



# THE UPDATE

Issue #10 March 10, 2006

## DETENTION OF SEIZED ITEMS - EXTENSION OF TIME - 490 CC

*R. v. Meshkati* - Jan, 10, 2006  
ABPC 16 per Lamoureux, PCJ:

During the execution of a drug warrant police seized a box of documents for investigation of a potential fraud. Crown sought an extension of the 3 month time period for detention as set out in s. 490 CC. Application was filed within the 3 months, but the extension hearing fell 6 days beyond the 3 month date. Issue as to whether Court had jurisdiction to entertain extension application.

**Held: Court having jurisdiction to hear application.**

*Newport* [2003] A.J. No. 502 (Prov Ct) followed. A practical approach is to be followed. "Section 490 requires that the Crown proceed expeditiously" – which they did in this case. Because the application was filed on time, that fact that the hearing fell outside of the 3 month date is irrelevant.

**H. Wolch** - Defence Counsel



## IMPAIRED DRIVING - CONVICTION APPEAL - STAY OF LICENSE SUSPENSION

*R. v. Cunningham* - Jan. 23, 2006  
ABCA 24 per Ritter, JA:

Conviction appeal on over .08 charge. Leave to appeal already granted on an issue regarding proof of service of certificate evidence. Application for stay of license suspension pending appeal. Crown opposed given that accused had a previous related conviction, and arguing that the appeal was "technical and weak".

**Held: Stay granted.**

Crown's concerns regarding public safety without merit. Accused's previous conviction was 11 years old. Leave to appeal could only have been granted if the appeal was found to have arguable merit, and raised grounds of law of some public importance: *Chaluk* (1998), 237 A.R. 366 (CA). "If legal ... errors are to be described as technical, and if that alone constitutes a basis for refusing a stay, then all stays of suspension of driving privileges will be refused."

**S. Prithipaul** - Defence Counsel



## MURDER - MENS REA - 229(a)(ii) CC - INTOXICATION - PROOF OF INTENT

*R. v. Whitebear* - Jan. 20, 2006  
ABCA 22 per Hunt, Berger,  
Costigan, JA - Trial J: Foster, J:

Appeal from conviction on charge of murder. Stabbing death in the course of a drinking party. Accused showed signs of intoxication. Self defence and accident rejected by trial judge. Issue regarding whether trial judge properly considered the intent necessary to commit murder.

**Held: Appeal allowed, new trial.**

Reasons for judgment did not disclose findings regarding the accused's state of intoxication at the time of the killing. The evidence that the accused appeared intoxicated upon apprehension shortly after the stabbing gave rise to the need for the trial judge to make specific findings, by inference, of the state of sobriety and whether the accused formed the specific intent required by s. 229(a)(ii) CC. "The trial judge's reasons preclude meaningful appellate review".

**A. Tralenberg** - Defence Counsel



**SENTENCE - ASSAULT WITH A WEAPON - DISCHARGE OF FIREARM - 9 MONTHS JAIL**

*R. v. Pariseau* - Jan. 6, 2006 ABPC 13 per Ayotte, PCJ:

50 year old accused with no record pled guilty to assault with a weapon and possession of a rifle for a purpose dangerous. Accused travelled to complainant’s home believing that the complainant was having an affair with his estranged wife. Upon arrival accused fired a single gun shot through the back door of the dwelling. When the complainant approached the door, he found the accused pointing the rifle at him. 2 months pre-trial custody. Defence application for conditional sentence.

**Held: 5 months jail plus probation.**

Accused given 2:1 credit for pre-trial custody time. Deterrence and denunciation not properly achieved by a conditional sentence. Accused’s actions were an attempt “to impose his will on his wife and frighten her ... In that sense it is a form of spousal abuse and some weight in aggravation should be given to it”.

**C. Frank** - Defence Counsel



**YOUTHS - SENTENCE - AGGRAVATED ASSAULT - BRUTAL UNPROVOKED BEATING - 11 MONTHS JAIL**

*R. v. P.K.K.* - Jan. 6, 2006 ABCA 1 per Cote, McMahon, Brooker, JA - Trial J: Carruthers, PCJ:

Crown appeal from probationary sentence imposed in relation to 15 year old youth with no record who pled guilty to aggravated assault. Accused, and one other young person, brutally beat an off duty police officer who had asked them to clean up a mess they had made at a community centre. In the range of 50 blows to the victims head. Complainant suffered serious cuts and bruises, a severe concussion, and could not remember the incident.

**Held: Appeal allowed, 11 month custody and supervision order imposed (first two-thirds to be served in custody).**

“What was the respondent’s crime? A very violent, dangerous, unprovoked and prolonged deliberate assault, by two, sufficient to disable temporarily a big strong trained man. The assault produced serious consequences”.

**A. Sanders** - Defence Counsel



**YOUTHS - STATEMENTS - 146 YCJA - RIGHT TO HAVE PARENT PRESENT - TEST**

*R. v. M.C.* - Jan. 16, 2006 ABPC 19 per Kvill, PCJ:

Accused charged with sexual assault. Issue regarding admissibility of statement. Police spoke to accused’s mother, told her that they were investigating a complaint, and that they needed to speak to the accused. The accused and his mother later attended at the police station and met the officer in the lobby. Police told the mother that they would interview the accused, and that if he wished to have his mother present, they would come back out to the lobby to get her. Accused then taken to an interview room, a s. 146 YCJA waiver signed, and the interview proceeded without the mother.

**Held: Statement inadmissible.**

The rights that accrue to young persons must be “liberally construed and aggressively enforced”: *L.(D.J.G.)* 2003 ABCA 198. The mother accompanied the youth to the police station, and should have been permitted to accompany her son to the interview room. The parent was excluded by the police, not the youth. “Subtle pressure was exerted on the young person to convince him not to bring the parent into the interview by suggesting that this was an embarrassing topic ... This is a wholly improper technique”. Authorities reviewed.

**L. Trahan** - Defence Counsel



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