SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. LeBlanc*, 2018 NSSC 234

Date: 2018-09-27
Docket: CRAT No. 475651
Registry: Antigonish

Between:

Her Majesty the Queen

v.

Coty Weston Warren LeBlanc and Michael Charles Benoit

Judge:	The Honourable Justice Peter P. Rosinski
Heard:	September 10, 2018, in Antigonish Nova Scotia
Final Written Submissions:	September 18, 2018
Counsel:	Wayne MacMillan for the Crown Colin Strapps for Coty Weston Warren LeBlanc Daniel MacIsaac for Michael Charles Benoit

By the Court:

Introduction

[1] Mr. LeBlanc is charged that he did on or about November 4, 2017 at or near Antigonish, Nova Scotia, possess a substance included in Schedule 1, to wit, cocaine, for the purpose of trafficking, contrary to Section 5(2) of the *Controlled Drugs and Substances Act*.

[2] Michael Benoit is similarly, and jointly, charged with Mr. LeBlanc.

[3] By search warrant executed at approximately 8:20 p.m. on November 4, 2017, police entered the basement apartment, (i.e. 161), of 162 Hawthorne Street, Antigonish. By 10:00 p.m., they left the premises with what appeared to be cocaine, cutting agents, drug paraphernalia including digital scales, and significant amounts of cash.

[4] Police had reasonable grounds to believe that the basement apartment was regularly occupied by, Michael Benoit (who was present at the time of the search), Coty LeBlanc and his partner (Mr. Benoit's daughter) Jayda Benoit.

[5] While in custody in Antigonish RCMP cells, Mr. LeBlanc was questioned by Constable James Jessome between 10:17 a.m. and 12:17 p.m., November 5, 2017.

[6] The Crown seeks to have that videotaped statement ruled admissible.[1]

[7] For the reasons that follow, I find Mr. Coty LeBlanc's statement admissible, as it is proved "voluntary" beyond a reasonable doubt.

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[1]Mr. Benoit challenged the videotaped statement that he gave to Constable Catherine Bezaire of the RCMP.His interview lasted from approximately 10:00 p.m. until 10:24 p.m. on November 4, 2017. He was properly advised of the reason for his arrest, his Charter rights (the informational and implementational aspects thereof) and given proper "voluntariness" primary and secondary cautions. I am also satisfied he understood these and the statement he gave was proved by the Crown to be "voluntary" beyond a reasonable doubt. After the conclusion of the *voir dire*, his counsel wrote to the court to confirm that: "Mr. Benoit does not oppose to the admission of his statement against him. This is done on the basis that Mr. Coty LeBlanc's statement is not admissible against Mr. Benoit, nor is Mr. Benoit's statement admissible against Mr. LeBlanc."

Background

[8] At approximately 9:20 p.m., Constable Lauren Stiles (of the New Glasgow Regional Police Service)[2] arrested Mr. LeBlanc outside the Highland Square Mall in New Glasgow for having possession of cocaine for the purpose of trafficking in relation to the basement apartment at 162 Hawthorne Street, Antigonish.

[9] I am satisfied that she properly advised him of his reason for arrest, and that Mr. LeBlanc understood that as well as her proper Charter of Rights advisement, and primary "right to silence" police caution which she read from a card. He did not wish to call a lawyer at that time.

[10] She brought Mr. LeBlanc to the New Glasgow Regional Police Service building (which I am aware was then an approximately 10-minute drive from the Highland Square Mall) where he was offered the opportunity to speak to counsel, which he declined.

[11] There is no evidence that there were any threats, promises or inducements, made to Mr. LeBlanc during the time he was in the custody of the New Glasgow Regional Police Service.

[12] Constable Michael Drake of the Antigonish RCMP was involved in the search at 162 Hawthorne Street, Antigonish. Thereafter he was asked to transport Mr. LeBlanc from New Glasgow to Antigonish. He had contact with Mr. LeBlanc at 10:38 p.m. at New Glasgow police cells. He arrested Mr. LeBlanc for possession of cocaine for the purpose of trafficking, read him his Charter of Rights, right to counsel, and also from his police card a proper "right to silence" police caution. The Constable asked Mr. LeBlanc to explain in his own words the rights that the Constable had explained to him, and after Mr. LeBlanc did so, the Constable confirmed in his testimony specifically that Mr. LeBlanc had understood the "right to silence" caution.

