

THE INTERPLAY BETWEEN SECTION 7 OF THE *CHARTER* AND VOLUNTARINESS (THE CONFESSIONS RULE) AFTER *R v SINGH*

Nicole Jedlinski, Crown Counsel
Ministry of Justice
Criminal Appeals and Special Prosecutions
Vancouver, B.C.

The Common Law Right to Silence

Stated broadly, the common law right to silence simply reflects the general principle that, absent statutory or other legal compulsion, no one is obligated to provide information to the police or respond to questioning.¹

Section 7 of the *Charter*

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.²

Voluntariness and The Confessions Rule

The Supreme Court of Canada in *R v Oickle*³ gave us a modern expansive view of the confessions rule. It emphasized a contextual approach and listed the following headings to describe the more common circumstances that diminish the voluntariness of confessions: (a) threats or promises, (b) oppression, (c) operating mind, and (d) police trickery that would shock the community.

Voluntariness is the touchstone of the confessions rule. Whether the concern is threats or promises, the lack of an operating mind, or police trickery that unfairly denies the accused's right to silence, this Court's jurisprudence has consistently protected the accused from having involuntary confessions introduced into evidence. If a confession is involuntary for any of these reasons, it is inadmissible.⁴

R v Singh

Summary of Facts:

Mr. Singh was arrested for second degree murder; an innocent bystander was killed by a stray bullet while standing inside the doorway to a pub.

¹ *R v Singh* 2007 SCC 48 at para. 27 [*Singh*].

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

³ 2008 SCC 38 [*Oickle*].

⁴ *Ibid* at para. 69.

Before he was interviewed by the police, Mr. Singh was advised of his *Charter* rights and was given the official police warning. He also spoke to counsel by phone and in person. He was interviewed twice by police, and both interviews were video-recorded.

During the interviews, when the discussion turned to the incident in question, Mr. Singh was not very talkative. He denied his involvement and asserted his right to silence. He told the police that he had nothing to say and that he did not want to speak to them. He asserted his right to silence 18 times in total. When he would assert his right to silence, the interviewing officer would either affirm that Mr. Singh did not have to say anything, or would explain to Mr. Singh that he had a duty or desire to place the evidence before him and he continued the interview.⁵

At the trial level, the judge was satisfied beyond a reasonable doubt that Mr. Singh's statements were voluntary. Mr. Singh did not testify and did not call evidence at trial. He was convicted of second degree murder by a jury.

Mr. Singh appealed his conviction solely on the s.7 *Charter* issue. The Court of Appeal upheld the trial judge's ruling and affirmed the conviction.

Mr. Singh appealed again to the Supreme Court of Canada on the s. 7 issue. He conceded that his statements were voluntary. It was his position that his statements should be excluded under the residual protection afforded to the right to silence under ss. 7 and 24 of the *Charter*.

Mr. Singh's position on both appeals (BCCA and SCC) was that the proper application of the s.7 right to silence requires the police to stop trying to obtain admissions once a detainee asserts his right to silence. He argued that any further questioning constitutes an infringement of the detainee's s. 7 rights.⁶

The Court of Appeal did not accede to Mr. Singh's suggestion:

I do not think that the appellant's broad proposition can be supported. It is inconsistent with the weight of authority in *R. v. Carpenter*, [2001 BCCA 31](#) (B.C. C.A.), paras. 70-1; *R. v. Roy* [\(2003\), 180 C.C.C. \(3d\) 298](#) (Ont. C.A.), para. 13; *R. c. Otis* [\(2000\), 151 C.C.C. \(3d\) 416](#) (Que. C.A.), para 54; *R. c. Timm* [\(1998\), 131 C.C.C. \(3d\) 306](#) (Que. C.A.), at pp. 319/20, aff'd [\(1999\), 140 C.C.C. \(3d\) 225](#) (S.C.C.); and *R. v. Teske*, [\[2005\] O.J. No. 3759](#) (Ont. C.A.), para. 65. These cases all recognize that the police are not precluded from using reasonable persuasion to encourage a detained person to break his silence after his right to silence has been asserted following the exercise of the right to counsel.⁷

Although voluntariness was conceded, Mr. Singh took the position that the Court of Appeal erred in law in stating at paragraph 19, "In the context of an investigatory interview with an obvious person in authority, the expansive view of the confession rule in *Oickle* may leave little

⁵ *Supra* note 1 at para. 13.

