



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

Judgment of July 22, 2022 | On appeal from the Court of Appeal of Alberta  
Neutral citation: 2022 SCC 32

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***The Supreme Court confirms an Alberta man’s murder confession should not be used at trial because he did not have enough opportunity to get legal advice.***

In 2015, police suspected Nigel Lafrance of having been involved in a murder, and got a search warrant for his home in Fort McMurray, Alberta. On the morning of March 19, a team of armed police officers entered his home to search it. They asked Mr. Lafrance if he was willing to answer some questions and, when he agreed, they drove him to a police station and interviewed him for over three hours. Police took a blood sample, fingerprints, and Mr. Lafrance’s cell phones and some clothing. He was not told he could contact a lawyer.

On April 7, the police arrested Mr. Lafrance for the murder. This time the police told him he could contact a lawyer, and Mr. Lafrance had a short phone call with Legal Aid, who told him he should “get a lawyer” to talk about his situation. The police then interviewed Mr. Lafrance for several hours. Mr. Lafrance asked if he could call his father, to help him get a lawyer. The police refused his request, since he had already called Legal Aid, and the police pushed for more answers. Mr. Lafrance eventually confessed to the murder.

Before the trial, Mr. Lafrance argued that his confession and some other evidence taken during the date of his first encounter with police should not be used at his trial. He said he should have been allowed to talk to a lawyer on March 19 and he should have been given a second chance at contacting a lawyer during the April 7 interview. Section 10(b) of the *Canadian Charter of Rights and Freedoms* guarantees that “everyone has the right on arrest or detention to retain and instruct counsel without delay and be informed of that right”.

The trial judge refused Mr. Lafrance’s request, and the evidence was used at his trial. The judge found that because the police had not actually “detained” Mr. Lafrance during the March 19 interview, they did not need to let him contact a lawyer on that day. Also, the police was not required to give him a second chance at talking to a lawyer during the April 7 interview. A jury convicted Mr. Lafrance of murder.

Mr. Lafrance appealed the conviction to Alberta’s Court of Appeal. A majority of judges in that court sided with Mr. Lafrance. They ordered a new trial to be held without the confession and without some of the other evidence the police had obtained. The Crown appealed to the Supreme Court of Canada.

The Supreme Court has agreed with the Court of Appeal: Mr. Lafrance is entitled to a new trial.

**Mr. Lafrance’s section 10(b) *Charter* right to counsel was violated.**

Writing for a majority of the judges of the Supreme Court, Justice Russell Brown found that the police violated Mr. Lafrance’s right to counsel on both dates. Given the “power imbalance” between police and a person detained by police, and because legal advice helps “cure” that imbalance, “these were serious breaches”, he wrote.

Whether police actually “detained” someone depends on three questions. First, how did the person perceive or understand the encounter with the police — did the person feel forced to comply with police instructions? Second, what did the police actually do, and how and where did they do it? Third, how would another person of a similar age, size, racial background and level of experience or sophistication have felt during the encounter?

In this case, the Supreme Court found that the police did in fact detain Mr. Lafrance after searching his home on March 19. Any reasonable person in Mr. Lafrance’s shoes would have understood that they were being singled out for investigation. Several factors support this conclusion: the police’s show of force in entering the home, waking Mr. Lafrance up and ordering him to leave; a long ride with police officers to the station; and a lengthy police interview in a secure area. As well, Mr. Lafrance was 19 years old, is Indigenous, had a lack of experience with police, and was unfamiliar with his legal rights. He would not have felt free to remain silent or free to leave.

The right to counsel guaranteed by the *Charter* includes not only informing a detained person of their right to talk to a lawyer, but also giving them time and an opportunity to actually get legal advice. A single consultation with a lawyer is usually enough. However, sometimes the police must provide the detained person with another chance to talk to a lawyer, especially if the person did not understand their rights or the advice they received.

In this case, the police violated Mr. Lafrance's right to counsel on March 19 because they actually detained him but did not tell him he could talk to a lawyer. The police again violated his right to counsel on April 7. After his first call to Legal Aid, it was clear Mr. Lafrance did not understand his rights. The police should have given him another chance at talking to a lawyer to get legal advice.

**Relying on the evidence would damage the reputation of the justice system.**

The police only obtained the confession and some other evidence after Mr. Lafrance's *Charter* rights were violated. The Supreme Court concluded that the confession and the other evidence should not be used at his trial. The seriousness of the *Charter* violations committed by the police, and the impact on Mr. Lafrance's rights, outweigh the public's interest in allowing the jury to hear that evidence. In these circumstances, Justice Brown concluded that allowing this evidence to be used at trial "would bring the administration of justice into disrepute".

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**Breakdown of the decision:** *Majority:* Justice [Brown](#) dismissed the appeal (Justices [Karakatsanis](#), [Martin](#), [Kasirer](#) and [Jamal](#) agreed) | *Dissenting:* Justices [Côté](#) and [Rowe](#) would have allowed the appeal and would have restored the original murder conviction (Chief Justice [Wagner](#) and Justice [Moldaver](#) agreed)

**More information (case # 39570):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [judgment](#) (Court of Queen's Bench of Alberta) | [appeal](#) (Court of Appeal of Alberta)

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