*R v Rabesca*, 2026 NWTSC 13

Date: 2026-03-10
S-1-CR-2025-000039

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

HIS MAJESTY THE KING

-and-

PAMELA ANN LOUISE RABESCA

# MEMORANDUM OF JUDGMENT ON CHARTER MOTION AND VOLUNTARINESS

## OVERVIEW

[1] Pamela Ann Louise Rabesca faces charges of assault with a weapon, assault causing bodily harm and carrying a knife for a dangerous purpose in relation to the alleged stabbing of Allison Minoza in Yellowknife on October 4, 2024.

[2] After a short police investigation, Ms. Rabesca was arrested the same day. While she was still in police custody the following morning, she gave a statement to the police. Ms. Rabesca filed an application arguing the statement is not admissible because it was not free and voluntary and because it was obtained in a manner that infringed on her rights protected by ss 7 and 9 of the Charter.

[3] After the hearing, I gave a bottom-line ruling finding that the police did not breach s 9 but I was not satisfied beyond a reasonable doubt that the statement was free and voluntary. I indicated that written reasons would follow. These are those reasons.

## BACKGROUND

[4] At the *voir dire*, the parties filed an Agreed Statement of Facts. The Crown called six police officers as witnesses and adduced two video recordings. The general course of the police investigation and police officers' interactions with Ms. Rabesca are not in dispute.

[5] On October 4, 2024, at approximately 8:30 a.m., the Yellowknife RCMP received a call from dispatch that a person had been stabbed. Officers responded to the call. After looking for the alleged victim for a few minutes, the officers found Alison Minoza. She was bleeding and suffering from what appeared to be a stab wound to her left arm. An officer obtained a preliminary witness statement from Ms. Minoza during which she provided a description of her attacker, but she did not identify the person by name. Paramedics transported Ms. Minoza to the hospital, where she received treatment for her injuries.

[6] Meanwhile, other police officers secured the scene and canvassed the neighbouring area. They noticed a CCTV camera that they thought might have captured the incident. They obtained the footage and confirmed the incident was recorded. From that footage, they identified a suspect: a woman wearing ripped jeans and a black jacket. They also identified a red Ford F-150 pickup truck related to the incident. Officers started searching for the vehicle.

[7] At approximately 11 a.m., officers located a red Ford F-150 pickup truck that matched the truck observed in the footage. The truck was parked behind Norseman Apartments in the downtown area of Yellowknife. There were two male occupants in the vehicle. While officers were speaking with them, a woman who matched the description of the suspect exited unit 203 of the Norseman Apartments and yelled at the occupants of the red F-150 the officers were speaking with.

[8] The officers attended Unit 203 to secure it while they waited for a search warrant. They knocked on the door and a man answered. The officers entered. Constable Benjamin Deveau was one of them. He saw a woman matching the description of the suspect in the bathroom. The woman was Ms. Rabesca. Constable

Deveau approached Ms. Rabesca and arrested her. Four other individuals were present in unit 203 and they were also arrested.

[9] After arresting Ms. Rabesca, Constable Deveau performed a search incidental to arrest, and he found a folding knife in the pocket of her jacket. He also found a crack pipe and a lighter on her person. Constable Deveau read Ms. Rabesca her ss 10 (a) and 10 (b) Charter rights and the police caution from memory. Ms. Rabesca told him her name was Pamela Shae. Once Ms. Rabesca was handcuffed, Constable Deveau moved her to the hallway of the apartment building, where she sat on the floor with the other four individuals arrested waiting to be transported to the Yellowknife RCMP Detachment.

[10] A few minutes later, officers escorted Ms. Rabesca to a police vehicle parked outside Norseman Apartments. While she sat in the back seat of the police vehicle, Constable Deveau read Ms. Rabesca her Charter rights using his police Charter card. Constable Deveau then drove Ms. Rabesca to the Yellowknife RCMP Detachment, where she was lodged in a holding cell and where she remained until the next morning at approximately 9:52 a.m., when lead investigator Constable Adam Long brought Ms. Rabesca to an interview room and obtained a statement from her.

[11] The police interview was audio and video recorded and lasted approximately one hour. On several occasions during this interview, Ms. Rabesca invoked her right to remain silent. The recorded police interview conducted is the statement the defence argues should be excluded from the evidence at trial.

[12] Shortly after the interview, and within 24 hours of her arrest, Ms. Rabesca appeared before a Justice of the Peace.

## ANALYSIS

### *Overholding and Section 9 of the Charter*

[13] As the majority of the Supreme Court of Canada explained in *R v Grant*, 2009 SCC 32 at paragraph 54, “[a] lawful detention is not arbitrary within the meaning of s 9 (*Mann*, at para. 20), unless the law authorizing the detention is itself arbitrary. Conversely, a detention not authorized by law is arbitrary and violates s. 9.” The

accused bears the legal burden of establishing their detention was arbitrary (*R v Suberu*, 2009 SCC 33, para 28; *R v Hardy*, 2015 MBCA 51, para 34).

[14] The provisions governing the impugned police conduct are ss 495 to 503 of the *Criminal Code* (CC). The accused is not challenging the constitutionality of the legislation by arguing the law is arbitrary. The defence's position is that the police did not comply with the applicable statutory requirements following Ms. Rabesca's arrest. Ms. Rabesca does not dispute that the police were authorized to arrest her pursuant to s 495 CC, but she argues that it was unreasonable and, therefore, contrary to s 503 CC to delay her questioning and her first appearance before a Justice of the Peace to the morning. She also submits that instead of bringing her before a Justice of the Peace, Constable Long should have released her on an undertaking in compliance with s 498 CC.

