

CANADA / JUDGMENT

R. v. Manuel

2025 BCSC 1675

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1675 R. v. Manuel

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Manuel,

2025 BCSC 1675

Date: 20250516

Docket: 108882-2

Registry: Kamloops

Rex

v.

Jennifer Lindsay Manuel and Alina May Ortloff

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Before: The Honourable Mr. Justice Doyle

Oral Reasons for Judgment

(Section 24(2) - Voir Dires #1 and #2)

Counsel for the Crown:

J. Rutherford

Counsel for the Accused Jennifer Manuel:

L.J. Helps

E. Wyllie

For the Accused Alina Ortloff:

No appearance

Place and Date of Trial/Hearing:

Kamloops, B.C.

February 10, 2025

Place and Date of Judgment:

Kamloops, B.C.

May 16, 2025

THE COURT:

- [1] I will note there is still a ban on publication in this matter since the trial proper has not yet started. We are still in the voir dire stage.
- [2] These are oral reasons. I reserve the right to edit them for clarity and grammar but the reasoning and the result will not change.
- [3] Ms. Manuel is charged on an indictment preferred April 1, 2022, alleging three counts of her possessing controlled substances for the purpose of trafficking on March 14, 2020, at or near Kamloops, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19: Count 1, methamphetamine; Count 2, fentanyl; and Count 3, cocaine.
- [4] The charges arise from a vehicle stop and subsequent arrest of Ms. Manuel on that date and the search and seizure from her and the vehicle in which she was a front seat passenger at the time of the arrest.
- [5] Two others present in the vehicle were also arrested that day. One of those, Ms. Ortloff, was a co-accused on this indictment until the Crown directed a stay of proceedings with regard to her on November 13, 2024. The third person present was not featured on the above indictment.
- [6] On September 24, 2024, as a result of applications by Ms. Manuel and Ms. Ortloff, I decided that the arrests of each of them were unlawful and that the subsequent search and seizures were also unlawful. My reasons for so finding were provided November 13, 2024, and they are indexed at 2024 BCSC 2275. As noted above, the charges against Ms. Ortloff were stayed. Those against Ms. Manuel are extant.

- [7] Ms. Manuel applies for the exclusion from trial of the evidence from the vehicle and from her pursuant to s. 24(2) of the Charter. That includes all alleged controlled substances and paraphernalia which underlie the charges in the indictment.
- [8] Though the parties' submissions vary, there is no issue about the principles set out in *R. v. Grant*, 2009 SCC 32,[Grant]. Both counsel also note more recent decisions of the Supreme Court including *R. v. Tim*, 2022 SCC 12,[Tim].
- [9] In *Tim*, paragraph 74:
- [74] Section 24(2) of the Charter is triggered where evidence is "obtained in a manner" that violates an accused's Charter rights. A s. 24(2) inquiry examines the impact of admitting evidence obtained in breach of the Charter on public confidence in the justice system over the long term, based on three lines of inquiry: (1) the seriousness of the Charter-infringing state conduct; (2) the impact of the breach on the accused's Charter-protected interests; and (3) society's interest in the adjudication of the case on the merits. A court's task is to balance the assessments under these three lines of inquiry "to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute" [citations omitted].
- [10] Paragraph 75:
- [75] Section 24(2) does not create an automatic exclusionary rule when evidence is obtained in breach of a Charter right. The accused bears the onus of establishing that, having regard to all the circumstances, the admission of the evidence would bring the administration of justice into disrepute [citations omitted].
- [11] Recently in *R. v. Jeeves*, 2025 BCSC 133, Madam Justice Ker noted, at paragraph 18, that the court must first determine if there is a sufficient nexus between the Charter right which was infringed or denied and the evidence for which the accused seeks exclusion, noting paragraph 78 of *Tim*.
- [12] Crown counsel in her usual fair manner concedes that the threshold test is met and that as such this Court must review the three branches of the *Grant* 24(2) analysis, and that is set out in the Crown's sur-reply at paragraph five.

