

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN:

MEGAN RAE KORDUNER

APPELLANT

-and-

HIS MAJESTY THE KING

RESPONDENT

-and-

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PARTS I and II – OVERVIEW AND POSITION ON QUESTIONS IN ISSUE

1. Women in Canadian Criminal Defence (“WiCCD”), is a non-profit, national advocacy organization for lawyers, licensed paralegals, and law students. WiCCD’s mission includes providing legal education to its members, including continuing professional development on impaired driving, mentorship, and advocacy. WiCCD represents 750 members across Canada, many of whom have intersectional identities as women or gender-diverse individuals who belong to one or more other equity-deserving groups. Many also act as counsel in provincial-level trial matters, often representing defendants who also identify as members of equity-deserving groups.
2. WiCCD advances the intersectional perspectives of its members and their clients.
3. WiCCD submits compelled statements used to justify demands for breath and bodily samples unnecessarily narrows the principle against self-incrimination. This narrowing will be most keenly felt by members of equity-deserving, marginalized communities, especially women. In addition to feeling statutorily compelled to respond to police questioning, this compulsion may be further heightened due to the inherent power imbalance between police officers and members of the public.
4. Women in particular may also feel societal pressures to respond to questioning rather than asserting their right to silence in efforts to comply with normative conceptions of femininity, and to avoid being perceived as cold or impolite.
5. WiCCD takes no position on the facts nor on the ultimate disposition of the appeal.

PART III – STATEMENT OF ARGUMENT

A. Section 7 in the Context of Impaired Driving Investigations

6. Section 7 of the *Charter* protects against self-incrimination, and is a principle of fundamental justice.¹ Whether s. 7 is triggered is contextual. Jurisprudence has grappled

¹ *Thompson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)* [1990] 1 SCR 425; *R. v. White*, [1999] 2 SCR 417 at para. 40 [*White*].

with competing interests between the right against self-incrimination and society's interests in protecting the public from impaired driving.

7. The requirement to report to police at an accident is codified in British Columbia, Ontario, and Quebec.² Alberta, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, and Prince Edward Island, codify use immunity.³
8. Prior to s. 320.31(9) the common law in *R. v. White*⁴, *R. v. Powers*⁵, and *R. v. Soules*⁶ precluded admissibility of compelled statements. *White* emphasizes the adversarial relationship.⁷
9. In *R. v. Caulderwood*, the court noted, “sometimes the criminal statement would be obtained first, and sometimes it would be obtained second, depending upon when the police officer first became suspicious of criminal conduct. This practice was utilized because even prior to the *Charter*, it was well recognized that an accused person could not be compelled to incriminate himself. In addition, the statutorily compelled statement was not voluntary, and would not be admitted in criminal proceedings.”⁸
10. The principle is triggered, “and the societal interest in the effective investigation and prosecution of crime is subordinated, at the moment when a driver speaks on the basis of a reasonable and honest belief that he or she is required by law to do so.”⁹ While such

² Sections [84](#) and [249](#) of the *Motor Vehicle Act*, [RSBC 1996, c 318](#); Section [199](#) of the *Highway Traffic Act*, [R.S.O. 1990, c. H.8](#); Section [170](#) of the *Highway Safety Code*, [CQLR c C-24.2](#).

³ Sections [71\(1\)](#) and [11\(3\)](#) of the *Traffic Safety Act*, [RSA 2000, c T-6](#); Sections [155\(4\)](#) and [158\(1\)](#) of the *Highway Traffic Act*, [C.C.S.M. c. H60](#); Sections [68\(2\)](#), [69\(2\)](#), and [71\(3\)](#) of *Saskatchewan Automobile Accident Insurance Act*, [RSS 1978, c A-35](#); Sections [130\(1\)](#) and [137\(1\)](#) of the *Motor Vehicle Act*, [RSNB 1973, c M-17](#); Section [98\(1\)](#) of the *Motor Vehicle Act*, [RSNS 1989, c 293](#); Section [232\(9\)](#) of the *Highway Traffic Act*, [RSPEI 1988, c H-5](#).

⁴ *White*, *supra*.

⁵ *R. v. Powers*, [2006 BCCA 454](#).

