

**CASE NO.**

**VOL. NO.**

**PAGE**

Her Majesty the Queen

v.

Vincent Alexander Hall

2001 NSPC 29

Sydney, N.S.

Williston, J.P.C.

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**TRIAL HELD:**

June 13, 2001, July 5, 6, 2001, September 4, 2001, October 26, 2001, November 2, 2001

**DECISION DELIVERED:** November 2, 2001

**WRITTEN RELEASE:** November 2, 2001

**SUBJECT: Impaired Driving - s. 253(b) Criminal Code; Charter of Rights - Right to Counsel; Operation of Breathalyzer Instrument; What determines "signature" on Certificate of Analysis; Expert Evidence**

**SUMMARY:** The accused, a regional municipal councillor, was observed driving unusually slow and slightly left of center. After being stopped by the police the usual indicia of impairment were observed by the officer and the accused was taken to the police station for a breathalyzer test. The officer did read the rights to counsel to the accused but he did not clearly explain to the accused about the availability of duty counsel through a 1-800 number. The Certificate of Analysis submitted at trial was not in a written signature but printed. The accused and two defence witnesses testified that the accused had only four lite beer, expert testimony given at trial indicated that the readings produced (120/100) would not result from the consumption of that amount of alcohol.

**ISSUE:**

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- 1) Whether the officer's failure to advise the accused of the availability of duty counsel violated his rights under s. 10(b) of the Charter and if so remedy is appropriate
- 2) Whether the name of the Qualified Technician printed on the Certificate of Analysis constitutes a "signature" within the parameters of s. 258(1)(g) of the Criminal Code
- 3) Whether evidence to the contrary led by the defence leads to a reasonable doubt in the presumption of the accuracy of the readings

**RESULT:**

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- 1) The failure of the officer to clearly advise the accused of the availability of duty counsel is a breach under s. 10(b) of the Charter. However, as no deliberate, wilful or flagrant conduct in the officer's conduct accused was given ample time to contact counsel, it does not affect fairness of the trial and the administration of justice would not be brought into disrepute by admission of evidence of the accused's telephone calls to

the Chief of Police as well as the Certificate of Analysis,

- 2) The name of the Qualified Technician as printed on the signature line on the Certificate of Analysis and in the same hand as appears on the rest of the certificate is sufficient to meet the requirements of a signature within the parameters of s. 258(1)(g) of the Code.
- 3) The accused and other defence witnesses were all consuming alcohol that evening. Their recollection is based on an attempt to reconstruct the evening in question. The defence witnesses observation were affected by their consumption of alcohol. Evidence of the officer and the breathalyzer reading are accepted and the presumption of accuracy of the readings applies.

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