Positions of the Parties

- [13] Counsel for the accused stresses that the circumstances here are serious on the first branch. She notes that Constable Lapierre's approach to the matter was not merely inadvertent or a minor violation, but rather a wilful or reckless disregard of the right to be free from arbitrary detention. She says that it is of no matter the arrest was not effected by Constable Lapierre, submitting that it is clear Constable Lapierre made the decision that caused other officers to effect the arrest.

- [14] With respect to the second branch, counsel for Ms. Manuel submits that the arrest on a busy highway was dangerous, noting that her client is an Indigenous woman who had been subject to months of surveillance including on her own property the final day, including not just observation, but video recording of her on her property and in her residence. Counsel acknowledges the reduced expectation of privacy in a vehicle and the minimal intrusion of a vehicle search. However, she notes that the evidence was only discoverable by virtue of the s. 9 infringement or denial, citing *Grant*, at paragraphs 122 and 137.
- [15] With respect to the third branch, defence counsel does not minimize the impact on the prosecution if the evidence is excluded and concedes the admission of the evidence would better serve the truth-seeking function of the criminal trial process. However, she relies on *R. v. Le*, 2019 SCC 34 at paragraph 140 [Le], which states:
- [140] Where the state seeks to benefit from the evidentiary fruits of Charter-offending conduct, our focus must be directed not to the impact of state misconduct upon the criminal trial, but upon the administration of justice. Courts must also bear in mind that the fact of a Charter breach signifies, in and of itself, injustice, and a consequent diminishment of administration of justice. What courts are mandated by s. 24(2) to consider is whether the admission of evidence risks doing further damage by diminishing the reputation of the administration of justice -- such that, for example, reasonable members of Canadian society might wonder whether courts take individual rights and freedoms from police misconduct seriously. We endorse this Court's caution in *Grant*, at para. 68, that, while the exclusion of evidence "may provoke immediate criticism", our focus is on "the overall repute of the justice system, viewed in the long term" by a reasonable person, informed of all relevant circumstances and of the importance of Charter rights.
- [16] Counsel for Ms. Manuel concludes that on a final balancing the first two factors weigh heavily in favour of exclusion and that a right thinking person would be concerned that individual rights were overborne by a police officer willing to ignore exculpatory behaviour inconsistent with his desire to make an arrest.
- [17] Crown counsel first notes that the overall purpose of the inquiry is as discussed in *Tim*, at paragraph 98, with respect to the final balancing of the three lines of inquiry, which is prospective and:
- ... aims to ensure that evidence obtained through a Charter breach "does not do further damage to the repute of the justice system" [citation omitted]. The balancing is also societal: the goal is not to punish the police, but rather to address systemic concerns by analyzing "the broad impact of admission of the evidence on the long-term repute of the justice system" (*Grant*, at para. 70; see also *Le*, at para. 139).

- [18] Crown counsel cites *R. v. Zacharias*, 2023 SCC 30 [Zacharias], where an initial traffic stop led to a series of unlawful searches and three successive arrests based on those searches, all of which were found to be consequential to the initial unlawful search. Crown counsel notes that in this case the unlawful search can be considered consequential to the unlawful arrest.
- [19] With regard to the first factor, Crown counsel relies upon *R. v. Chapman*, 2020 SKCA 11, [Chapman]. At paragraph 104 of Chapman, citing *R. v. Harrison*, 2009 SCC 34, at paragraph 23, the Court of Appeal stated:
- [104] . . . Charter-infringing police conduct can run the gamut from blameless, to negligent, to conduct that demonstrates a blatant disregard for Charter rights. What is important is not the legal label attached to the police conduct, but rather the proper placement of it along the fault line.
- [20] In that case, the Court of Appeal found the trial judge had erred in finding the arrest and search lawful. In conducting the consequent s. 24(2) analysis on appeal, the court found that the officers' belief was not "far off". It found they "clearly had, at the very least, a reasonable suspicion", even though their belief was not objectively reasonable. Moreover, the search conducted after arrest was done in a reasonable manner. The court concluded the police conduct fell at the lower end of the culpability spectrum and did not pull towards exclusion.
- [21] The Crown submits that this case is factually similar to Chapman. The Crown stresses that Constable Lapierre's testimony is not the breach and that there was reason for Constable Lapierre to be suspicious. The Crown says the grounds fell short but they did exist. Moreover, the Crown says the arrest and search were done in a reasonable manner.
- [22] The Crown summarizes this breach as between very serious breaches in *Beaver*, 2022 SCC 54 and *Le* and the moderate to weak breaches in *Zacharias* and *Chapman*, ultimately submitting the seriousness pulls moderately toward exclusion.
- [23] With regard to the second factor, Crown counsel relies upon *R. v. Fedan*, 2016 BCCA 26, with respect to the reduced expectation of privacy in a vehicle, as well as noting the more intrusive search of the vehicle in *Zacharias* where duffel bags were searched, referencing the privacy interest in duffel bags as more engaged than any privacy interest one might have in a propane tank. Alleged controlled substances were found in a propane tank in this case.
- [24] The Crown contends that the ongoing investigation of Ms. Manuel was not intrusive since she was already subject to some degree of state oversight after her release and she was a passenger in a vehicle when arrested.
- [25] In summary, the Crown submits that this branch weakly favours exclusion.
- [26] With regard to the third factor, the Crown highlights the reliability of the evidence and the importance of the evidence to the Crown's case, noting paragraph 142 of *Le*:

