

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. Williams, 2010 NSPC 27

**Date:** March 10, 2010  
**Docket #:** 1986089/090  
**Registry:** Sydney

**Between:**

The Queen

v.

Harry Herbert Williams

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**LIBRARY HEADING**

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**Judge:** A.P. Ross

**Heard:** February 11, 2010  
February 18, 2010

**Summary**

During an impaired driving investigation, police obtained breath samples from the accused and prepared a Certificate of Analysis. The Certificate was tendered by the prosecution as proof that the accused's blood alcohol levels were over the legal limit. The elapsed time between the two breath tests was 28 minutes. No evidence was given about the reason for this interval, which was 13 minutes more than the police were required to allow. The relevant section of the Criminal Code requires that the tests be taken as soon as practicably. Defense argued that the unexplained delay of 28 minutes deprived the Crown of the evidentiary presumption, which would otherwise be available, that the alcohol level at the time of driving was the same as that measured by the tests and contained in the Certificate.

**Issue**

What number of minutes, over and above the required 15, creates an evidentiary burden of explanation on the Crown, failing which the so-called “presumption of identity” does not pertain?

**Result**

A delay of 30 minutes or more between breath tests requires an explanation which shows that the tests were done at the earliest practicable time.

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