[13] He took custody of Mr. LeBlanc, and his personal effects (including the cell phone which had been seized and wrapped in tinfoil, which he believed still contained the Sim card) at approximately 10:45 p.m.

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[2] I found Constables Stiles, Bezaire, Drake and Jessome- as well as Cpl. Meisner, credible, and I accept their evidence, unless I specifically indicate otherwise.

[14] He transported him directly to the Antigonish RCMP detachment making no stops on the way and only had "casual conversation" with Mr. LeBlanc. He handed Mr. LeBlanc over to Constable Jessome at 11:32 p.m. on November 4, 2017.

[15] Constable Jessome had been involved in the search of 162 Hawthorne Street Antigonish, where Mr. Michael Benoit was present. He arrested Mr. Benoit (and I infer he advised him specifically he was under arrest for possession of cocaine for the purposes of trafficking) and read a proper and fulsome Charter of Rights advisement, and "right to silence" caution, both of which Mr. Benoit understood. He did not wish to avail himself of a lawyer at that time.

[16] Constable Jessome spoke with Mr. LeBlanc at approximately 11:51 p.m. He reiterated that the reason for his arrest was possession of cocaine for the purpose of trafficking. He read to him a proper and fulsome Charter of Rights advisement, and the "right to silence" caution around midnight. Mr. LeBlanc indicated to each of these that he understood. He did not wish to call a lawyer initially, but at approximately 12:07 a.m. he decided "it would be in my best interests" and was given access to a telephone and spoke to duty counsel around 12:14 a.m. - Mitch LeBlanc. He was also provided an opportunity to contact his pregnant girlfriend, Jayda Benoit, before 12:49 a.m.

[17] The Constable confirmed that he had read to Mr. LeBlanc the primary "right to silence" caution and then the secondary police caution was read to him twice (at 12:10 a.m. - he may not have fully understood it - and then at 12:11 a.m.) and that Mr. LeBlanc indicated each of the latter two times he understood both warnings.

[18] No direct evidence was presented regarding Mr. LeBlanc's circumstances:

a. Between his initial arrival at the New Glasgow Regional Police Service building, which I infer would have been at approximately 9:45-10:00 p.m., November 4, 2017 and Constable Drake's involvement with him at 10:38 p.m.; and

b. Between (after being placed in cells in Antigonish by Constable Drake at approximately 11:32 p.m. ,and his initial contact with Constable Jessome at 11:51 p.m.) being returned to cells at 12:49 a.m. on November 5, 2017 and the next morning at approximately 10:00 a.m. when the Constable had his next contact with Mr. LeBlanc

[19] The Constable testified that he was "not sure" if Mr. LeBlanc had been fed, or who else if anyone had contact with him, after being placed in the cell after midnight, and before he was re-interviewed by Constable Jessome between 10:15 a.m. and 12:17 p.m. on November 5, 2017.[3]

[20] He took Mr. LeBlanc the 15 feet from the cell area to the interview room. No conversation took place. The videotaped statement contains all the conversations between the Constable and Mr. LeBlanc within the time interval, 10:17 a.m. – 12:17 p.m. on November 5, 2017.

The Crown's position

[21] The Crown accepts that it has the burden to prove beyond a reasonable doubt that Mr. LeBlanc's statement was given "voluntarily" as that has been interpreted in the case law including, *R. v. Oickle*, 2000 SCC 38, and *R. v. Singh*, 2007 SCC 48.

[22] It says there were no oppressive circumstances, or reasons otherwise to raise a reasonable doubt regarding Mr. LeBlanc's voluntariness or exercise of his free will in giving the statement. Moreover, Mr. LeBlanc was repeatedly advised of his "right to silence" cautions, and while the last one of those associated with his arrest was given at approximately 12:11 a.m. on November 5, 2017, Constable Jessome nevertheless reiterated that to him during the beginning of the videotaped statement:

> Question –… As you know, you did speak with a lawyer last night on the telephone, you had an opportunity to speak with the lawyer of your choice? And you can remember all those things that I read to you yesterday, and one of the things I read to you was the police warning.
>
> Answer – That's right.
>
> Question – And that's kind of one of the things you know, where you have no hope or fear of any threats or promise and all [those things].
>
> Answer – Yeah.
>
> …

[3] I discussed such gaps in the evidentiary record in *R. v. Shamsuddin*, 2017 NSSC 310, at paras. 32-50-presently under appeal CAC number 478407, not yet inscribed for hearing. I infer herein that: Mr. LeBlanc would have fallen asleep shortly after he was returned to cells at approximately 12:49 a.m., after speaking to duty counsel and his girlfriend Jayda; and that he likely slept for a significant portion of the time before he was removed from cells at approximately 10:00 a.m. on November 5, 2017. This unexplained gap in time does not in all the circumstances cause me to have a reasonable doubt about the voluntariness of Mr. LeBlanc giving the videotaped statement.

