



# THE UPDATE

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## CHARTER - 8 - ARREST - REASONABLE GROUNDS - TEST TO APPLY

**R. v. Sahlen** - Apr. 26, 2006  
ABCA 135 per Fraser, Fruman, Costigan, JA - T. Judge: Smith, J:

Appeal from conviction on charge of possession of cocaine for the purpose of trafficking. Issue regarding trial judge's finding of reasonable grounds to arrest. Two officer's involved in the stopping of the accused, however, only one of them testified that grounds to arrest existed. Trial judge found that the arresting officer "...had both objective and subjective factors, which added together, formed sufficient basis to arrest".

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

Wrong test applied. No evidence properly explained the difference in the two officer's subjective views. "It seems that the trial judge at no point independently assessed the objective reasonableness of the arrest."

**A. Sanders** - Defence Counsel

## IMPAIRED DRIVING - CHARTER - 8 - SCREENING TEST - MOUTH ALCOHOL - 15 MINUTE WAIT

**R. v. Nelson** - Apr. 24, 2006  
ABQB 297 per Watson, J:

Impaired driving trial. Issue regarding admissibility of screening test and reasonable grounds to make breath demand. Fact based case where Court found that accused had told police that he had not had anything to drink since the morning.

**Held: No s. 8 breach.**

As per *Bernshaw*, "...it is not necessary that the officer personally observe the individual for 15 minutes, so long as the officer is in a position to say that, objectively and subjectively, there is a reasoned and sound basis to conclude in fact that the 15 minute period has expired without any further consumption of alcohol or the production of mouth alcohol so as to affect the test".

**M. Clancy** - Defence Counsel

## SENTENCE - CHILD PORNOGRAPHY - DISTRIBUTION - 3 ½ YEARS

**R. v. Treleaven** - Apr. 24, 2006  
ABPC 99 per Creagh, PCJ:

Accused pled guilty to distributing child pornography. Serious case. Accused was the administrator of an internet chat room. 20 gigabytes of material seized with real images including the rape of children, bestiality and incest. 49 year old accused with two sexual assault related convictions dating back to the 1970s. 3 ½ year joint submission.

**Held: 3 ½ years jail.**

Distribution of child pornography constitutes child abuse: *Steadman* [2001] AJ No. 1563. "This case is unique because of the quantity and nature of the material. It is also unique because of the length of time the offender has been involved in this chat room ... and his ability to affect the world wide distribution of child pornography". Authorities reviewed.

**D. Paull** - Defence Counsel

**SENTENCE - DANGEROUS DRIVING CAUSING HARM AND HIT AND RUN - 15 MONTHS JAIL**

*R. v. O'Neill* - May 8, 2006 ABPC 126 per Stevenson, PCJ:

Accused pled guilty to dangerous driving causing bodily harm and hit and run. 18 year old accused under the influence of alcohol, driving too fast. One of the accused's passengers suffered serious back and neck injuries. No criminal record, but a very serious driving record. Accused was a suspended driver at the time of the offence as a result of traffic convictions. Conditional sentence application.

**Held: 15 months jail.**

9 months for dangerous driving, with 6 months consecutive for leaving the scene. CSO not consistent with fundamental purposes of sentencing: *Hindes* [2000] AJ No. 808 (CA). No remorse shown at the time. "Remorse ... after guilt is admitted is ... a questionable commodity".

**A. Iovinelli** - Defence Counsel

**SENTENCE - DRUGS - PRODUCTION OF MARIHUANA - 36 MONTHS**

*R. v. Le* - Apr. 24, 2006 ABQB 44 per Sullivan, J:

Accused convicted of production of marihuana. Large commercial grow operation. 822 plants, "there was a potential for 4,110 ounces of marihuana". Expert evidence established that grower could realize a revenue in the range of \$900,000. 42 year old accused, mother of two children aged 15 and 5, with no record.

**Held: 36 months jail.**

Denunciation and deterrence paramount. As per *Matthiesson* [1996] AJ No. 1419 (QB) "The major concern is to impose a sentence that will deter others who might be tempted to participate in ... the drug trade". Lengthy jail sentence necessary. *Smith* (2001) 288 AR 175 (QB) followed. Authorities reviewed.

**D. Chow** - Defence Counsel

**SENTENCE - PRINCIPLE - ADMISSIBILITY OF UNTRIED BAD ACTS - TEST**

*R. v. Roberts* - Apr. 20, 2006 ABCA 113 per Russell, McIntyre, Mahoney, JA - T. Judge: Martin, J:

Defence appeal from 15 year parole ineligibility imposed following second degree murder conviction. Shooting death. Sentencing judge admitted into evidence prior untried acts of the accused's use of firearms as a aggravating factor in sentencing.

**Held: Appeal dismissed.**

Sentence not unfit. Evidence of prior bad acts proven beyond a reasonable doubt in sentencing. As per *Lees* [1979] 2 SCR 749, evidence admissible on the issue "of the accused's character, conduct and attitude". Evidence not used to punish accused for previous for untried past acts. Factors set out in *Edwards* (2001), 54 OR (3d) 737 (CA) weighed in favour of admission. Authorities reviewed.

**C. Davison** - Defence Counsel

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