[15] In October 2024, Constable Long was on a rotation with the Yellowknife RCMP General Investigation Section (GIS), a unit with the mandate of providing support to frontline general duty RCMP officers in Yellowknife by taking on the responsibility of more complex investigations that require additional resources. Constable Long testified that he became involved in this investigation at approximately 8:30 a.m. on October 4. By the time the police attended Norseman Apartments later that morning, the decision was made that the GIS would take over the investigation and Constable Long was assigned as lead investigator.

[16] After the officers entered Apartment 203 and arrested five individuals in the unit, all arrestees were transported to the Yellowknife Detachment. Once at the detachment, Constable Long reviewed all the information the police had gathered, including the surveillance footage. He developed a plan to obtain warned cautioned statements from four of the five persons who had been arrested. Ms. Rabesca was one of them. He decided to interview Ms. Rabesca last because she was the main suspect of the stabbing, the person who he believed was the principal actor, and he wanted to have as much detail as possible about the incident before interviewing her.

[17] Constable Long successively interviewed the three other suspects from 2:26 p.m. to 8:15 p.m. He decided to postpone Ms. Rabesca's interview to the next morning. He explained he did not question Ms. Rabesca that evening because it had already been a long day. He wanted to give Ms. Rabesca time to rest. He indicated that there were many moving parts in this investigation. In cross-examination, he

denied believing that as long as an accused is brought before a Justice of the Peace within 24 hours, he can keep them in custody. In fact, he described that he usually tries to get detainees released as soon as possible but it was impossible in this case because of "all the moving parts" of the investigation. In cross-examination, he acknowledged that before postponing Ms. Rabesca's police interview to the next morning, he did not speak to the cellblock guards or consult the cellblock log to find out if Ms. Rabesca had been resting or sleeping since she was lodged in cells. He agreed with the suggestion that he did not speak with Ms. Rabesca to ask how she was feeling and whether she needed to rest. Constable Long also acknowledged that he was tired and that he needed time to rest. In fact, he ended a twelve-hour shift at 8:30pm on October 4. He was back at the detachment the next morning, on a Saturday, at 8 a.m., when he was not scheduled to be working, to continue the investigation, including proceeding with Ms. Rabesca's interview.

[18] Constable Long testified that it would not have been possible to hand over the responsibility to interview Ms. Rabesca to another officer. The GIS was composed only of a few members who were busy on other assignments. He would not have asked a general duty member to assist with this task, particularly at a time when the Yellowknife Detachment had staffing issues.

[19] Constable Long agreed with the suggestion that he made the decision to charge Ms. Rabesca with aggravated assault and possession of a weapon for a dangerous purpose before he obtained a statement from her and although he did not remember exactly when he reached that decision, it was probably at some point during the afternoon of October 4. Constable Long also explained that he decided not to release Ms. Rabesca on an undertaking to a peace officer because of the severity of her alleged conduct. He believed that she had almost killed someone, which justified his decision to take her before a Justice of the Peace.

<u>The decision to take Ms. Rabesca before a Justice of the Peace - s 498 CC</u>

[20] The defence takes the position that Constable Long should have released Ms. Rabesca on an undertaking to a peace officer pursuant to s 498(1) CC instead of taking her before a justice.

[21] Section 498(1) CC sets out the general principle that persons who are arrested and charged with an offence other than one listed at s 469 CC, which is not the case

here, should be released. Detention is the exception. The conditions that justify a police officer detaining an accused are set out at s 498(1.1) CC, which provides:

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| **Exception**<br>(1.1) The peace officer shall not release the person if the peace officer believes, on reasonable grounds,<br><br>(a) that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, having regard to all the circumstances, including the need to<br><br>(i) establish the identity of the person,<br>(ii) secure or preserve evidence of or relating to the offence,<br>(iii) prevent the continuation or repetition of the offence or the commission of another offence, or<br>(iv) ensure the safety and security of any victim of or witness to the offence; or<br><br>(b) that, if the person is released from custody, the person will fail to attend court in order to be dealt with according to law. | **Exception**<br>(1.1) L'agent de la paix ne met pas la personne en liberté s'il a des motifs raisonnables de croire :<br><br>a) qu'il est nécessaire, dans l'intérêt public, de détenir la personne sous garde ou de régler la question de sa mise en liberté en vertu d'une autre disposition de la présente partie, eu égard aux circonstances, y compris la nécessité:<br><br>(i) d'identifier la personne,<br>(ii) de recueillir ou conserver une preuve de l'infraction ou une preuve y relative,<br>(iii) d'empêcher que l'infraction se poursuive ou se répète, ou qu'une autre infraction soit commise,<br>(iv) d'assurer la sécurité des victimes ou des témoins de l'infraction;<br><br>b) que, s'il met la personne en liberté, celle-ci omettra d'être présente au tribunal pour être traitée selon la loi. |

[22] The defence argues that the only circumstances that can justify detention are those listed at s 498(1.1) (a) (i) to (iv): to establish the identity of the person, to secure or preserve evidence of or relating to the offence, to prevent the continuation

or repetition of the offence or the commission of another offence, or to ensure the safety and security of any victim of or witness to the offence. They note that Constable Long explained his decision not to release Ms. Rabesca solely by the severity of the alleged conduct, which is not one of the listed circumstances. They further submit that none of the listed circumstances are present in this case.