> Question – And then I read you the secondary police caution which basically said, if any other police officers have made any threats or promises to you to get you to say things…
>
> Answer – For sure.
>
> Question- … You didn't have to repeat those things, nor are you obliged to say anything further.
>
> Answer – Yeah.
>
> Question – But, again, anything you do say could be… [called before a Judge] in court essentially.
>
> Answer – Mm-Hmm
>
> Question – And that's another reason why we capture the video right…
>
> Answer – That's right.
>
> Question – … Is for evidentiary purposes. And so and, again, it's just – it's the fairest, best way to proceed.
>
> Answer – Right.

[23] The Crown further argues that if the court concludes that an imperfect caution was given to Mr. LeBlanc, that fact "should not be elevated to such an extent as to exclude a proper consideration of all relevant factors": *R. v. KPLF* 2010 NSCA 45, at para. 38. Justice Beveridge's concurring opinion provides a helpful commentary on the origins of the "right to silence" caution, and reminds us to consider disputes regarding the effect of the contents thereof on a detainee's right to silence in the context of the specific factual matrix of each individual case.

[24] Regarding the time gap between when Mr. LeBlanc was advised in a fulsome manner of his "right to silence" as late as 12:11 a.m. on November 5, 2017, and the less fulsome reference by Cst. Jessome, at 10:15 a.m., the Crown says the gap is not so lengthy or otherwise affected or exacerbated by other factors that the court should be left with a reasonable doubt that Mr. LeBlanc did not fully understand he had the right to remain silent during the statement taking – see the court's comments in *Singh,* at para. 31.[4]

[4] I note Mr. LeBlanc also had the benefit of speaking with duty counsel at approximately 12:14 a.m. on November 5, 2017 for an unspecified period of time before he was returned to cells at 12:49 a.m. It is a reasonable inference, and one I would draw, that duty counsel advised Mr. LeBlanc of his right to silence, and likely recommended he exercise his right to silence, at least until he had further contact with legal counsel- see para 33, *Singh*.

The position of Mr. LeBlanc

[25] In summary, Mr. LeBlanc argues that the statement he gave was not voluntary because:

1. There were circumstances of oppression that immediately preceded his giving the statement to Constable Jessome (i.e. he was left in a window-less cell at 12:49 a.m. with no way to know what time it was and therefore how long he had been in the cell; there is no evidence that he was provided any food or drink;
2. He was denied an understanding of his right to silence as a result of the time interval between being advised thereof by Constables Stiles, Drake and Jessome, and the taking of his statement between 10: 17 a.m. and 12:17 p.m. on November 5, 2017, in concert with an incomplete police caution given by Constable Jessome during the statement taking;
3. He was denied the protection of the right to silence, because Constable Jessome "would not stop demanding that Mr. LeBlanc to explain himself in spite of his many deferrals to legal counsel… [and he was] steamrolled over by further questions from Constable Jessome".

Why I conclude the statement is proved voluntary beyond a reasonable doubt

[26] There were no circumstances of oppression in this case.

[27] I am satisfied that Mr. LeBlanc slept for a significant period of time between 12:49 a.m. and 10 a.m. on November 5, 2017.

[28] Mr. LeBlanc made no mention of being hungry or thirsty during the two-hour interview, except when he asks for something for his bad heartburn[5] at approximately 11:58 p.m., Constable Jessome indicates he will get him some water, and leaves the room. Within minutes he has returned without any heartburn medication, but says he will keep looking for a heartburn relief over-the-counter. Then the Constable states:[6]

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[5] Pp. 198 – 199 Preliminary Inquiry Transcript – which I appreciate is only a helpful guide to the best evidence which is the videotaped statement.

[6] P. 212 – Preliminary Inquiry Transcript.

