



THE UPDATE

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CHARTER - 24(1) - ABUSE - CROWN ELECTION - STAY

R. v. Turcin - Apr 10, 2008 ABQB 231 per Macklin, J:

Judicial review application. Accused charged with impaired driving. Impaired driving Information sworn outside of 6 months. Trial judge found the Crown's summary election to be a nullity, but declined to dismiss the charges. New Information sworn and Crown proceeded by Indictment. Stay of proceedings sought.

Held: Stay granted.

Community's sense of fair play violated. Clearest of cases. "An Information charging a ... hybrid offence which is laid more than six months after the alleged offence occurred is not invalidated by the Crown mistakenly making an election to proceed summarily. Nor is the Crown precluded from re-electing to proceed by indictment unless ... the resulting prejudice to the accused is sufficient to violate the community's sense of fair play and decency": *Dudley* 2008 ABCA 73.

R. Prithipaul - Defence Counsel

CONSPIRACY - PARTY TO OFFENCE - TEST

R. v. Trieu - Apr 16, 2008 ABCA 143 per Conrad, Berger and Costigan, JA - T Judge: Burrows, J:

Crown appeal from acquittal on charge of conspiracy to traffic in cocaine. Accused sold cell phones to people who he knew were drug traffickers, and he knew that the phones were being used in the trafficking operation. Issue as to whether accused was a party.

Held: Appeal dismissed.

McNamara (1981), 56 CCC (2d) 193 (Ont CA) and *Vucetic* (1998), 129 CCC (3d) 178 (Ont CA) not followed. "For Trieu to be a party to the offence of conspiracy to traffic in cocaine, the Crown had to prove that Trieu performed acts for the purpose of aiding the formation of an agreement to traffic in cocaine. Acts performed after the agreement was formed did not aid in the commission of the offence of conspiracy ... Although acts performed after the agreement was reached could have aided in the commission of the offence of trafficking, Trieu was not charged with the offence of trafficking."

K. Moore, L. Wood - Defence Counsel

IMPAIRED DRIVING - 254(2) - REASONABLE SUSPICION

R. v. Tidlund - Apr 17, 2008 ABPC 113 per Fradsham, PCJ:

Impaired driving trial. Checkstop. Odour of alcohol from the vehicle. Accused stated that he had consumed "two beers ... tonight." No other information sought by police. Screening demand made. Issue as to whether reasonable suspicion test met.

Held: Breath demand lawful.

"In order to prevent unjustified screening tests, s. 254(2) requires that the suspicion be reasonably held": *Zakreski* (2004), 362 AR 10. Test being mere consumption, not amount or behaviour consequences. Smell of alcohol coming from the accused's breath alone is enough to satisfy the test under 254(2): *Stauch* (2007), 414 AR 34. In the present case, the smell from the vehicle combined with the accused's statements satisfied the test.

I. Savage - Defence Counsel

**SENTENCE - AGGRAVATED
ASSAULT - 30 MONTHS JAIL**

R. v. PJO - Apr 16, 2008 ABPC
112 per Ogle, PCJ:

23 year old aboriginal accused pled guilty to aggravated assault. Victim intervened in a fight and was stabbed in the neck by accused. No permanent injuries. Accused had a serious alcohol addiction. Youth record included a conviction for manslaughter.

Held: 30 months jail.

Sentence reduced to 12 months given pre-trial custody time. 18 months probation added. Although accused was an aboriginal offender, as per *Wells* [2000] 1 SCR 2007 “the more violent and serious the offence, the more likely as a practical matter that the appropriate sentence will not differ as between an aboriginal and non-aboriginal offender.”

M. Keelaghan - Defence Counsel

**SEX OFFENDER REGISTRY -
490.012 CC - TEST**

R. v. Currie - May 5, 2008 ABCA
168 per McFadyen, Paperny and
Slatter, JA - T Judge: Mason, J:

Crown appeal from trial judge’s refusal to issue a SOIRA order under s. 490.012 CC. Accused convicted of aggravated sexual assault and confinement, and was sentenced to 11 years jail.

Held: Appeal allowed.

As per *Redhead* 2006 ABCA 84, a SOIRA order is mandatory upon conviction for a designed offence, unless the person convicted establishes that the impact of the order on him would be grossly disproportionate to the public interest. The onus on the accused is “very high.” Matter returned to trial court for determination.

A. Simic - Defence Counsel

**YOUTHS - SENTENCE -
SERIOUS VIOLENT OFFENCE**

R. v. GB - Apr 30, 2008 ABCA 156
per Paperny, Hart and Horner, JA -
T Judge: Carruthers, PCJ:

Crown appeal from 4 month deferred custody sentence following a conviction for robbery. Issue as to whether trial judge erred in failing to find that the robbery was a Serious Violent Offence.

Held: Appeal allowed.

A Serious Violent Offence is any offence where the offender causes or attempts to cause serious bodily harm. Sentence imposed violated s. 42(5) YCJA. “We do not agree, however, that the finding of serious bodily harm which should have been made mandates a Serious Violent Offence designation. From the permissive language of s. 42(9) of the YCJA ... a sentencing court retains a residual discretion on an application for a Serious Violent Offence designation.”

I. McNish - Defence Counsel

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