

# Status of the Case Chart

## Refusal

### Case for Refusal

- Clear evidence of subjective opinion held by Sgt. Carter with some identified objective supporting criteria
  - Strong smell [of alcohol]
  - Unsteady on feet
  - Flushed face
  - Glassy blood shot eyes
  - (information about accident)
- Clear evidence of refusal

### Problems with Refusal

- *Charter* problem
  - Based on notes you had the file disclosed that HZ was arguably detained in police vehicle at scene from 7:42 – 8:08, without reason offered
  - No right to counsel furnished
- On R and PG for making demand – Carter identified grounds but
  - Were the grounds adequate?
  - Why did no-one notice indicia of impairment (other than odour of alcohol by some) on site?
  - If they did notice it, why did the officers not make the demand, which must be offered “as soon as practicable”
- Had indication in Carter’s notes that demand was not proper
  - “Blood” and not breath
    - Leads to two problems
      - Cannot charge someone for not giving a breath sample in response to a blood demand

- No legal basis for blood demand

## **Impaired Driving Causing Death**

### **Case for Impaired Driving Causing Death**

- (1) Accused was at locations throughout the evening where alcohol was served and was observed to have alcohol in front of him by four officers at Branigans
- (2) Had unexplained accident with no attempt to abate speed or brake and ample notice of oncoming traffic
- (3) Description of conduct that could be considered evasive
  - Apparent attempt to keep head down and not speak or make eye contact
- (4) A number of witnesses note smell of alcohol before arrival at scene
  - Woychuk “en route”
  - Mr. Rosser, paramedic
  - Mr. Fontaine, paramedic
  - Cst. Graham in motor vehicle
- (5) Opinion evidence he was impaired
  - Carter at station forms that opinion
  - Woychuk signs Prisoner Log Sheet indicating impairment (ex 101) and records in his Narrative Report that he observes signs of impairment at scene
  - Pederson forms the opinion that he is impaired when he is being released according to RCMP statement
- (6) circumstantial similarities between patron with 8 beers (on basis of evidence of waitress) and Derek Harvey Zenk
  - pregnant wife
  - one of the first to arrive on February 24, 2005
  - ate large number of wings

### **Problems with Impaired Driving Charge**

- None of the witnesses at scene note signs of impairment (other than potential evasive conduct)
- Evasive conduct is consistent with shock or aftermath of collision
- Key indicia of impairment observed by police at the station, unsteadiness, are arguably ambiguous after an accident
- Neither Woychuk nor Pederson had indicated opinions about impairment in their notes
- Waitress did not recognize HZ photo when presented with it, weakening the value of her evidence of circumstantial indicators of identity
- None of the 23 police officers who were with accused
  - confirmed heavy patterns of alcohol consumption
  - or formed the opinion he was impaired
    - most disclaimed opportunity to observe
    - some offered the opinion that he appeared fine or was no impaired

### **Criminal Negligence Causing Death Charge**

[Key elements of offence]

- marked departure from the standards of the norm
- driving in a manner that “shows wanton or reckless disregard for the lives or safety of others”
- causation of consequence of death

### **Case for Criminal Negligence Causing Death**

- unexplained collision after 12 or more seconds of warning with no attempt to abate speed or avoid the collision
- evidence of alcohol consumption
- clear causation of consequence of death

### **Problems with Criminal Negligence Causing Death**

- no evidence of pattern of erratic driving or speeding identified by accident reconstructionist or witnesses
- possibility of momentary lapse of attention or falling asleep at wheel had to be considered

### **Dangerous Driving Causing Death Charge**

[Key Elements of offence]

- marked departure from the standards of the norm
- driving in a manner that is dangerous to the public, in all of the circumstances
- causation of consequence of death

### **Case for Dangerous Driving Causing Death**

- unexplained collision after 12 or more seconds of warning with no attempt to abate speed or avoid the collision
- evidence of alcohol consumption
- clear causation of consequence of death

### **Problems with Dangerous Driving Causing Death**

- no evidence of pattern of erratic driving or speeding
- possibility of momentary lapse of attention or falling asleep at wheel had to be considered