

# Canada won't import 'Miranda'

## High court rejects U.S.-style right to counsel

JANICE TIBBETTS  
POSTMEDIA NEWS  
OTTAWA

A deeply divided Supreme Court of Canada refused Friday to import U.S. "Miranda rights" to Canada, ruling that it would frustrate criminal investigations and slow down the justice system to impose a constitutional guarantee for suspects to have lawyers present during police interrogations.

By a 5-4 margin, the nine-member bench said the right

to counsel entails a phone call and consultation after arrest, but it does not extend to having lawyers in police interview rooms.

"We are not persuaded that the Miranda rule should be transplanted in Canadian soil," Chief Justice Beverley McLachlin and Justice Louise Charron wrote for the majority.

"While the police must be respectful of an individual's Charter rights, a rule that would require the police to automatically retreat upon a detainee stating that he or she has nothing to say would not strike the proper balance between the public interest in the investigation of crimes and the suspect's interest in being left alone."

The majority added that the

prevailing view in courts nationwide is that "we should not (and cannot) change the law of Canada so as to forbid the police to talk to a detained suspect unless defence counsel sits in and rules on each question."

Justices Louis LeBel and Morris Fish, writing a biting dissent for the minority, warned that the majority ruling "carries significant and unacceptable consequences for the administration of criminal justice and the constitutional rights of detainees in this country."

The dissenting judges said the majority's fear that the administration of justice would grind to a halt is groundless, since it has not come to fruition in the United States in the nearly 50 years

since it adopted Miranda rights, despite dire predictions by naysayers at the time.

In a separate dissent, Justice Ian Binnie said that denying suspects the right to counsel during interrogations gives police a "trump card."

The ruling, which was the lead case in one of three similar decisions handed down Friday, was a loss for Trent Terrence Sinclair, who was arrested in Vernon, B.C., and later convicted of manslaughter for the 2003 death of Garry Grice.

The court also handed defeats to killer Stanley James Willier, of High Prairie, Alta., and Donald Russell McCrimmon, who was convicted of assaulting women in Chilliwack, B.C.

The Criminal Lawyers As-

sociation, which intervened in Sinclair's appeal, said the decision settles an "open question" that has existed for years in the criminal justice system.

"It's undoubtedly going to produce more unreliable convictions because it will embolden the police to engage in more tricks and coercion as soon as a person gets off the phone with a lawyer, knowing that the person has exhausted their right to get advice," predicted association president Paul Burnstein.

"It will do little or nothing to help protect the public and we know that because the rules in America are much more robust for making sure people who are detained in police custody have access to a lawyer, and it hasn't in any way impeded law enforcement

in the U.S. because they have the largest incarceration rate in the free world."

The Supreme Court majority noted that suspects have the right to remain silent during police interrogations, which they said is not touched by the ruling.

The dissenting judges denounced the conclusion, saying the right to counsel and the right to silence are intertwined because skilled police interviewers "time and time again" persist in interrogating suspects until they eventually crack under pressure.

The Supreme Court ruling means Willier goes back to trial and McCrimmon, convicted on an eight-count indictment of assaulting women in 2005, failed in his court challenge to his conviction.