[23] As set out above, when Constable Deveau arrested Ms. Rabesca, she identified herself as Pamela Shae. At the *voir dire*, Constable Charles Audette explained that he was tasked with trying to confirm the identity of the suspect because the usual steps, including databank queries, did not yield a positive identification. At some point after 5 p.m., Constable Audette attended Ms. Rabesca's cell and explained to her that the police needed her full name to continue their investigation. That is when she provided her last name Rabesca. Until some time after 5 p.m., the police were trying "to establish the identity of the person."

[24] Although I agree with the defence that none of the listed circumstances were present after Ms. Rabesca was properly identified, I reject the position that at least one of these circumstances must be present to justify the decision to detain. The provision reads, "The peace officer shall not release the person if the peace officer believes, on reasonable grounds, (a) that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, having regard to all the circumstances including […]" [emphasis added]. The word "including" signals that the list is not exhaustive. Necessary in the public interest is a stand-alone basis to detain (*R v Culmer*, 2024 ONSC 6485, para 262).

[25] The next question is whether Constable Long had reasonable grounds to believe that the public interest required Ms. Rabesca to be brought before a Justice of the Peace, having regards to all the circumstances. I conclude that he did.

[26] Ms. Rabesca was alleged to have stabbed a woman who was still in hospital being treated for severe injuries. Although the charge of aggravated assault was later downgraded to assault causing bodily harm, I have no reason to doubt the officer's evidence that he believed at the time that Ms. Rabesca had "almost killed somebody". In addition, upon her arrest, Ms. Rabesca was found with a folding knife on her person. The charges Ms. Rabesca faced and the circumstances in which they were allegedly committed are serious. They engage the need to protect the safety of the public. In these circumstances, I find that it was in the public interest to bring Ms. Rabesca before a Justice of the Peace.

The decision to hold Ms. Rabesca overnight – s 503 CC

[27] The central issue on s 9 of the Charter is whether the decision to postpone Ms. Rabesca's police interview and first appearance before a Justice of the Peace complied with the applicable *Criminal Code* provisions.

[28] 503 CC stipulates:

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| **Taking before justice**<br>503 (1) Subject to the other provisions of this section, a peace officer who arrests a person with or without warrant and who has not released the person under any other provision under this Part shall, in accordance with the following paragraphs, cause the person to be taken before a justice to be dealt with according to law:<br><br>(a) if a justice is available within a period of 24 hours after the person has been arrested by the peace officer, the person shall be taken before a justice without unreasonable delay and in any event within that period; and<br><br>(b) if a justice is not available within a period of 24 hours after the person has been arrested by the peace officer, the person shall be taken before a justice as soon as possible. | **Prévenu conduit devant un juge de paix**<br>503 (1) Sous réserve des autres dispositions du présent article, l'agent de la paix qui arrête une personne avec ou sans mandat et qui ne la met pas en liberté en vertu de toute autre disposition de la présente partie la fait conduire devant un juge de paix, conformément aux alinéas ci-après, pour qu'elle soit traitée selon la loi :<br><br>a) si un juge de paix est disponible dans un délai de vingt-quatre heures après son arrestation, elle est conduite devant un juge de paix sans retard injustifié et, dans tous les cas, au plus tard dans ce délai ;<br><br>b) si un juge de paix n'est pas disponible dans un délai de vingt-quatre heures après son arrestation, elle est conduite devant un juge de paix le plus tôt possible |

[29] A Justice of the Peace was available within 24 hours of Ms. Rabesca's arrest and therefore, this case is captured by subsection (a). The provision stipulates that, in such a case, the person arrested must be taken before a Justice of the Peace "without reasonable delay" and in any event, within 24 hours. The expression used in the French version, which is equally authoritative, is "sans retard injustifié". According to the Collins-Robert French-English Dictionary, this expression can be translated into English as "unjustified delay". Unjustified is defined by the Merriam-Webster Dictionary as "not demonstrably correct or judicious**:** not warranted or appropriate." Both versions convey the same meaning that an unreasonable delay is one that is not justifiable.

[30] As highlighted in *R v W(E)*, 2002 NFCA 49, in paragraph 14 [*W(E)*]:

> Based on the clear language of section 503(1), the fundamental requirement is that the police must take the accused before a justice of the peace "*without unreasonable delay*". The reference to twenty-four hours simply establishes the outer limit of the permissible detention ( R. v. Storrey, 1990 CanLII 125 (SCC), [1990] 1 S.C.R. 241, at page 256). Whether a delay is unreasonable will, of course, depend on the particular facts.

[31] At the hearing, the defence took the position that delaying the release or the appearance before a Justice of the Peace for the sole purpose of gathering evidence, including the conduct of a police interview, is not permitted by s 498(1.1) CC and is unreasonable within the meaning of s 503 CC. The defence relied on *R v Raios*, 2018 ONSC 6867 [*Raios*], at paragraph 21. The Crown pointed to the wording of s 498(1.1) CC, which provides that delaying the release to secure evidence is one of the listed factors and argued that, by analogy, the same reasoning applies to delaying the appearance before a justice.

[32] I allowed the parties to file additional case law on this issue. The defence provided additional cases and correspondence in which they changed the position they took at the hearing. They acknowledged that their original position does not align with the Supreme Court of Canada decision in *R v Storrey*, [1990] 1 SCR 241 [*Storrey*], where the court wrote at p 254:

> […] it has long been the rule in Canada and the United Kingdom that the police can continue their investigation subsequent to an arrest. The essential role of the police is to investigate crimes. That role and function can and should continue after they have made a lawful arrest. The continued investigation will benefit society as a whole and not

> infrequently the arrested person. It is in the interest of the innocent arrested person that the investigation continue so that he or she may be cleared of the charges as quickly as possible.