⁶ *Supra* note 1 at para. 17.

⁷ *R v Singh* 2006 BCCA 281 at para. 15.

additional room for s. 7 but there is no particular utility in a double-barrelled test of admissibility.”

Charron J., writing for the Supreme Court majority decision, found that it was therefore necessary to explore the interplay between the confessions rule and the right to silence under s.7 of the *Charter*. First, it was recognized that there is considerable overlap between the inquiry into voluntariness and the review under s.7 of the *Charter* in respect of an alleged breach of an individual’s right to silence. The right to silence pre-dated the *Charter* and was embraced in the common law confessions rule.⁸

The “double-barrelled test of admissibility” refers to the overlap between the confessions rule and the s. 7 right to silence. The two tests for analyzing whether a suspect’s right to silence was violated are functionally equivalent when the detainee is aware that he or she is speaking to a person in authority. The accused actually has greater protection under the common law because the Crown bears the burden of establishing voluntariness beyond a reasonable doubt, and exclusion is automatic if the test is not met. But, there is an even greater safeguard for the accused, as a residual protection exists for the s.7 right to silence in combination with s.24. (i.e. if an accused’s statement is found voluntary, it may still be excluded under s.24(2) if a *Charter* breach is found to be connected to the statement.)⁹

The common law recognizes the individual’s right to remain silent. However, the common law also recognizes that police interrogation is an important tool in the investigation of crime. Just because individuals have the right to silence, it does not mean that they have the right not to be spoken to by police.¹⁰

The Supreme Court also recognized the importance of the police caution, as this caution informs the suspect of their right to remain silent. Also, a suspect’s situation is much different after detention as they are in the control of the police, and that’s when the caution is really important. However, the Court advises that police are best to caution a person who is not detained when they have reasonable grounds to believe that the person is a suspect, as the confessions rule applies whether or not the suspect is detained. On the other hand, s.7 of the *Charter* is only triggered upon detention.¹¹

Charron J. said the following about the connection between voluntariness and s.7:

Therefore, voluntariness, as it is understood today, requires that the court scrutinize whether the accused was denied his or her right to silence. The right to silence is defined in accordance with constitutional principles. A finding of voluntariness will therefore be

⁸ *Supra* note 1 at para. 24

⁹ *Supra* note 1 at para. 25.

¹⁰ *Supra* note 1 at para. 28.

¹¹ *Supra* note 1 at para. 31-33.

determinative of the s. 7 issue. In other words, if the Crown proves voluntariness beyond a reasonable doubt, there can be no finding of a *Charter* violation of the right to silence in respect of the same statement. The converse holds true as well. If the circumstances are such that an accused is able to show on a balance of probabilities a breach of his or her right to silence, the Crown will not be in a position to meet the voluntariness test.¹²

The confessions rule effectively subsumes the s.7 right to silence. Charron J. cited Professors Paciocco and Stuesser who explain the interrelationship between the common law rule and s.7:

Section 7 of the *Charter* can supplement the common law. It has been recognized, for example, that the voluntariness rule has acquired constitutional status as a principle of fundamental justice. This particular development has little practical significance, however. With respect to statements themselves, accused persons will be better off relying on the common law rule where the Crown bears the onus of establishing voluntariness, and where exclusion of the statement is automatic. If the *Charter* principle is relied upon, the accused bears the burden of establishing a violation on the balance of probabilities, and if the Crown can demonstrate that the accused would have spoken without the breach, the statement made might still be admissible.

