

Use of Reid Technique in Canada

*R. v. Amos (2009)*¹

by Gino Arcaro M.Ed., B.Sc.

I. Introduction

This case law provides an extensive academic analysis of the connection between:

- i. specific interrogation strategies including Reid Techniques,
- ii. the right to remain silent,
- iii. the right to counsel, and
- iv. how the new *R. v. Grant(2009)* model applies to sec. 24(2) Charter.

II. Synopsis

A homicide investigation resulted in three people being charged. One of the accused gave two videotaped statements to the police. The first was a witness statement, given during a 2 ½ hour interview. The second was a confession obtained two days later, during a 6 ½ hour formal interrogation following the accused's arrest.

A number of interrogation strategies were used including some Reid techniques. The accused invoked the right to silence 9 times. The confession was admitted – it was ruled voluntary and not the product of a Charter violation. However, *Grant* was applied and the first statement was excluded under sec 24(2) Charter. The accused had been detained and denied his right to counsel.

III. Evidence

On February 23, 2007, the victim was badly beaten with weapons, in a residence. He was placed in the trunk of a car, driven to a rural area, and left for dead at the side of the road. Between 5:00 and 6:00 a.m. that morning, he was discovered by a snow plough operator who called police. The victim was taken to hospital and later airlifted to a Toronto hospital where he underwent surgery to relieve pressure on his brain. He was later placed on life support. On the morning of February 26, his family authorized a withdrawal of life support and he was pronounced dead.

Three persons were charged with the murder. One of them made 2 videotaped statements to police:

Statement #1: February 24, 2007, at the police station, as a witness.

Statement #2: February 26 – 27, 2007, at the police station, as an accused. Duration: about 6 ½ hours over a 10-hour period.

Trial evidence: During the evening hours of February 22, 2007, a man visited a house to buy and consume crack cocaine. The three accused persons were present in that house. During the evening, other persons also visited the house to buy drugs and left, after which time, the three accused discovered that a quantity of ecstasy pills were missing.

¹ CanLII 63592 (ON S.C.)

The victim had been a customer at the house. While in the house, he showed the three accused some ecstasy pills he said he'd just purchased from a guy named "Pete" (who had also been a customer). One of the accused became irate, believing the pills to be among those stolen. He grabbed a baseball bat saying, "Nobody fucking steals from me." The victim was then hit over the head with the bat, stabbed in the stomach and chest, and held in the washroom. He was dumped in the bathtub, water turned on to clean up his blood, and confined. His face was stomped on. His live body was then wrapped in blankets and carried outside to a car and later dumped in a snow bank at the side of the road, where he was later discovered by a snow plough driver.

Later the next day, February 23, a former cell mate of one of the accused was in Toronto partying with two of the suspects. The suspect told him about a "situation in Barrie in which blood had been spilled." The former cell-mate contacted police on February 24. Police surveillance was initiated on the two suspects. Up to that point, police had no information at all about any involvement of suspect #3 (the accused who gave the two statements).

Police followed the suspect car. Two men were in the car: one of the original suspects was the driver and the confessor was a passenger. The driver was arrested. The passenger was told by police that he was not under arrest but that they "wished to speak to him about the driver's arrest." He agreed and was driven to the police station, where the first statement was obtained on Feb 24, during the "witness interview."

The driver was also interviewed by police on February 24. That interview began at the same time that the "passenger" was leaving after his witness interview. The driver eventually implicated his two accomplices, including the "passenger" who just left.

Police testified they had concluded by then that they had reasonable grounds to arrest the "passenger" after his witness interview for attempt murder and aggravated assault (the victim later died). On February 26, at about 2:15 p.m., the "passenger" was placed under arrest for accessory after the fact of murder. The second statement was then obtained – a confession – during a formal interrogation.

IV. Statement #2 – The Confession

The confession was ruled voluntary – there was no Charter violation. The primary detective was a "highly articulate, skilled interrogator." The officer testified that his "*method of interrogation is an amalgam of his experiences in interviewing many accused persons over a number of years. He utilized some features of the so-called 'Reid Technique.'*" He had no physical contact with the accused at any time prior or during the interview. He did not physically threaten the accused. He engaged in lengthy monologues and called the accused by his first name."

