



# THE UPDATE

Issue #1 January 11, 2008

## CHARTER - 10(B) - DETENTION - TEST

*R. v. Lee* - Nov. 2, 2007 ABCA  
337 per Cote, Watson, Greckol, JA  
- T. Judge: Slatter, J:

Appeal from conviction on charge of possession of the proceeds of crime. Issue regarding admissibility of a statement. Police asked accused to come to detachment for interview. Police did not have reasonable grounds to arrest, but were suspicious. Although tone of interview was polite, officer's objective was to attempt to gather "self incriminatory evidence." No 10(b) rights given. Trial judge found that accused was not detained.

### **Held: Appeal dismissed.**

Seven point test for detention as set out in *Moran* (1987), 36 CCC (3d) 225 (Ont CA) followed. "The law does not command the police to tell every interview subject before questioning that such person has the right to leave." The fact that the police seek to gather self-incriminatory evidence does not amount to detention. Fact findings made on a Charter voir dire reversible only on the basis of palpable and overriding error.

**K. Teskey** - Defence Counsel

## IMPAIRED DRIVING - 8 - REASONABLE GROUNDS

*R. v. Campbell* - Nov. 1, 2007 ABPC  
308 per Sully, PCJ:

Impaired driving trial. Issue regarding reasonable grounds to arrest and make the breath demand. Accused stopped after travelling 120 km/hr in a 60 zone. Indicia noted by police included: glassy, bloodshot eyes, unsteady on his feet, and a moderate order of liquor on accused's breath.

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

"The standard for the requirement for reasonable and probable grounds is well settled. Under s. 254(3), a peace officer must, subjectively, have an honest belief that the suspect has committed the offence, and objectively, there must be reasonable grounds for the belief: *Bernshaw*. Test met on the evidence.

**L. Trach** - Defence Counsel

## IMPAIRED DRIVING - 10(A) - REASONS FOR DETENTION

*R. v. Klontz* - Nov. 5, 2007 ABPC  
311 per Anderson, PCJ:

Impaired driving trial. Police called after accused struck a vehicle in a parking lot. Accused questioned upon arrival and no odour of alcohol detected and no admissions made. Accused then placed in a locked police cruiser. Screening demand read 15 minutes later, and accused refused to comply.

### **Held: 10(a) breach, words of refusal excluded.**

"At a minimum, individuals who are detained for investigative purposes must be advised, in clear and simple language, of the reasons for the detention": *Mann*. Accused never told of the impaired driving investigation until the reading of the demand. The breach was not trivial, and was temporally tied to the words of refusal. Court also found a 10(b) breach as the accused was detained upon being placed in the police vehicle, and as a matter of fairness, ought to have been provided with his 10(b) rights. Authorities reviewed.

**R. Prithipaul** - Defence Counsel

**IMPAIRED DRIVING - 10(A) - REASONS FOR DETENTION**

**R. v. Angelovski** - Nov. 6, 2007 ABPC 316 per Johnson, PCJ:

Impaired driving trial. Accused stopped after travelling 110 km/hr in a 60 zone. Accused had bloodshot eyes and emitted a strong odour of cologne. Accused then told to walk to the police cruiser. His walk was unstable and an odour of alcohol was detected in the cruiser. Accused was then arrested for impaired driving.

**Held: 10(a) breach, symptoms observed excluded.**

**Perrett** 2007 ABPC 258 and **Koppang** 2007 ABPC 76 followed. “The request that the accused get out of his vehicle and walk back to the police car had nothing to do with speeding.” Although only two minutes passed from the time that the accused stepped out of his vehicle to the time of arrest, the analysis is contextual. The accused was not properly advised of his jeopardy. Exclusion of the symptoms observed led to a finding of an absence of reasonable grounds and a s. 8 breach.

**S. Prithipaul** - Defence Counsel

**IMPAIRED DRIVING - 254(2) CC - CONSTITUTIONAL VALIDITY**

**R. v. McCargar** - Nov. 1, 2007 ABPC 302 per Tilley, PCJ:

Accused charged with refusal to provide a screening sample. Issue regarding constitutional validity of ss. 254(2), 254(5) and 255(1). Legislation alleged to violate ss. 7, 8, 9, 10 and 12 of the Charter.

**Held: Legislation constitutional.**

Although s. 254(2) CC authorizes the seizure of breath in the absence of reasonable and probable (i.e. lower than the *Hunter v. Southam* standard), and in the absence of the right of counsel, the legislative scheme has been upheld under s. 1 by the Supreme Court in *Thomsen* (1988), 40 CCC (3d) 411 (SCC). “It appears that the constitutionality of ss. 254(2) and the punishment for a refusal to provide a roadside breath sample, as contemplated under s. 254(2) and s. 255(1) of the Code, has been canvassed, either directly or by implication, in a number of Supreme Court of Canada, and Court of Appeal cases.” Authorities reviewed.

**K. Haryett** - Defence Counsel

**SENTENCE - CSO - RISK TO THE COMMUNITY**

**R. v. Curtis** - Nov. 6, 2007 ABCA 387 per Paperny, Kent, Phillips, JA - T. Judge: Lamoureux, PCJ:

Crown appeal from conditional sentence imposed in relation to numerous offences including uttering threats and assault. Accused suffered from a number of psychiatric disorders, including ADHD, Operational Defiant Disorder, Fetal Alcohol Disorder.

**Held: Appeal allowed, 18 month jail sentence imposed.**

Accused had a history of consistent violent behaviour for a number of years. “In fact and in law, a CSO is not available in these circumstances. The evidence establishes that this is a violent offender and that the community is at risk.”

**J. Hawkes** - Defence Counsel

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