Although in most cases the common law will therefore provide greater protection, there will be cases where section 7 gives added value to the accused. As has already been seen, section 7 is violated if the accused is cross-examined about why he did not give a statement to the police. Moreover, as described below, section 7 protects the right to silence, and although it is contentious, [note that it is this area of contention that is resolved in this appeal] it may be that a breach of that constitutional right can result in the exclusion of otherwise admissible statements; without question, section 7 goes beyond the voluntariness rule in cases of "detained statements," excluding many that would otherwise meet the voluntariness rule. Similarly, in cases of "statutory compulsion" statements made in compliance with statutory obligations to speak may be excluded, even though they would have been admissible at common law. Section 7 also supports the exclusion of derivative evidence that the common law would have received. As Justice Iacobucci warned in *R. v. Oickle* with respect to the common law and *Charter* regimes, "[i]t would be a mistake to assume that one subsumes the other entirely." [Footnotes omitted.]¹³

Mr. Singh asked the Court to rule that: police officers should inform the detainee of their right to silence, and then, if the detainee states that they do not wish to speak to police, the police shall then be required to stop their interrogation. The Court refused to follow this suggestion because it ignores the state interests at stake (police duty to investigate crime) and it overshoots the protection afforded to the individual's freedom of choice under both the common law and the

¹² *Supra* note 1 at para. 37.

¹³ *Supra* note 1 at para. 39 cited in *The Law of Evidence* (4th ed. 2005), at pp. 304-5.

Charter. It looked to the decision in *R v G(C)*¹⁴, where Hackett J. said, “The exercise of the right to silence is within the control of an accused who has an operating mind and is fully informed of his or her rights, provided the conduct of the authorities do not take away his or her ability to choose.”¹⁵

The Court also referred to its decision in *R v Hebert*¹⁶ and stressed the importance of striking a balance between individual and societal interests.

Under both common law and *Charter* rules, police persistence in continuing an interview after the detainee expresses the desire to remain silent may bring the admissibility of the statement into question.¹⁷

Although Mr. Singh conceded voluntariness of his statement, and argued that his right to remain silent under s.7 had been breached, the Court still considered the common law confessions rule along with s.7 as the two are functionally equivalent.

The trial judge looked at whether the conduct of Mr. Singh’s interviewer deprived him of the right to make a meaningful choice as to whether or not to speak to the authorities, and decided that Mr. Singh’s right to choose to talk or to remain silent was not undermined by his interviewer’s conduct. The Supreme Court majority found no error in this conclusion.

The Court emphasized that each case will be highly fact-specific. One factor may include the number of times the accused asserts his or her right to silence, but is not in itself determinative as all of the circumstances must be assessed. The use of legitimate means of persuasion is permitted and is part of the critical balance that must be maintained between individual and state interests. The ultimate question is whether the accused exercised free will by choosing to make a statement.¹⁸

Subsequent case law and treatment of *Singh*

There have been numerous cases since the decision in *Singh* about voluntariness and s.7. Below are a few examples of cases that have considered *Singh* in their decision on whether to admit or exclude statements of the accused.

Statements Excluded

¹⁴ [2004] O.J. No. 229 at Para. 93.

¹⁵ *Supra* note 1 at para. 42-43.

¹⁶ [1990] 2 SCR 151

¹⁷ *Supra* note 1 at para. 47.

¹⁸ *Supra* note 1 at para. 53.

R v. Fitzgerald¹⁹

Summary of Facts: Police were investigating a hit and run accident which killed a pedestrian. Police learned that the vehicle involved was owned by James High and that his mother, Allyne Fitzgerald, had taken steps to obstruct the investigation by concealing and cleaning the vehicle, then arranging for a covert repair.

Police arrested the accused, Ms. Fitzgerald, on Saturday June 3, 2006 shortly after 8:00am without a warrant at her home. She was brought to the detachment where she spoke with counsel, and was held in cells until shortly after 1:00 pm, at which time she was brought to an interview room. She was advised of her right to remain silent. Her interview was video recorded and lasted for nearly 4 hours.

The accused asserted her right to silence approximately 137 times by repeatedly saying that she had been advised by her lawyer that she did not have to speak to them, and that she did not intend to answer their questions or make a statement.

Among the tactics used by the police to try and obtain a statement from the accused were: appeals to her conscience; sympathy for the family of the deceased; urging her to do “the right thing;” some suggestion that the death under investigation may be a murder; she was told that this was her last chance to provide an explanation; and the interviewer implied that the advice provided by her lawyer may not be good advice.

