Date: 2025 11 20
Docket: S-1-CR 2024 000 057

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

TRENT TSELEIE

MEMORANDUM OF JUDGMENT
(RULING ON CHARTER APPLICATION)

## I) INTRODUCTION

[1] The accused, Trent Tseleie, was tried on charges stemming from an incident that took place on May 27, 2023 in Yellowknife. On that date he was arrested outside the Fort Gary apartment building. Shortly after the arrest, police seized a loaded handgun that had been left in the wheel well of a nearby truck. The accused was charged with numerous firearms-related charges as a result of the seizure of that handgun. The allegations were that he was the one who left the handgun in the wheel well of the truck shortly before being arrested.

[2] At trial, the accused brought a motion alleging breaches of his rights under the *Canadian Charter of Rights and Freedoms* (the *Charter*).

[3] First, he argued that the police officer who arrested him on May 27th did not have sufficient grounds to do so, and that as a result, his detention on that date was arbitrary.

[4] Second, he argued that he was also arbitrarily detained in July 2024 when, as a result of an error made in the issuance of a Warrant of Committal a month earlier, he was detained on these charges when he ought to have been released.

[5] For these breaches he sought a stay of proceedings pursuant to s. 24(1) of the *Charter*, or, alternatively, the exclusion of the firearm pursuant to s. 24(2).

[6] On June 30th, 2025, I dismissed the *Charter* Application and said written Reasons would follow. These are those Reasons.

## II) WHETHER THE ACCUSED WAS ARBITRARILY DETAINED ON MAY 27TH, 2023

### 1. The Evidence

[7] On consent of the parties, this matter proceeded as a blended trial and *voir dire*. The Crown called Cst. Audet, the arresting officer; Cst. Fiddler, who was the lead investigator; and Constables Redden, Grimshaw, and Hill, who attended the scene as backup at the time of the arrest and were present when the handgun was found.

[8] Cst. Audet and Cst. Fiddler were, at the time, members of the General Investigations Section (GIS) in the R.C.M.P.'s "G" Division. GIS is a relatively small team. At the time, it was headed by Sgt. Kuchta. Aside from Cst. Audet and Cst. Fiddler, it included another police officer, Cst. Lenz.

[9] The investigation began on May 25th, 2023, when Cst. Fiddler learned from Sgt. Kuchta that a person named Dan Ouellet had reported to him that video surveillance footage from Fort Gary showed the accused in possession of a firearm and trafficking drugs in the building. Sgt. Kuchta assigned Cst. Fiddler to be the lead investigator on this complaint.

[10] Mr. Ouellet was known to Cst. Fiddler. He was employed by Risk Control Canada, a security company contracted by Northview, the company that owns Fort Gary and several other rental buildings in Yellowknife. Police had received complaints from Mr. Ouellet before about suspected criminal activities taking place at Fort Gary and other locations. Cst. Fiddler had no reason to doubt the credibility of his complaint.

[11] On May 26th Cst. Fiddler reached out to Mr. Ouellet. She obtained several excerpts of security video footage from him and watched them. Based on what she saw on the footage, she formed the belief that the accused was concealing a firearm in the waistband of his pants. She explained that her conclusions were informed by training she received in 2022, which included teachings about indicators of people carrying concealed firearms. She related what she observed in the videos to some of those indicators, including the bulge under the accused's shirt, the position of his hand, the fact that he was moving just one arm when walking, as well as his guarded demeanour and the fact he appeared to be making conscious stops to look around. She also relied on her own experience carrying firearms.

[12] Cst. Fiddler issued a safety bulletin that day for the Yellowknife detachment, to alert all officers on duty that the accused was believed to be carrying a firearm.

[13] On May 26th, after she reviewed the videos, Cst. Fiddler told Cst. Audet about them and shared her grounds for believing that the accused was in possession of a firearm. She and Cst. Audet made patrols that evening to attempt to locate the accused, but those were unsuccessful. She testified that if they had found him that night, they would have arrested him.

[14] With respect to drug trafficking activities, Cst. Fiddler explained that she was aware that Mr. Ouellet had told Sgt. Kuchta that he believed that the accused was trafficking drugs at Fort Gary. It was clarified during her cross-examination that she understood this to be based on what Mr. Ouellet had seen on the security footage, not on any other additional information that he might have had.

[15] Cst. Fiddler was of the view that certain things seen on the videos were consistent with drug trafficking, including the accused coming and going to different units and the fact that he was seen retrieving and hiding something from the ceiling in the hallway.

[16] She was aware as well that information had been received from two confidential informants to the effect that the accused was trafficking drugs at Fort Gary. The first source reported that the accused was trafficking cocaine at Fort Gary, was using multiple units to do so and was keeping the cocaine on his person. This was first-hand information. This informant had provided information in the past but Cst. Fiddler could not say whether this past information had proven to be reliable.

[17] The second informant reported that the accused was selling crack cocaine and was staying at unit #206 at Fort Gary. This informant had provided information in the past that had proven to be reliable.

[18] I understand from Cst. Fiddler's testimony that in her mind, the confidential information received, the security footage, the police's knowledge of activities taking place in Fort Gary, and past knowledge about the accused all contributed to her conclusion that he was arrestable for possession for the purpose of trafficking as well as for possession of a firearm.

[19] On May 27th, Cst. Fiddler was in the office working on an Information to Obtain, with a view of seeking a judicial authorization to conduct a search at Fort Gary. Cst. Fiddler testified that Cst. Audet was aware that she was working this.

[20] The police's primary concern was the firearm. The investigative team had not yet decided precisely with what type of warrant they would proceed.

[21] One of the challenges they faced at that point was identifying the specific place to be searched, as the accused appeared to be frequenting different units in the building. They also had concerns about police officer safety and public safety executing a search warrant in that building, given the belief that the accused was carrying a firearm. Cst. Fiddler estimated that the Information to Obtain was about 60% done that morning.

[22] In consultation with the investigative team, it was decided that Cst. Audet would conduct surveillance at Fort Gary. The purpose of that surveillance was for police to know if the accused left the building.

[23] Cst. Audet testified that although the purpose of going to Fort Gary was to conduct surveillance, he believed, at that point, that there were sufficient grounds to arrest the accused for both illegal possession of a firearm and possession of drugs for the purpose of trafficking.

[24] Cst. Audet was aware of the complaint received by Mr. Ouellet and of the existence of the videos. Cst. Audet testified that he saw the videos, but he was not sure whether that was before or after the arrest. One way or another he was aware of them when he went to Fort Gary to conduct surveillance. He knew that Cst. Fiddler had watched the videos and what she made of them. He had no reason to doubt her credibility.

