



THE UPDATE

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CHARTER NOTICE- TRUST CONDITIONS ON NOTICE

R. v. Evenson - June 1, 2006
ABPC 146 per Lamoureux, PCJ:

Impaired driving trial. Charter Notice provided to Crown. Notice provided with a trust condition that the Crown not discuss the Notice with the police, so as to preserve the "flow ... and veracity of the officer's evidence". Crown refused to accept trust condition.

Held: Trust condition void.

Any trust condition would have to accord with Rule 11 of the *Code of Conduct*. "The circumstances for imposition of trust conditions in a criminal prosecution would be rare. However, those circumstances might well include the access to and use of privileged material in possession of the accused. The right to impose trust conditions is analogous to the setting and enforcing of conditions of limited access to documents": *Dell* (2005), 194 CCC (3d) 321. Charter Notice in present case did not contain any privileged information.

D. Chow - Defence Counsel

SELF-DEFENCE - 34(1) - SPOUSAL ASSAULT

R. v. Briere - June 2, 2006 ABPC
149 per Semenuk, PCJ:

Accused charged with aggravated assault. In the course of an altercation with his wife, the accused punched her once in the face causing 5 broken bones. Self-defence claimed.

Held: Acquittal.

Section 34(1) CC available to the accused. The fact that there was a single blow was critical. The complainant was hitting the accused and they both fell to the ground. As the accused was attempting to get up, the complainant scratched his face, at which time he punched her. Doubt raised as to whether degree of force used was no more than necessary. "A person defending himself cannot weigh to a nicety the exact measure of his necessary action": *Palmer* (1971), 55 Cr App R 223 (PC).

D. Chow - Defence Counsel

SENTENCE - DANGEROUS DRIVING CAUSING DEATH

R. v. Zayezierski - June 7, 2006
ABPC 150 per Brown, PCJ:

20 year old accused pled guilty to dangerous driving causing death. Accused was driving 3 friends home from the bar. Accused accelerated through a curve to a speed of 138 km/hr. The speed limit was 60. The accused lost control of the vehicle, hitting a guard rail and flipping. One of the passengers was killed, while a second suffered serious injuries.

Held: 2 years less 1 day conditional sentence plus probation.

Primary mitigating factors being: early guilty plea, remorse, youth, no record and a positive PSR. "The *Proulx* decision makes it clear that a conditional sentence should be considered for all eligible offences and is usually the more appropriate sentence when there are restorative justice objectives to be addressed".

L. Hursh - Defence Counsel

SENTENCE - DANGEROUS DRIVING - POLICE CHASE

R. v. Quast - June 7, 2006 ABCA 182 per Fruman, MacLeod, Park, JA - Trial Judge: McDonald, PCJ:

Defence appeal from 15 month sentence (plus 6 months pre-trial custody) imposed following guilty pleas to dangerous driving / flight from police. Accused had no license and no insurance. After he was pulled over by police, he pulled away, dragging a police officer 6 meters. Rush hour chase ensued. Accused "blew through two red lights" while going 60 km/hr over the speed limit. Chase ended with a serious collision. No injuries.

Held: Appeal dismissed.

"This Court has emphasized that flight from the police is a serious offence: *K.(J.)* (1992), 37 MVR (2d) 66. The sentence imposed in this case is not unfit and is in keeping with the sentencing principles to be applied in cases involving high speed chases, as outlined in *Roberts* (2005) ABCA 11."

J. Blumer - Defence Counsel

SENTENCE - DRUGS - PRODUCTION OF MDA

R. v. Patrick - June 1, 2006 ABPC 124 per Wilkins, PCJ:

Accused found guilty after trial of various drug offences, including production of MDA (ecstasy). Total amount of MDA produced was 4.9126 kilos. 86,300 tablets with a content of 58 mg of active ingredient were produced. The pills were sold for a gross revenue of \$215,200, the net revenue after deduction of the cost of production was \$175,100. The accused's share of profit was 50% or \$88,500. 30 year old accused, no record, university education.

Held: 4 years jail plus \$46,635 fine.

As per *Bouabon* (2002) ABQB 128, MDA is a "hard" drug ranking below MDMA and "meth" in its potency and harmfulness. The target for MDA is adolescents "which exacerbates the seriousness of this offence". Authorities reviewed.

C. Stewart - Defence Counsel

SENTENCE - SEXUAL TOUCHING - 2 YEARS JAIL

R. v. Van Den Boogaard - June 7, 2006 ABCA 183 per Costigan, Agrios, Bielby, JA - Trial Judge: Wilson, J:

Crown appeal from 6 month jail sentence plus probation imposed following conviction on 2 charges of sexual touching. 58 year old accused, family man with no record. 11 and 13 year old victims, who the accused was babysitting. The accused "tied the two girls to one another and to his bed ... he caressed the breasts of each girl ... he sprayed water on their bodies. The girls were naked at the time".

Held: Appeal allowed. Sentence increased to 2 years less 1 day minus time served.

Although not a major sexual assault warranting the 4 year starting point, the offences were serious. Aggravating factors included: breach of trust, multiple victims, and the fact that the victims were bound.

M. Duckett - Defence Counsel

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