[33] In that case, the Court found that the police were justified to continue their investigation by holding an identification line-up following the arrest, and that a delay of 18 hours before the charge was laid was not unreasonable and did not constitute arbitrary detention.

[34] The defence also provided *R v Viszlai*, 2012 BCCA 442 [*Viszlai*], a case in which the police had delayed a suspect interview for 15 hours while the lead investigator from a specialized unit was travelling from a bigger urban centre to the smaller community where the suspect was arrested. The British Columbia Court of Appeal ruled that delaying the release of the accused to conduct a police interview can be justified, noting the comments of the majority of the Supreme Court of Canada in *R v Singh*, 2007 SCC 48 [*Singh*] at paragraph 28 that "[t]he importance of police questioning in the fulfillment of their investigative role cannot be doubted." The Court of Appeal found that, in that case, holding the suspect overnight so the primary investigator could interview him was reasonable.

[35] The defence now concedes that the proper interpretation of the legislative regime is that the police *can* delay the release or the first appearance before a Justice of the Peace for the purpose of gathering evidence but only if it is reasonable. The defence maintain their position that, in the circumstances of this case, holding Ms. Rabesca overnight to attempt to interview her in the morning amounted to unreasonable delay.

[36] Although the police can delay the release or the first appearance to pursue investigative steps such as a police interview, it does not mean that they have free range until the expiration of the 24-hour period (*Storrey*, pp 256-257; *W(E)*, para 16). They must act diligently and promptly, which means that they can only continue the detention and postpone the appearance while they are genuinely and reasonably continuing their investigation. In this case, I find they were.

[37] Until some time after 5 p.m. on October 4, the police had not been able to establish Ms. Rabesca's identity. As described above, it was not until she provided her actual last name to Constable Audette that they were able to identify her. The detention was reasonable until Ms. Rabesca was identified.

[38] I also find it was reasonable for the investigator to complete the interviews of the other suspects before questioning Ms. Rabesca. The police believed the other individuals arrested had peripheral roles in the stabbing, while Ms. Rabesca was suspected of being the stabber. Constable Long's decision to interview her last was justified.

[39] In cross-examination, the defence challenged Constable Long's decision to interview all the suspects himself instead of asking colleagues to complete this task for him when the investigation continued into the evening. Constable Long explained that the GIS and the Yellowknife Detachment were short-staffed at the time, a situation that has since been addressed, which did not offer him this option. In addition, he felt it was important for him to complete Ms. Rabesca's interview as the lead investigator because he had all the relevant information. I find these justifications reasonable. The British Columbia Court of Appeal reached a similar conclusion in *Viszlai* where it found that the argument that the suspect's interview should have been delegated to an officer who was not the lead investigator and not a member of a specialized unit was without merit (para 60).

[40] The real question is whether the police could continue to hold Ms. Rabesca overnight when they had completed the other interviews, from 8:15 p.m. until the next morning.

[41] The defence filed *W(E).* In that case the suspect was arrested at 6 p.m. and brought before a Justice of the Peace at 5:46 p.m. the next day. The investigators were interviewing witnesses until midnight, at which point they transferred the suspect to a larger facility for the night. The interview of the suspect started at 3:20 p.m. the next day. The Newfoundland Court of Appeal found that the delay from the time of arrest until the next morning was not unreasonable (para 10). They, however, took issue with the delay in starting the interview the next day, noting the complete absence of evidence of any investigative steps from 9 a.m. to 3 p.m. The present case is different, as Ms. Rabesca was interviewed the next morning.

[42] The defence also relies on *Raios*. In that case, Mr. Raios was arrested at 4:40 a.m. His police interview began at 1 p.m. and ended at 1:50 p.m. The police took no further investigative steps between 1:50 p.m. and 10:59 a.m. the following day when the accused appeared in bail court. The Crown conceded and the Court found that s 503 CC and s 9 of the Charter were breached. Two key circumstances differ from those before me. First, in *Raios*, almost 22 hours elapsed between the

completion of investigative steps and the first appearance in bail court. Second, unlike here, the appearance in bail court occurred after the expiration of the 24 hours outer limit.

[43] *R v McGregor*, 2020 ONSC 4802 is also distinguishable for the same reason. In that case, the accused was not brought before a justice until 42 hours after his arrest. In addition, the main concern was that the police had arrested the accused for obstructing a peace officer, which was used as a pretext to keep the accused in custody to question him in relation to a disappearance and murder investigation.

[44] I agree with the defence that police officers should keep front of mind the time elapsed since the arrest and the impact of continued detention on the detainee. In this case, Constable Long did. It was clear from his evidence in cross-examination that he understood that s 503 CC is not a licence to hold detainees for 24 hours as the police pleases and that they are required to release detainees or bring them before a Justice of the Peace as soon as reasonably feasible. Constable Long testified that the RCMP try to process accused persons promptly but that in this case, because of the time it took to interview the other suspects, he felt he had to postpone Ms. Rabesca's statement to the next morning.

