

SUPREME COURT OF NOVA SCOTIA
Citation: R. v. MacKinnon, 2013 NSSC 356

Date: 20131108
Docket: Hfx No. 414703A
Registry: Halifax

Between:

Blair William MacKinnon

Appellant

v.

Her Majesty the Queen

Respondent

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Judge: The Honourable Justice Michael J. Wood

Heard: October 9, 2013 in Halifax, Nova Scotia

Written Decision: November 8, 2013

Subject: Criminal Law - s. 10(b) *Canadian Charter of Rights and Freedoms* - right to counsel

Summary: At trial, the Appellant was convicted of failing breathalyzer. Sole defence was alleged breach of right to counsel. Room where call made to legal counsel was not sound-proof and Appellant could hear R.C.M.P. officers outside of room. He made no complaint at the time. Trial judge concluded that there was an onus on accused to notify police if they felt that right to consult counsel in

private was infringed.

Issue:

Did the trial judge err in imposing a burden on an accused to object at the time if they believed their right to consult counsel in private was infringed?

Result:

The Court reviewed the case law concerning the right to counsel. It concluded that belief in lack of privacy must be shown to be reasonable in the circumstances. Whether there was an objection at the time is one factor to consider, but is not determinative. Trial judge erred in placing onus to object on accused and failing to consider the reasonableness of his belief. Appeal allowed and remitted for new trial.

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