⁶ *R. v. Soules*, [2011 ONCA 429](#).

⁷ *White*, *supra* at para. [58](#).

⁸ *R. v. Caulderwood*, [2022 SKPC 21](#) at para. [30](#).

⁹ *White*, *supra* at para. [77](#).

statements are not used as direct evidence to incriminate an accused individual,¹⁰ they are used as grounds for demands.

11. Even when an individual has not been told by the investigating officer they are compelled by statute to respond to questioning, statements made in response to general questions, pursuant to a generalized, non-specific understanding of a duty to report, are captured by s. 7.¹¹ This does not require a statutory duty to report.¹²
12. Over time, the principle against self-incrimination has slowly been eroded by the refusal offence,¹³ and requirements to comply with various bodily sample demands. Making compelled statements admissible for the purpose of establishing grounds for detention or demand further narrows the principle against self-incrimination.
13. There exists an inherent power imbalance between police, granted power by statute, and members of the public. Most people interacting with police, “will not precisely know the limits of police authority and may, depending on the circumstances, perceive even a routine interaction with the police as demanding a sense of obligation to comply with every request.”¹⁴ This manifests in all interactions. This is “inappropriately exacerbated when it is layered on top of a racial and gender power dynamic.”¹⁵ Thus, those from equity-deserving groups may feel not only statutorily compelled to answer, but also compelled in order to avoid further scrutiny or harm.

(i) Impact Upon Equity-Deserving Groups

14. Otherwise neutral rules can have adverse effects on disadvantaged groups as “[m]embership in such groups often brings with it a unique constellation of physical,

¹⁰ *R. v. Orbanski*, [2005 SCC 37](#); *R. v. Paterson*, [2017 SCC 15](#) at para. [23](#).

¹¹ *R. v. DaCosta*, [2001 CanLII 28409 \(ON SC\)](#).

¹² *White*, *supra* at para. [78](#).

¹³ *Criminal Code*, [R.S.C., 1985, c. C-46](#), s. [320.15\(1\)](#).

¹⁴ *R. v. Le*, [2019 SCC 34](#), at para. [26](#) [*Le*].

¹⁵ "OHRC Submission to the Ministry of Community Safety and Correctional Services on street checks" (11 August 2015), [online](#): Ontario Human Rights Commission citing *Abbott v. Toronto Police Services Board*, [2009 HRTO 1909](#) at para. [42](#).

economic and social barriers.”¹⁶ Laws intended to produce a static outcome may do the opposite due to “the constellation of factors or characteristics that go into the constructions of identities[, which] often masquerade as unconnected, purely individual traits, behaviours, choices, or situations.”¹⁷

15. In addition to feeling compelled by statute to respond to police, individuals from to equity-deserving groups may feel compelled to provide responses or statements to police due to inherent elevated power imbalances, even with prior police interaction experience.
16. Individuals who belong to equity-deserving groups are systemically more frequently approached by police.¹⁸ An increased frequency in interactions with police does not always lead to increased knowledge about legal obligations.
17. Although *Le* and *Grant* both address s. 9 of the *Charter*, there is assistive commentary on the experiences of minorities in police interactions. In *Le*, the Court found repeated interactions with police does not mean an “acquired a level of sophistication in dealing with the police,”¹⁹ or that previous experiences “attenuate the power imbalance.”²⁰ The Court indicated it is more reasonable to suppose frequent interactions foster more “psychological compulsion, in the form of a reasonable perception of suspension of freedom of choice.” Individuals subjected to such interactions “more readily submit to police demands in order to move on with their daily lives because of a sense of ‘learned helplessness’.”²¹ When individuals are repeatedly exposed to unwanted experiences with a

¹⁶ *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#), para. [34](#).

¹⁷ Lisa Phillips and Margot Young. “[Sex, Tax and the Charter: A Review of Thibaudeau v. Canada](#),” *Review of Constitutional Studies* (1995) 2:2, p. [221](#).

