



Case in Brief: **R. v. Breault**

Judgment of April 13, 2023 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2023 SCC 9

The Supreme Court of Canada rules that police must have an approved screening device with them when they order someone to provide a breath sample.

Early in the afternoon of April 2, 2017, in Val-Bélair near Quebec City, police were looking for someone reported by trail patrollers to be driving an all-terrain vehicle (ATV) while drunk. They stopped Pascal Breault, who was walking away from a parked ATV at a campsite. The officers wanted to take a breath sample from Mr. Breault, but they did not have an approved screening device (ASD) to do so. They radioed nearby officers to obtain a device.

While still waiting for the device, the officers demanded that Mr. Breault provide a breath sample. Mr. Breault refused three times to provide the required sample, even after he was told that refusing without a reasonable excuse to comply with the demand was a criminal offence. Given the repeated refusals of Mr. Breault, who said he had not driven the ATV, and given that the device had not yet arrived, the officers eventually cancelled their request. Mr. Breault was then charged with refusing to comply with a demand by police to provide a breath sample.

Under section 254(2)(b) of the *Criminal Code* (now section 320.27(1)(b)), police can demand that a person “provide forthwith” a breath sample if the person is suspected of drinking and driving within the last three hours. The test must be done using an ASD. When a person blows into the device, it provides officers with a reading that determines if there is sufficient alcohol in the person’s body to warrant a full breathalyzer test. Anyone who refuses to take the test without a reasonable excuse commits a criminal offence.

A municipal court in Quebec found Mr. Breault guilty of refusing to comply with a demand to provide a breath sample, and Quebec’s Superior Court dismissed his appeal. He then turned to the Quebec Court of Appeal, which allowed his appeal and acquitted him. The Crown appealed to the Supreme Court of Canada.

The Supreme Court has dismissed the appeal.

The demand by police to provide a breath sample was invalid because they did not have immediate access to an ASD when making the demand.

Writing for a unanimous Court, Justice Suzanne Côté ruled that the validity of a demand to provide a breath sample requires that police have immediate access to an ASD at the time the demand is made. According to Justice Côté, the word “forthwith” in section 254(2)(b) must, as a general rule, be given a strict interpretation that reflects its ordinary meaning, namely “immediately” or “without delay”. At this step of the detection procedure, a detained driver does not have a right to counsel as guaranteed by section 10(b) of the *Canadian Charter of Rights and Freedoms*, since the driver must provide a breath sample immediately. The limit on this right is justified because the detention is very brief. It is therefore essential to the constitutional validity of this provision that the interpretation given to the word “forthwith” be consistent with its ordinary meaning. As she noted, “[t]he more flexibly the word ‘forthwith’ is interpreted, the less the recognized justification for limiting the right to counsel holds up”.

Justice Côté stated that, exceptionally, unusual circumstances may justify a flexible interpretation of the word “forthwith” if they are related to the use of the device or the reliability of the result. However, unusual circumstances cannot arise from budgetary considerations or considerations of practical efficiency, such as the supplying of ASDs to police forces or the time needed to train officers to use them. The absence of a device at the scene at the time the demand is made is not in itself an unusual circumstance.

The Crown did not show that there were unusual circumstances that would account for the absence of an ASD at the scene and thus justify a flexible interpretation of the immediacy requirement. Justice Côté therefore found that the demand made by police was invalid. For these reasons, Mr. Breault’s refusal to provide a breath sample was not a criminal offence.

Breakdown of the decision: *Unanimous*: Justice [Côté](#) dismissed the appeal and upheld the acquittal entered by the Quebec Court of Appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Rowe](#), [Martin](#), [Kasirer](#), [Jamal](#) and [O'Bonsawin](#) agreed)

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