[25] Cst. Audet was familiar with Mr. Ouellet and had dealt with him on a number of occasions about other complaints. He had no reason to doubt his credibility.

[26] Cst. Audet was aware of the accused having been considered a person of interest because of his association with other individuals who were the subject of drug trafficking investigations. He was aware of an incident in the Fall of 2022 where the accused had fled from police when they had tried to arrest him at Fort Gary in connection with resisting arrest, and possibly outstanding warrants and drug charges.

[27] Cst. Audet was also aware that police considered Fort Gary to be a "high crime" area. He was aware that police had received several complaints and reports from other people living in the building who were concerned for their safety because of ongoing drug trafficking activities and violent incidents taking place in the building.

[28] Cst. Audet arrived in the parking lot at Fort Gary and took his surveillance position. Once there, he had a text message exchange with Mr. Ouellet and learned that the accused had left the building just before Cst. Audet got there. Mr. Ouellet sent Cst. Audet a still shot from the security camera footage showing the accused before he left the building.

[29] Cst. Audet phoned Cst. Fiddler and told her of what he had just learned about the accused having recently left the area. While he was on the phone with her, he saw the accused return.

[30] The accused stood outside the front of the building. He appeared to be unable to get into the building and to be trying to get the attention of someone in one of the apartments.

[31] Other officers were directed to attend the area to provide backup. The evidence was unclear as to who gave this direction. Cst. Audet first testified that he was the one who called for backup, but later in his testimony he said it may have been Sgt. Kuchta who directed other officers to attend. There was also evidence from other officers that they heard Cst. Audet request help on the radio. Given the context and how quickly the situation unfolded, I do not find these inconsistencies surprising or significant for the purpose of assessing the witnesses' reliability.

[32] A number of officers converged to the area. Soon, the sound of police sirens could be heard approaching. When this happened, Cst. Audet saw that the accused's behaviour changed. He stopped trying to get anyone's attention to get inside the building. He started to look around; he seemed to be panicking; he appeared to be trying to find a place to hide. As the first police vehicle started to get up the hill that leads to the parking lot, the accused started to crawl under a white truck.

[33] Cst. Audet got out of his vehicle. He lost sight of the accused because the truck was blocking his view but was able to see some movement under the truck. By then Cst. Redden had arrived and had gotten out of his vehicle. Cst. Audet crouched, and started making calls to the accused, with his sidearm drawn, giving him commands to show his hands and not move. At that point the accused's body was partially under the vehicle.

[34] The accused complied with Cst. Audet's commands. Cst. Redden came to assist. He handcuffed the accused. The other officers arrived shortly after.

[35] A short time after the arrest, one of the officers noticed a handgun in the wheel well of the white truck. The gun was seized. It was loaded.

[36] As I already mentioned, the evidence of the general duty officers who attended the scene served to confirm, in a general way, the unfolding of events immediately after the arrest and the discovery of the firearm.

[37] That evidence is not particularly helpful in assessing the sufficiency of the grounds for arrest because those officers simply provided backup when asked. Some said they had been briefed by the GIS members that morning about the ongoing investigation, but were not aware of details.

[38] Of note, Cst. Grimshaw testified that he saw the security camera footage. It is not entirely clear who showed it to him. Cst. Grimshaw said Cst. Audet showed it to him but Cst. Audet did not recall showing the video to anyone. However he came to see it, Cst. Grimshaw testified that it was clear to him that the accused was holding and concealing something in his pants, and he said it looked like it was a firearm based on how it was being held and the cocked position of the accused's hand. In other words, Cst. Grimshaw came to the same conclusion as Mr. Ouellet and Cst. Fiddler.

2. Analysis

[39] Police officers have the power to arrest someone without a warrant if they have reasonable and probable grounds to believe that the person has committed or is about to commit an indictable offence. *Criminal Code*, s.495(1)(a).

[40] The sufficiency of grounds to arrest is measured against a test that has both an objective and a subjective component. The arresting officer must subjectively have reasonable and probable grounds to arrest, and those grounds must be objectively justified. The objective assessment is based on all the circumstances known at the time of the arrest, from the perspective of a reasonable person with comparable knowledge, training and experience as the arresting officer. *R v Storrey*, [1990] 1 S.C.R. 241; *R v Tim*, 2022 SCC 12, paras 23-25. The standard is met at the point where credibly-based probability replaces suspicion. *R v Dhillon*, 2016 ONCA 308, para 25.

[41] In forming grounds for arrest, police officers are not bound by the rules of evidence. They are entitled to rely on many things that would not be admissible to prove an accused's guilt. This includes information obtained from others, as long as they believe that information to be credible and reliable. *R v Ali*, 2020 ABCA 344, paras 11-12.

[42] In this context, police officers are allowed to rely on information provided by other police officers. *Ali*, para 13. In situations where the arrest is based on instructions or information received from another officer, the information that the instructing officer has must meet the reasonable and probable ground threshold. Obviously, insufficient grounds do not gain strength by being passed from one officer to the other. *R v Gerson-Foster*, 2019 ONCA 405, para 84.

[43] Here, the Defence argues that the accused's arrest was the result of a hasty and incomplete investigation. Defence attempts to draw parallels between this situation and what occurred in *R v Mohamed*, 2021 ONSC 2336.

[44] I disagree with Defence's characterization of the investigation. I find the situation here significantly different from what occurred in *Mohamed*. In that case, police had set up surveillance on the accused after having received information that he was selling drugs and was in possession of a firearm. They arrested the accused shortly after having spotted him riding an electric bike, in part because they interpreted his movements as attempts to evade them. The trial judge was not satisfied that the accused even knew that their unmarked vehicle was a police

vehicle. He also found that the tip that police acted on was stale and uncorroborated, and that they had taken no steps to verify it. They had taken no investigative steps at all before beginning surveillance on the suspect and ultimately intercepting it. *Mohamed*, para 109.

[45] The situation here is very different. Upon receiving the information from Mr. Ouellet, Cst. Fiddler obtained the security camera footage and reviewed it herself. She did not simply act on Mr. Ouellet's opinion. With respect to the drug investigation, police had information from two different sources, including one who had proven reliable in the past. Cst. Fiddler was continuing to work on her Information to Obtain. This was not a situation where police failed to investigate the matter.

[46] I agree that police duties and responsibilities cannot be ignored when evaluating the reasonable and probable grounds standard. *R v Bailey*, 2023 ONSC 6789, paras 25-26. Here, however, I disagree with the proposition that the police failed in those duties in this case.

[47] However one views the quality of the investigation, the fundamental issue is whether Cst. Audet had sufficient grounds to arrest the accused. Defence argues that he did not, even accepting that he may have subjectively believed that he had those grounds. Defence urges caution in relying on Cst. Audet's testimony because of certain inconsistencies and gaps in his evidence.