¹⁸ *R. v. Grant*, [2009 SCC 32](#) at para. [145](#) [*Grant*]; Riley Alp, “[Queer in Fear: The Role of Homophobia and Transphobia in Wrongful Convictions](#),” *Wrongful Conviction Law Review* (2023) 4:2, p. [169](#) [*Alp*]; Wendy Chan and Dorothy Chunn, *Racialization, Crime, and Criminal Justice in Canada* (Toronto: University of Toronto Press, 2014) [*Chan and Chunn*] [*Book of Authorities (BOA) Tab 1*].

¹⁹ *Le*, *supra* at para. [109](#).

²⁰ *Ibid* at para. [110](#).

²¹ *Ibid*, citing M. E. P. Seligman, “Learned Helplessness” (1972), 23 *Annu. Rev. Med.* 407, at p. 408.

more powerful entity, they “learn to simply acquiesce and try to get through the unwanted experience by getting it over with as quickly and peaceably as possible.”²²

18. It is possible that an individual may become confused between legal obligations to report and s. 7 rights and provide a more extensive, more self-incriminating admission than is legally required.²³
19. *Grant* noted minorities may, “because of their background and experience, feel especially unable to disregard police directions, and feel that assertion of their right to walk away will itself be taken as evasive.”²⁴ The same can be said of asserting the right to silence.
20. Even where a police officer does not specifically make reference to any legal obligations for an individual to provide a statement or further information, an individual belonging to an equity-deserving group, on the basis of lacking knowledge of what their obligations are under statute, or in an effort to ‘get over’ an interaction with police officers, may form an honest and reasonable belief they are compelled to do so.

(ii) Impact Upon Women and Gender-Diverse Individuals

21. In light of the existing power imbalance, in addition to pressures to comply with normative conceptions of femininity or gender, women and gender-diverse individuals in particular may feel compelled to respond to police questions, putting s. 7 rights at risk.
22. Women and gender-diverse people experience police interactions differently, often shaped by social inequality. They tend to be single parents, younger, experienced abuse as a child, witnessed abuse or violence as a child, or reported mental health or substance abuse challenges.²⁵ Women’s criminality is disproportionately linked to systemic

²² *Ibid.*

²³ *White, supra* at para. 64.

²⁴ *Grant, supra* at para. 169.

²⁵ Native Women’s Association of Canada, “Aboriginal Women and the Legal System in Canada” (June 2007) [online](#).

disempowerment and violence. Victimization contextualizes why some women experience constrained and limited life choices while still recognizing state authority.²⁶

23. Social norms for women in dictate “they be nurturing, empathetic, soft, and submissive.”²⁷ As a result of socialization, women are “more expressive, interdependent, caring, compassionate to others, cooperative, communal, and socially responsible.”²⁸ This is in direct opposition with the “masculine norms expected of police officers of ‘aggressive behaviour, physical strength, and solidarity.’”²⁹ Men are associated with lesser civility, and a lack of civility is associated with masculinity,³⁰ Civility and deference is associated with femininity.
24. Research shows “in western societies, prevailing stereotypes associate agency with men and communion with women, since men are usually assigned to roles with power and status, and women with nurturant roles.”³¹ Gender socialization and the impact of a male-dominant police force differs between men and women, particularly in the context of compelled statements. These differences are not innate; they are learned.³² The standards of civility, of which each gender or sex is judged by their social cooperation, differ.

²⁶ *R. v. Sharma*, [2018 ONSC 1141](#) at para. [23](#).

²⁷ Lynda Leigh Reil, “Gender Issues in Policing: Women’s Experiences in Canadian Law Enforcement” (2019) [unpublished], [online](#), p. [23](#) [Reil].

²⁸ Nancy Chodorow, “Family structure and feminine perspective” in M. Rosaldo and L. Lamphere, eds, *Women in culture and society* (Stanford, CA: Stanford University Press, 1974), 41–48, emphasis added [**BOA Tab 2**].

²⁹ Reil, *supra*, p. [23](#).

³⁰ Genevieve Creighton and John L. Oliffe, “Theorising masculinities and men’s health: A brief history with a view to practice”, *Health Sociology Review* (2010) 19:4, 409–418 [**BOA Tab 3**].

³¹ Xing J Chen-Xia, Verónica Betancor, Alexandra Chas, and Armando Rodríguez-Pérez, “Gender inequality in incivility: Everyone should be polite, but it is fine for some of us to be impolite,” *Frontiers in Psychology* (2022) 13, page 2 DOI: [online](#).