- [142] The third line of inquiry, society's interest in an adjudication of the case on its merits, typically pulls in the opposite direction -- that is, towards a finding that admission would not bring the administration of justice into disrepute. While that pull is particularly strong where the evidence is reliable and critical to the Crown's case [citation omitted], we emphasize that the third line of inquiry cannot turn into a rubber stamp where all evidence is deemed reliable and critical to the Crown's case at this stage. The third line of inquiry becomes particularly important where one, but not both, of the first two inquiries pull towards the exclusion of the evidence. Where the first and second inquiries, taken together, make a strong case for exclusion, the third inquiry will seldom if ever tip the balance in favour of admissibility [citation omitted]. Conversely, if the first two inquiries together reveal weaker support for exclusion of the evidence, the third inquiry will most often confirm that the administration of justice would not be brought into disrepute by admitting the evidence.
- [27] The Crown submits the evidence at issue here is real evidence that is entirely reliable and, as set out with bold emphasis in the Crown's written submissions "is the Crown's case". The Crown notes that this is a serious offence involving notorious drugs including fentanyl in large quantities and for which the maximum sentence is life imprisonment. Crown counsel submits that on balance society has an overriding interest seeing this case adjudicated on its merits and the other two factors do not overwhelm that interest.

Discussion

- [28] I found that the arrest of the two accused, Ms. Manuel and Ms. Ortloff, infringed or denied their respective rights pursuant to s. 9 and the search of them and the vehicle was unlawful and denied their respective rights pursuant to s. 8 of the Charter. Constable Lapierre made the decision to arrest the accused. The vehicle was stopped on a busy highway and the arrests were effected. The vehicle was towed from that highway to be searched.
- [29] Some issue was taken with the location of the arrest on a busy highway and the delay searching the vehicle due to removal of the vehicle from that location to conduct a search. I find the explanations of the police in these respects were reasonable. The removal of the vehicle for the search at a different location made sense in the circumstances, and although this delayed the search and documentation of the seizure of evidence, the temporal connection remained. The search itself was unremarkable. It was conducted in a reasonable manner.
- [30] The police did not obtain a warrant for the search of the vehicle relying upon the search being incident to arrest. As such, since the arrests were unlawful the Crown conceded, properly in my view, that the search was unlawful.
- [31] In Chapman at paragraph 96, the discovery of the cocaine in the vehicle arose directly from violations of ss. 9 and 8, and the court found the appropriate remedy for consideration was exclusion of the evidence pursuant to s. 24(2). The court ultimately admitted the evidence.