[48] The evidence most relevant to the sufficiency of the grounds for arrest is the evidence of Cst. Audet and Cst. Fiddler. The other officers testified primarily about the aftermath of the arrest and the discovery of the handgun. Still, as Defence challenged the reliability of Cst. Audet's testimony, the testimony of other officers as to what happened that day is of some assistance inasmuch as it is helpful in assessing the accuracy of Cst. Audet's recall of the events.

[49] Taken as a whole, and in the context of the rest of the evidence, I do not find Cst. Audet's testimony unreliable. There were some inconsistencies in the evidence, but none that cause me concern about the reliability of his testimony on key issues.

[50] For example, as I already mentioned, Cst. Audet was not clear on who directed police officers to go to Fort Gary to assist him. At first, he said he called for help but later in his evidence, he said that Sgt Kuchta was the one who requested the backup.

[51] Cst. Fiddler recalls hearing, on the radio, Cst. Audet advising general duty members that the accused had left the building, was on foot, and to be in the area in case he returned. This suggests that at one point Cst. Audet was on the radio speaking to duty members, but that it may have been before he saw the accused return to Fort Gary. Cst. Audet may simply have been confused about exactly when he communicated with other officers on the radio. In any event, some confusion about who said what and when, as these events were unfolding, is hardly surprising.

[52] Cst. Fiddler's testimony corroborated Cst. Audet's evidence in various ways. She confirmed that they had a conversation that morning after Cst. Audet learned from Mr. Ouellet that the accused had left the building. She confirmed that she had shared her grounds with him before he went to conduct surveillance. She confirmed other aspects of his description of what took place that morning.

[53] The testimony of the back-up officers also generally corroborated Cst. Audet's account of what happened at the scene at the time of the arrest, and immediately after.

[54] I find that in large measure, despite certain inconsistencies which I consider to be minor given the context, the evidence of the other witnesses corroborated what Cst. Audet testified to. I accept his evidence.

[55] Cst. Audet testified that he believed that there were sufficient grounds to arrest the accused for both the firearms offence and drug offenses on May 27th. There is nothing to suggest that he did not have that subjective belief. The real issue is whether his belief was objectively justified.

[56] By the time Cst. Audet went to conduct surveillance, Cst. Fiddler had shared with him the information she had up to that point. The fact that Cst. Audet did not mention every detail of what she shared with him in his own testimony is immaterial because I accept her evidence that she did share her grounds with him. They had even patrolled together the night before looking for the accused, with a view of arresting him.

[57] In assessing the objective justification for Cst. Audet's belief, the analysis must take into account the totality of the information he had, including the information that came from Cst. Fiddler.

[58] With respect to the possession of the firearm, Cst. Audet knew that the accused had been seen on video security footage walking inside Fort Gary. Defence

points out that the firearm is not visible on any of the footage. That is true. However, from seeing the videos, it is clear to me that the accused is holding something in the waistband of his pants, sometimes in the front, sometimes in the back.

[59] Cst. Fiddler explained why she came to the conclusion that this was a firearm. She relied on her observations of the footage. Her observations were informed by training she received about indicators of someone carrying a concealed firearm. She also relied on her own experience carrying firearms. Her evidence in this regard made sense to me.

[60] It is worth noting that Cst. Grimshaw came to the same conclusion she did when he saw this footage. So did Mr. Ouellet.

[61] This evidence would certainly not be sufficient to establish beyond a reasonable doubt that the object that the accused is holding in his waistband is a handgun. But that is not the test that must be met at this stage. As I have already mentioned, the objective justification for grounds must be assessed from the perspective of a reasonable person with comparable knowledge, training and experience as the officer who formed the grounds.

[62] Aside from being aware of the video footage and what Cst. Fiddler made of it, Cst. Audet had a certain amount of contextual information. He was aware of Fort Gary being a "high crime area" and that a number of complaints about drug trafficking and violence had been received from concerned tenants in that building. In addition, he had some information about the accused's past interactions with the police including an incident where he attempted to evade arrest at Fort Gary. This information is more peripheral, more general, and less direct than the video footage, but it is part of the totality of what was known to him at the time.

[63] In my view, the security footage was sufficient for Cst. Fiddler to form the necessary grounds to arrest the accused for illegal possession of firearm. That information had been passed on to Cst. Audet whether he saw the footage before the arrest or not, such that he too had sufficient grounds to arrest him.

[64] Moreover, even assuming that the information Cst. Audet had at the start of the surveillance was not, using the language of *Dhillon*, sufficient for "credibly-based probability to replace suspicion", I find that this threshold was definitely crossed once Cst. Audet observed the accused's reaction to the approaching sound of police sirens.

[65] In the context of proving an accused's guilt, evidence of flight or attempted flight must be approached with great caution. The requirement for proof beyond a reasonable doubt demands that all reasonable explanations for the behaviour, other than guilt, be considered before such behaviour can be used to infer guilt.

[66] The analysis is very different, however, when flight or attempted flight is considered as part of the sufficiency of grounds to arrest. Flight or attempted flight, in these situations, is relevant. It is an objective basis to form a reasonable suspicion. *R v Wilkinson*, 2023 BCCA 3, para 55. *R v Nesbeth*, 2008 ONCA 579, para 18. In my view, in the circumstances of this case, it was also capable of strengthening Cst. Audet's grounds to believe that the accused was in possession of something illegal.

[67] Defence argued that the accused's conduct does not assist with the sufficiency of the grounds because it could have been in response to being confronted with an officer attempting to arrest him at gunpoint. However, that submission does not align with the evidence: Cst. Audet testified that the change in the accused's behaviour happened as soon as the noise of the police sirens could be heard getting closer. At that point there is no evidence or suggestion that the accused was even aware that Cst. Audet was there.

[68] On the evidence, the accused's behaviour changed rather drastically. He went from attempting to get someone's attention to be let into the building to discontinuing those efforts, seeming panicked, and appearing to look for a place to hide.

[69] I accept that there could be many reasons why a person might prefer avoiding contact with police and become nervous upon hearing the sound of approaching sirens. But that does not mean that a police officer is not entitled to take that behaviour into account in forming reasonable and probable grounds that the person is committing an offence.

[70] I conclude, on the totality of the circumstances, that Cst. Audet had reasonable and probable grounds to believe that the accused was in possession of an illegal firearm when he made the decision to arrest him.

[71] The grounds to arrest the accused on drug charges were perhaps less compelling. At the very least, the totality of the information that the police had would have raised very strong suspicion. But it does not matter.

[72] Given my conclusion that Cst. Audet had sufficient grounds to arrest the accused with respect to the firearm charge, I do not need to make a firm determination as to whether he also had grounds to also arrest him for drug charges. Similarly, I do not need to decide whether Cst. Audet had sufficient information to justify detaining him for investigative purposes on drug charges.