[45] Constable Long explained the main reason he held Ms. Rabesca overnight was to give her the opportunity to rest after a long day. I am mindful that Constable Long did not seek information on how rested Ms. Rabesca was that evening. He did not ask Ms. Rabesca how tired she was feeling. I agree with the defence that it would have been preferable if the officer had taken steps to ascertain Ms. Rabesca's state by speaking with her, reviewing the cell block logbook, or both, but I do not accept that his failure to do so was unreasonable. The situation Constable Long found himself in was difficult. On the one hand, starting the suspect's interview at 8:30 p.m. and potentially questioning Ms. Rabesca late in the evening could raise concerns about oppressive conditions. On the other hand, delaying the interview prolongs the detention. It is not an easy decision to make, and I do not accept the defence's submission that Constable Long made an unreasonable one.

[46] At the hearing, the defence acknowledged that in deciding this issue, there is a risk of falling into micromanaging police decision-making. I agree. It is often easy to look at a police investigation in hindsight and find ways they could have done better. The test I must apply is "without unreasonable delay". This means that the police comply with s 503 CC if they make justifiable and reasonable decisions. They are not required to make perfect decisions.

[47] Another question that arises is whether it was even possible to take Ms. Rabesca before a Justice of the Peace on the evening of October 4.

[48] The parties filed an Agreed Statement of Facts that sets out the process in place for the conduct of first appearances in bail court in this jurisdiction in October 2024. It states that Justices of the Peace were available every day at almost any hour with some advance notice. However, they would usually not conduct a first appearance in bail court in the absence of a Crown Prosecutor. During the relevant period, Crown Prosecutors were assigned to conduct such appearances seven days a week, from 8 a.m. to 5 p.m. Prosecutors were informed by the police that such an appearance was required when they received a notice from the police and a bail package. If the assigned Crown Prosecutor received notice that a hearing was required before 5 p.m., they usually made themselves available to conduct the hearing later that evening. However, if they did not receive notice by 5 p.m., they would likely have ended their day of work and they would only become aware of the necessity to schedule a first appearance at 8 a.m. the next morning.

[49] Considering the police had not established Ms. Rabesca's identity before 5 p.m., the investigators would not have been able to notify the Crown Prosecutor and to complete a bail package by the cut-off time. Consequently, I conclude that irrespective of Constable Long's decision to conduct Ms. Rabesca's interview the next morning, it is improbable that an appearance before a Justice of the Peace could have been conducted on the evening of October 4.

[50] However, whether an appearance that evening was possible is not a determining factor in my decision. As explained above, I find the police conduct and decisions that delayed Ms. Rabesca's first appearance were reasonable and, therefore, compliant with s 503 CC.

[51] The accused has not established that her right to be free from arbitrary detention protected by s 9 of the Charter was infringed.

***Voluntariness and s. 7 of the Charter***

<u>The legal principles</u>

[52] The confessions rule governs the admissibility of statements under the common law. It provides that if the Crown wishes to use a statement made by the accused to a person in authority, it must prove beyond a reasonable doubt the

statement was voluntary (*R v Oickle*, 2000 SCC 38 [*Oickle*] at paras 30 and 68). Voluntariness is broadly defined. A statement can be involuntary "because it is unreliable and raises the possibility of a false confession, or because it was obtained unfairly and contravenes the principle prohibiting self-incrimination and the right to remain silent" (*R v Tessier*, 2022 SCC 35, para 70).

[53] The confessions rule aims at striking "[t]he delicate balance between individual rights and collective interests in the criminal justice system" (*R v Beaver*, 2022 SCC 54, para 46 [*Beaver*]). It recognizes the right to protection against self-incrimination and the right to remain silent without unduly restricting the police's ability to investigate and solve crimes (*Oickle*, para 33, *Beaver*, para 46).

[54] Section 7 of the Charter stipulates that "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice", which includes the right for a suspect of a crime to remain silent. The Supreme Court of Canada determined that the Charter protected right to silence is encompassed in the confessions rule (*R v Singh* 2007 SCC 48 [*Singh*], para 37, *R v Sinclair*, 2010 SCC 35 [*Sinclair*], para 62) such that "[a] finding of voluntariness will […] be determinative of the s. 7 issue." As a result, if the Crown can prove beyond any reasonable doubt the statement was free and voluntary under the confessions rule, it inevitably means that there is no violation of the right to silence. Conversely, if the accused establishes a breach of the right to remain silent on a balance of probabilities, the statement is not voluntary (*Singh*, para 37).

[55] Deciding whether a statement is free and voluntary is highly fact-specific and requires a contextual analysis (*Singh*, para 53; *Sinclair*, para 62). In *Oickle*, the Supreme Court of Canada identified factors that bear on voluntariness: the presence of threats or promises, the existence of oppressive conditions, whether the accused had an operating mind and the presence of police trickery (*Oickle*, para 69). However, the ultimate question is whether the Crown can prove that the will of the person making the statement has not been overborne (*Oickle*, para 57; *Singh*, para 53).

[56] Many cases have considered whether persistent police questioning in the face of an assertion of the right to remain silent infringes on the accused's Charter rights and affects voluntariness. The leading case on this issue is *Singh*.

[57] Summarizing the principles arising from the Supreme Court of Canada's jurisprudence, including *Singh*, Charbonneau J noted in *R v Sayine*, 2014 NWTSC 56 [*Sayine*] at paragraph 77:

> The law is clear: the assertion by a detainee of his or her desire not to speak does not trigger an obligation on the part of the police to immediately stop trying to elicit information. Some persistence on the part of the police is permitted, and indeed consistent with the law's recognition of the importance of letting them carry out their investigative duties and attempt to solve crimes.

