



THE UPDATE

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ADJOURNMENTS - DEFENCE COUNSEL UNPREPARED - ADJOURNMENT MUST BE GRANTED

R. v. Rae - June 10, 2005, Alta. C.A. per Hunt, Berger and Costigan, J.A. - Trial Judge: McNab, P.C.J.:

Appeal from conviction on assault charge. Defence counsel at trial had sought an adjournment because he was unprepared. Adjournment denied.

Held: Appeal allowed, new trial ordered.

Decision as to whether to grant an adjournment is discretionary, but scope of review is wide if the accused has been deprived of his rights: *Barrette* [1977] 2 S.C.R. 121. Denial of adjournment amounted to a denial of the ability to make full answer. "Counsel's statement to the Court that he was uncomfortable in proceeding and inadequately prepared is determinative ... No prejudice beyond that need be shown".

P. Royal - Defence Counsel

CHARTER - 8 - KNIFE FOUND IN PAT DOWN SEARCH - PUBLIC INTOXICATION ARREST - NO BREACH

R. v. Grant - June 10, 2005, Alta. Prov. Ct. per Fradsham, P.C.J.:

Accused originally arrested for public intoxication and taken into custody. Pat down search at detachment revealed a butterfly knife, and accused charged under s. 91(2) C.C.. Issue regarding alleged s. 8 breach.

Held: No breach.

Police had reasonable grounds to arrest for public intoxication under s. 115 G.L.A.: *McMurren* (2001) 298 A.R. 390. Accordingly, police entitled to take accused into custody without issuing a violation ticket as per s. 115(2). Police entitled to conduct an unintrusive pat down search of accused who is to be lodged in cells. Authorities reviewed.

D. Sherwin - Defence Counsel

CROWN COUNSEL - ABUSE OF PROCESS - COURT ORDER REQUIRING CROWN COUNSEL TO TESTIFY

R. v. Lam - June 9, 2005, Alta Q.B. per Burrows, J.:

Accused charged with conspiracy related offences. Defence retained a Vietnamese interpreter to assist with wiretap evidence. Same interpreter had also worked for the Crown. Shortly after learning of the interpreter's assistance to the defence, Crown counsel wrote to the interpreter advising that his contract with the Crown would not be renewed. Abuse of process application. Application to have Court compel Crown counsel to testify on voir dire.

Held: Application granted.

The subpoenaed lawyer was able to give material and necessary evidence: *Brown* [1997] O.J. No. 6171.

K. Moore, G. Lazin - Defence Counsel



**CHILD WITNESS - S. 715.1 -
VIDEOTAPE - "REASONABLE
TIME" - 7 MONTHS - TAPE
NOT ADMISSIBLE**

R. v. E.G.M. - June 9, 2005, Alta.
Q.B. per Lee, J.:

Accused charged with sexual assault. Younger brother of complainant not interviewed by police for 7 months following alleged offence. Videotape interview. Crown application to admit videotape as per s. 715.1 C.C.

Held: Application denied.

Rationale and purpose of s. 715.1 not met. Witness was now 14 years old and appeared to have good recall of alleged events. "It does not appear that the police were diligent in this matter, and it certainly appears that the younger brother was easily identifiable as a potential material witness". Authorities reviewed.

D. Knisely - Defence Counsel

**SENTENCE - ASSAULT
CAUSING - BURNING OF 2
YEAR OLD IN BATH TUB - 1
YEAR JAIL PLUS
PROBATION**

R. v. Tate - June 16, 2005, Alta.
C.A. per Paperny, J.A., Mason and
Sirrs, J. - Trial Judge - Maloney,
P.C.J.:

Defence appeal from 1 year jail sentence plus 1 year probation in relation to charge of assault causing. Accused with no record partially immersed his girlfriend's 2 year old son into a bathtub of scalding water causing some second degree burning.

Held: Appeal dismissed.

Conditional sentence inappropriate. "Imposition of a custodial sentence ... recognizes the vulnerability of young children to the exploitation and abuse by their parents or care givers".

C. Rice - Defence Counsel

**SENTENCE - ATTEMPTING
TO DISSUADE A WITNESS -
23 MONTHS JAIL UPHOLD**

R. v. Crazybull - June 16, 2005,
Alta. C.A. per Paperny, J.A.,
Mason and Sirrs, J. - Trial Judge:
Kirkpatrick, P.C.J.:

Defence appeal from 23 month sentence in relation to accused who attempted to dissuade a witness from testifying. Accused told the witness that if he testified "a carload of boys would make sure de did not attend". Young accused with a lengthy criminal record.

Held: Appeal dismissed.

Complainant was 16 and took the threat seriously. "The offence of obstructing justice ... is one that goes to the very root of the system": *C.E.B.* [1995] B.C.J. No. 659.

J. Virk - Defence Counsel