The interrogation included 11 strategies:

1. Direct Positive Confrontation

The officer verbally "confronted" the accused by using phrases such as "either you got in that car because you were scared for your own life, or you got in that car because you're just as bad as Shawn Amos is." Nothing in his confrontational technique was improper.

2. The Use of Deceit by the Interviewer

The detective told the accused the following lies:

- i. Everybody has told me the story.
- ii. You're the only person who is sitting here choosing not to explain why they did what they did.
- iii. Did you know his sister is a missionary?
- iv. Shawn Amos tried to hang all you guys out to dry.
- v. We got three guys who are saying, 'Yeah, I'll talk to ya'.
- vi. ... I have two sons. One of them does have some learning disabilities, and I'm very careful when I talk to him. He's not stupid by any means, but he has problems comprehending certain things in school.

The detective testified that he used deceit to "foster rapport with the accused." He said that he sometimes uses lies like "the victim's sister being a missionary" in cases where he assesses the interviewee has little empathy for his or her victim.

"Police must be permitted to outsmart criminals. " In these circumstances, the lies were "permissible deception" because the lies did not shock the community.

3. Minimizing Moral Responsibility

The officer told the accused:

- i. I know you've had some problems with thinkin' about takin' your life. Problems with relationships, okay. I'm not lookin' at you as bein' Scott, the cold-blooded killer here, alright?
- ii. I know you an' Troy (MacLean) were not the primary participants.
- iii. You're the youngest of these four guys. You've the least serious record of these four guys. It doesn't take a rocket scientist to know that you were not the leader of this gang.
- iv. It doesn't take a rocket scientist to say if you watch somebody bash somebody's head in, you're not just gonna go, 'hey guys, I'm leaving now', right?
- v. (You are) the most innocent of the four people that were involved.
- vi. Do you really think you deserve punishment for doing what you did?
- vii. You've made a mistake, okay, but that doesn't mean you're not a good person.

From the judgment:

There is nothing problematic or objectionable about police, when questioning suspects, in downplaying or minimizing the moral culpability of their alleged criminal activity. I find there was nothing improper in these and other similar transcript examples where [the detective] minimized [the accused's] moral responsibility. At no time did he suggest that a confession by the subject would result in reduced or minimal legal consequences. Those questions did not minimize the offence anywhere close to the extent of oppression within the meaning of Oickle and other authorities. In using the words "this is your opportunity" to tell your story, and statements to the effect that "your credibility is at its highest

now”, and in asserting to the accused that he would not be as credible ten months down the road at trial when he had “spoken to lawyers”, and the like, the detective was making an approach to the accused’s intellect and conscience.

4. Moral Inducements

The detective told the accused:

- i. An honest person who makes a mistake takes responsibility.
- ii. All you’re doin’ is makin’ yourself look like a cold-hearted guy who doesn’t care about Troy (MacLean), who doesn’t care about Richard (Boxall), and who doesn’t care about Richard’s family.
- iii. You got an opportunity to right here and now to turn the corner. To start doing the right thing. To walk out of this room and feel proud of what you did.
- iv. You have an opportunity to help your friend out and this is what he gets.

From the judgment:

Employing moral inducements will not generally produce an involuntary confession because police officers are not capable of controlling such inducements. Neither these nor any other transcript statements dealing with moral inducements were improper in these circumstances.

