

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* G.T.D., 2018 SCC 7, [2018] 1 S.C.R. 220 | **Appeal heard:** February 14, 2018  **Judgment rendered:** February 14, 2018  **Docket:** 37756 |

Between:

**G.T.D.**

Appellant

and

Her Majesty The Queen

Respondent

**Coram:** Wagner C.J. and Abella, Côté, Brown and Martin JJ.

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| **Reasons for Judgment:**  (paras. 1 to 6) | Brown J. (Wagner C.J. and Abella, Côté, and Martin JJ. concurring) |

R. *v.* G.T.D., 2018 SCC 7, [2018] 1 S.C.R. 220

G.T.D. Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.* G.T.D**.

2018 SCC 7

File No.: 37756.

2018: February 14.[[1]](#footnote-1)

Present: Wagner C.J. and Abella, Côté, Brown and Martin JJ.

on appeal from the court of appeal for alberta

*Constitutional law — Charter of Rights — Right to counsel — Remedy — Exclusion of evidence — Police officer delivering standard caution after accused invoked his right to counsel — Wording of caution eliciting incriminatory statement from accused — Trial judge refusing to exclude evidence resulting from statement and convicting accused of sexual assault — Court of Appeal holding that accused’s Charter right to counsel was breached but that evidence should not be excluded — Standard caution violating police’s duty to hold off and breaching right to counsel — Breach warranting exclusion of evidence — New trial ordered — Canadian Charter of Rights and Freedoms, ss. 10(b), 24(2).*

**Cases Cited**

**Referred to:** *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353; *R. v. Prosper*, [1994] 3 S.C.R. 236; *R. v. Fearon*, 2014 SCC 77, [2014] 3 S.C.R. 621.

**Statutes and Regulations Cited**

*Canadian Charter of Rights and Freedoms*, ss. 10(*b*), 24(2).

APPEAL from a judgment of the Alberta Court of Appeal (Slatter, Veldhuis and Schutz JJ.A.), 2017 ABCA 274, 40 C.R. (7th) 25, 57 Alta. L.R. (6th) 213, [2017] A.J. No. 879 (QL), 2017 CarswellAlta 1549 (WL Can.), affirming the conviction of the accused for sexual assault. Appeal allowed, Wagner C.J. dissenting.

Ian Runkle, for the appellant.

Jason R. Russell, for the respondent.

The judgment of the Court was delivered orally by

1. Brown J. — G.T.D. was convicted for the sexual assault of a previous intimate partner and appeals as of right on the strength of a dissent at the Court of Appeal of Alberta. The dissenting judge would have ordered a new trial on the ground that the delivery of the Edmonton Police Service’s standard caution breached G.T.D.’s right to counsel under s. 10(*b*) of the *Canadian Charter of Rights and Freedoms* and that the inculpatory statement G.T.D. offered in response should be excluded under s. 24(2) of the *Charter* according to the test set out in *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353. The majority at the Court of Appeal agreed that G.T.D.’s right to counsel had been breached, but dismissed the appeal on the basis that the statement should not be excluded.
2. The right to counsel under s. 10(*b*) of the *Charter* obliges police to “‘hold off’ from attempting to elicit incriminatory evidence from the detainee until he or she has had a reasonable opportunity to reach counsel” (*R. v. Prosper*, [1994] 3 S.C.R. 236, at p. 269). The first issue in this appeal is whether the question “Do you wish to say anything?”, asked at the conclusion of the standard caution used by the Edmonton Police Service after G.T.D. had already invoked his right to counsel, violated this duty to “hold off”. We are all of the view that it did, because it elicited a statement from G.T.D.
3. The next issue is whether this breach warrants the exclusion of G.T.D.’s statement under s. 24(2) of the *Charter*. A majority of the Court is of the view that it does, and relies substantially on the reasons of Justice Veldhuis at the Court of Appeal. As she noted at para. 83 of her reasons, the Crown had ample opportunity to call further evidence about Edmonton Police Service training or policy, but chose not to do so. The majority would therefore allow the appeal and order a new trial.
4. The Chief Justice would dismiss the appeal on the basis that the breach does not warrant the exclusion of G.T.D.’s statement. The appellant argued that the use of the question “Do you wish to say anything?” as part of the standard caution results in a systemic pattern of *Charter* breaches. While such a pattern may aggravate the seriousness of the *Charter*-infringing state conduct, here, the pattern did not, in the Chief Justice’s view, involve the abuse of well-settled rules or negligence in determining what those rules mandated. The duty to “hold off” itself is well-settled.
5. In the circumstances, whether this form of caution falls within its scope was, in the Chief Justice’s view, not so certain as to deprive the police error, systemic as it may have been, of the badges of reasonableness or good faith. Nor, in his view, is this a case where the police have improperly chosen “the least onerous path [through a *Charter*] gray area” (*R. v. Fearon*, 2014 SCC 77, [2014] 3 S.C.R. 621, at para. 94).
6. The Chief Justice concludes that the fact that the question was accompanied by clear information about G.T.D.’s choice to speak to the police attenuated the impact of the state conduct on the *Charter*-protected interests of the accused to the point where, balanced with the seriousness of the breach and society’s interest in adjudication on the merits, admission of the statement would not bring the administration of justice into disrepute.

Judgment accordingly.

Solicitors for the appellant: Runkle Law, Edmonton.

*Solicitor for the respondent: Alberta Justice and Solicitor General, Appeals, Education & Prosecution Policy Branch, Edmonton.*

1. A formal judgment was issued on February 19, 2018 and revised on April 6, 2018, to amend the French version of paras. 2, 4 and 5. The amendments are included in this judgment. [↑](#footnote-ref-1)