



THE UPDATE

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CHARTER - 11(B) - SPEEDY TRIAL - SEXUAL OFFENCES - 617 DAYS OF DELAY - NO BREACH

R. v. Hurley - Jan. 19, 2006 ABPC 25 per Fradsham, PCJ:

Accused charged with 4 sexual offences. *Askov* application. 617 days of delay from the swearing of the Information. Trial did not conclude on the date originally set. Continuation date adjourned by Crown due to a family emergency.

Held: No breach.

No waiver of 11(b) right by accused. Accused's acceptance of proposed trial dates constituted "acquiescence in the inevitable". Crown's counsel's family emergency formed part of the inherent time requirements of the case. "Illness ... is not the fault of anyone": *Liew* 2002 ABCA 279. No prejudice shown by accused apart from stress. The period of delay caused by "limits on institutional resources" was within the 8-10 month recommendation set out in *Morin*.

M. Brebner - Defence Counsel

SENTENCE - ASSAULT CAUSING - INFANT VICTIM - BROKEN LEGS AND RIBS - 2 YEARS LESS 1 DAY JAIL

R. v. M.J.S. - Jan. 19, 2006 ABPC 24 per Fradsham, PCJ:

Accused pled guilty to assault causing bodily harm as against his infant child (1-3 months old). Accused squeezed the child's rib cage "to the point where he heard popping noises" in an effort to stop the child from crying. 2 fractures to the legs, and 11 fractures to the child's ribs. 32 year old accused with a limited unrelated record.

Held: 2 years less 1 day jail, plus probation.

Conditional sentence inappropriate given breach of trust and seriousness of offence: *Tate* [2005] A.J. No. 702 (CA). Primary aim of sentence being deterrence. Case fell somewhere between the accused who intentionally sets out to injure a child and the application of force by an immature parent who did not fully appreciate the risk of harm. Authorities reviewed.

A. Fay - Defence Counsel

SENTENCE - DANGEROUS DRIVING - POLICE CHASE - 1 YEAR JAIL

R. v. Armstrong - Jan. 16, 2006 ABPC 5 per McDonald, PCJ:

Accused pled guilty to dangerous driving, evading police and possession of a stolen vehicle. Accused fled from police travelling the wrong way down the Trans-Canada Highway for approximately 2 kms. Some traffic on the highway at the time. Accused was confrontational with police upon arrest. Lengthy record, including related convictions for driving offences.

Held: 1 year jail, plus 2 years probation.

Conditional sentence inappropriate given accused's record. Accused constituted a danger to the safety of the community. *McLean* [2004] A.J. No. 1276 (CA) distinguished. Negative pre-sentence report. Deterrence and denunciation paramount in police chase cases. Authorities reviewed.

M. Keelaghan - Defence Counsel

SENTENCE - DANGEROUS DRIVING - HIGH SPEED COLLISION - HORRIFIC RECORD - 5 YEARS JAIL FIT

R. v. Johnson - Jan. 30, 2006 ABPC 22 per Dunnigan, PCJ:

Accused pled guilty to a number of offences including dangerous driving and drive while disqualified. Accused struck a parked motor vehicle while travelling 110 km/hr in a 50 zone. Urine sample tested positive for opiates and cocaine. Horrific record, including 5 previous dangerous driving convictions, 5 impaired convictions and one conviction for dangerous driving causing death. At the time of the offence the accused's license was suspended pursuant to 19 provincial orders.

Held: 5 years jail fit.

Jail sentence reduced by 3 months as credit for guilty pleas, and an additional 32 months for 14 months pre-trial custody. Specific deterrence required in view of record. "Virtually his entire adult life has been one long, outrageous driving pattern". Authorities reviewed.

A. Iovinelli - Defence Counsel



SENTENCE - LEAVING THE SCENE OF AN ACCIDENT - 252 CC - 60 DAYS JAIL

R. v. Bahad - Jan. 17, 2006 ABPC 18 per McDonald, PCJ:

Accused pled guilty to leaving the scene of an accident. Joint submission for probation. Accused ran a red light and struck another vehicle. Accused was then followed home by another motorist. Minor injury caused. Unrelated record.

Held: 60 days jail.

Joint submission not fit. Denunciation and deterrence paramount. Principles set out in **Gratton** (2003) 356 A.R. 334 (QB) found to apply: "... it is vital that the Courts speak on behalf of the society which has so repeatedly enacted, through its legislative branches, that form of denunciation which this sort of crime attracts where speed, alcohol and disregard for other are combined in the operation of over a ton of metal at perhaps 100 feet per second. It is not moralism which forces a trial judge to denounce this sort of criminal conduct".

P. Popovic - Defence Counsel



YOUTHS - TRIAL IN ABSENTIA - JURISDICTION TO CONDUCT YOUTH COURT TRIAL IN ACCUSED'S ABSENCE

R. v. D.D.B. - Jan. 18, 2006 ABPC 31 per Cook-Stanhope, PCJ:

Youth charged with arson and break and enter. Trial conducted over 2 days. Accused failed to return for the second day. Issue as to whether in view of ss. 475 and 650 CC Court having jurisdiction to continue trial *in absentia*.

Held: Court declined to proceed in the absence of the accused.

In general, Youth Court having jurisdiction to proceed *in absentia*. "The most compelling choice for a Court would be ... to proceed to the end of the Crown's case, then adjourn to await the apprehension of the young person. This has several advantages, the most important of which is that it preserves the available evidence ... it also has the benefit of reinforcing respect for societal values [s.3(1)(c)(i)] and accords an appropriate level of respect for victims who are often witnesses in trial proceedings, and who, statutorily are entitled to a minimum degree of inconvenience [s.3(1)(d)(ii)]." Authorities reviewed.

B. McLaren - Defence Counsel



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