



# THE UPDATE

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## CHARTER - 8 - VEHICLE SEARCH - DRUGS ADMITTED

*R. v. Zinkhan* - August 17, 2006 ABPC 215 per Van de Veen, PCJ:

Accused's vehicle stopped due to speeding and failure to signal a lane change. Police officer, while looking through the vehicle window, saw a baggie sticking out of the accused's pocket. Officer immediately believed that the baggie contained marihuana. Accused arrested, and search of accused and vehicle resulted in discovery of drugs.

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

Lawful stopping of vehicle for traffic safety reasons. Subjective reasonable grounds of officer were objectively defensible. "Once the initial traffic stop was lawfully made, a further search on the suspicion of illegal drugs, both of the accused's vehicle and person is lawful": *Yague* [2005] AJ No. 982 (CA). Authorities reviewed.

**J. Turner** - Defence Counsel

## CHARTER - 9 - JETWAY UNIT - DRUGS ADMITTED

*R. v. Gill* - July 25, 2006 ABPC 154 per Millar, PCJ:

Accused charged with possession of cocaine for purpose of trafficking. Jetway Unit spoke to accused at Calgary bus depot. Accused looked nervous and gave odd answers to questions. Accused told initially that he was not detained. Ultimately police asked accused: "If you're not carrying any drugs, would you mind if we searched your bag? You're certainly not obliged to." Permission was given and one kilogram of cocaine was found.

**Held: No s. 9 breach.**

Accused not detained. No element of psychological restraint. As per *Kang-Brown* [2005] ABQB 608, accused was given a choice as to whether to speak to police or not. "A person is not detained merely because he is approached by police and asked questions". Authorities reviewed.

**T. Roulston** - Defence Counsel

## IMPAIRED DRIVING - 10(B) - WAIVER - CERTIFICATE EXCLUDED

*R. v. Nixon* - August 10, 2006 ABPC 194 per Millar, PCJ:

Impaired driving trial. Upon being advised of his 10(b) rights, accused replied: "I will call in the morning". At the detachment, accused again reiterated that he did not want to call "his lawyer this late". Accused ultimately changed his mind, called a lawyer, but was only able to leave a voice message. When asked by police if he wanted to call anyone else, he responded: "No, I'll follow up with him tomorrow".

**Held: 10(b) breach. Certificate excluded.**

"His insistence that he will call him at a later time is in and of itself an indication that he is not understanding the right which he is being asked to waive. Nixon's response is equivocal and does not constitute a valid waiver".

**P. Brunnen** - Defence Counsel

**SENTENCE - FRAUD - BREACH OF TRUST - \$170,000 - 3 YEARS JAIL**

**R. v. Henrikson** - August 8, 2006 ABPC 188 per McDonald, PCJ:

Accused pled guilty to fraud. Breach of trust. \$170,000 stolen by accused from her employer. Accused was the company bookkeeper. In September of 2005 accused was convicted of stealing \$149,000 from a previous employer, and at that time received an 18 month jail sentence plus probation.

**Held: 3 years jail.**

Accused suffered with a gambling addiction. Guilty plea being only mitigating factor. "The Court of Appeal's recent judgments in *McKinnon* [2005] AJ No. 12 and *McTighe* [2005] AJ No. 64, make it abundantly clear that (perhaps very exceptional circumstances aside) a conditional sentence order is simply not appropriate in cases dealing with employee trust thefts".

**H. Van Harten** - Defence Counsel

**SENTENCE - SEXUAL ASSAULT - CHILD VICTIMS - 6.5 YEARS JAIL**

**R. v. Moors** - July 27, 2006 ABPC 190 per Fraser, PCJ:

Accused pled guilty to several offences of sexual touching, invitation to touch and exposure. 5 child victims, ranging in age from 18 months to 6 years. In each case accused was hired as a babysitter. Accused's misconduct ranged from exposing his genitals to inserting his penis into the children's anus. Major sexual assaults. 22 year old accused, no record, with "mental disabilities".

**Held: 6.5 years jail.**

Sentence reduced to 5.5 years given time in custody. "In *Deck* (2006) ABCA 92 the Court of Appeal said that the justice system must take the strongest possible steps to protect children and denounce predators who sexually abuse them. The protection of children from harm is a universally accepted goal".

**SENTENCE - WEAPONS - 88 C.C. - RIFLE - 6 MONTHS JAIL PLUS PROBATION**

**R. v. Weber** - August 11, 2006 ABPC 212 per Lamoureux, PCJ:

Accused pled guilty to possession of a rifle for purpose dangerous, contrary to s. 88 CC. Accused, who was addicted to cocaine, became engaged at his father, and obtained a loaded .22 caliber rifle and began waiving it around. At times, the rifle was pointed in the father's direction, and at one point the accused shot the rifle into a vehicle door. 36 year old accused who was on probation at the time of the offence.

**Held: 6 months jail plus 18 months probation.**

Accused diagnosed as suffering from polysubstance abuse. Combination of rage, drugs and firearms, extremely dangerous. Conditional sentence wholly inappropriate. Accused constituted a danger to the safety of the community.

**M. Dinkel** - Defence Counsel

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

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