



# THE UPDATE

Issue #19 May 18, 2007

## CHARTER - 7 - DISCLOSURE - IMPAIRED DRIVING - 10 & 24(2) MURDER - INTENT - 229(a) CC - RCMP SEARCH POLICIES - CERTIFICATE ADMITTED ESSENTIAL INGREDIENTS

**R. v. Klapper** - April 3, 2007  
ABPC 99 per Shriar. PCJ:

Accused charged with possession of marihuana for the purpose of trafficking. Vehicle stop and search without a warrant. Application for disclosure of the RCMP policies relating to warrantless searches.

**Held: Disclosure ordered.**

"In *Wills* 70 CCC (3d) 529 the ... Court stated that with respect to a warrantless search, the Crown must demonstrate that the search was reasonable ... I conclude based on the broad definition of relevance for this purpose, that there is a 'reasonable possibility', to use the words of the Supreme Court in *Stinchcombe*, that information relating to applicable policy or policies may be relevant to the defence at the very least in meeting the case for the Crown regarding the reasonableness of the search".

**T. Sturgeon** - Defence Counsel

**R. v. MacDonald** - April 3, 2007  
ABPC 97 per Fradsham, PCJ:

Impaired driving trial. 10(b) breach. Accused did not want to speak to counsel, but the arresting officer insisted. Numerous calls made with the officer dialling the phone, and although a message was left for one of the lawyers, the officer did not wait a reasonable amount of time for a return call. Issue regarding 24(2).

**Held: Certificate admissible.**

Admission of the breath samples did not render the trial unfair. As per *Pierman (M.B.)* (1996), 192 NR 237 (SCC), it is not inevitable that a 10(b) violation will adversely affect trial fairness. "There can be rare exceptions". The accused only spoke to counsel because the arresting officer kept ignoring his waiver of his 10(b) rights. No breach of trial fairness because accused never did want to speak to counsel in order to obtain information about what to do.

**J. Livergant** - Defence Counsel

**R. v. Willier** - April 16, 2007 ABCA  
132 per Costigan, O'Brien, Watson, JA - T. Judge: Moen, J:

Appeal from second degree murder conviction. Issue as to whether trial judge reversed the onus and erred in her assessment of the issue of intent.

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

"The trial judge ... used language which included characterization of the defence position as a positive one to establish a level of intoxication sufficient to remove 'the intent' ... she found that the appellant 'knew that knives *could* kill', and 'knew that stabbing someone with knives *could* kill, was *likely* to kill' ... she said 'There is *nothing* in the evidence to suggest that [the appellant] did not know at the time of the stabbing that it could cause death". Essential ingredients of s. 229 CC not accurately addressed by trial judge. Accused has no burden of proof as to knowledge or intent.

**P. Royal** - Defence Counsel

**SENTENCE - IMPAIRED  
CAUSING DEATH - 3 YEARS**

*R. v. Rhyason* - April 3, 2007  
ABCA 119 per Cote, Marshall,  
Acton, JA - T. Judge: Lee, J:

Crown appeal from 18 month jail sentence imposed following conviction for impaired causing death. 17 year old pedestrian killed. 21 year old accused, breath readings of 120 and 100 mg%, recent impaired driving conviction.

**Held: Appeal allowed, 3 years jail.**

Sentencing judge’s errors included: (1) finding some degree of contributory negligence on the part of the pedestrian; (2) calling the accused’s blood-alcohol level not blatantly egregious; (3) calling the accused’s driving pattern not blatantly egregious. The accused failed to make any effort to slow down as the pedestrian crossed in a marked crosswalk. Accused breached his recognizance while on pre-trial release, and kept drinking. Accused constituted a danger to the community. “So jail is necessary”.

**S. Prithipaul** - Defence Counsel

**SENTENCE - MURDER -  
PAROLE ELIGIBILITY**

*R. v. Strongman* - April 2, 2007  
ABQB 218 per Macklin, J:

Two accused found guilty of second degree murder and other offences (third accused convicted of manslaughter). Killing of a cab driver. Cab driver stabbed by one of his three passengers, and then left to die in the truck of his car. Accused Baptist was 24 years old, with 26 prior convictions (none for violence). Accused Crane was 27 years old, with 50 prior convictions (10 for violence).

**Held: Baptist - 18 year, Crane - 22 year, parole ineligibility.**

The deceased “escaped a war torn and a lawless country so that he could find a safe and peaceful country to raise a family. He worked hard at a menial job unworthy of his education and abilities ... he was callously murdered in the country he chose for its peacefulness”.

**P. Royal, M. Danyliuk, N. Rauf** -  
Defence Counsel

**YOUTHS - STATEMENTS -  
SPONTANEOUS UTTERANCES**

*R. v. V.G.* - April 2, 2007 ABPC 96  
per Anderson, PCJ:

First degree murder trial. Issue regarding admissibility of statement made to police moments after arrest. 16 year old accused arrested at gunpoint along with her boyfriend. In the police cruiser the accused stated: “He didn’t do it, I did it”.

**Held: Statement inadmissible.**

Statement did not fall within the spontaneity exception to the requirements set out in s. 146 YCJA. “This exception only makes sense if it is saying that the fairness-based protections of s. 146 ... can give way in only one legislated circumstance, namely, when a statement is so reliable or free of external influences from authority that the probative value of the statement, in the truth-seeking process becomes paramount”. Doubt as to whether statement was spontaneous. “I do not find the statement reliable ... free of influence, angst or external stimuli”.

**R. Stoppel** - Defence Counsel

*Dawson 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.dsscrimlaw.com](http://www.dsscrimlaw.com)

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