[58] However, that persistence has limits. Although they concluded that the trial judge's decision the statement was voluntary and Charter compliant ought not to be disturbed in that case, the majority in *Singh* did not endorse the practice of persistent questioning. In fact, Charron J observed at paragraph 47:

> [..] the law as it stands does not permit the police to *ignore* the detainee's freedom to choose whether to speak or not, as contended. Under both common law and *Charter* rules, police persistence in continuing the interview, despite repeated assertions by the detainee that he wishes to remain silent, may well raise a strong argument that any subsequently obtained statement was not the product of a free will to speak to the authorities.

<u>The recorded statement is not voluntary</u>

[59] Before I turn to the core issues raised, I note that it is not disputed that several factors that can affect voluntariness are not present in this case, including:

- There is no doubt that Ms. Rabesca had an operating mind at the time she spoke with Constable Long.

- Ms. Rabesca was aware of her right to remain silent. She was adequately informed of her Charter rights by the police, both at the time of her arrest and at the beginning of the recorded interview. She was given the opportunity to consult with counsel and she twice declined. Shortly after initiating the formal interview, and before he started questioning Ms. Rabesca about the alleged offence, Constable Long informed her of her ss 10 (a) and 10 (b) Charter rights. After Ms. Rabesca waived her right to speak to counsel, Constable Long read the police caution. He also explained the right to silence and to

ensure Ms. Rabesca understood, he asked her to tell him what it meant to her. Mr. Rabesca's response shows that she understood her right to remain silent.

- Constable Long was polite and respectful with Ms. Rabesca throughout the interview. There were no threats or overt promises offered, and Constable Long did not conduct an aggressive interrogation.

- Constable Long offered Ms. Rabesca coffee and snacks; he ensured the temperature of the interview room was comfortable for her and offered her a sweater or blanket in the event she felt cold.

- The interview was not prolonged, lasting less than an hour.

- The evidence does not suggest that there was any police trickery.

[60] The question I must decide is whether the statement given by Ms. Rabesca to Constable Long was involuntary and obtained in violation of her right to remain silent because of the officer's persistent questioning of Ms. Rabesca after she repeatedly asserted her right to silence.

[61] The defence argues Ms. Rabesca asserted her right to silence between 19 and 22 times during the police interview. They claim she did so in different ways: mostly by voicing a desire to go home or by asking when she would be able to go home. On a few occasions, she also said she did not want to talk. The defence also submits that, on three occasions, Ms. Rabesca indicated she was sick, tired or not feeling well and that those instances could also be considered an assertion of her right to remain silent. The defence claims that each time Ms. Rabesca invoked her right to silence, her attempt to stop the interview was simply brushed off by Constable Long, which implied that he was not going to take no for an answer and left the impression that Ms. Rabesca needed to speak for the interrogation to stop.

[62] The Crown does not dispute that there are different ways a suspect can express their choice to remain silent during an interrogation. For example, asking to be returned to one's cell or standing up to leave the interview room have been considered assertions of the right to silence (*Singh*, para 13; *Sayine*, para 90). The Crown concedes that Ms. Rabesca asserted her right to silence several times during the interview but disagrees with the defence on the number of times it happened. They further argue that not every action to assert the right to silence is equal. They

say that some actions are subtle and others are more forceful and the degree of opposition to the continued questioning matters.

[63] The Crown also submits that the fact that the officer deflected Ms. Rabesca's questions about the length of her detention does not necessarily imply that she would only be released if she spoke. She could equally have entertained the possibility that she would remain in custody whether she spoke or not. The Crown claims that, as a result, the police conduct cannot be considered an inducement. In addition, the Crown points to the fact that, between assertions of the right to silence, Ms. Rabesca answered questions and, importantly, she also asked questions, which suggests she was engaging deliberately and exercising her free will to talk. The Crown urges me to look not only at the implicit assertions that suggest a desire to refrain from speaking with the police, but also those that suggest a desire to speak.

[64] I agree with the Crown that a few early exchanges, when Ms. Rabesca says she is sick or tired, when she mentions she wants to go home or when she asks when she will be released, do not amount to asserting her right to remain silent in the context of this interview. Similarly, not every response from the officer amounts to brushing off Ms. Rabesca's questions about her potential release.

[65] For example, at the onset of the interview, Constable Long inquires with Ms. Rabesca if she had breakfast. She says she did. He then asks if she feels cold. Ms. Rabesca answers, "I'm sick". In the context of this exchange, when Ms. Rabesca said: "I'm sick", she is not expressing her desire to remain silent. Constable Long asks her questions to ensure she is comfortable and Ms. Rabesca explains to Constable Long that she feels cold because she is sick. I agree with the Crown that this is not an assertion of her right to silence.

[66] Another example occurs a few minutes later when Constable Long canvasses Ms. Rabesca's Charter rights with her. After Constable Long informs her of the reasons for her arrest and starts to address the right to silence, the following exchange takes place:

| | |
|---|---|
| P. RABESCA: | So, I probably won't get out today? |
| CST LONG: | Ah… I can certainly talk to you about that afterwards. I'm just… |
| R. RABESCA: | Yeah |

CST LONG: I wanna make sure that I don't say anything and I don't want you to say anything to me until you understand these…this, okay?