5. Condemning Others in Order to Ease the Responsibility of the Suspect

The officer testified that this is an oft-used technique which he used with this accused. *“Standing alone, there was nothing wrong with its use in the circumstances of this case to attempt to persuade the interviewee to confess.”*

6. Commenting on the Accused’s Credibility at his Trial

The officer said to the accused:

- i. And that’s gonna help you look good in court, how? That’s not a way you want to present yourself in a case like this.
- ii. You don’t get a chance to wait for the facts and then try to adjust your story to fit the facts, nobody believes you when you do that.
- iii. Do you think anybody’s gonna believe you after they watch you sitting in this room being given an opportunity after opportunity after opportunity after opportunity to say, ‘Jim, I was scared for my life’?
- iv. Your believability is on the line.
- v. There is only one decision to make and all it boils down to is how are you gonna present yourself.
- vi. You watched Troy (MacLean). He starts from the beginning of the night to the end of the night and he tells it exactly what happened, what he understands... Problem is, you have to see he is trying to explain for you and that you were scared. The obvious question is

then, why wouldn't the person who was actually scared say it himself?

The detective was trying to convince the accused that there was no point denying his involvement. The officer testified that when referring to the accused's silence he was not offering a benefit in the control of the police, but rather suggesting to him that his silence might benefit the co-accused.

"There is nothing inherently improper in these and similar interview comments made to the accused in these circumstances."

7. Highlighting the Accused's Redeeming Qualities

The officer said:

- i. You're sitting here with a couple of minor crimes.
- ii. The bottom line is walkin' in here today, I thought of you as someone who deserves a shot at lookin' credible.
- iii. There's a lot of good people like yourself out there. A lot of young guys who are floundering, who are trying to figure their way through life, who lose their way.

From the judgment:

During interrogations, it is common for police to try to engage the suspect in a reassuring conversation which, in effect, has the result of building a trusting relationship between interviewer and accused. There is generally nothing improper in police use of this interview technique, and there was nothing improper in the questions of that nature that were used in this case.

8. Quid Pro Quo

The officer said:

- i. Maybe I should be lookin' at the possibility maybe you were involved, I don't know.
- ii. Shawn had the same problem answering simple questions and it's startin' ta scare me a little bit that you're a little bit more closer to what Shawn's (Amos) like, than what Troy's (MacLean) like. He couldn't answer the questions because his answers didn't make him look good. Is that why you can't answer the questions?
- iii. You'd rather just say nothing and you're gonna waste your life. That's what it all boils down to, isn't it?
- iv. There's a big difference between transporting a dead body and takin' a guy who's alive and leaving him out to freeze to death.
- v. Your demeanour in this room has taken you from being an accessory after the fact to murder, whose valid reason was that he was scared, to being someone who is gonna be charged with murder. Now, I don't want that to happen, okay? And that's why I spent so much time tryin' to talk some sense into you, but you don't leave us any choice.
- vi. I wanna make sure on the record, on videotape, you're telling me that you believed he was alive when you put him on the side of the

road. So, now I have three murderers and one accessory after the fact. That's what I've got.

- vii. But you've turned that around to the point where the best witness against you to prove that you're involved and probably fully involved in this murder has somehow become you. You won't even deny – you won't even deny being involved.
- viii. Do you see how this is snowballing? As a direct result of you not even being willing to say, 'I was scared. I went along because I was scared.' As a direct result of that, you elevate your status from being someone who we felt was going for a car ride because they didn't see any other way out of this situation without possibly getting hurt themselves. You've taken yourself from there to someone who was involved in a murder.
- ix. Are you just beyond help? Have you just given up on life and you've just said, 'ah, who cares?'
- x. Are ya lookin' ta be convicted of something you didn't do?

Nothing was a veiled threat. The officer was saying that “police were continuing to investigate – and that included them speaking to the co-accused, and obtaining forensic and other evidence. The officer was also saying to the accused that police in future may, but not necessarily, conclude there was enough evidence against [the accused] for murder – not that there was enough at that point.

