



THE UPDATE

Issue #16 April 21, 2006

BAIL - APPEAL - COURT OF APPEAL - MURDER - DENIED

R. v. White - Feb. 22, 2006 ABCA 65 per Cote, O'Leary, Martin JA:

Crown appeal from an order for bail on second degree murder charge. Accused charged with murdering his wife. Accused first reported his wife missing and had made a number of public appeals for help in locating her.

Held: Bail revoked.

Strong Crown case with potential for lengthy jail. As per *Hall* [2002] 3 S.C.R. 309, where "the crime is horrific ... a justice system that cannot detain the accused risks losing the public confidence." Lengthy pre-trial delay unacceptable. Court ordered that trial proceed on an expedited basis. "It must be the truly exceptional case which cannot be brought to trial within one year of the charge when the accused has been denied bail". Publication ban request denied. No statutory right to a ban where bail is reviewed by Court of Appeal. *Dagenais/Mentuck* test weighed in favour of the media.

L. Stevens - Defence Counsel

BAIL - JURISDICTION - 523(2)(A) CC - POWER OF PROVINCIAL COURT TO REVIEW BAIL CONDITIONS

R. v. Mahmoud - Feb. 24, 2006 ABPC 59 per Fradsham, PCJ:

Accused charged with assault with a weapon. Crown proceeded summarily. In advance of trial, accused sought to amend his release conditions in Provincial Court (without Crown consent) as per s. 523(2)(a) CC.

Held: Application denied.

Amendment application had to be brought in Queen's Bench under s. 520 CC. 523(2)(a) CC only vests jurisdiction re: bail amendments with the Provincial Court in circumstances where the accused "is being tried" in that Court. The phrase "is being tried" interpreted to mean "where the accused has embarked on an actual trial": *Hill* [2005] NSJ No. 494. "I ... hope the Court of Appeal will have an opportunity to review the matter and settle the judicial disagreement which has grown up around the issue".

A. Managh - Defence Counsel

CHARTER - 7 - DISCLOSURE - WHETHER QUEEN'S BENCH HAS JURISDICTION TO VACATE A STAY AND COSTS

R. v. Krueger - Feb. 22, 2006 ABCA 63 per Cote, O'Brien, Slatter, JA:

Stay of proceedings and costs originally ordered in Provincial Court arising from a disclosure breach. Both orders set aside in Queen's Bench. Issue as to whether Queen's Bench Justice having jurisdiction to set aside.

Held: Appeal dismissed.

Stay and costs were inappropriate given that disclosure was simply delayed in a non-deliberate fashion. No prejudice to right to full answer and defence. Summary conviction appeal court having the express jurisdiction under s. 830 CC to hear an appeal from a costs order. Trial judge erred in principle in awarding costs as there was no analysis as to whether the Crown's conduct constituted a marked and unacceptable departure from reasonable standards: *Henkel* (2003), 172 CCC (3d) 387.

S. Prithipaul - Defence Counsel

**JURY TRIAL - CHARGE -
QUESTIONS BY JURORS -
JURY SECRECY**

R. v. Ferguson - Feb. 22, 2006
ABCA 36 per Fraser, Ritter,
O'Brien, JA - T. Judge: Hawco, J:

Appeal from conviction by jury on manslaughter charge. Accused was an RCMP officer who shot a prisoner. Following the jury charge, the judge answered a procedural question raised by the jury in the absence of either counsel or the accused. 4 days after the verdict, a juror wrote to the trial judge asking to "withdraw" her vote as she had been pressured by fellow jurors.

Held: Appeal dismissed.

The question asked by the jury was purely administrative in nature, and did not result in a violation of the accused's right to be present at his trial: *Fontaine* (2002), 168 CCC (3d) 263 (Man CA). Regarding the juror's letter, jury secrecy is of the outmost importance. Statements from a juror regarding deliberations "are never receivable": *Saumure* [1956] SCR 403. "This juror wrote a letter after having four days to listen to public commentary ... or criticisms ... and four days to re-visit and second guess". Authorities reviewed.

N. O'Brien - Defence Counsel

**SENTENCE - AGGRAVATED
ASSAULT - STABBING -
DOMESTIC VIOLENCE - 7
YEARS JAIL**

R. v. Thibert - Feb. 28, 2006
ABQB 151 per Moore, J:

Accused pled guilty to aggravated assault. Accused and complainant had been in an intimate relationship. Accused believed that the complainant was cheating on him. Complainant stabbed / slashed 9 times resulting in significant blood loss. Injuries life threatening but for prompt medical attention. Accused's record included 4 assault related convictions and a robbery.

Held: 7 years jail.

Serious violence. Breach of trust / domestic violence. In depth review of case law following from *Brown & Umpherville* (1992) 73 CCC (3d) 242 (Alta CA).

J. Lutz - Defence Counsel

**SENTENCE - SEXUAL
TOUCHING - BREACH OF
TRUST - TEACHER/STUDENT
- 18 MONTH CSO**

R. v. Andrews - Feb. 28, 2006
ABPC 63 per Fradsham, PCJ:

Accused pled guilty to sexual touching contrary to s. 153 CC. Accused was a 36 year old High School teacher who became involved with one of his students. Parties engaged in various sexual acts including kissing, oral sex and intercourse. Relationship ended when it was discovered by the complainant's father.

Held: 18 month CSO.

Assessment found accused to be at a low risk of re-offending. Mitigating factors included: early guilty plea and accused lost his employment. As per *H.G.V.* (2001) 277 AR 262 (CA) denunciation and deterrence paramount. "Parents are entitled to, and do, trust that the people hired to teach in the schools will not view the student body as a convenient collection of potential prey". Authorities reviewed.

S. Eichler - Defence Counsel

Anderson Dawson Knisely Stevens & Shaigec
Suite 300, 9924-106 Street, Edmonton, Alberta, T5K 1C4
Tel: (780) 424-9058 Fax: (780) 425-0172

All updates can be found at www.adkscrimlaw.com

**By clicking on the heading of any of the cases in THE UPDATE,
the reader will immediately be linked to full text of the case.**