- [32] On a review of the entire chain of events and consistent with the reasoning in Chapman, I find that the breaches and the discovery of the evidence were part of the same transaction connected temporally, contextually and causally. Further to the principle summarized at paragraph 78 of Tim, I find that on a purposive and generous approach the evidence seized was obtained in a manner that infringed or denied the above rights and that it triggers s. 24(2).
- [33] As such I will move on to the evaluation prescribed by Grant.
- [34] In R. v. Bottomley, 2023 BCSC 603, Justice Devlin provided a succinct summary of the evaluation at paragraphs 37 to 40:
- [37] In Grant, the Supreme Court of Canada identified three lines of inquiry for determining whether evidence obtained in a Charter-infringing manner should be excluded under s. 24(2) of the Charter. The factors to consider and weigh are (at para. 71):
- (1) the seriousness of the Charter-infringing state conduct (admission may send the message the justice system condones serious state misconduct),
 - (2) the impact of the breach on the Charter-protected interests of the accused (admission may send the message that individual rights count for little), and
 - (3) society's interest in the adjudication of the case on its merits.
- [38] These factors do not operate as a disjunctive three-part test. There are no particular findings under the three lines of inquiry that mandate particular results, and it "is not simply a question of whether the majority of the relevant factors favour exclusion in a particular case": [citation omitted]. The balancing mandated by s. 24(2) is "qualitative in nature and therefore not capable of mathematical precision": [citation omitted].
- [39] Rather, courts must assess and balance considerations under all three factors to determine whether, on balance and having regard to all the circumstances, admitting the impugned evidence would bring the administration of justice into disrepute in the long-term. In doing so, the trial judge assumes the objective perspective of a reasonable person, informed of all relevant circumstances and the values underlying the Charter. [Citation omitted].
- [40] The Grant factors look to the long-term integrity of, and public confidence in, the justice system: [citations omitted]. The focus of s. 24(2) is also prospective. It starts from the proposition that damage has already been done to the public's confidence in the administration of justice by the Charter violation or violations that gave rise to the s. 24(2) analysis. Thus, the Grant analysis concerns itself with whether admitting the impugned evidence will do further damage to the repute of the justice system: [citation omitted]. Finally, s. 24(2) has a societal focus, and is aimed not at punishing the police or compensating the accused, but rather at systemic concerns, focusing on the broad impact of the admission of the evidence on the long-term repute of the justice system: [citation omitted].

Seriousness of the Charter infringing state conduct

[35] With regard to seriousness, at paragraphs 52 to 53, Devlin, J. states:

[52] The operative question under the first line of inquiry is whether the police conduct at issue "involve[d] misconduct from which the court should be concerned to dissociate itself": [citation omitted]. The premise of this inquiry is "that inadvertent, technical or otherwise minor infringements impact less upon the rule of law and, therefore, upon the reputation of the administration of justice than wilful or reckless disregard of Charter rights": [citations omitted].

[53] Most recently, the Supreme Court of Canada reviewed the jurisprudence on this line of inquiry in *R. v. McColman*, 2023 SCC 8:

[58] In evaluating the gravity of the state conduct at issue, a court must "situate that conduct on a scale of culpability": [citations omitted]. As Justice Doherty observed in *R. v. Blake*, [citation omitted], "the graver the state's misconduct the stronger the need to preserve the long-term repute of the administration of justice by disassociating the court's processes from that misconduct". To properly situate state conduct on the "scale of culpability", courts must also ask whether the presence of surrounding circumstances attenuates or exacerbates the seriousness of the state conduct: [citation omitted]. Were the police compelled to act quickly in order to prevent the disappearance of evidence? Did the police act in good faith? Could the police have obtained the evidence without a Charter violation? Only by adopting a holistic analysis can a court properly situate state conduct on the scale of culpability.

[36] As noted, Crown counsel relies upon Chapman submitting that the seriousness here pulls moderately toward exclusion.

[37] Chapman is distinct, in my view, for a few reasons.

[38] In Chapman, there was a concerted effort among the police officers involved and after discussion "they felt that they had reasonable grounds" (paragraph 15). They decided that Constable Hancock would effect the arrest. The Court of Appeal noted, at paragraph 108, that the officers subjectively believed they had met the reasonable grounds to believe standard, and though the court found that they had not, they were not "far off". The court noted that:

They did not make a rash decision. They discussed the information they had, contemplated what it meant, and all honestly believed that it supported an arrest.

[39] In short, the court accepted that the officers in Chapman subjectively believed they had grounds to arrest and the Court of Appeal went on to assess the objective reasonableness of that subjective belief.

[40] I did not accept that Constable Lapierre had the subjective grounds he alleged he had. I found his evidence suspicious, unreliable and tailored to support his alleged grounds. He did not consult with any other officers.