> Question – Well, I'll see if I can get you some of those [Zantac] when we're finished here. Okay. The guard was just asking me if you were hungry, she can prepare you a meal?
>
> Answer – yeah, yeah, I am hungry. (p 202 preliminary inquiry transcript)
>
> …
>
> Question – I'm just going to say the time is now 12:17 and we have to end the statement then, I'll take you back to your cell and the guard will prepare you a meal. Chicken okay?
>
> Answer – yeah.
>
> Question – she'll get you a meal, and you need the Zantac still?
>
> Answer – sure

[29] There is no evidence that Mr. LeBlanc had requested any food or drink before the interview. He requested none during the interview. He was offered food at the end of the interview.

[30] As to how he was treated generally during the interview, the following exchange is apposite:[7]

> Question – and it's important that we get the truth.
>
> Answer – no, I understand that.
>
> Question – and like I was saying, Coty, I wouldn't do something like that [have him arrested for trafficking in cocaine] without a firm belief that this offence has taken place. It wouldn't allow me to sleep at night.
>
> Answer – no.
>
> Question – because it's important that I treat you fairly and treat you with respect.
>
> Answer – that's right.
>
> Question – okay. And I hope that you feel that I have so far.
>
> Answer – no, I do.

[31] I have carefully watched the videotape. Mr. LeBlanc seems focused, calm, follows the conversation, and speaks intelligibly, even coyly at times, with Constable Jessome.

[32] Mr. LeBlanc makes no explicit reference therein to any purported oppressive circumstances.

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[7] Pp. 127 – 8, Preliminary Inquiry transcript

[33] Nor does a viewing of the videotape suggest that he is enduring oppressive circumstances.[8]

[34] I am fully satisfied that he completely understood that he had the right to silence and what that means. His repeated references to preferring to allow his legal counsel to address some of the questions put to him by Cst. Jessome confirm this.

[35] The suggestion that he was denied his right to remain silent by Constable Jessome's "steamrolling" over his repeated references that he would prefer to have legal counsel address certain matters discussed, does not by itself, or together with the other arguments made by his counsel, support his assertion that his right to remain silent was infringed or violated.

[36] Moreover, I disagree with defence counsel's characterization of Constable Jessome's conduct as "steamrolling" over Mr. LeBlanc's exercise of free will.

[37] While Constable Jessome continued to ask questions, as he was entitled to do, in spite of Mr. LeBlanc's selective choice to defer certain questions to legal counsel, he was polite, measured, appropriate, and calm at all times.

[38] Midway through the interview,[9] we find the following exchange:

> My representing myself is-is somewhat-somewhat could-could use some work for sure. But, you know, like where am I-where I-where am I trying to go with this? I'm not really worried about-about the other parties involved at the moment so much as I'm worried about trying to get my own situation…
>
> Q. And-and that's….
>
> A. …. Represented accurately because I'm not-I'm not, you know, like this-it's not like, you know, I've been around these round tables my whole life, you know, it's like-I-this is like, you know, the second time I've ever like-like been charged with anything about life, you know, like … (inaudible)… I might have possession for weed offence when I was 16 years old. Other than that, it was the coke thing two years ago and then now this charge, that's the …(inaudible)… I'll be on when she …(inaudible)… so, you know, I'm not very familiar with lawyering up and all that sort of thing, you know what I mean, like that's all new to me so I'm trying

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[8] In *R. v. MHB*, 2016 NSSC 129, at paras. 18-23, I have previously set out, and reconsider them here, the applicable general principles regarding whether the Crown has proved a statement to a person in authority was given voluntarily.

[9] Pp. 160 – 161, Preliminary Inquiry Transcript.

> to-trying to navigate the best I can but, like I say, I'm-I'm sorry for-for…(inaudible)…some quality of …(inaudible).
>
> Q. You don't need to apologize for anything.
>
> A. Yeah…(inaudible).
>
> Q. You don't have to apologize.
>
> A. And I want-I just want to try to say here, even though I said what I said when I came in…
>
> Q. Mm-hmm.
>
> A. ... and I could have left, I wanted to stay here so I can show you that I'm not intimidated or of talking to what I can but I'm, you know, in some respects…(inaudible)… or nothing like that, you know, that's-I guess that's where I'm coming from but, you know…

[39] I am satisfied beyond a reasonable doubt that Mr. LeBlanc's will to remain silent was not improperly overborne.