[73] I conclude that Cst. Audet had sufficient grounds to arrest the accused on May 27th 2023, and that the accused's right not to be arbitrarily detained were not breached.

II) THE ACCUSED'S DETENTION ON JULY 18, 2024

1. The evidence

[74] The circumstances that form the basis of the second breach alleged by the accused are undisputed, as they were presented through an Agreed Statement of Facts.

[75] The accused was released on a Release Order on the firearms charges on May 13, 2024.

[76] On June 4th, 2024, he appeared before a Justice of the Peace, pursuant to section 503 of the *Criminal Code*, having been arrested on unrelated offenses alleged to have occurred in Norman Wells. There was no defence counsel at this hearing. I gather from counsel's submissions that this is not unusual on s. 503 appearances.

[77] The Agreed Statement of Facts outlines what happened during that appearance. A transcript of the proceedings is also appended to the Agreed Statement of Facts.

[78] A copy of the May 2024 Release Order on the Yellowknife charges had been emailed to the Justice of the Peace prior to the s.503 appearance. At the hearing the prosecutor told the Justice of the Peace that the accused had outstanding Yellowknife charges, that the accused was in a reverse onus situation, and that the Crown was opposed to his release.

[79] The accused told the Justice of the Peace that he did not want a show cause hearing and that he was consenting to his detention. The matter was adjourned to be spoken to in Territorial Court on June 18th for a first appearance in that court.

[80] The Justice of the Peace issued a remand warrant (Form 19) to have the accused brought to Territorial Court on June 18th. She also issued a Warrant of Committal (Form 8) ordering the accused's detention, noting that he was consenting to his detention and reserving his right to show cause. In issuing the Form 8, she listed not only the new Norman Wells charges, but also the Yellowknife charges. The Crown concedes that this was an error. The prosecutor had not applied to cancel the May 2024 Release Order, and the Justice of the Peace had not made an order cancelling it.

[81] On the June 18th appearance in Territorial Court, the Norman Wells charges were set to proceed to trial on July 18th. No one realized, at that time, that some of the charges appearing on the Form 8 should not have been included in that document.

[82] The accused was escorted to Norman Wells for his trial. On July 18th, the Crown directed a stay of proceedings on the Norman Wells charges. Because the Form 8 showed that the accused was also detained on the Yellowknife charges, he was not released.

[83] The defence counsel who was on the circuit was not the counsel on the Yellowknife charges. However, he was aware – presumably having been briefed by the other counsel - that the accused was on a Release Order on those charges.

[84] The Agreed Statement of Facts says the following about what happened in Norman Wells after the charges were stayed:

> (…)
>
> 7. Defence counsel informed the circuit court clerk on July 18th that it was his understanding that there was an active release order and Mr. Tseleie was to be released. The clerk informed defence counsel that there was a remand warrant on file, and as the Yellowknife charges were not before the court, there was nothing to be done. The court clerk suggested that defence counsel contact the Yellowknife registry to sort it out
>
> 8. On July 19th, Mr. Tseleie contacted his counsel from the North Slave Correctional Center alerting them that he was still in custody.
>
> 9. Following that phone call, defence counsel contacted the Yellowknife territorial court registry to request assistance in determining whether or not Mr. Tseleie was properly detained. The Court registry informed defence counsel that they were unable to determine whether the Form 8 was made in error and indicated that defence counsel [sic] to make efforts to obtain a transcript of the 503 hearing themselves. After that

> telephone call defence counsel followed up by way of email correspondence, attached as Appendix "D"
>
> 10. Counsel for Mr. Tseleie obtained the recording of the June 4th 2024 hearing, which was provided to Crown counsel. Mr. Tseleie's Yellowknife charges were then brought forward to Justice of the Peace Court on July 19th, 2024, when both Crown and counsel for Mr. Tseleie sought an order releasing Mr. Tseleie on his May 13, 2023 [sic] release order.
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> 11. Mr. Tseleie was released from the North Slave Correctional Centre on July 19th, 2024 and was required to spend the weekend in Yellowknife before being flown home to the community he was required to reside in.

[85] In the email exchange appended to the Agreed Statement of Facts, counsel alerted the registry to several things: she noted that there appeared to be two conflicting orders in place, a Warrant of Committal and a Release Order; she wrote that the only way to verify whether the Release Order was cancelled was to listen to the recording of the s.503 hearing; she said that she has attempted to contact the Transcript Coordinator to access the recording and left a message; she asked whether there was any way, other than through the Transcript Coordinator, to access the recording; she underscored the urgency of the situation and inquired about whether the matter could be added to the Justice of the Peace court docket that afternoon.

[86] In her response, the court clerk advised that she was unable to confirm what happened at the s. 503 hearing and that ordering a transcript or listening to the recording was the only way to clarify what happened. She advised that she did not have access to recordings of s.503 hearings. She said that she would inquire about adding the matter to the afternoon's docket.

[87] Ultimately, as a result of defence counsel's efforts and the Crown's cooperation, the matter was addressed that afternoon and the accused was released.

[88] Defence argues that the erroneous inclusion of the Yellowknife charges in the Form 8 resulted in a breach of the accused's right not to be arbitrarily detained pursuant to s. 9 of the *Charter*, and that this breach was compounded by the failure of Territorial Court clerks in Norman Wells and in Yellowknife to engage with counsel and provide assistance when the issue was brought to their attention.

[89] The Crown takes the position that the Justice of the Peace's order, while made in error, does not constitute a *Charter* breach. As for the conduct of the clerks, the Crown acknowledges that they should have been more pro-active but argues that in the circumstances, what happened did not amount to a breach.

2. Analysis

a) The error made by the Justice of the Peace

[90] The Crown's position is that a judge's decision can not constitute a *Charter* breach giving rise to a s. 24 remedy. The Crown relies on a number of cases which, at first blush, appear to support that view. *Dolphin Deliveries LTD. v R.W.D.S.U., Local 580* [1986] 2 S.C.R. 773; *R v Canadian Broadcasting Corp*, 1993 CarswellSask 293; *R v Domm*, 1996 CarswellOnt 4539.

[91] S. 32 of the *Charter* defines the scope of its application. It reads:

> 32(1) This Charter applies
>
> (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and the Northwest Territories
>
> (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

[92] *Dolphin Deliveries Ltd* arose from a labor dispute where a union invoked section 2(b) of the *Charter* to challenge an injunction prohibiting picketing. A majority of the Supreme Court of Canada concluded that an order of a court could not be equated with an element of government action for the purposes of s. 32. It is apparent from the decision that one of the reasons fort this conclusion was the concern about widening the scope of the *Charter* to all private litigation.