³² *Ibid.*

25. Policing continues to be male-dominated.³³ In 2023, Statistics Canada reported that only 23% of officers were women.³⁴
26. Women and gender-diverse people face heightened risks of misunderstanding and escalation in police interactions. Those risks are compounded when they come from a different cultural background or speak a different language. Communication barriers and unfamiliarity with Canadian customs and legal processes increase the likelihood of compliance without appreciating the nature of the interaction or understanding and exercising their rights. They may comply because it is customary.
27. At the investigation and arrest stage, male officers extend chivalry toward women.³⁵ This is known as the chivalry hypothesis, which finds “women who adhere to traditional, heteronormative gender expectations are treated more leniently.”³⁶ Women perceived as aggressive or hostile are labeled uncooperative and more likely to be arrested.³⁷
28. A study analyzed how Toronto-based women, many of whom had intersectional identities as racialized women, interacted with police during raids. Participants who perceived the risk of further harm from police, including physical violence or damage to living spaces, performed normative femininity.³⁸ Participants felt presenting in stereotypical, or

³³ Reil, p. 65, citing Jennifer Brown and Frances Heidensohn, *Gender and Policing: Comparative Perspectives* (Macmillan, 2000), p. 74, David G. Barrie & Susan Broomhall, *A History of Police and Masculinities* (New York: Routledge, 2012), p. 236, Cara Rabe-Hemp, “Survival in an ‘all boys club’: Policewomen and Their Fight for Acceptance”, *Policing: An International Journal of Police Strategies & Management* (2008) 31:2 25-270, p. 252, Leslie J. Bikos, *I took the Blue Pill: The Effect of the Hegemonic Police Culture on Canadian Police Women’s Identities* (London, ON: University of Western Ontario, 2016), p. 25, and “Table 254-0005 - Police officers by rank and gender, Canada, provinces and territories, annual” (2016), [online](#): *Statistics Canada*.

³⁴ “Women officers as a percentage of total police officers, by rank, Canada, 1993 to 2023” (June 18, 2024), [online](#): *Statistics Canada*.

³⁵ Christy A. Visher, “Gender, Police Arrest Decisions, and Notions of Chivalry,” *Criminology* (1983) 21:1, 5 – 28 [Visher] [BOA Tab 4].

³⁶ Carolyn Greene, Marta-Marika Urbanik, and Manzah-Kyentoh Yankey, “‘I’m Wise to the Game:’ How Inner-City Women Experience and Navigate Police Raids” (2021) *Feminist Criminology*, 16:4, 403-423, p. 410 [Greene et al] [BOA Tab 5].

³⁷ Visher, p. 7.

³⁸ Visher, p. 5; Greene et al, p. 410.

essentialized normative standards of femininity,³⁹ emphasizing themselves as carers and mothers, and performing as “docile, weak, and vulnerable,”⁴⁰ helped avoid escalating the situation, consistent with the chivalry hypothesis.⁴¹

29. Gender-diverse individuals have been criminalized and subject to increased scrutiny and negative attention from police.⁴² Members of the 2SLGBTQ+ community feel pressure to ‘pass’ as heterosexual or gender-conforming to avoid negative perceptions or violence.⁴³
30. Against this backdrop, women and gender-diverse individuals interacting with police in a collision investigation may, beyond being statutorily compelled, also feel compelled by the power imbalance and social pressures to respond to police questioning. A person who believes they are legally required to provide details to the police may disclose self-incriminating information, not because it is reliable or voluntary, but because non-compliance is perceived to carry immediate consequences.
31. This is borne out on the evidence. The respondent believed she was compelled to answer police questions.⁴⁴ When asked about the basis for her belief the statement was compelled, the Appellant said, in part, “because of the question he was asking me made me feel that he wanted the information.”⁴⁵ Her answer demonstrates she had a *feeling* that the officer wanted information. It is not simply the belief she was statutorily compelled. In keeping with the research, she complied based on her feeling this was the expectation.
32. This too is in keeping with larger social pressures. When an authority figure, particularly male, wants answers to questions, it is the duty, the obligation, of women to answer. To

³⁹ Chan and Chunn, p. 31.

