

Her Majesty the Queen (respondent) v. Adam Neil Drader, Andrew Martinus Drader and
Robert Archie Cormier (applicants/accused)
(110234887Q2; 2012 ABQB 469)

Indexed As: R. v. Drader (A.N.) et al.

Alberta Court of Queen's Bench
Judicial District of Edmonton
Macklin, J.
July 19, 2012.

Summary:

Following a voir dire, the Alberta Court of Queen's Bench issued reasons for judgment on March 9, 2012, allowing the admission into evidence of certain recorded and monitored communications of the accused (Cormier) while he was an inmate at the Edmonton Remand Centre (see [2012] A.R. TBEEd. MR.128). On April 13, 2012, the Supreme Court of Canada issued a decision in R. v. Tse. Cormier applied to reopen the voir dire in order to argue that the judgment in Tse compelled the court to reverse its earlier decision. Cormier argued that the decision in Tse lead to the conclusion that s. 14.4 of the Corrections Act (which allowed the recording and monitoring of inmate communications) and the relevant provisions in the Correctional Institution Regulation were unconstitutional.

The Alberta Court of Queen's Bench dismissed the application to reverse the court's previous decision in light of Tse.

Civil Rights - Topic 1215

Security of the person - Lawful or reasonable search - Prisoners - [See **Civil Rights - Topic 1363.1**].

Civil Rights - Topic 1217

Security of the person - Lawful or reasonable search - What constitutes unreasonable search and seizure - [See **Civil Rights - Topic 1363.1**].

Civil Rights - Topic 1363.1

Security of the person - Institutional inmates - Telephone calls - Following a voir dire, the Alberta Court of Queen's Bench issued reasons for judgment on March 9, 2012, allowing the admission into evidence of certain recorded and monitored communications of the accused (Cormier) while he was an inmate at the Edmonton Remand Centre (ERC) - On April 13, 2012, the Supreme Court of Canada issued a decision in R. v. Tse - Cormier applied to reopen the voir dire in order to argue that the judgment in Tse compelled the court to reverse its earlier decision - He argued that the decision in Tse lead to the conclusion that s. 14.4 of the Corrections Act (which allowed the recording and monitoring of inmate communications) and the relevant provisions in the Correctional Institution Regulation were unconstitutional - In Tse, the court held that to the extent that s. 184.4 of the Criminal Code allowed for the interception of private communications without the consent of parties or judicial pre-authorization, it did not offend the Charter - However, it

breached s. 8 of the Charter as there was no requirement for post-interception notice, and failed in that regard to meet the proportionality analysis in *R. v. Oakes* - The Alberta Court of Queen's Bench dismissed the application to reverse the court's previous decision in light of *Tse* - The absence of after-the-fact notice, such as that contemplated in *Tse*, was not fatal to the constitutionality of s. 14.4 of the Corrections Act and the Correctional Institution Regulation - Inmates' use of the ERC communications system was limited and conditional - The inmates in question had only a minimal expectation of privacy and they, as well as those with whom they communicated, knew the calls were subject to recording and monitoring.

Civil Rights - Topic 1370

Security of the person - Institutional inmates - Interception of private communications - [See **Civil Rights - Topic 1363.1**].

Civil Rights - Topic 1444

Security of the person - Right to privacy - Expectation of privacy - [See **Civil Rights - Topic 1363.1**].

Prisons - Topic 1115

Administration - Prisoners' rights - Privacy - [See **Civil Rights - Topic 1363.1**].

Prisons - Topic 1116

Administration - Prisoners' rights - Telephone calls - [See **Civil Rights - Topic 1363.1**].

Cases Noticed:

R. v. Tse (Y.F.A.) (2012), 429 N.R. 109; 321 B.C.A.C. 1; 547 W.A.C. 1; 2012 SCC 16, consd. [para. 2].

R. v. Oakes, [1986] 1 S.C.R. 103; 65 N.R. 87; 14 O.A.C. 335, reld to. [para. 8].

Southam Inc. v. Hunter et al., [1984] 2 S.C.R. 145; 55 N.R. 241; 55 A.R. 291, reld to. [para. 14].

Statutes Noticed:

Canadian Charter of Rights and Freedoms, 1982, sect. 8 [para. 5].

Corrections Act, R.S.A. 2000, c. C-29, sect. 14.4 [para. 3].

Counsel:

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Kathryn A. Quinlan, for the applicant, Adam Drader;

Arnold E.F. Piragoff, Q.C., for the applicant, Andrew Drader.

This application was heard on July 16, 2012, before Macklin, J., of the Alberta Court of Queen's Bench, Judicial District of Edmonton, who delivered the following supplementary reasons for judgment on July 19, 2012.

Application dismissed.

Editor: Angela E. McKay