[41] This is not a joint decision by the team after consideration of the totality of the circumstances and their respective training and experience. This was not like Chapman where the Court of Appeal was considering that the accepted subjective belief was not "far off" when it came time to assess the reasonableness of that accepted subjective belief.

[42] For convenience, I will set out several passages from my earlier decision finding violations of ss. 9 and 8:

[126] Quite frankly, I cannot rely upon Cst. Lapierre's evidence of his grounds from March 14, 2020.

...

[130] On the constellation of Cst. Lapierre's evidence, I lack confidence in his stated belief that he had grounds for the arrest of both accused. I am suspicious of his evidence, and overall, cannot rely upon it.

...

[132] On the circumstances of this case, I am not prepared to accept that there were lawful grounds for the arrest of either accused.

[133] Cst. Friesen did make that broadcast at 12:08 p.m. I find on all the evidence that Cst. Lapierre ignored it, since like so many other instances in this investigation, it did not fit his theory. It was more evidence that was exculpable, neutral or equivocal.

[134] I do not accept that the grounds Cst. Lapierre alleges he had are reliable or accurate. His evidence was tailored to support his alleged grounds.

[43] I agree with Crown counsel that the focus at this stage of the inquiry is the seriousness of the breaches, not Constable Lapierre's testimony about them. However, that testimony led me to determine I did not have confidence in Constable Lapierre's stated belief that he had grounds for the arrest of Ms. Manuel. I did not accept the grounds he alleged he had, finding his evidence was tailored to support those alleged grounds before this Court.

Constable Lapierre's testimony included his training and experience in drug investigations. I found that Constable Lapierre's conduct resulted in an unlawful arrest and an unlawful search. In my view, that conduct constitutes a major and deliberate departure from decades long Charter standards designed to respect the rule of law and govern state conduct. The fact that the unlawful search was conducted reasonably does little to detract from the seriousness.

- [44] Constable Lapierre's conduct is that from which the court should disassociate itself. This is not a matter of punishing the police. It is a matter of preserving the public confidence in the rule of law and its processes, including the arrest without warrant of any citizen, including Ms. Manuel.
- [45] I situate this case at the serious end of the spectrum. This factor strongly favours the exclusion of the evidence in this case.

Impact on Charter protected interests

- [46] I cite Devlin J. in Bottomley with respect to Charter protected interests:
- [78] The second line of inquiry focuses on the seriousness of the state's Charter-infringing conduct from the accused's perspective. The court must identify the interests protected by the relevant Charter rights and evaluate "how seriously the breaches affected those interests": see Tim at para. 90. Under this analysis, the court must examine the interests engaged by the infringed right and the degree to which the Charter infringement impacts or intrudes upon those interests: [citation omitted]. Yet, as Ker J. noted in Moonie, this line of inquiry "encompasses not only the impact of the breach on the accused but also focuses on society's interest in respect for Charter rights": [citation omitted].
- [79] Impacts of a breach on an accused's Charter-protected interests, like a breach's seriousness, must be situated on a spectrum. Impacts can range from those "that are fleeting, technical, transient, or trivial, to those that are profoundly intrusive or that seriously compromise the interests underlying the rights infringed": [citations omitted]. For instance, a search that intrudes on an area in which the individual reasonably enjoys a high expectation of privacy, or that demeans their dignity, is more serious than one that does not: [citation omitted]. Placing the impacts of a breach on a spectrum is important because the more serious the impact on the accused's protected interests, the greater the risk that the admission of the evidence may send a signal that Charter rights count for very little, bringing the administration of justice into disrepute: [citation omitted].
- [80] Although they often work in tandem, and call for a similar methodology, the first and second lines of inquiry are distinct. The Court recently discussed this point in McColman:
- [59] It should be noted at the outset that the first and second lines of inquiry are distinct. The first line of inquiry evaluates the state conduct itself, while the second line of inquiry goes further and assesses the impact of the state conduct on the accused's Charter-protected interests. This Court has noted that "[w]hile the first two lines of inquiry typically work in tandem in the sense that both pull towards exclusion of the evidence, they need not pull with identical degrees of force in order to compel exclusion": [citation omitted]. As noted in R. v. Lafrance, 2022 SCC 32, at para. 90, "it is the cumulative weight of the first two lines of inquiry that trial judges must consider and balance against the third line of inquiry when assessing whether evidence should be excluded". In certain situations, only one of the first two lines of inquiry will pull towards exclusion of the evidence. State conduct that is not

particularly serious may nonetheless heavily impact the accused's Charter-protected interests. Conversely, state conduct that is egregious may minimally impact the accused's Charter-protected interests. Courts must be careful not to collapse the first two lines of inquiry into one, unstructured analysis.