Toward the end of the interview, the accused made fewer assertions and ultimately provided some answers to police questions.

Issue: Voluntariness of the accused’s statement to police. The accused also alleged a breach of her s.9 *Charter* rights.

Conclusion: The Court found that the statement was not voluntary.

Analysis: The Court cited paragraphs 30-31 and 34-35 of *Singh* and surmised that a detainee under police interrogation has the right to make a choice as to whether to speak to the police or to remain silence, and that this should be considered in the voluntariness analysis.²⁰

The Court also recognized the balance between protecting the rights of the accused and society’s need to investigate and solve crimes.

The following factors were found to support exclusion of the statement:

- the accused was held at the detachment some 12 hours before being presented to a justice of the peace to consider release;
- the interviewer made seemingly disparaging comments about the value of the advice the accused received from her lawyer;
- the interviewer suggested it was the accused’s last chance to provide a statement;

¹⁹ 2009 BCSC 1599

²⁰ *Ibid* at para. 19.

- the interviewer suggested that the accused should answer questions in order to shed light on what could be seen as a murder investigation, when in fact the police did not have any reason to believe the accident to be a deliberate act of causing death;
- the repeated assertions from the accused of her wish to remain silent

The Court found that the police deliberately applied a substantial amount of pressure on the accused to make a statement, and that they went beyond the acceptable bounds of investigation, taking the situation to a point where the accused's right to choose was rendered meaningless. The statement was therefore excluded.²¹

The Court determined the matter on the voluntariness analysis alone after examining the totality of the circumstances.

R v Koivisto²²

Summary of Facts: The accused was charged with sexual assault and sexual interference of a 3 year old who attended the day care at which he worked.

The accused attended the police station at 12:04pm. He was arrested for sexual assault and sexual interference. He was given his rights to counsel, and cautioned. He was interviewed from 1:11pm to 3:30pm. The accused was not initially told who the complainant was. Further, the accused was not told the nature of the allegation and was made to guess until partway through the interview. This interview was video recorded.

Issue: Voluntariness of the accused's statement. The accused alleged breaches of his s.7, 10(a) and 10(b) *Charter* rights.

Conclusion: The Court found breaches of s.10 (a), 10(b) and s.7 of the *Charter*, and excluded the statement.

Analysis: The interviewer initially did not tell the accused who the complainant was. The Court found that this violated the accused's s.10 (a) rights.²³

Since the accused did not know who the allegations involved, he could not communicate effectively with counsel, which undermined his s.10 (b) rights.²⁴

The following factors were considered in determination of the s.7 issue:

- the police initially did not advise the accused of who the complainant was;
- the accused was not advised of the nature of the allegation, he was made to guess;
- the police referred to non-existent evidence (DNA) that inferred a more serious allegation than what was made by the complainant;
- the police ignored repeated assertions (28) from the accused about his wish to remain silent;

²¹ *Supra* note 19 at para. 26-29.

²² 2011 ONCJ 307

²³ *Ibid* at para. 70-72.

²⁴ *Supra* note 22 at para. 73-75.

- the police told the accused they had an obligation to continue questioning despite his request to remain silent; and
- the police misrepresented that their function is to help the accused/detainee.

The interviewing officer repeatedly told the accused that it was his job to continue questioning. The Court found that the officer had confused his duty to investigate a crime, and used it as rationale to ignore the detainee's right to remain silent. The Court concluded that the accused's s.7 rights had been breached.²⁵

The Court opined that the majority words in *Oickle, Singh* and *Sinclair* were misinterpreted: The officer and the Crown have cherry-picked though the trilogy of cases to support their position that the Applicant's common law and *Charter* rights were not violated in this case. They have confused the police duty to investigate crime with an entitlement to ignore and violate a detainee's common law and *Charter* rights.²⁶

The Court excluded the statement pursuant to s.24 (2).

