

NOVA SCOTIA COURT OF APPEAL
[Cite as: *R. v. Moore*, 2002 NSCA151]

Date: 20021127
Docket: CAC No. 182118
Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Bernard Edgar Moore

Respondent

Judges: Glube, C.J.N.S., Chipman & Hamilton, J.J.A.

Appeal Heard: November 27, 2002

Judgment Delivered: November 27, 2002

Held: Leave to appeal is granted, but appeal dismissed as per oral reasons for judgment of Hamilton, J.A.; Glube, C.J.N.S. and Chipman, J.A. concurring.

Counsel: Mr. Peter P. Rosinski, for the Appellant
Mr. Philip J. Star, Q.C.

Reasons for judgment:

[1] Following a trial in the Provincial Court, the respondent was convicted by Judge H. Randall on a charge of operating a motor vehicle while having consumed alcohol such that the concentration of alcohol in his blood exceeded the .08 limit prescribed by s.254(b) of the *Criminal Code*. Justice Gerald R.P. Moir of the Supreme Court, sitting as a summary conviction appeal court, allowed the respondent's appeal on the basis that the police denied the respondent his right to counsel guaranteed by s.10(b) of the *Canadian Charter of Rights and Freedoms*. Justice Moir also excluded the results of the respondent's breathalyser tests obtained following the *Charter* breach pursuant to s.24(2) of the *Charter*.

[2] Pursuant to s. 839 the appellant seeks leave to appeal and, if granted, appeals the decision of Justice Moir, dated May 28, 2002.

[3] Largely for the reasons set out by Justice Moir, we are satisfied he did not err. Because the police did not indicate to the respondent that legal aid may be available to him when they purported to read him his *Charter* rights, he did not have before him all of the information he is entitled to under s. 10(b) of the *Charter*. (*R. v. Brydges*, [1990] 1 S.C.R. 190; *R. v. Bartle*, [1994] 3 S.C.R. 173; and *R. v. Prosper*, [1994] 3 S.C.R. 236) His decision also makes it clear he considered all of the factors set out in *R v. Collins*, [1987] 1 S.C.R. 265 in determining whether the breathalyser test results should be excluded pursuant to s.24(2) of the *Charter*.

[4] Accordingly leave to appeal is granted, but the appeal is dismissed.

Hamilton, J.A.

Concurred in:

Glube, C.J.N.S.

Chipman, J.A.