[67] This exchange occurs in the context of Charter rights information being provided to Ms. Rabesca. She tells the officer she was not informed or does not remember the reasons for her arrest the previous morning. After Constable Long reiterates that she was arrested for aggravated assault and possession of a weapon for a dangerous purpose, and presumably realizing the gravity of the situation, she is looking for confirmation from the officer that she will not be released that day. Constable Long did not brush off the question. In fact, it was appropriate for the officer to refrain from engaging in such a discussion with Ms. Rabesca until he was done addressing the Charter rights.

[68] Although not all the occurrences alleged by the defence amount to an assertion of the right to remain silent, Ms. Rabesca does invoke her right to silence multiple times throughout the interrogation. The following are examples of exchanges between Ms. Rabesca and Constable Long, which are reflective of how Ms. Rabesca asserted her right to silence and how they were met by the interviewing officer.

P. RABESCA: No, but then, can you tell me when I get to leave?

CST LONG: I can certainly discuss that with you, ahm…but I'd like to know, like, kinda, like, what happened yesterday.

[…]

CST LONG: […] I'm just kinda curious to see, like, what, you know, what the day was like…like, what time did you get there at Norseman?

P. RABESCA: I don't know. *(unintelligible)* … I don't know. I just wanna know when can I…can you tell me when I get to go home?

CST LONG: Was there, like, a lot of people that were there?

[…]

P. RABESCA: […] Okay, now can you let me know when I'm going…? When I get to go home?

| | |
|---|---|
| CST LONG: | Okay. |
| P. RABESCA: | I've never been in cells before. I don't like it. |
| CST LONG: | Ahm… but she took your mickey, and that …. That was the issue? |
| […] | |
| P. RABESCA: | […] Are we done now? When do I get to go home? |
| CST LONG: | I'd like to find out what happened here. |

[69] I have carefully reviewed the recorded statement, and I conclude that Ms. Rabesca asserts her right to remain silent 17 times in total. Almost every time, the officer brushes her off and carries on with his questioning. It is only at the end of the interview that Constable Long tells Ms. Rabesca she is not getting released but instead will be appearing before a Justice of Peace, although the officer testified that this decision had already been made before the statement was obtained.

[70] In cases filed by the defence in support of their position, the number of times the accused invoked the right to remain silent was significantly higher than the present case (approximately 33 times in *R v Felker*, 2009 BCSC 408 [*Felker*] and over 100 times in *R v Davis*, 2011 ONSC 5564 [*Davis*]). The number of times a suspect asserts their right to silence is a factor to be taken into consideration, but it is not determinative (*Singh*, para 53). In *Singh*, the accused invoked his right to silence 18 times, and the statement was found to be voluntary.

[71] In this case, the police interview was much shorter than it was in *Felker* and *Davis*. The longer the interrogation goes on, the more the pressure on a suspect increases. A shorter police interview can be a factor that weighs in favour of a conclusion that the statement is voluntary. However, it does not mean that the suspect's cannot be overborne when they raise their right to silence on a comparatively lower number of assertions in a shorter period. In this case, in the first minutes of the actual interrogation, when Constable Long moved from small talk and Charter rights to questioning Ms. Rabesca about her whereabouts on the night preceding the stabbing, Ms. Rabesca firmly asserts her right to silence several times, and she continues to assert her right to remain silent throughout the statement.

[72] I agree with the Crown that I should not only look at instances when Ms. Rabesca conveyed a desire to refrain from speaking with the police, but I should

also look at times when she conveyed that she was interested in speaking with the officer. For example, at one point, after Ms. Rabesca had claimed several times that she lacked memory of what happened the night of the stabbing because she was in a state of black out from the consumption of alcohol, she asks the officer, "Why, what happened? Do you know what happened? Tell me what happened." I accept that Ms. Rabesca is trying to obtain information from the investigator, which could suggest a free will to speak. However, on only a few occasions she asks questions to the officer about the evidence he has gathered, and they are followed by other assertions of the right to silence. In addition, throughout the statement, Ms. Rabesca's level of engagement with Constable Long is limited. For most of the interview, Constable Long presses Ms. Rabesca with questions, and she answers that she does not remember or provides laconic answers. Like in *Davis*, "[t]his is not a case where the accused asserted [her] right to remain silent initially but then chose to waive that right."

[73] I agree with the Crown that the circumstances before me are different from those in *R v Den Ouden*, 2023 ABKB 85 [*Den Ouden*] where the interviewing officer made ambiguous statements about the potential release of the accused, which more explicitly conveyed that the length of the accused's detention was connected to his performance during the interview. However, the Crown concedes that Constable Long should have informed Ms. Rabesca much earlier that the decision to detain her had already been made. Ms. Rabesca's repeated attempts to exercise her right to silence and to find out about her potential release were ignored and the questioning continued as if her choice to speak or not did not matter. I conclude that Constable Long's repeated deflection of Ms. Rabesca's questions about her release implied that the interview would continue until she provided the information the officer was seeking.

[74] The defence argues that the presence of other factors, although they do not rise to the level of oppressive conditions, made Ms. Rabesca more vulnerable to the persistent questioning and contributed to denying her a meaningful choice to abstain from speaking with the police. The defence points to the length of Ms. Rabesca's detention period before the interview started, Ms. Rabesca's inexperience with the criminal justice system and the fact that she was sick and tired during the interview.

[75] I agree that the length of Ms. Rabesca's pre-statement, her inexperience with the criminal justice system and her health condition heightened the impact of the implied inducement on Ms. Rabesca.