I find that what [detective] was telling [the accused] at that point was his assessment of what the officer then had - an accurate appraisal of the circumstances then known to [detective]. It was not a threat, implicit or explicit. The detective “was not attempting to hold out and did not hold out any inducement to the accused. However, some words were capable being misunderstood - that if the interviewee did not provide his version of events immediately, then rather than facing the less serious charge of accessory after the fact to murder, he would be facing the more serious charge of murder. Also capable of being misunderstood were the officer's comments about how a trial judge and jury would perceive silence and how his interview statement could affect his eventual punishment. Those comments had the potential to be perceived by the accused as an inducement and to be coercive. In the context of this case, [the detective's] statements were not “explicit offers by the police to procure lenient treatment in return for a confession”. The officer was instead attempting to invite [the accused] who was still protesting his innocence, to provide a story that would clear him of liability or minimize his liability. During this interview, the accused spoke to his lawyer of choice on four occasions. Nonetheless, these words of the officer had the potential to be perceived as an inducement.

9. Comments on the Legal Process

The detective told the accused:

- i. Every lawyer's advice that I have ever heard says, don't say anything. You can take that advice. That's all it is – advice, but you and I know that this is a crystal clear issue. Your lawyer doesn't know what you know and what I know. (Transcript, p.78)
- ii. The silence benefits him, makes his job easier. (Transcript, p.80)
- iii. I know how the legal system works, okay? I've been working in it for twenty years. You don't know. (Transcript, p.115)
- iv. I've done my best to explain to you that it's not a matter of admitting your involvement, it's a matter of when you admit your involvement. (Transcript, p.117)

In the context of voluntariness, these and other similar words used by the officer in commenting on the legal process were legitimate means of persuasion aimed at persuading the accused to talk. The detective said, "... because the evidence is gonna be crystal clear that you were there and you've done what I've already told you you've done. You're gonna have to explain why. The same question is gonna be asked in court, why." "You're not the kinda a guy who deserves to be the kinda person that comes out of a penitentiary." The detective was not then telling the accused he would avoid punishment, but rather referring to the type of person the accused was. Nothing impermissible in that. There was no suggestion that the accused would be able to avoid punishment or the penitentiary if he confessed. There is nothing in these comments that raises further quid pro quo concerns.

10. Right to Silence

Before the start of the February 26-27 interview, the accused was arrested for accessory after the fact of murder. He then spoke with his lawyer, at 3:11 p.m. for 22 minutes. His interrogation began at 3:38 p.m. that afternoon. The accused invoked his **right to silence nine times**. The officer testified he was aware of Canadian case law permitting him to continue to speak to the subject in the face of the subject's right to remain silent. The officer did have that right. The Supreme Court's decision in *R. v. Singh*² so authorizes. During the interview, Dakins spoke further with Mr. Bryson:

- i. for 6 minutes starting at 4:05 p.m. (the detective also spoke to the lawyer for 4 minutes immediately following)
- ii. for 47 minutes starting at 9:25 p.m.;
- iii. for 5 minutes starting at 10:23 p.m.; and
- iv. for 35 minutes starting at 11:02 p.m.

Police persistence in conducting an interview in the face of repeated refusals of an accused to speak to counsel may raise a strong argument that the statement is not the product of a free will. That did not occur here. While I will turn to this issue in the context of the accused's s.10 Charter motion, there is nothing under this heading in these circumstances which gives rise to any reasonable doubt as to statement voluntariness.

² *R. v. Singh* (2007) S.C.J. No. 48. S.C.C.

11. Power Imbalance

The officer knew that the accused was then age 21, uneducated, had little social support, was an experienced criminal, had recently attempted suicide, and had mental health issues. It is conceded that he had an operating mind. [The accused] was not physically touched during the interview. He was offered food and beverage. He was fully clothed throughout. He was subjected to an interrogation that lasted 6 ½ hours over a 10-hour period. During the interview, he'd made no complaint to the investigator about the treatment accorded him. The officer never raised his voice. Frequent interview interruptions occurred. In the 2 ½ hours immediately before he confessed, he spoke for 1 ½ hours with his lawyer. As I have noted, he was provided with multiple occasions of access to legal counsel of his choice. He showed no significant signs of distress during the entire audio/video interview. At Transcript, p.224, he described his treatment by the interviewer as respectful.