[93] In *R v Canadian Broadcasting Corp*, the order at issue was a publication ban issued in the context of proceedings taken under the *Young Offenders Act*. A number of media outlets sought to challenge the publication ban in the Court of Appeal. They argued that the judge, in exercising his common law powers, had breached s.2(b) of the *Charter*.

[94] The Saskatchewan Court of Appeal concluded that in effect, the media outlets were seeking remedy pursuant to s.24(1), and that the court's jurisdiction did not extend to that under the circumstances. It said the following about the basis for the *Charter* application:

> (…) C.B.C. points at Lavoie P.C.J., a member of the judicial branch of government, as the violator of its *Charter* right and at his order (specifically the impugned ruling)

> as the instrument of violation. The Supreme Court of Canada in *R.W.D.S.U. v Dolphin Deliveries Ltd*, [1986] 2 S.C.R. 573, in very similar general circumstances, held that a judge acting in his or her judicial capacity cannot be a *Charter* right violator and an order of a court cannot, for the purpose of a *Charter* application, constitute the necessary "governmental action" upon which to found a *Charter* violation and a consequential remedy to redress the violation. In short, although courts are bound by the *Charter* as they are bound by all law, the *Charter* does not apply to court orders.
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> *R v Canadian Broadcasting Corp*, para 17.

[95] In *Domm*, the issue examined by the Ontario Court of Appeal was whether an accused charged with breaching a publication ban could, as part of his defence, challenge the constitutional validity of that ban. The Court concluded that the validity of the publication ban could not be attacked at the accused's trial. Citing *Dolphin Deliveries Ltd*, the Court reiterated that a court order is not government action within the meaning of s.32 of the *Charter*. It went on to say:

> While courts are duty bound to apply the *Charter*, the *Charter* is not designed to constrain judicial conduct in the same way it restrains legislative activity. Even though court orders may attract Charter scrutiny depending on their nature and context in which they are made (*Hogg, Constitutional Law in Canada*, [3rd Ed. 1992], 843-45), compliance with the *Charter* cannot be seen as a mandatory condition precedent to the exercise of judicial authority in the same way as it is in respect of legislative activity.
>
> *Domm*, para 45.

[96] Notwithstanding this line of cases, it is beyond dispute that in certain circumstances, the actions of a court may give rise to *Charter* sanction. A good illustration of this is in the context of the right to be tried within a reasonable time, guaranteed by s. 11(d) of the *Charter*. When considering the reasonableness of the delay, delay attributable to the court is taken into account, and may result in a s. 24(1) remedy. Similarly, the right to an interpreter, protected by s.14 of the *Charter*, is one that is the court's responsibility to uphold. This shows that the answer to the question raised in this application is more nuanced than might appear at first glance.

[97] Defence has referred to a number of cases where courts have engaged in an analysis of whether a court order can constitute a *Charter* breach. For example, in *R v Van Huigenbus, Janzen & Van Herk*, 2024 ABKB 228, the issue was whether the judge preventing defence from telling the jury that they could acquit despite finding all the elements of the offence were proven (sometimes referred to as "jury nullification"), would breach the accused's right to freedom of expression. The Crown invoked *Dolphin Deliveries Ltd* to argue that court orders were outside the *Charter*'s reach. The judge did not interpret *Dolphin Deliveries Ltd* as closing the

door to the Defence's position. As a result, he engaged in the constitutional analysis. He concluded that preventing the defence from making this submission was a breach of s.2(b) of the *Charter* but was justified pursuant to s.1.

[98] Another example arose in *R v Nicole*, (1993) 16 C.R. (6th) (Ont.C.J). In that case, the accused was detained following a show cause hearing in Justice of the Peace Court. The accused applied for a bail review and was successful, based on significant errors made by the Justice of the Peace. However, the accused was not physically present at the bail review hearing. A public service strike had prevented him being brought before the court. When counsel attended the detention center to have the release documents executed, they were advised that the circumstances of the public service strike would not allow for the attendance of a Justice of the Peace. Counsel took steps to arrange for an appearance in the superior court the next day to have the accused released.

[99] As a result of these events the accused brought an application for a stay of proceedings pursuant to s.24(1). He argued that his rights against arbitrary detention were breached both because of the errors made by the Justice of the Peace at the original hearing, and by his continued detention after his release was ordered at the bail review. The court agreed with him on both counts and granted a stay of proceedings.

[100] The Justice of the Peace had clearly taken into account inappropriate matters in deciding to detain the accused on the secondary ground. Among other things, the justice of the peace considered his lack of remorse, his failure to admit to an alcohol problem, and he apparently treated a pending charge as though it was a conviction. *Nicole*, para 13.

[101] About this, the Court said:

> The presumption of innocence that underlies our system of judicial interim release was notably absent from this bail hearing. While not every case of error in a show cause hearing will amount to detention "without just cause" within the meaning of s.11(e) of the Charter, in my view the denial of bail for reasons which violate the presumption of innocence and are extraneous to the narrow circumstances set out in s.515(10) does breach s.11(e).
>
> *Nicole*, para 16.

[102] The court did not refer to the *Dolphin Deliveries Ltd* line of cases, and did not discuss the issue of whether a court order can be the foundation of a *Charter* breach.

[103] There are other cases referred to by Defence where the issue of whether a court order can give rise to a *Charter* breach was raised and not dealt with because the cases were decided on other bases. In those cases the courts did not outright reject the notion that the *Charter* could apply to court orders. *R v Hughes* 2998 CanLII 15089; *R v Lindsay and Gillepsie* 1999 CanLII 14150.

[104] Having carefully reviewed these cases, I conclude, as the court observed in *Hughes*, that the proposition that the *Charter* does not apply to the judicial branch of government is too broad. At the same time, the *Charter* does not have a blanket application to the courts and it does not apply to judicial decision making in the same manner as it does to legislative actions.

[105] To the extent that *Nicole* supports the idea that legal errors made by a Justice of the Peace – or any judge, for that matter – on bail matters may result in a breach of the right against arbitrary detention, I respectfully disagree. Similarly, I disagree with the conclusion reached in *R v Van Huigenbus, Janzen & Van Herk* that the decision to include or not include an instruction in a jury charge can form the basis for a *Charter* remedy.

[106] In our criminal justice system, judges are constantly called upon to apply principles of law in making decisions. Sometimes they are applying principles set out in statutes, other times those principles stem from the common law. Sometimes, those decisions are later reviewed by a higher court and found to have made in error.