⁴⁰ Greene et al, p. [411](#).

⁴¹ *Ibid*, p. [411](#).

⁴² Alp, *supra*; Kevin L. Nadal, Amalia Quintanilla, Ariana Goswick & Julie Sriken, “Lesbian, Gay, Bisexual, and Queer People's Perceptions of the Criminal Justice System: Implications for Social Services” (2015) *Journal of Gay & Lesbian Social Services*, 27:4, 457-481 [**K. L. Nadal et al**] [**BOA Tab 6**].

⁴³ K. L. Nadal et al, p. 466.

⁴⁴ *R. v. Korduner*, [2025 ABCA 30](#) [**ABCA Reasons**] at para. [12](#).

⁴⁵ *R. v. Korduner*, [2022 ABKB 790](#) at para. [11](#).

assist, to submit, to comply. To do otherwise is to risk incivility; to do otherwise is to go against deep-rooted social norms.

33. Even where everyone is compelled to give statements in the same circumstances, the *substance* of the statements are likely to differ, with women disadvantaged. In the quest to be helpful, not difficult or uncivil, women are likely to offer more information, beyond what is compelled, or submit to requests that go beyond the scope of the compulsion.

(iii) Encroachment on Confidence in Policing

34. Admission of compelled statements by way of s. 320.31(9) further adds to individuals' confusion of statutory duties. It impinges on public confidence in policing and police investigations. By admitting statutorily compelled statements, those questioned choose between legal compliance or s. 7 waiver.⁴⁶ As suggested by the dissent, this may decrease willingness to participate in compelled reporting, and investigations following collisions.
35. The Respondent states it is speculative to suggest that there is a higher risk of falsification if the public were aware that a statement could be used to support further investigation against them.⁴⁷ However, there is no evidence to suggest the contrary.⁴⁸ Ultimately, the end result of admitting compelled statements could hinder, rather than improve, the effectiveness of investigations.⁴⁹ Knowledge an individual must forego their right against self-incrimination for this purpose may ultimately cause decreased trust in policing and the criminal justice system.

B. The Infringement of s. 7 Cannot be Justified under s. 1 of the *Charter*

36. While s. 320.31(9) furthers Parliament's objective in detecting and deterring impaired drivers, it is not clear providing an additional deterrent is sufficiently important to override the right under s. 7.

⁴⁶ ABCA Reasons at para. [134](#).

⁴⁷ Respondent's Factum at para. [75](#).

⁴⁸ ABCA Reasons at para. [134](#).

⁴⁹ ABCA Reasons at para. [134](#).

37. The right to silence is already impaired by the refusal offence. Furthermore, as observed in dissent, multiple avenues of investigation, are available to police in the course of determining whether an individual has been driving impaired,⁵⁰ specifically the ASD.

38. There is no “absence of less drastic means.”⁵¹ Reasonable alternatives to investigate suspected impaired driving do not circumscribe use immunity as established in *White*.⁵²

39. Allowing compelled provincial statements to justify a demand significantly narrows s. 7 protection. The impact is especially severe for individuals from equity-deserving groups, whose interactions with police, including responses to police questioning, are shaped by a heightened power imbalance influenced by societal pressures.

PARTS IV and V – COSTS AND ORDER SOUGHT

40. WiCCD seeks no costs and respectfully requests that none be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of January, 2026.

Marie-France Leij, as agent for

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⁵⁰ *Ibid* at para. [138](#).

⁵¹ *R. v. Safarzadeh-Markhali*, [2016 SCC 14](#) at para. [58](#).

⁵² ABCA Reasons at para. [141](#).

PART VI – TABLE OF AUTHORITIES

Jurisprudence	Paragraph(s)
<i>Fraser v. Canada (Attorney General)</i> , 2020 SCC 28	14
<i>R. v. Caulderwood</i> , 2022 SKPC 21	9
<i>R. v. DaCosta</i> , 2001 CanLII 28409 (ON SC)	11
<i>R. v. Grant</i> , 2009 SCC 32	16, 17, 19
<i>R. v. Korduner</i> , 2022 ABKB 790	31
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