



THE UPDATE

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APPEAL - REASONS - BRIEF REASONS ADEQUATE

R. v. E.G.M - September 15, 2006 ABCA 257 per McFadyen, Berger, O'Brien, JA - T. Judge: Lee, J:

Appeal from sexual assault conviction. Grounds of appeal: unreasonable verdict and trial judge's failure to give full reasons for rejecting accused's evidence.

Held: Appeal dismissed.

Trial judge's findings were supported by the evidence. Verdict not unreasonable. With respect to the reasons for judgement, "while the trial judge's review and assessment of the appellant's evidence is admittedly brief, we cannot say that, taken in their entirety, the reasons preclude meaningful appellate review." As per *Lavoie* (2000), 271 AR 321 (CA), reasons for judgment must be read as a whole, and not dissected into small parts with each part examined in isolation.

W. Raponi - Defence Counsel

LAWFUL EXECUTION OF DUTY

R. v. Lowry - August 31, 2006 ABPC 209 per Semenuk, PCJ:

Accused charged with assaulting 2 police officers. Assaults occurred while accused was being evicted from a hotel where he had been living more than 6 months. Issue as to whether accused entitled to eviction notice under *Residential Tenancies Act*, and whether the failure to provide the notice meant that the police were not within the lawful execution of their duty.

Held: Acquittals entered.

Residential Tenancies Act applied, given that accused had lived at hotel for more than 6 months. Therefore, the accused could not be immediately evicted under the *Innkeepers Act* for behaviour detrimental to other guests. Police had no authority to remove accused from his room.

M. Takada - Defence Counsel

CHARTER - 7 & 12 - STRIP SEARCH AND TASER - STAY

R. v. J.W. - August 31, 2006 ABPC 216 per Kvill, PCJ:

Break and enter trial. Youth. After arrest, accused taken into custody and strip-searched. Officer testified that he routinely strip-searched "just about everybody". At the commencement of the strip search, the officer took the end off of his Taser for ready use. Accused became uncooperative during the strip-search and was Tasered. After Tasering the accused cried and was compliant. Officer testified that the Taser inflicted excruciating pain.

Held: Stay of proceedings.

Tasering of accused was neither necessary nor proportional. "Prohibited weapons should only be used proportionate to the threat". *Pringle* (2003) ABPC 7 followed. "The police misconduct is so egregious in this case that the mere fact of going forward with the prosecution, in light of the police action, would be offensive".

L. Wood - Defence Counsel

ASSAULT - POLICE -

**IMPAIRED DRIVING - TEST -
EQUIVOCAL EVIDENCE**

R. v. Houlihan - September 7, 2006
ABQB 638 per Binder, J:

Appeal from conviction on impaired driving charge. Defence argued that the evidence of impairment was equivocal, and incapable of constituting proof beyond a reasonable doubt.

Held: Appeal dismissed.

“Trial judge did not err in his characterization of the legal test as set out in *Andrews* ... he clearly stated that the Appellant’s erratic driving pattern was a marked deviation from normal The learned trial judge then went on to address whether the erratic driving was due to impairment by alcohol.”

S. Prithipaul - Defence Counsel

**SENTENCE - AGGRAVATED
ASSAULT - 10 MONTHS JAIL**

R. v. Kosmak - August 30, 2006
ABPC 237 per Brown, PCJ:

19 year old accused pled guilty to aggravated assault. Group of young men fighting over an ex-girlfriend. Accused, armed with a machete, slashed the complainant several times, causing a massive wound to the left arm, including a severed tendon. No criminal record.

Held: 10 months jail plus 2 years probation.

Aggravating factors included: use of a weapon, element of planning, and that the assault took place at a sports complex frequented by families. Usual range being 18 months to 3 years. 10 months fit given guilty plea and strides toward rehabilitation.

E. Archer - Defence Counsel

**TRAFFIC OFFENCES -
SKATEBOARDER IS A
PEDESTRIAN**

R. v. Atchison - September 15, 2006
ABCA 258 per Picard, Costigan,
Martin, JA:

Accused charged with failing to yield for a pedestrian in a cross-walk. The pedestrian was on a skateboard. Issue as to whether a person on a skateboard is a “pedestrian”.

Held: Appeal dismissed.

“When the ordinary and grammatical meaning of the word ‘pedestrian’ is considered in light of the object and scheme of the *TSA* and the intention of the Legislature, it is our view that it must include persons on skateboards and similar devices”.

J. Fixsen - Defence Counsel

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