[107] If errors made by judges in the context of bail gave rise to a *Charter* remedy, there would be no reason in principle why errors and decisions in multiple other contexts would not as well. This could include a variety of judicial decisions such as those involved in sentencing, rulings on evidentiary matters, and others. Any such decision, once found to have been made in error, could potentially become a stand-alone breach of the *Charter*, giving rise to s.24 remedy. In my view, such an interpretation is untenable. Similarly, I great have difficulty with the proposition that the right to freedom of expression applies to submissions made to a jury and the notion that a judge's decision as to what be included in those submissions could ever constitute a stand-alone breach of the *Charter*.

[108] Our criminal justice system is based on there being various levels of decision making and review mechanisms that can be invoked to correct errors. To have certain categories of legal errors give rise to a *Charter* remedy and not others would, it seems to me, create uncertainty and chaos.

[109] In the bail context, the *Criminal Code* provides for a review mechanism. A review can be launched at an accused's instance. It can also occur by operation of the law pursuant to s. 525 of the *Criminal Code*. In addition, *habeas corpus* is available to persons who believe they are being unlawfully deprived of their liberty, whether it is the context of bail or otherwise. *R v Bird*, 2019 SCC 7, para 62.

[110] I acknowledge that in the accused's circumstances, especially since all of this was unfolding on a Friday, initiating bail review or *habeas corpus* proceedings may not have been effective in solving the problem that afternoon. However unique circumstances and practical challenges in a specific case are not a proper basis for concluding that, in law, this type of error opens the door to *Charter* relief as a matter of course.

[111] I conclude that the Justice of the Peace's error in issuing the Form 8 on June 4th did not constitute, in and of itself, a breach of s. 9 of the *Charter*.

b) The actions of Territorial Court registry staff

[112] The Crown acknowledges that in certain circumstances, the actions of court actors can give rise to a *Charter* breach. It also concedes that the court staff involved in this matter should have been more pro-active once they were made aware that there may be an error in the Warrant of Committal that formed the basis for holding the accused in custody. The Crown also does not dispute that the consequences to the accused were significant. However, Crown argues that what happened in this case, while not ideal, did not rise to the level of a *Charter* breach.

[113] Without doubt, systemic shortcomings, even those that can be considered as being closely connected to the operation of the courts, can amount to a breach of an accused's *Charter* rights. Defence has referred to cases that illustrate this.

[114] For example, in *R v Foxwell*, 2023 ABCJ 137, the accused had been ordered released on bail with a deposit of money. The police detachment where the accused was held only accepted cash for posting bail. The accused did not have access to cash. Because of this he remained in custody for 30 hours after his release had been ordered. This was found this to be a breach of s. 9 of the *Charter*.

[115] In *Nicole*, the inability of a Justice of the Peace to attend the detention center because of a public service strike was found to result in a breach of the accused's s. 11(e) rights not to be denied reasonable bail.

[116] In *R v Noor*, 2022 ONCJ 140, various administrative issues resulted in an accused not having his s.503 appearance until 58 hours after first being taken into custody, at which point he was released. This too was found to result in a breach of s. 11(e) of the *Charter*.

[117] As both counsel acknowledged, none of these cases are exactly on point, and the situation I am faced with here is very unusual. I have not been referred to any case where actions or inactions of court clerks were found to result in a breach of the *Charter*, and I am not aware of any such case.

[118] The Crown does not argue that actions of registry staff could never form the basis of an allegation of breach of a *Charter* right. I agree. Registry staff are closely connected to the court itself, which distinguishes them from state agents such as police forces or correctional centers. But that does not mean that no *Charter* breach could ever flow from actions or inactions on their part. If, as noted above, certain actions by the court itself can trigger *Charter* remedies, there is no reason why the same could not be true for staff who work with and within the court.

[119] However, I am not persuaded that this is one of those cases.

[120] It goes without saying that liberty interests are fundamental. In a situation where there appears to have been an error resulting in someone being detained when they should not be, everyone who works in the justice system has a responsibility to be proactive in addressing the issue. This includes registry staff. They are not, however, the only ones who have to be pro-active in such situations. In this case, the responsibility for what happened cannot be laid entirely on registry staff.

[121] The problem, of course, began with the Justice of the Peace's error. Once issued, the Form 8 was on its face, a court order that was presumed to be valid. It could not be disregarded on the basis of someone saying it was issued in error, or that a conflicting order was in place. It should have been apparent to everyone, at the outset, that this problem was going to have to be addressed in court by a judge.

[122] The agreed facts are that the defence counsel told the clerk that there was an active Release Order on the Yellowknife charges. It does not say whether counsel made any attempt to obtain a copy of that Release Order, whether he spoke to the prosecutor about the situation, and if he did, what the response was. There is also no indication of whether the defence counsel asked the clerk to advise the circuit judge of the situation, or asked that the accused's matter be recalled so that the concerns about his bail status could be discussed on the record.

[123] I cannot speculate either way about whether any of those things happened, and I acknowledge that matters were complicated by the fact that the file on the Yellowknife charges was not in Norman Wells. I simply note that at that point, with a prosecutor, defence counsel, and judge there, the issue could and should have been raised with the judge. In the face of someone potentially being in custody when they should not be, everyone, including the clerk, but not only the clerk, had a responsibility to be as proactive as possible.

[124] As for what happened in Yellowknife, the clerk was not wrong to say that the only way to determine if there was an error on the Form 8 was to access the details of what happened at the June 4th s.503 hearing. I agree with Defence that the suggestion of ordering a transcript, given the situation, was not particularly helpful: a transcript, even ordered on an expedited basis would likely not be produced the same day. The only solution, given the urgency, was to review the recording.

[125] The clerk advised counsel in the email exchange that she did not have access to the recordings. In the end, the accused's Yellowknife counsel was able to access them. The agreed facts do not explain how this came to be. That being so, it is difficult for me to assess whether the clerk could have obtained access to it, or done anything to facilitate counsel's access. I do not know whether the clerk looked into trying to access the recording given the urgency of the situation, whether she attempted to speak to a judge about the situation, or whether she took any other steps.

[126] In a situation like this, where someone's liberty is at stake, registry staff should be pro-active and assist counsel as much as possible. And, if there was nothing the clerk herself could do to obtain the recordings, alerting a judge to the situation, if one was available, would have been helpful.

[127] It is surprising to me that registry staff do not have access recordings of s.503 appearances. Situations where the need arises to urgently access the recordings of those hearings may arise infrequently, but as this case demonstrates, when they do arise, having to order a transcript and wait for it to be produced, or having to proceed through the Transcript Coordinator, may not be a satisfactory option.

[128] All that being said, there is no evidence to suggest, nor would it be fair to conclude, that there was any malice on the part of any of the registry staff involved. There was a lack of pro-activeness, but as I already noted, particularly with respect to what transpired in Norman Wells, others could have been more pro-active as well.

