



***The Supreme Court of Canada will decide whether police must have an approved testing device with them when they order someone to provide a breath sample.***

Early in the afternoon of April 2, 2017, police were looking for someone reported 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 near Quebec City. 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, police ordered Mr. Breault to provide a breath sample. Mr. Breault repeatedly refused, so the officers placed him under arrest. The testing device had not yet arrived. It never did because the officers eventually cancelled their request and charged Mr. Breault with failing to comply with a demand by police to take a breath test.

### **The law**

The *Criminal Code* says police can demand someone provide a breath sample immediately if that 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, the ASD provides officers with a reading that determines if there is sufficient alcohol in someone's body to warrant a full breathalyzer test. Anyone who refuses to take the test with the ASD without a reasonable excuse commits an offence.

### **The lower courts**

A municipal court in Quebec found Mr. Breault guilty, and Quebec's Superior Court dismissed his appeal. He then turned to the Quebec Court of Appeal, which allowed his appeal and acquitted him of the charge. The Court of Appeal said police must have an ASD with them when they order someone to take a breath test, so the person can immediately comply with the order. The Crown appealed to the Supreme Court of Canada.

### **Questions for the Supreme Court**

This case raises important issues, such as whether police officers must have an ASD with them when they order someone to provide a breath sample, or whether police can keep someone waiting while they get the device.

### **Impact and Interveners**

The Court's decision could affect policing decisions across Canada. For this reason, various organizations have applied to be "interveners" in this case. Interveners are people or groups who get permission from the Court to provide context on legal questions, although the case does not affect them directly. They submit their arguments in writing. Some are also allowed to make their arguments at the hearing. Interveners offer judges different perspectives to consider when making their decisions.

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**More information (case # 39680):** [Case information](#) | [Factums](#) (written arguments from both sides)

**Lower court rulings:** [trial](#) (Quebec City Municipal Court – in French only) | [appeal](#) (Quebec Superior Court – in French only) | [appeal](#) (Quebec Court of Appeal)

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