[47] Chapman also provides useful context to the facts in this case at paragraphs 118-122:

[118] Section 9 guards against arbitrary detention. Its purpose is to protect individual liberty from unjustified state interference. As the Court noted in *Le* (at para 152): "Underlying this purpose is an uncontroversial principle that is inherent to a free society founded upon the rule of law: 'government cannot interfere with individual liberty absent lawful authority to the contrary'".

[119] Section 8 protects privacy and the principle that the state will not interfere with an individual's privacy except to the extent permitted by law. Infringements of s. 8 in circumstances denoting a high expectation of privacy tend to favour exclusion of evidence, while infringements of lesser interests will not pull as strongly towards exclusion: [citations omitted].

[120] In this case, even though Mr. Chapman had a lower expectation of privacy in his vehicle than he would have, for instance, in his home [citation omitted], I am still of the view that the breaches in this case had a serious impact on his s. 8 rights.

[121] The s. 10(a) breach, in and of itself, had only a minor impact. Although one can imagine that Mr. Chapman would have experienced stress from not being told of the reason for his stop for more than 30 minutes, the lack of information provided to him did not assist the police in gathering other evidence or cause Mr. Chapman to inadvertently incriminate himself.

[122] The impact of the breaches of Mr. Chapman's rights under ss. 8 and 9 was, however, serious. He was arrested and taken into custody on the basis of information that fell short of providing a lawful basis for his arrest. Then his vehicle was searched, on the basis of this unlawful arrest, and highly incriminating evidence was found. The impact of the breaches was undoubtedly serious and analysis of this factor pulls towards exclusion, notwithstanding my conclusion regarding discoverability.

[48] With respect, and leaving aside the s. 10(a) breach, which "had only a minor impact", the same can be said with respect to Ms. Manuel. I find this factor pulls towards exclusion, despite the discoverability of the evidence found in the *Avalanche*.

Society's interest in adjudication on the merits

[49] The third branch, again citing *Devlin, J.* in *Bottomley*:

- [96] The final Grant line of inquiry "asks whether the truth-seeking function of the criminal trial process would be better served by admission of the evidence, or by its exclusion". In engaging this question, courts must "consider both the negative impact of admission of the evidence on the repute of the administration of justice and the impact of failing to admit the evidence", and in each case, the long-term repute of the administration of justice must be assessed. [Citations omitted].
- [97] In Grant, the Court identified the reliability of the evidence, its importance to the Crown's case, and the seriousness of the alleged offence as relevant factors at this stage.
- [98] For instance, it may be that the nature of the Charter breach undermines the reliability of the impugned evidence (e.g., where an accused was effectively compelled to talk to the police), militating in favour of exclusion: Grant at para. 81. Conversely, where evidence is highly reliable, and particularly where it is essential to the prosecution of serious offences, the exclusion of the evidence may more negatively impact on the repute of the administration of justice: Grant at para. 83; Pawar at para. 91; and R. v. Côté, 2011 SCC 46 at para. 53.
- [99] Notably, the last of these factors (i.e., the seriousness of the offence) "can cut both ways": McColman at para. 70. The third line of inquiry "typically pulls towards inclusion of the evidence", often with a view to the seriousness of the offence: Le at para. 158. Yet, it is well-established that "even a person accused of the most heinous crimes is entitled to the full protection of the Charter", and "[s]hort-cutting or short-circuiting those rights affects not only the accused, but also the entire reputation of the criminal justice system": R. v. Burlingham, [1995] 2 S.C.R. 206, 1995 CanLII 88 at para. 50. The Court commented on this point as follows in Grant (at para. 84):