[129] Finally, there is no evidence that what happened here is part of a systemic or generalized problem. Defence Counsel said in submissions that she has become aware of one other instance where a similar error was made by a Justice of the Peace at a s.503 appearance. If that is so, it is disturbing to say the least. It may point to issues with justice of the peace training. It also suggests that the processes followed in section 503 hearings may need to be revisited. Be that as it may, as counsel acknowledged at the hearing, since I have no evidence about other similar incidents, this cannot be a factor in my assessment of whether a *Charter* breach has been established in this case. If, in the future, this is proven to be a reoccurring problem that is not being addressed, the outcome may be different.

[130] In the present circumstances, however, I am not satisfied that the accused's continued detention after his Norman Wells charges were stayed on July 18, 2024, constituted a breach of his rights not to be unlawfully or arbitrarily detained.

## III) REMEDY

[131] In the event that I am mistaken in my conclusion that the accused's *Charter* rights were not breached, I have gone on to examine whether he would be, if the breaches were made out, entitled to the relief he seeks.

### 1.Stay of Proceedings

[132] A stay of proceedings is available pursuant to s. 24(1) of the *Charter* when the state's conduct is found to amount to an abuse of process. It is the most drastic remedy that a criminal court can order. It permanently halts the prosecution of an accused and as a result, frustrates the truth-seeking function of the trial and deprives the public of the opportunity to see justice done on the merits. *R v Babos*, 2014 SCC 16, paras 30-31.

[133] Given its impact, this remedy is reserved for the clearest of cases and is only warranted on rare occasions. *R v O'Connor*, [1994] 4 S.C.R. 411 (S.C.C.).

[134] The jurisprudence recognizes two categories of abuse of process that can justify a stay of proceedings: state conduct that compromises the fairness of the trial, (the main category) and state conduct that does not give rise to trial unfairness but risks undermining the integrity of the criminal justice process (the residual category). The test to be applied is the same, regardless of which type of abuse of process is invoked, and consists of three requirements:

1. the prejudice to the accused's right or to the integrity of the justice system will be manifested, perpetrated or aggravated through the conduct of the trial or by its outcome;

2. There must be no alternative remedy capable of redressing the prejudice;

3. Where there is uncertainty as to whether the first two considerations warrant a stay, the court must balance the interests in favour of granting the stay, such as denouncing misconduct and preserving the integrity of the justice system, against the 'interest that society has in having a final decision on the merits.'

*Babos*, para 32; *R v Brunelle*, 2024 SCC 3, para 29; R *v Brousseau*, 2024 CMAC 2 (CanLII), paras 45- 46 (leave to appear to SCC dismissed 2025 CanLII 12619 (SCC).

[135] The seizure of evidence following an unlawful arrest could be examined under the main category as something that compromises trial fairness: the state should not be able to use evidence unlawfully obtained. However, as noted above, the second requirement for a stay of proceedings to be available is that there be no other remedy capable of redressing the injustice.

[136] It seems to me that if the accused's arrest was unlawful and the overall circumstances so egregious that they could form part of the justification to direct a stay of proceedings, those circumstances would inevitably also justify the exclusion of the evidence seized as a result of that arrest, in application of legal framework set out in *R v Grant*, 2009 SCC 32. As such, there would be an alternative way to redress the situation.

[137] The same is true for the continued detention in July 2024. The Supreme Court of Canada has recognized that in certain cases, the remedy for state conduct that infringes the *Charter* can be a reduction of the sentence. *R v Nasogaluak*, [2010] 1 S.C.R. 206.

[138] Given the existence of these alternative remedies, I conclude that the availability of a stay of proceedings in this case must be analyzed under the residual category. That category is concerned with whether the state conduct, even if it does not compromise the fairness of the trial, risks undermining the integrity of the criminal justice process to such a degree that the court must dissociate itself from it. In an analysis under this category, the third component of the test takes on particular importance:

> (…) when the residual category is invoked, the balancing stage takes on added importance. Where prejudice to the integrity of the justice system is alleged, the court is asked to decide which of two options better protects the integrity of the system: staying the proceedings, or having the trial despite the impugned conduct. This inquiry necessarily demands balancing. The court must consider such things as the nature and seriousness of the impugned conduct, whether the conduct is isolated or reflects a systemic and ongoing problem, the circumstances of the accused, the charges that he or she faces, and the interests of society in having the charges disposed of on the merits. Clearly, the more egregious the state conduct, the greater the need for the court to dissociate itself from it, When the conduct in question shocks the community's conscience and/or offends its sense of fair play and decency, it becomes less likely that society's interest in a full trial on the merits will prevail in the balancing process. But in residual cases, balance must always be considered.
>
> *Babos*, para 41.

[139] Considering the nature and seriousness of the impugned conduct, dealing first with the arrest, in my view, the circumstances are not of a nature that would shock the community's conscience and sense of fair play and decency.

[140] Police had information from various sources suggesting that the accused was involved in drug trafficking. Cst. Fiddler was in the process of drafting an application to obtain a judicial authorization to conduct a search at Fort Gary apartments. Police also had reasons to believe that the accused had been carrying a handgun, inside that apartment building. This engaged significant public safety concerns, as well as officer safety concerns, as evidenced by the issuance of the Officer Safety Bulletin.

[141] There was nothing untoward about how the arrest was conducted. I can infer, even though the accused did not testify at the *voir dire*, that being arrested at gunpoint was an extremely frightening and stressful experience for him. However, with the information that Cst. Audet had, this was not an unreasonable thing for him to do. This was a high-risk situation unfolding in the parking lot of an apartment building in a residential area. There is no suggestion of any excessive physical force being used during the arrest. In the end, the situation was brought under control very quickly.

[142] In addition, even assuming that Cst. Audet's grounds did not meet the "reasonable and probable grounds" threshold, this was not a situation where he had no grounds at all, or where his actions were arbitrary or driven by improper motives.

[143] In my view, what happened in this case is a far cry from a situation that risks undermining the integrity of the criminal justice process.

[144] The same can be said for the accused's continued detention in July 2024.

[145] The Crown did not attempt to minimize the significance of the events that led to the accused remaining in custody after the Norman Wells charges were stayed, nor the effect that this had on him. This is reflected in the Crown's concession that these events should be taken into account on sentencing and result in a reduction of his sentence.

[146] However, and without repeating what I have already said in my analysis of whether these events resulted in a *Charter* breach, there is no suggestion of bad faith on the part of the Justice of the Peace who made the error, nor on the part of court registry staff or anyone else. The evidence also does not establish that this is part of a systemic problem that has been brought to the attention of the court or the court staff and has been left unaddressed.