Ruling re Statement #2 – The Confession

*The court was “fully satisfied beyond a reasonable doubt that there was no causal connection between the police conduct referenced under *Quid Pro Quo* (supra), and which I have characterized as potentially coercive and a potential inducement, and the accused’s February 26 – 27 statement to police. Neither the length of the questioning nor any of the conditions under which it was conducted, considered separately and cumulatively, affect its validity. There is no causal connection or link between the length or conditions of detention and the decision of the accused to forego his silence right. I am thoroughly satisfied that there occurred no threatening gestures, no violence, no promises and no threats. He was not injured and made no complaint to anyone about the treatment accorded him. I am fully satisfied beyond a reasonable doubt that the accused’s will was never overborne during any of the questioning. The interview was neither oppressive nor intimidating. Although oppression has a potential to produce false confessions, I am fully satisfied beyond reasonable doubt both that the conditions and conduct of this interview did not produce a stress-compliant confession and that his will was not overborne to the point that he gave an induced confession. There is no persuasive evidence that he suffered from mental or emotional confusion that evening. I find beyond doubt that he did not. When the accused began to confess at page 143, he was quite calm. He maintained direct eye contact with his interrogator - rather than looking at the floor as before. His tone was level. His words measured. He was not distraught or teary. He corrected himself on aspects of his confession at Transcript, pages 155 and 173. I find he was then being careful to provide a complete and accurate recollection of his memory. He provided great detail. I reject the arguments now made on his behalf that he was then mentally or emotionally exhausted, and/or that his will had been overborne. Quite*

the opposite is fully demonstrated. For the reasons I have given, I am fully satisfied beyond reasonable doubt that the Dakins' confession on February 26 – 27:

- (a) was not the result of any “fear of prejudice or hope of advantage exercised or held out by a person in authority”;*
- (b) was not the product of a coercive “atmosphere of oppression” manufactured by police;*
- (c) was the product of an “operating mind”;* and
- (d) was not the result of “police trickery” that is “so appalling as to shock the community”.*

Charter Motion re Statement #2 – The Confession

“This was a difficult interrogation by a skilled police investigator. For the reasons I have given, I find that, as regards the February 26-27, 2007 statement, Mr. Dakins has not met his burden of demonstrating Charter breach on a balance of probabilities.”

The application was dismissed for the following reasons:

1. Undermining Relationship With Counsel

Police are not allowed to belittle an accused's lawyer or the legal advice obtained from the lawyer in an effort to undermine the accused's confidence in the lawyer.³ The court found nothing wrong with the detective's conduct or statements – **no sec.10(b) Charter violation occurred.** The following, from the transcript, is what the detective said:

- a) I know what you're lawyer's advice is, okay? But you're an adult. You're the one who's in the room right now, okay? Every lawyer's advice that I've ever heard says 'don't say anything'. You can take that advice. That's all it is – is advice, but you and I know that this is a crystal clear issue. Your lawyer doesn't know what you and I know. (Transcript, p.78)
- b) Your believability is on the line. Not your lawyer's believability, yours. Do you understand why your defence lawyer tells you not to say anything to the police? What is a defence lawyer's job, Scott? To defend you in court, right? If someone's gone out and then committed a legitimate crime and they tell the police that they committed that crime, what does it do for the defence lawyer's job? It makes it a hell of a lot harder for him to convince the judge that their client's innocent, doesn't it? Right? Scott? Doesn't it? How are they supposed to walk into court now and say, 'Oh, Your Honour, my client didn't steal that car.' Well here he is on the video telling police that he did. Right? So what is he supposed to do with that? The silence benefits him, makes his job easier. Your issue is different. Your issue is responsibility and respect and credibility and believability. It's not your lawyer's credibility on the line. What will happen when your lawyer sees all the evidence that's against you, have you ever been told to plead guilty? (Transcript, pp. 79-80)

³ *R. v. Burlingham* [1995] S.C.J. No. 39.