[76] Ms. Rabesca had been in custody for almost 23 hours when the police interview started. The defence argues that even in the absence of a finding of a s 9 breach, the length of the detention can affect the voluntariness analysis. Obtaining a statement after 23 hours of detention is not in itself objectionable and alone would not have led me to conclude the statement was involuntary. However, in this case, the length of the detention affected Ms. Rabesca. She told Constable Long that four of her five children lived with her mother in Fort Smith and her mother was in Yellowknife for the weekend with the children for a visit. Ms. Rabesca explained that she did not get a chance to see her children much. It is in that context that Ms. Rabesca firmly repeatedly conveyed during her statement that she was anxious to find out when she should be released. I conclude that, in this case, the length of the pre-statement detention period is a factor that affects voluntariness.

[77] As noted in *Singh*, when considering the question of voluntariness and any alleged breach of the right to silence "the focus is on the conduct of the police and its effect on the suspect's ability to exercise his or her free will. The test is an objective one. However, the individual characteristics of the accused are obviously relevant considerations in applying this objective test" (para 36). This includes the suspect's experience with the criminal justice system (*Den Ouden*, para 48).

[78] It is not disputed that Ms. Rabesca had little experience with the criminal justice system. During the interview, she said it was her first time in police cells. Constable Long confirmed this in his exchanges with Ms. Rabesca during the statement and in his evidence at the *voir dire* when he indicated that Ms. Rabseca was not a person who had many police interactions. Again, this factor alone would not justify a finding that the statement was involuntary, but it is relevant to the assessment I must perform.

[79] With respect to Ms. Rabesca's physical condition, the evidence does not support a conclusion that she was sleep deprived. I accept defence's position that a night's sleep in RCMP cells is generally not as restful as a night in one's own bed. Police cells can be noisy and although Ms. Rabesca had a mattress and a blanket, it is not the most comfortable environment. However, Ms. Rabesca was able to rest or sleep for several hours before she was interviewed. Ms. Rabesca does mention that she is tired a few times during the questioning, but she appears alert throughout the statement. I agree with the Crown that what the defence described as fatigue becoming evident during the interview is more a change in attitude shortly after Ms. Rabesca finds out the police have a video of the incident.

[80] Where I do have concerns is about the impact of Ms. Rabesca's medical condition. In the early morning of October 5, 2024, Ms. Rabesca disclosed to the cellblock guard and to Corporal Layman, the supervising officer at the Yellowknife Detachment during the night shift, that she was diabetic. This information was noted on the cellblock logbook. Corporal Layman took adequate steps to ensure her wellbeing. He observed she was not showing signs of medical distress, offered her food, water, insulin and the opportunity to be transported to the hospital. At the time Ms. Rabesca indicated that she was fine and declined any medical assistance.

[81] Before Constable Long started the formal interview, he was not aware that Ms. Rabesca had raised concerns about her medical condition. He was not informed of this fact by other RCMP staff, and he took no steps to obtain such information. Considering Ms. Rabesca informed the police of her health condition, it was incumbent on them to make sure this information was conveyed to the interviewing officer. Whether it was Constable Long proactively reviewing the cellblock log before starting the interview or any another process, the police needed to have a system in place to guarantee that health concerns raised by a detainee are brought to the attention of the interviewing officer before a statement is obtained. It did not happen in this case.

[82] When Ms. Rabesca mentions she is sick at the beginning of the interview, Constable Long does not ask her what symptoms she is experiencing. Ms. Rabesca does not show any overt signs of medical distress during the interview, but the fact that she raised concerns about her diabetes in the early morning combined with her voicing that she is feeling sick during the interview and the interviewing officer's failure to explore this further might be insufficient to establish oppressive conditions. But it raises concerns about Ms. Rabesca's enhanced vulnerability to an implicit inducement.

[83] I do not believe that Constable Long intentionally breached Ms. Rabesca's right to silence, but the impact of his conduct was to offer an implicit inducement to a suspect who was inexperienced in the criminal justice system, who reported being physically unwell and had disclosed a medical condition, who had been in custody for almost 24 hours and who was anxious to find out about her custodial status. The combined effect of these circumstances leaves me with a reasonable doubt that the accused's will was not overborne.

[84] I am not satisfied beyond any reasonable doubt that Ms. Rabesca's statement to Constable Long was free and voluntary.

## CONCLUSION

[85] The defence failed to establish the police's decision to detain Ms. Rabesca overnight before attempting to obtain a statement from her was unreasonable. I also reject the submission that the decision to bring Ms. Rabesca before a Justice of the Peace instead of releasing her on an undertaking to a peace officer was not compliant with the *Criminal Code*. Consequently, I find that the accused has not met the burden of proving the accused's s 9 right was violated.

[86] However, I find that, during the interview, the police offered an implicit inducement to Ms. Rabesca, which, in all circumstances, leaves me with a reasonable doubt with respect to its voluntariness. Consequently, the statement is inadmissible at trial.

Annie Piché
J.S.C.

Dated at Yellowknife, NT, this
10th day of March 2026

Counsel for Crown: Jared Kelly

Counsel for Defence: Charles Davison and Paulina Ross

**S-1-CR-2025-000039**

**IN THE SUPREME COURT OF THE**

**NORTHWEST TERRITORIES**

**Between:**

HIS MAJESTY THE KING

-and-

PAMELA ANN LOUISE RABESCA

**MEMORANDUM OF JUDGMENT**
**ON CHARTER MOTION AND VOLUNTARINESS**
**OF THE HONOURABLE JUSTICE ANNIE PICHÉ**