The Court then considered the common law in case of error in its *Charter* analysis, and found that it would have excluded the statement as it offends the common law principles with respect to voluntariness. An atmosphere of oppression, including false promises of help, was building throughout the interview which contributed to the deterioration of the accused's free will to remain silent. Further, the reference to nonexistent DNA crossed the line into trickery.

Other post-Singh cases where statements have been excluded: *R v Brown*²⁷ and *R v Gander*.²⁸

Some Statements Admitted, Some Excluded

*R v Butorac*²⁹

Summary of Facts: The accused was charged with the murder of two women. Police determined that they were looking for a certain type of vehicle in connection to one of the murders. Tire tracks and shoe prints were also linked to the scene. Police were able to compile a list of approximately 60-70 registered owners matching the description of the vehicle, and went around finding these people and asking them a standardized list of questions.

The accused was located in July and asked questions from the standardized list in person at his residence.

Police subsequently executed a search warrant approximately 3 months later in October. The accused was provided with the standard police caution but was not advised of his s.10 (a) and 10(b) rights. He was temporarily detained for about 15-20 minutes and directed to take off the

²⁵ *Supra* note 22 at para. 78-79.

²⁶ *Supra* note 22 at para. 83.

²⁷ 2010 ONCA 622.

²⁸ 2011 ONSC 3452.

²⁹ 2010 BCSC 1173

shoes he was wearing. He made a brief statement about those being his only shoes, as it was raining, and he was subsequently permitted to leave.

The accused was arrested 2 months later on December 29th, 2007 at 12:10pm. He was chartered and warned and spoke to counsel. The accused was booked into police cells at the same time that 2 undercover officers (UCOs) were being booked in. He was then placed in a cell with one of the UCOs. All conversations between the accused and the UCO were recorded. The accused made some useful statements to the UCO while in cells prior to being interviewed between the hours of 2:49pm and 5:30pm.

The accused was interviewed that evening at about 6:40 pm and then again then next morning between 8:18am and 12:41pm. The accused was mostly unresponsive in his interviews. Near the end of his first interview it appeared that the accused was becoming more responsive. Police decided to hold him and interview him again in the morning, beyond the 24 hour limit. He did not make a confession during either interview.

After the second interview, the accused was taken back to his cell. The UCO was released at this time, and the accused was released shortly thereafter at 1:03 pm without charges being laid. The accused was held in custody for almost 25 hours without being brought before a justice of the peace, in violation of s. 503(1)(a) of the Criminal Code.

Upon the release of the accused, the UCO offered him a ride. The accused and the UCO went to a restaurant for a meal, and then the UCO drove the accused to his residence at 2:32pm. The conversations between them were recorded.

Issue: Voluntariness of statements made by the accused, specifically: a statement made in July, prior to arrest; a statement made in October, during the execution of the search warrant; statements made while in cells to the UCO; and statements made to the UCO after the accused's release. Plus, the accused claimed breaches of ss. 7, 8, 9, 10(a) and 10(b) of the *Charter*.

Analysis:

July statement

The accused disputed voluntariness of this statement because he was not cautioned before answering questions.

In deciding whether the lack of the standard police caution rendered the accused's answers to the officer's questions involuntary and inadmissible, the Court looked to paragraph 31 of *Singh* which suggests that the presence or absence of a caution is only one factor in determining voluntariness, and that all of the surrounding circumstances need to be reviewed, such as whether or not the person is detained, and if they are a suspect.

At the time of the statement, which was answers to a standardized list of questions, the accused was not a suspect, and it was too early in the investigation to have regarded the accused as a suspect. He was not detained, he was under no compulsion to talk to police, and he could have refused to cooperate. None of the factors listed in *Oickle* were present, i.e. the accused had an operating mind, there were no threats or inducements and no police trickery. The Court found the statement to be reliable, voluntary and admissible at trial.³⁰

October statement

This was a brief statement about the accused's shoes. The issue to be determined was: does the failure of the police to advise the accused of his s.10(a) and 10(b) rights upon detention constitute a violation of his rights, and if so, should the statement be excluded under s.24(2) of the *Charter*?³¹

The Court found the statement to be voluntary. There was an audio-recording of the statement which demonstrated that the accused had an operating mind, and that there were no threats or promises. Further, the statement was not made in oppressive conditions, and there was no police trickery. The accused was given the standard police caution, was provided with a copy of the warrant and was told that everything was being recorded. It was clear that the officer was concerned that the accused had suitable clothing for the weather.