- c) What d'ya think your lawyer would tell ya if he knew everything that you and I know? Do ya think Mr. Bryson would tell you to keep your mouth shut then? (Transcript, p.116)
- d) The only thing he'll tell ya though, is you're gonna get the same advice you've had all along. He's gonna tell ya not to talk, but again, and this is very important, Scott, it's advice, right? There's good advice and there's bad advice, and just because you're a lawyer doesn't mean the advice is always the best advice. (Transcript, p.137)

2. Not Advised of Jeopardy Change

“The law is clear that in order for an accused person to be able to exercise his right to counsel in a meaningful way, he must be aware of the extent of his jeopardy. The Supreme Court in *R. v. Evans* (1991) instructs:

When considering whether there has been a breach of s.10(a) of the Charter, it is the substance of what the accused can reasonably be supposed to have understood, rather than the formalism of the precise words used, which must govern. The question is whether what the accused was told, viewed reasonably in all of the circumstances of the case, was sufficient to permit him to make a reasonable decision ... to undermine his right to counsel under s.10(b).⁴

Therefore, it is a requirement that an accused be given, he if doesn't already possess it, sufficient information to allow him to assess the seriousness of his situation and based on that information, decide whether or not he requires the advice of counsel. Police are obliged to re-advise an accused person of his/her right to counsel when the focus of the investigation changes during the interview.

In this case, there was **no Charter violation**. Before he started to confess at 11:37 p.m., midway through the interrogation on February 26 (Transcript, p.143), the accused knew at least the following:

- a) Richard Boxall had died;
- b) police considered the circumstances under which Boxall had died to constitute a murder;
- c) he was then charged with accessory after the fact to murder due to his involvement in events surrounding that death;
- d) accessory after the fact of murder is a charge that is laid against somebody who helps somebody commit a murder;
- e) as a result of having already interviewed MacLean (with whom Dakins had been car-stopped on February 24), police were then aware Dakins had been involved in the events surrounding the death;
- f) police believed that Dakins and MacLean were not the primary participants in causing Boxall's injuries;
- g) police were aware that Dakins was inside 101 Owen Street at the time that Boxall was beaten - over having in his possession ecstasy pills that were believed to have been stolen earlier that evening by Peter Gosney;

⁴ *R. v. Evans* [1991] S.C.J. No. 31.

- h) MacLean had told police that Boxall had been assaulted in the hallway of 101 Owen by Messrs. Amos, Preston and Dakins, and that numerous weapons had been employed;
- i) MacLean told police that in the assault Preston had used a knife and a sharp poker or tongs while Amos used a bat. A portion of MacLean's video recorded interview where he relays the information in this and the preceding paragraph had been played for Dakins by Det. Sgt. Smyth;
- j) there still existed the possibility that Dakins himself would be charged with murder;

He also obviously had personal knowledge of his own involvement in the murder, allowing him to take into account the jeopardy he faced that evening.

V. Statement #2 – The “Witness Statement”

The “witness statement” was excluded because the accused had been detained but not given his right to counsel – a Charter violation occurred. From the judgment:

*I find on a balance of probabilities that Scott Dakins was constitutionally detained at the time of the February 24 interview and should have been afforded his s.10(b) Charter rights to counsel at the outset. In R. v. Collins (1987)⁵ and R. v. Manninen (1987)⁶, the court held that self-incriminatory evidence such as a statement which is obtained following a denial of the right of counsel will generally go to the very fairness of the trial and will generally bring the **administration of justice into disrepute**. It is evidence, the production of which was brought about by the Charter breach. The Crown conceded that, if I reach the conclusion which I have on the issue of detention, the February 24 statement should not be admissible at trial. I have considered the totality of circumstances surrounding the February 24 interview and have found that the overall purpose of the interview was to obtain a statement from Mr. Dakins, whether incriminating or otherwise. This was not merely a technical breach of Charter section 10(b). Proper police conduct must be followed in obtaining statements from detained suspects...*

I find, objectively, that police had formed the belief, based on evidence collected before the February 24 interview, that Dakins was a suspect in the commission of an offence relating to the Boxall beating - at least as an accessory after the fact. On these facts, several of the Moran criteria are engaged. He had just turned 21, but was already experienced in the criminal justice process. Still, he was located in a cell-like setting, behind locked doors, and in circumstances in which a reasonable person would feel constrained or controlled by police. The questioning was not part of a general investigation of crime – rather police had information which I find should have alerted them that he was one of the suspects in a criminal offence relating to the circumstances of Mr. Boxall's beating. The

⁵ R. v. Collins (1987) CanLII 84 (S.C.C.).

