.

I find that these breaches of Mr. Stinson's *Charter* rights tend towards the middle to higher end of the breach-spectrum. Overall, the seriousness of the officers' conduct militates towards exclusion of the evidence that flowed from these breaches.

Impact of the breach on the Charter-protected interests of the accused

[74] These consecutive breaches produced a significant negative impact on Mr. Stinson's *Charter*-protected interests. The detention of Mr. Stinson, which I have found to be unlawful, gave rise to his immediate right to counsel. The officers' failure to

provide him with this right deprived him of the ability to assert his legal rights during the detention.

[75] In the absence of his right to counsel, Mr. Stinson replied to police questioning, which ultimately led to his arrest, search of his wife's vehicle, and a strip search of his person.

[76] The impact of the state conduct strongly favours exclusion of the evidence.

Society's interests in an adjudication of the case on its merits

[77] In considering the third line of inquiry, although the seized drugs provided reliable evidence that was essential to the proof of a serious crime, the police misconduct tends towards the serious end of the continuum described in *Grant*. The police disregarded Mr. Stinson's ss. 9 and 10 rights and the evidence that flowed from these breaches led, ultimately, to him being strip-searched.

[78] As stated by the Ontario Court of Appeal in *R. v. McGuffie*, 2016 ONCA 365, at para 73:

> The seriousness of the charges to which the challenged evidence is relevant, does not speak for or against exclusion of the evidence, but rather can "cut both ways": *Grant*, at para. 84. On the one hand, if the evidence at stake is reliable and important to the Crown's case, the seriousness of the charge can be said to enhance society's interests in an adjudication on the merits. On the other hand, society's concerns that police misconduct not appear to be condoned by the courts, and that individual rights be taken seriously, come to the forefront when the consequences to those whose rights have been infringed are particularly serious: see *Grant*, at para. 84; *R. v. Dhillon*, 2010 ONCA 582, 260 C.C.C. (3d) 53, at para. 60.

[79] The Supreme Court of Canada recently considered the third *Grant* inquiry in *R. v. Le*, 2019 SCC 34. The Court held:

> 158 While we have observed that the third line of inquiry under *Grant* typically pulls towards inclusion of the evidence on the basis that its admission would not bring the administration of justice into disrepute, not all considerations will pull in this direction. While this inquiry is concerned with the societal interest in "an adjudication on the merits" (*Grant*, at para. 85), the focus, as we have already explained, must be upon the impact of state misconduct upon the reputation of the administration of justice. While disrepute may result from the exclusion of relevant and reliable evidence (*Grant*, at para. 81), so too might it result from admitting evidence that deprives the accused of a fair hearing or that amounts to "judicial condonation of unacceptable conduct by the investigatory and prosecutorial agencies" (*Collins*, at p. 281). An "adjudication on the merits", in a rule of law state, presupposes an adjudication grounded in legality and respect for longstanding constitutional norms.
>
> 159 The charges against Mr. Le are obviously, like most criminal offences, serious, and the evidence seized is also highly reliable. At the same time, courts must be careful to dissociate themselves and their trial processes from the violation of longstanding constitutional norms reflected in this Court's *Charter* jurisprudence that has emphasized the importance of individuals' liberty interests. On balance, this line of inquiry provides support for admitting the evidence.

[80] Even if the third line of inquiry favours admission in the matter before me, on balance, having considered all of the circumstances, and in particular the seriousness of the breaches, I find that the admission of the evidence in question would bring the administration of justice into disrepute. As such, having balanced all the factors, the evidence should be excluded.

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CHISHOLM C.J.T.C.