[147] I acknowledge that there are several cases, referred to by Defence, where a stay of proceedings was directed in situations where persons were kept in custody longer than they should have been, for various reasons. *R v Lane*, 2019 NLPC A001240917, *Nicole*; *Noor*; *R v Ouellet*, 2017 NLPC 0116A00382; *R v Shin*, 2019 ONCJ 297. In all these cases, however, the accused faced drinking and driving charges, which are comparatively much less serious than the charges the accused faces here. The circumstances of the breaches found to have occurred were also, in my view, much more egregious than is the case here.

[148] In *Foxwell*, the accused faced drinking and driving charges, but also several others including a charge for resisting arrest, and two for having assaulted police officers, including one where he caused bodily harm to the officer. The judge found that there was a breach and that the impugned practice was not an isolated incident. Still, noting the seriousness of the charges, the judge declined to direct a stay of proceedings. He decided instead that a proper remedy was reduction in sentence and a formal denouncement. *Foxwell*, paras 237-238.

[149] I conclude that the events that occurred in June and July 2024, which resulted in the accused remaining in custody, being escorted to Yellowknife, detained for an extra day, and not being able to return home until the following Monday, while concerning, do not justify a stay of proceedings.

[150] I have also considered whether the two breaches alleged, taken globally, would justify a stay of proceedings and I have concluded that they would not. This

is not one of the "clearest of cases" where denouncing what happened outweighs society's interest in having the matter decided on the merits.

2. Exclusion of evidence

[151] Given that the firearm was discovered in the wheel well of the truck, and not as part of a search of the accused incident to arrest, the first question that arises is whether the evidence was obtained in a manner that contravened the *Charter*.

[152] The threshold for s.24(2) to be engaged is that there must be a sufficient nexus between the *Charter* breach and the impugned evidence. The connection may be temporal, contextual, casual, or a combination of the three. The determination of whether that nexus exists requires a facts-specific inquiry. The connection must not be too tenuous or remote. *R v Williams*, 2024 ONCJ 1170, para 225.

[153] Here, the discovery of the firearm occurred very shortly after the accused's arrest. But for the arrest, police officers would not have been at that location at that time. There is both a temporal and contextual connection between the arrest and the discovery of the evidence. In my view, in all the circumstances, there exists a sufficient nexus between the two to engage s. 24.

[154] The legal framework that governs applications to exclude evidence pursuant to s. 24(2) of the *Charter*, set out in *Grant*, requires balancing three factors:

1) the seriousness of the state infringing 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 *Grant.*

[155] This balancing exercise is qualitative. Dissociation of the justice system from police misconduct does not always trump the truth-seeking interests of the criminal justice system, nor is the converse true. The long-term repute of the administration of justice is what must be assessed. *R v Harrison*, 2009 SCC 34, para 36.

[156] In the present case, and as noted above at Paragraphs 140 to 142, even assuming Cst. Audet's grounds did not meet the threshold of reasonable and probable grounds, this was not a situation of him having no grounds at all. Police had information that the accused was engaged in drug trafficking activities at the Fort Gary apartment building; they had information that he was carrying a handgun on his person; they had legitimate concerns about public safety.

[157] Cst. Audet did not act arbitrarily or for improper motives. He testified that he thought he had sufficient grounds to effect the arrest when he originally attended the scene to conduct surveillance. He also explained why he made the decision to arrest the accused when he did. He was subjectively convinced that he had the grounds to arrest the accused, and that subjective belief was not fanciful or disconnected from reality. Hence, even if one were to assume that, objectively speaking, his grounds fell short of the standard required by law, I would consider this breach to be at the lower end of the spectrum of seriousness.

[158] With respect to the impact of the breach on the accused's interests, I would place it in the middle of the range. While the search he was subjected to after his arrest was not particularly intrusive, I do not think it can be examined in isolation. It must be considered along with the circumstances of the arrest. As I have already stated, being arrested at gunpoint would have had a significant impact on the accused, regardless of the relatively unintrusive search that followed.

[159] The third factor, in my view, strongly favours inclusion. The charges are very serious. The evidence sought to be excluded is essential to the Crown's case.

[160] Importantly, the evidence sought to be excluded is a handgun. Courts have recognized that it is appropriate, as part of the s.24(2) analysis, to take into consideration the distinctive feature of illegal handguns, and that the circumstances to be considered on an application to exclude evidence cannot be disconnected from their real-word context. *R v Paradis*, 2020 NWTCA 2, para 26-28; *R v Omar*, 2024 NWTCA 6, para 20.

[161] The possession of a loaded firearm is inherently very dangerous. It is a growing issue and a nationwide phenomenon. *R v Chin*, 2009 ABCA 226. The Northwest Territories has not been sheltered from this problem. The current context in the Northwest Territories, and in Yellowknife in particular, is that there is an increasing number of incidents involving the use of illegal firearms.

[162] Under the circumstances, the public interest in the adjudication on the merits is heightened, and the decision to exclude reliable evidence critical to the prosecution is more likely to have a detrimental impact on the repute of the administration of justice.

[163] The accused has not established that the handgun seized following his arrest should be excluded pursuant to s.24(2) of the *Charter*.

IV) CONCLUSION

[164] Those were my reasons for dismissing the *Charter* application.

[165] I would add this with respect to the circumstances that led to the accused's continued detention in July 2024.

[166] As I have already noted, the root of the problem was the Justice of the Peace's error in issuing the Form 8 on June 4th. In submissions, the Crown described that error as "a technical error that had significant consequences". For my part, I would not characterize this error as a "technical" one. A Form 8 Warrant of Committal reflects a decision to detain an accused pending trial. Including charges for which the accused has not been ordered detained in such a document is not, in my respectful view, merely a technical error. It is a substantive error.

[167] This case illustrates the importance of justices of the peace being clear on what orders are being sought at hearings, and being meticulous in ensuring that the documents they issue after hearings accurately reflect the decisions that they made.

[168] What happened in this case also illustrates the importance for everyone who works within the justice system to be as proactive as possible when an issue of this nature arises.

[169] Hindsight is 20-20, and mistakes inevitably happen from time to time. Taking stock of what happened and examining how processes and practices could be improved is the best way of avoiding it happening again, and is the responsibility of everyone who works within the criminal justice system.

L.A. Charbonneau
JSC

Dated at Yellowknife, NT, this
20th , day of November, 2025

Counsel for the Crown: Nakita McFadden

Counsel for the Accused : Jessie Casebeer

S-1-CR 2024 000057

IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

BETWEEN

HIS MAJESTY THE KING

-and-

TRENT TSELEIE

MEMORANDUM OF JUDGMENT
(RULING ON CHARTER APPLICATION)
OF THE HONOURABLE
JUSTICE L.A. CHARBONNEAU