In our view, while the seriousness of the alleged offence may be a valid consideration, it has the potential to cut both ways. Failure to effectively prosecute a serious charge due to excluded evidence may have an immediate impact on how people view the justice system. Yet, as discussed, it is the long-term repute of the justice system that is s. 24(2)'s focus. As pointed out in Burlingham, the goals furthered by s. 24(2) "operate independently of the type of crime for which the individual stands accused" (para. 51). And as Lamer J. observed in Collins, "[t]he Charter is designed to protect the accused from the majority, so the enforcement of the Charter must not be left to that majority" (p. 282). The short-term public clamour for a conviction in a particular case must not deafen the s. 24(2) judge to the longer-term repute of the administration of justice. Moreover, while the public has a heightened interest in seeing a determination on the merits where the offence charged is serious, it also has a vital interest in having a justice system that is above reproach, particularly where the penal stakes for the accused are high.

- [50] There is no question that the evidence at issue in this case is highly reliable and the Crown stresses without contest by the accused that the exclusion of the evidence seized would be the end of the Crown's case. This factor typically pulls in favour of admission; Chapman, at paragraph 123. It is also noted in Chapman at paragraphs 124-125:

- [124] Admission of evidence will not be automatic under this line of inquiry, however, just because the evidence is reliable. Disrepute to the administration of justice may also result from admitting even highly reliable evidence that deprives the accused of a fair trial or amounts to condonation of unacceptable conduct by the investigatory and prosecutorial bodies. An adjudication on the merits, in a state governed by the rule of law, presupposes an adjudication grounded in legality and respect for longstanding constitutional norms: [citation omitted].
- [125] It is also crucial not to allow societal interest in adjudication on the merits to trump all other interests implicated in the s. 24(2) analysis: Paterson at para 56. In practical terms, the third line of inquiry becomes important when one, but not both, of the first two inquiries pushes strongly towards the exclusion of the evidence. If the first and second lines of inquiry make a strong case for exclusion of the evidence, the third line of inquiry will seldom, if ever, tip the balance in favour of admissibility. But if the first two inquiries provided weaker support for exclusion of the evidence, the third inquiry will weigh heavily in favour of admissibility: [citations omitted].
- [51] In this case, the first two inquiries push strongly towards exclusion.
- [52] In the circumstances here the police conduct was not grounded in legality and respect for longstanding constitutional norms. I find that this is not one of those "seldom if ever" situations referred to in Chapman.

Final Balancing

- [53] As stated for the majority by Justice Jamal in Beaver, with regard to final balancing:
- [133] The final step in the s. 24(2) analysis involves weighing each line of inquiry to determine whether admitting the evidence would bring the administration of justice into disrepute. This balancing has a prospective function: it aims to ensure that evidence obtained through a Charter breach does not cause further damage to the justice system. It is also societal in scope: its goal is not to punish the police but to address systemic concerns involving the broad impact of admitting the evidence on the long-term reputations of the justice system [citations omitted].
- [134] When undertaking this weighing exercise, "it is the cumulative weight of the first two lines of inquiry that trial judges must consider and balance against the third line of inquiry" [citation omitted]. "[W]hen the two first lines, taken together, make a strong case for exclusion", the third line of inquiry "will seldom tip the scale in favour of admissibility" [citation omitted]. The third line of inquiry "becomes important when one, but not both, of the first two inquiries pushes strongly toward the exclusion of the evidence" [citations omitted]. It is possible that admitting evidence obtained by particularly serious Charter-infringing conduct will bring the administration of justice into disrepute, even if the conduct did not have a serious impact on the accused's Charter-protected interests [citation omitted]. But where the cumulative weight of the first two lines of inquiry

is overwhelmed by a compelling public interest in admitting the evidence, the administration of justice will not be brought into disrepute by its admission.

[54] In this case I find that both the first and second line of inquiry make a strong case for exclusion. The accumulative effect of the first two lines of inquiry is not overwhelmed by a compelling public interest in admitting the evidence.

[55] In Chapman, the balancing was a "close call" (paragraph 130). I have summarized what I consider important distinctions between this case and Chapman. In my view, the circumstances here are not a close call.

[56] The evidence seized by the police is excluded from the trial of this matter.

"Doyle J."

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