[40] Each time Mr. LeBlanc wished to defer the answer of a question to legal counsel, he was not even asking that the interview terminate, but rather deflecting the question by not answering it. He chose to do so – effectively he chose not to answer. He exercised his right to silence in those circumstances and others when he coyly answered the Constable's questions with questions, or other obfuscating verbal volleys.

[41] Justice Charron stated for the majority in *Singh*:

> 53 In some circumstances, the evidence will support a finding that continued questioning by the police in the face of the accused's repeated assertions of the right to silence denied the accused a meaningful choice whether to speak or to remain silent: see *Otis*. The number of times the accused asserts his or her right to silence is part of the assessment of all of the circumstances, but is not in itself determinative. The ultimate question is whether the accused exercised free will by choosing to make a statement: *Otis*, at paras. 50 and 54.

[42] Mr. Singh asserted his right to silence unequivocally 18 times – "powerless to end his interrogation, [he] asked, repeatedly, to be returned to his cell. Yet he was not permitted to do so until he capitulated and made the incriminating statements impugned on this appeal"; per Fish J. for the Dissent at para. 58.

[43] Yet in that case, on those facts, the Supreme Court of Canada Majority confirmed that Mr. Singh's statement was admissible.

[44] Mr. LeBlanc is arguing that his statement was not given voluntarily. I specifically asked counsel whether Mr. LeBlanc was relying upon Section 7 of the Charter, and counsel confirmed he was not. I took that to mean that counsel appreciated that there is a duality of relevant common law principles and principles arising from Section 7 of the Charter, when a detainee's statement has been given to a known person in authority.

[45] As the Majority in *Singh* re-iterated:

> 36 On the question of voluntariness, as under any distinct s. 7 review based on an alleged breach of the right to silence, the focus is on the conduct of the police and its effect on the suspect's ability to exercise his or her free will. The test is an objective one. However, the individual characteristics of the accused are obviously relevant considerations in applying this objective test.
>
> 37 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 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. It is important to understand, however, the proper scope of the constitutionalized right to silence, a question that I will address in a moment. As I will explain, Mr. Singh's real bone of contention lies in the scope of the right to silence now constitutionally entrenched under s. 7 of the *Charter*. However, before I do so, more needs to be said on the interrelation between the confessions rule and the residual protection afforded under s. 7 of the *Charter*.
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> 38 Much concern was expressed on this appeal about this overlap between the confessions rule and s. 7 of the *Charter*. However, Mr. Singh's argument that his *Charter* right to silence is somehow rendered meaningless by an approach that recognizes the full breadth of the contemporary confessions rule is misguided. First, there is nothing unusual in the fact that common law rules develop along *Charter* lines. The common law confessions rule is no exception. Second, the expanded approach adopted in *Oickle* does not negate, but rather *enhances*, the protection of Mr. Singh's right to silence. As stated already, under the common law rule, the onus is on the Crown to prove voluntariness beyond a reasonable doubt. The mere presence of a doubt as to the exercise of the detainee's free will in making the statement will suffice to ground a remedy. And, by contrast to remedies under the *Charter*, which are subject to the court's discretion [page428] under s. 24(2), a violation of the confessions rule always warrants exclusion. In *Oickle*, Iacobucci J. noted the wider protection afforded under the confessions

rule in explaining why he rejected the suggestion that the *Charter* should be regarded as subsuming the common law rules. His words bear repeating:

> One possible view is that the *Charter* subsumes the common law rules.
>
> But I do not believe that this view is correct, for several reasons. First, the confessions rule has a broader scope than the *Charter*. For example, the protections of s. 10 only apply "on arrest or detention". By contrast, the confessions rule applies whenever a person in authority questions a suspect. Second, the *Charter* applies a different burden and standard of proof from that under the confessions rule. Under the former, the burden is on the accused to show, on a balance of probabilities, a violation of constitutional rights. Under the latter, the burden is on the prosecution to show beyond a reasonable doubt that the confession was voluntary. Finally, the remedies are different. The *Charter* excludes evidence obtained in violation of its provisions under s. 24(2) only if admitting the evidence would bring the administration of justice into disrepute: see *R. v. Stillman*, [1997] 1 S.C.R. 607, *R. v. Collins*, [1987] 1 S.C.R. 265, and the related jurisprudence. By contrast, a violation of the confessions rule always warrants exclusion.
>
> These various differences illustrate that the *Charter* is not an exhaustive catalogue of rights. Instead, it represents a bare minimum below which the law must not fall. A necessary corollary of this statement is that the law, whether by statute or common law, can offer protections beyond those guaranteed by the *Charter*. The common law confessions rule is one such doctrine, and it would be a mistake to confuse it with the protections given by the *Charter*. While obviously it may be appropriate, as in *Hebert, supra*, to interpret one in light of the other, it would be a mistake to assume [page 429] one subsumes the other entirely. [Emphasis added; paras. 29-31.]

