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Her Majesty the Queen   Terrance Michael Finlayson

2002 1012996/1012997   Sydney, Nova Scotia   Judge A. Peter Ross

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DATE HEARD: May 2, 2002; May 30, 2002

DECISION: November 6, 2002

SUBJECT: The accused was charged with "exceeding the breathalyzer" under s. 253(b) of the Criminal Code.

SUMMARY: The accused consumed some beer after driving but before the tests. He claimed to have been drinking heavily during the previous night. Expert evidence was tendered by the accused seeking to displace the presumption of equivalency in blood alcohol concentration set out in s. 258(1)(c) and attempting to show that the accused's levels could have been below 80 at the time of driving. Crown called expert evidence in rebuttal.

Defence expert performed a "forward calculation" from a presumed drinking pattern to calculate a range of blood alcohol concentration at the time of driving. Presumed facts did not afford fully with the facts proven at trial.

Crown expert extrapolated backward from the breathalyzer measured blood alcohol concentration to calculate a much narrower range of levels at the time of driving. His opinion had better factual foundation.

ISSUE: The probative value of the expert opinion evidence; its bearing on the legal presumptions and proofs arising for determination in the case.

RESULT: The defence expert opinion is of insufficient weight to displace the presumption in s. 258(1)(c). Neither is it evidence tending to show that the accused's blood alcohol concentration was under 80 at the

time of driving. The Crown's expert employed superior
methodology, based his opinion on known quantities and tested his
conclusion against other evidence in the case. His approach
demonstrated greater fidelity to the scientific method. Together
with other evidence, it served to prove the essential "over 80"
element of the offence

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