The Court found a breach of the informational component of the accused's s.10 (a) and 10(b) rights. However, it was found that the police were acting in good faith. The Court found that there was little or no connection between the breach and the statement, and concluded that the statement was not obtained in a manner that infringed a *Charter* right. The statement was deemed admissible.

In-cell and Post-cell statements to the UCO

The accused argued that his statements should be excluded under 24(2) because of s.7 and 9 breaches.³²

The accused was arbitrarily detained at some point because he was detained beyond the 24 hour limit provided for in s. 503(1) of the Criminal Code.³³

The Court ruled that the in cell statements to the UCO were admissible. The accused's s. 7 rights were not breached during the in cell statement. The UCO did not actively elicit information in violation of the accused's right to remain silent. The nature of the conversation was free flowing and natural. Further, the in-cell statements did not violate s.9 as they were made prior to the police interviews, and before the 24 hour limit was reached.³⁴

³⁰ *Ibid* at para. 62-63.

³¹ *Supra* note 29 at para. 71.

³² *Supra* note 29 at para. 150.

³³ *Supra* note 29 at para. 152.

³⁴ *Supra* note 29 at para. 153.

The accused's s.7 rights were not breached, but the post-cell statements were in violation of the accused's s.9 rights and therefore excluded.³⁵

The accused's s. 7 rights were not breached during the post cell statements. He was no longer detained; he chose to accept a ride from the UCO and to converse freely with him. He could have just as easily declined the offer.³⁶

The Judge found that the police interviews and the accused's time in custody did not taint the post-cell statements. However, the Court found that there was a breach of the accused's s.9 rights as his detention became arbitrary around 11 am the following day.³⁷

Mr. Butorac's detention was for the purpose of the police continuing to investigate him as the suspected perpetrator of the murders. They were required to accord with the law. The comments of Charron J. for the majority in *Singh* SCC, at Para. 45 are apt:

As I stated earlier, the suspect may be the most fruitful source of information. While the fact of detention unquestionably triggers the need for additional checks on police interrogation techniques because of the greater vulnerability of the detainee, the moment of detention does nothing to reduce the suspect's value as an important source of information. Provided that the detainee's rights are adequately protected, including the freedom to choose whether to speak or not, it is in society's interest that the police attempt to tap this valuable source.³⁸

The Court found that the police deliberately chose to violate the accused's s. 9 rights in the hope of obtaining a confession.³⁹

The Court found a sufficient nexus between the arbitrary detention of the accused and the post-cell statements and engaged in a s. 24(2) analysis. The Court concluded that the police effectively destroyed the accused's right to remain silent by choosing to detain him longer than reasonably necessary. The Court excluded the evidence pursuant to s.24 (2) as its admission would bring the administration of justice into disrepute.

Statements Admitted

R v Ma⁴⁰

³⁵ *Ibid.*

³⁶ *Supra* note 29 at para. 216-219.

³⁷ *Supra* note 29 at para. 220.

³⁸ *Supra* note 29 at para. 224.

³⁹ *Supra* note 29 at para. 226.

⁴⁰ 2010 ONSC 1395

Summary of Facts: The accused was charged in a group beating death of a drug dealer. He attended the police station and was arrested for murder. Since English was his second language, the accused was provided his *Charter* rights and the police caution in both English and in Mandarin. He spoke with a lawyer before his interview.

The police conducted a video-recorded interview with the accused that lasted 5 hours and 50 minutes. The interview was conducted in English. The accused told police that his lawyer instructed him not to say anything more than his name, birthdate and address. He repeated the nature of this advice more than 30 times during his interview.

Issue: Is the statement of the accused voluntary and admissible? Were there breaches of the accused's s.7, 10(a), 10(b), 11(d), 14 and 15 *Charter* rights?