⁶ R. v. Manninen (1987) 1 S.C.R. 1223.

questions were not of a general nature designed only to obtain information. They quickly became pointed, accusatory and were designed to be intimidating. The overall purpose of the interview was to obtain a statement from him, whether incriminating or otherwise. The police should have concluded that he had committed an offence or was a party to it. Accordingly, they should have arrested and charged him – which would have triggered his 10(b) rights.

VI. Conclusions and Practical Applications

This case provides an excellent point-of reference about what constitutes, (i) circumstantial evidence that shows overall purpose, and; (ii) intention to obtain incriminating evidence – specifically a passenger in a car driven by a murder suspect – suspicion by association. The fact that reasonable grounds connecting the passenger to the homicide was absent, was not enough to prove that the questioning was a voluntary “witness interview.”

1. The line between a detention and a consent interview is drawn by the "overall purpose" of the questioning.
2. The "overall purpose" determines whether questioning will be classified as a formal interrogation under detention, or, a voluntary witness statement. The key is the police officer's intention – whether to obtain incriminating evidence or not. If the "overall purpose" is to obtain incriminating evidence, the suspect will be considered detained, triggering the need for Charter instructions about the reason and right to counsel.
3. "Overall purpose" is connected to belief about the person being interviewed. If the person logically and reasonably is considered a suspect, inform him of the right to counsel determined within that context. The totality of the evidence will be the determinant, not just the testimony of the police.
4. Factors that help determine the “overall purpose” include:
 - i. place of the interview, and;
 - ii. nature of the questions
5. A person will be considered a suspect as opposed to a witness if:
 - i. the place of interview is in a "cell-like setting, behind locked doors, and in circumstances in which a reasonable person would feel constrained or controlled by police" and,
 - ii. the questioning is specific to a crime as opposed to "part of a general investigation of crime." In this case, the police had "information" that "should have alerted them that he was one of the suspects in a criminal offence relating to the circumstances of Mr. Boxall’s beating." The nature of the questions showed the intent to get incriminating statements - the "questions were not of a general nature designed only to obtain information. They quickly became pointed, accusatory and were designed to be intimidating.”

6. Reid interrogation techniques are contextually permissible during interrogations, if no quid pro quo occurs.
7. The exclusion of the “witness' statement” is one of the early *Grant* derivatives. This case is an example of how the courts may apply the new *Grant* model. The failure to inform the accused of his right to counsel before the first statement was considered to be more than a "mere technical" Charter violation. This Charter violation was considered to be "serious police misconduct." According to the *Grant* model, severe Charter violations "tend to favour" exclusion."

VII. Commentary

Does failure to inform a person suspected of a brutal murder of the right to counsel really fall under the category of "serious police misconduct"? The phrase "misconduct" implies extremely wrong behaviour – shocking conduct. The suspect was not beaten, threatened, or subjected to treatment that would shock the public. The police failed to make an instructional statement. They failed to say, "You have the right to call a lawyer." The police made the wrong call. The Charter must be taken seriously, without question. But, was the police officers' inaction really "misconduct" and was it really "serious" misconduct?

Once again, the victim is lost in the discussion and ruling of what “brings the administration of justice into disrepute.” Yes, the *Grant* model does not include severity of offence but does it make sense to the Canadian public that the discussion of admissibility of a suspect's statement to the police fails to include the brutal beating of a human being who was dumped at the side of the road and left to die?

If Canadian citizens were asked, in a nation-wide survey about whether the severity of offence should be a factor in the admissibility of statements, what would the results be? What would the "reasonable Canadian citizen" say? I have a hard time believing that the vast majority of Canadians would not want severity of offence to enter into the admissibility of statement analysis.