39 Further elaboration is required here on the warning that it would be "a mistake to assume one subsumes the other entirely". For the reasons I have already expressed, **the confessions rule effectively subsumes the constitutional right to silence in circumstances where an obvious person in authority is interrogating a person who is in detention because, in such circumstances, the two tests are functionally equivalent.** However, this does not mean that the residual protection afforded to the right to silence under s. 7 of the *Charter* cannot supplement the common law. Professors Paciocco and Stuesser explain this interrelationship between the common law rule and s. 7 succinctly as follows:

> 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 [page430] 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.]

(*The Law of Evidence* (4th ed. 2005), at pp. 304-5)

40 As noted by Professors Paciocco and Stuesser, the residual protection afforded to the right to silence under s. 7 has been recognized in a number of circumstances. Section 7 may be found to have a role to play in yet other contexts not mentioned in the passage excerpted above. Cases of "detained statements", as one example where s. 7 goes beyond the voluntariness rule, is the most relevant on this appeal. What the authors are alluding to here is the principle in *Hebert* whereby, as they explain it, "the right to silence of a detained person is contravened where an undercover state agent (either a police officer or an informant planted by the police) actively elicits a statement from the accused" (p. 307). This is an example where s. 7 offers protection beyond the confessions rule because the latter is not triggered in circumstances such as *Hebert*. The confessions rule only applies in respect of statements made to a person in authority. The undercover agent, who is unknown to the accused to be acting as a state authority, does not fall in that category. It is well established that the test for determining who is a "person in authority" is not categorical; rather, it is contextual. It depends largely on the reasonable perception of the accused. The test was reiterated recently in *R. v. Grandinetti*, [2005] 1 S.C.R. 27, 2005 SCC 5: "The operative question is whether the accused, based on his or her [reasonable] perception of the recipient's ability to influence the prosecution, believed either that refusing to make a statement to the person would result in prejudice, or that making one would result in favourable treatment" (para. 38). This approach is rooted in the rule's traditional concern about the reliability of confessions, the

rationale being that [page431] there is a greater risk that an accused may be influenced to give a false confession to a person perceived to have the authority to influence the course of the investigation or the proceedings.

41 I now turn to the scope of the s. 7 *Charter* right to silence.

3.3.*The Section 7 Right to Silence*

42 As stated earlier, Mr. Singh submits that the law in Canada provides inadequate protection during custodial interrogations. Police officers, he states, should be required to inform the detainee of his or her right to silence and, absent a signed waiver, to refrain from questioning any detainee who states that he or she does not wish to speak to the police. In effect, Mr. Singh asks that the Court impose on the police a correlative obligation, comparable to s. 10(*b*) of the *Charter*, to stop questioning a suspect whenever he or she clearly asserts the right to silence. Such a bright-line rule would undoubtedly have the advantage of certainty. However, for reasons that follow, I cannot accede to this suggestion.

…

48 It is clear that Mr. Singh's argument on his s. 7 application is based on an expanded notion of the right to silence that does not form part of Canadian law. With respect, my colleague Justice Fish effectively endorses this expanded notion of the right to silence when he poses the question on this appeal as being "whether 'no' means 'yes' where a police interrogator refuses to take 'no' for an answer from a detainee under his total control" (para. 55).

[My emphasis added]

Conclusion

[46] Upon consideration of the testimony presented, a careful viewing of the videotaped statement, and arguments made by counsel, I am satisfied beyond a reasonable doubt that Mr. LeBlanc throughout his videotaped statement gave all the utterances therein voluntarily. He exercised free will throughout.

[47] His statement is admissible as evidence against him alone in this trial where he is jointly charged with Michael Benoit.

Rosinski, J.