





1 DC Francella: *"I am reminding you of your rights. You have the right to*  
2 *remain silent but whatever you say will be taken down in writing and*  
3 *given in evidence. Do you understand?"*

4 Defendant: *"Yes Ma'am, I understand."*

5 DC Francella: *"You also have the right to an attorney. Do you wish to*  
6 *have one present?"*

7 Defendant: *"Yes Ma'am."*

8 The attorney Scott Wilson was called at 5:30 p.m. Mr. Wilson advised  
9 that he would speak to Mr. Bryan (the Defendant).

10 In the interview room the Defendant advises that he wishes to proceed  
11 without an attorney present. DC Francella noted the Defendant's  
12 response as:

13 *"Whatever he did not feel comfortable with, he would say, "No*  
14 *comment."*

15 8. There have been changes to the wording of the caution as a result of the  
16 provisions of sections 147 to 152 of the Police Law (2010 Revision). The  
17 caution provided for in the Judges' Rules has changed to reflect the recent  
18 changes to the right of silence. Under the Police Law the following is the  
19 current police caution prior to questioning:

20 *"You do not have to say anything but it may harm your defence if you do*  
21 *not mention, when questioned, something which you later rely on in*  
22 *Court. Anything you do say may be given in evidence."*

1 9. The two questions for me to decide are whether DC Francella's statements,  
2 which were that the evidence against Racquel Bryan and the Defendant was  
3 overwhelming and, that it would be likely that Racquel Bryan would be  
4 charged, could constitute oppressive conduct being brought to bear on the  
5 Defendant, so as to make any statement made by him to the officers  
6 involuntary and therefore inadmissible.

7 10. In *R v. K.F. Ebanks and B.R. Powell* 2001 CILR 24, Henderson J. applied  
8 the dicta of Sachs J. in *R v. Priestley* (1966) 50 Cr. App. R. 183 where he  
9 states at paragraph 30,

10 *"The first question is whether the statement should be excluded on the*  
11 *ground that it was the product of oppression. When I use the word*  
12 *"oppression", I refer to it in the common law sense. ...at common law, a*  
13 *confession is regarded as having been obtained by oppression, as Sachs*  
14 *J. said R v. Priestley, if it was the product of something which tends to*  
15 *sap and has sapped, that free will which must exist before a confession is*  
16 *voluntary."*

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18 Henderson J. goes on to state at paragraph 31,

19 *"The inquiry is essentially subjective. One must determine what*  
20 *oppressive conduct was brought to bear on the defendant. One must*  
21 *assess the impact of that conduct upon him. One must have regard to his*  
22 *mental, psychological and perhaps physical make up. It is a question of*  
23 *looking at his ability, or lack of it, to speak with a free will and with the*  
24 *intention of communicating what he has to say. A lengthy period of*  
25 *detention, whether lawful or unlawful, may, in some circumstances,*  
26 *amount to oppressive conduct and have the effect I have described.*  
27 *Where the detention is unlawful and where the unlawfulness is known to,*  
28 *and understood by, the defendant, may well add to the oppressive effect*  
29 *of the detention."*

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1 11. In addition, the Defence argues that because the Defendant did not have his  
2 attorney present at the meeting at the FCU on the 29<sup>th</sup> September 2008 any  
3 statements he made to DC Francella should be rendered inadmissible.

4 12. It is clear to me that by the time this investigation had reached the 29<sup>th</sup>  
5 September 2008, the Defendant had been cautioned at least twice, and he  
6 fully understood his right to remain silent and his right to have an attorney  
7 present. What is particularly revealing is that in his early response to the  
8 investigating officers during the interview of the 11<sup>th</sup> July 2008 it is noted  
9 that the Defendant stated,

10 *“Whatever he did not feel comfortable with he would say, “No*  
11 *comment.””*

12 At the same time he positively decided to continue with the interview  
13 without an attorney being present, and was fully aware of his rights when so  
14 doing.

15 13. DC Francella’s evidence is that she rendered a caution on the 29<sup>th</sup> September  
16 2008 and she told the Defendant of her need to re-interview him and,  
17 according to her, the Defendant said he wanted to have his attorney present  
18 for the re-interview.

19 14. DS Montague’s evidence was that the Defendant was cautioned as usual and  
20 he was reminded that he was still under caution.

21 15. On the question of whether a caution was delivered on the 29<sup>th</sup> September  
22 2008, the Court notes that in the interview conducted on the 3<sup>rd</sup> November  
23 2008 with the Defendant’s then attorney, Clyde Allen, being present, the

1 Defendant was asked specifically about the conversation on the 29<sup>th</sup>  
2 September 2008 and DC Francella's question was:

3 DC Francella: *"I wrote down your rights to counsel and caution on an*  
4 *interview form and read them to you. Is that correct?"*

5 Answer: *"Yes."*

6 16. Accordingly, from all the evidence I have heard from DC Francella, DS  
7 Montague and the Defendant, himself, I find that the Defendant was properly  
8 cautioned. The Defendant was no longer in custody and therefore could have  
9 re-arranged the time for the interview. The Defendant was familiar with the  
10 meaning of the caution and was fully aware of his right to an attorney during  
11 any interview with the investigating officers and of his right to remain silent.

12 17. On the 29<sup>th</sup> September 2008 both the Defendant and Racquel Bryan were  
13 answering to their police bail. It would be quite apparent to the Defendant  
14 that both he and Racquel Bryan could well be facing serious charges relating  
15 to Cayman Bakery and Foster's Food Fair.

16 18. Having reviewed all the evidence and the submissions of both counsel, I do  
17 not find the words said by DC Francella to constitute oppressive conduct, nor  
18 do I find that the Defendant's freewill had been sapped to such an extent that  
19 any statements he made to DC Francella could be deemed involuntary.

20 19. I find that the Defendant clearly understood what was meant by a caution and  
21 he clearly understood that he could have his attorney present. After hearing  
22 what was at least a third caution, I find that he was well aware of his right to

1 remain silent. The fact that he chose not to remain silent was a voluntary  
2 decision he took by himself.

3 20. Accordingly, I find that the Crown has shown beyond all reasonable doubt  
4 that the statements were not the product of any threat, promise or inducement  
5 by the police as persons in authority to the accused. I find that the Defendant  
6 spoke to the officers voluntarily, in full knowledge of what he was saying –  
7 understanding the caution and the previous cautions that had been delivered  
8 to him. I find that the statements had not been obtained by any oppression or  
9 unfairness and are therefore admissible.

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13 **Dated this the 13<sup>th</sup> March 2012**

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19 **Honourable Mr. Justice Charles Quin**  
20 **Judge of the Grand Court**

