



# THE UPDATE

Issue #14 July 18, 2008

## CHARTER - 8 - VEHICLE STOP - DOG SEARCH - TEST

*R. v. Slater* - May 13, 2008 ABPC 139 per Barley, PCJ:

Drug trial. 129 pounds of marijuana found during vehicle search. Vehicle stopped due to minor traffic infraction. Officer noted "irregularities" regarding a fuel tank in the back of the truck, and suspected drug transporting. A drug dog was then used, and the dog reacted to the fuel tank. A warrantless search followed.

**Held: s. 8 violation, evidence excluded.**

Once a driver is stopped, questions may only be asked related to possible driving offences. More intrusive procedures require reasonable grounds: *Ladouceur* (1990), 56 CCC (3d) 22 (SCC). Dog sniff search requiring proof of reasonable suspicion: *Kang-Brown* 2008 SCJ 18. The irregularities regarding the fuel tank gave rise at best to concerns under a dangerous goods investigation – not a drug search. Authorities reviewed.

**S. Lord, P. Hoare** -  
Defence Counsel

## CHARTER - 11(B) - DELAY - PREJUDICE - NO STAY

*R. v. Kuemper* - May 9, 2008 ABPC 140 per Van de Veen, PCJ:

*Askov* application. Charges were approximately 4 years old. First trial concluded March of 2006. Successful summary conviction appeal led to the charges being referred back to Provincial Court for re-trial. Total period of delay complained of was 7-10 months, which resulted from the scheduling of a disqualified judge to hear the first trial and late disclosure of police notes at the time of the second trial.

**Held: Stay application denied.**

"While the delay in this case is unsatisfactory, given the late disclosure of police notes especially, it is not so excessive as to justify the granting of a judicial stay ... The circumstances in this case do not demonstrate sufficient prejudice to the accused to warrant the exceptional remedy." Authorities reviewed.

**J. Lutz, A. Sanders** -  
Defence Counsel

## IMPAIRED DRIVING - 254(2) - RECENT CONSUMPTION -

*R. v. Bellham* - May 8, 2008 ABPC 167 per Burch, PCJ:

Impaired driving trial. Issue regarding alleged s. 8 violation (screening test / recent alcohol consumption). Accused stopped on the highway, approximately 5-7 minutes from the pub where he told police he had been drinking. Screening test administered without waiting 15 minutes from the time of last possible alcohol consumption.

**Held: Breach of s. 8, acquittal.**

"A 'proper' analysis incorporates an element of accuracy. Where there are facts which cause [or should cause] the officer to conclude that a short delay is required to obtain an accurate result the officer would be acting within the bounds of the forthwith requirements of s. 254(2) if he delayed in taking the samples."

**C. Luchak** - Defence Counsel

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

*R. v. Dugas* - May 28, 2008 ABPC 158 per Van de Veen, PCJ:

Impaired driving trial. Accused told by police that he was stopped because he had driven up a parking lane and he had stopped in the middle of an intersection. Upon noting an odour of alcohol, accused was then questioned regarding consumption. Taken to police vehicle for screening test. Issue regarding alleged 10(a) breach.

**Held: No breach.**

There is no predetermined formalism that will meet the 10(a) requirements: *Evans* [1991] 1 SCR 869. “When the accused was asked twice whether he had been drinking in circumstances where he had just driven erratically and his vehicle smelled of alcohol, the accused knew he was detained because of a drinking and driving investigation.” Authorities reviewed.

**I. Savage** - Defence Counsel

**IMPAIRED DRIVING - EVIDENCE TO CONTRARY**

*R. v. Campbell* - May 21, 2008 ABPC 149 per Fraser, PCJ:

Impaired driving trial. Evidence to the contrary. Straddle case. Issue as to whether the majority in *Gibson* [2008] SCC 16 found that straddle cases can amount to evidence to the contrary.

**Held: Conviction.**

“Straddle evidence is an attempt to defeat the statutory presumption itself and does not constitute evidence to the contrary ... The individual testing of the accused to determine his elimination rate adds nothing of value ... This is clearly a straddle case since one of the scenarios would place the accused above .08. Therefore, I find the evidence of the expert to be inadmissible.”

**D. Chow** - Defence Counsel

**SENTENCE - ASSAULT PO - SPITTING - 3 MONTH CSO**

*R. v. Navoy* - May 8, 2008 ABPC 142 per Daniel, PCJ:

Accused convicted after trial of resisting arrest and assaulting two police officers. Accused spit blood and saliva into the face of two arresting officers. 29 year old accused with no record who submitted to blood testing (negative for any communicable disease).

**Held: 3 month CSO.**

Positive PSR. Out of character behaviour. Predominant sentence objectives being deterrence and denunciation. “The message to the public must be that a prison sentence will be automatically imposed for such disrespectful and dangerous conduct.” Conditional sentence appropriate given that accused did not constitute a danger to the community. Authorities reviewed.

**M. Oykman** - Defence Counsel

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