Conclusion: The accused's statement is admissible, and there were no *Charter* breaches.

Analysis:

Voluntariness

In its analysis on voluntariness the Court looked to the majority decision in *Singh* and recognized that there is no right not to have police investigators speak to a detainee. The entire circumstances surrounding the statement must be considered. Continued questioning by the police will not cause an automatic exclusion of a statement. However, statements may be excluded if they resulted from systematically breaking down an operating mind and undermining a person's right to silence.

The following factors supported voluntariness of the statement:

- the officer was always courteous to the accused and did not deprive him of food, sleep or water;
- the officer consistently reminded the accused of his rights;
- the accused was given access to his lawyer by phone;
- the police did not attempt to discover what was said between the accused and his lawyer;
- the interviewer told the accused that he did not have to answer questions;
- the interviewer did not make any negative comments about defence lawyers;
- there was no inducement or oppression during the interview.

The Court found that there were times when the accused chose to communicate in the interview, and there were other times where he would not provide an answer. The accused make choices

about his right to remain silent. The statement was proven to be voluntary beyond a reasonable doubt and was admitted into evidence.⁴¹

Charter Rights

Following *Singh*, the Court recognized that if the Crown proves voluntariness beyond a reasonable doubt, there will be no finding of *Charter* violation of the same statement.

The Court found no breach of s.7, 10(a) or (b), 11(d), 14 or 15 of the *Charter*.

R v Williamson⁴²

Summary of Facts: This case was about historic sexual offences. The accused was arrested at his place of employment at about 2:35pm. He was advised of his rights and was cautioned. He was transported to the police station where he was interviewed at approximately 3:30pm. The interview was video-recorded and lasted approximately 1 hour and 45 minutes.

The following were strategies used by the officer during the interview: minimize the morality of the offences; suggest the victim was the aggressor; provide a false example; and use of the phrase, “it would be better for you.”

Issue: Was the accused’s statement voluntary? And were there breaches of the accused’s s.10(a) and (b) *Charter* rights?

Conclusion: The statement was voluntary and admissible, and there were no *Charter* breaches.

Analysis: Prior to its analysis, the Court reviewed the decisions in *Oickle, Singh and Hebert*. The Court cited para. 37 of *Singh* about the interplay between the confessions rule and s.7 of the *Charter*.

The Court analyzed the statement with all the surrounding circumstances and assessed the accused’s words and conduct during his interview.

The Court found that the use of the words, “it would be better” by the interviewer did not raise a reasonable doubt as to the voluntariness of the accused’s statement.⁴³

Factors which favoured admission of the statement included:

- the accused had an operating mind;
- the accused engaged appropriately in conversation;
- the questioning was not prolonged or intense;

⁴¹ *Ibid* at para. 38-40.

⁴² 2011 ONSC 6584

⁴³ *Ibid* at para. 109.

- the interview was not preceded by any hardships such as lack of sleep or deprivation of necessities;
- there was no *quid pro quo* offer to the accused; and
- there were no threats to the accused;

The Court concluded that at all times during the interview, the accused was aware of his situation and made informed and voluntary decisions about whether to speak to the police and what to say.⁴⁴

With respect to the allegations of breach under s.10 of the *Charter*, the Court found that the accused was sufficiently advised of the allegations, and there was no change in jeopardy during the interview. The Court found no violation of the accused's s.10 rights.

Overall Conclusion

Since the decision in *Singh*, courts have recognized the interplay between s.7 and the confessions rule. Each case, however, will turn on its own facts. The factors in *Oickle* are still used to determine voluntariness of an accused's statement.

If it is determined that a statement is not voluntary, it is automatically excluded. If it is determined that a statement is voluntary, it is admissible, however, it may still be excluded under s.24(2) of the *Charter* if there is a *Charter* breach that is sufficiently connected to the statement. There appears to be a more thorough analysis of s.24 (2) in cases which look at voluntariness and s.7 since the revised approach was provided by the Supreme Court in *R v Grant*.⁴⁵

⁴⁴ *Supra* note 42 at para. 119.

⁴⁵ 2009 SCC 32.