



THE UPDATE

Issue #6 August 5, 2005

CHARTER - 7 - DISCLOSURE - INCOMPLETE POLICE NOTES - NO BREACH

R. v. Bailey - June 8, 2005 Alta. Prov. Ct. per Van de Veen, P.C.J.:

Impaired driving trial. Police officer testified to symptoms of impairment not recorded in her notes. Defence sought exclusion of these additional symptoms as a result of an alleged breach of the s. 7 right to disclosure.

Held: No breach of s. 7.

Zack [1999] O.J. 5747 distinguished. Officer's notes, although not detailed, were sufficient to allow for memory refreshing. Although there is a duty upon police officers to take complete and accurate notes, "evidence not contained in officer's notes may be suspect or given less weight on the basis of credibility, not Charter breach".

J. Bascom - Defence Counsel

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CHARTER - 10(B) - FAILURE TO ADVISE OF DUTY COUNSEL PHONE NUMBER

R. v. Korol - June 8, 2005 Alta. C.A. per Ritter, J.A.:

Application for leave to appeal from refusal conviction. 10(b) caution given to accused upon arrest did not contain the number for the Legal Aid Duty Counsel service that had been put into effect one month prior. Accused asserted 10(b) right by requesting to speak to specific counsel, then changed his mind, and after being read a waiver, refused to blow.

Held: Leave denied.

Breach of informational component of 10(b) right. As per *Bartle* issues of diligence and waiver did not arise. However, no error in decision not to exclude evidence under s. 24(2). "Korol's desire to contact a specific lawyer played an influential role in the trial fairness branch of the s. 24(2) analysis."

M. Bloos - Defence Counsel

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IMPAIRED DRIVING - EVIDENCE TO THE CONTRARY - READINGS ON CERTIFICATE OF ANALYSES

R. v. Kenny - June 9, 2005 Alta. Prov. Ct. per Semenuk, P.C.J.:

Impaired driving trial. Evidence to the contrary. Issue as to whether the readings on the Certificate may be used in assessing the accused's credibility re: alcohol consumption.

Held: Acquittals entered.

Genereux (2005) ABQB 202 binding. Blood-alcohol readings as set out on the Certificate can be considered by the Court in assessing the credibility of the accused on an evidence to the contrary defence. "The mental gymnastics now required for the Court to address an evidence to the contrary case are Olympic in nature. It is hoped that the SCC will address these various issues ... in the evidence to contrary case now before it in *Boucher* (2004), 183 C.C.C. (3d) 550.

J. Bascom - Defence Counsel

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**SENTENCE - PERSONATION -
IDENTITY THEFT - 4.5
YEARS JAIL**

R. v. Thiel - June 8, 2005 Alta.
Prov. Ct. per McNab, P.C.J.:

Accused pled guilty to 8 offences involving personation and fraud. Identity theft. Through impersonation of complainant with use of cheques and ID, accused stole \$5,600. Lengthy related record – 131 prior convictions.

Held: 4.5 years jail imposed.

Given the record, accused constituted a danger to the safety of the community. “This court cannot help but notice the astonishing increase in the misappropriation of another’s identity.”

A. Piragoff - Defence Counsel

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**SENTENCE - ROBBERY -
MUGGING - 9 MONTH
CONDITIONAL SENTENCE**

R. v. Chalifoux - June 8, 2005
Alta. C.A. per Picard, J.A.;
Langston and Verville, J. - Trial
Judge: Dalton, P.C.J.:

Crown appeal from 9 month CSO imposed after accused pled guilty to robbery. Mugging. Accused struck complainant in the face and arm and took his cell phone. 28 year old aboriginal accused with a long record. 6 months pre-trial custody.

Held: Appeal dismissed.

Strict conditional within the appropriate range given the pre-trial custody. “The sentence is consistent with the spirit of *Gladue* [1999] 1 S.C.R. 688. It does punish, but provides for the opportunity for rehabilitation.”

L. Wood - Defence Counsel

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**YOUTHS - SENTENCE-
AGGRAVATED ASSAULT -
333 DAYS CUSTODY AND
COMMUNITY SUPERVISION**

R. v. T.M. - June 2, 2005 Alta.
Prov. Ct. per Tousignant, P.C.J.:

17 year old pled guilty to aggravated assault. Accused and one other young person beat up an adult who had asked them to pick up their empty beer cans left behind a community centre. Serious beating. Complainant hospitalized for 6 days with severe concussion. Full recovery expected to take 18 months.

**Held: Sentence of 333 days’
custody and community
supervision.**

Unprovoked attack upon a wholly innocent person. Accused given credit for early guilty plea and for successful participation in a Community Conference. Authorities reviewed.

B. McLaren - Defence Counsel

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