



THE UPDATE

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CHARTER - PROCEDURE - JP - COURT'S JURISDICTION

R. v. Knisely - June 6, 2008 ABPC
165 per Creagh, PCJ:

Speeding ticket trial. In the course of the trial before a Traffic Commissioner, a disclosure / constitutional issue arose. The matter was then transferred to be heard by a Provincial Court Judge as per s. 1(6) of the Constitutional Notice Reg. Accused challenged the constitutional validity of the legislative scheme mandating the transfer, arguing that s. 3 of the Justice of the Peace Reg. and s. 6 of the Constitutional Notice Reg. were inconsistent with each other.

Held: Application dismissed.

“While, on a plain reading, the two regulations are in part inconsistent, that inconsistency does not result in a grant of jurisdiction where the legislature has expressly said one can not exist.”

In Person

IMPAIRED DRIVING - 10(A) - REASONS FOR DETENTION

R. v. Boldt - May 29, 2008 ABPC 154
per Bascom, PCJ:

Impaired driving trial. Check stop. Moderate odour of alcohol noted by police. Accused asked about consumption. After it took the accused approximately 3 minutes to find his license, he was asked to accompany the officer to the police vehicle for a screening test. Alleged 10(a) breach.

Held: No 10(a) breach.

Objective test to be applied as per *Evans* [1991] 1 SCR 869. Accused knew the reasons for his detention: (1) the check stop was visible to the accused; (2) the officer testified to his “standard greeting” which identified the purpose of the stop; (3) the accused was told that the reason for coming back to the police vehicle was to provide a screening sample. Authorities reviewed.

R. Snukal - Defence Counsel

IMPAIRED DRIVING - 254(2) - WORDING OF DEMAND

R. v. Knight - June 5, 2008 ABPC
162 per Anderson, PCJ:

Impaired driving trial. Accused failed a screening test. Investigating officer did not bring his notes to court, and had virtually no memory of the content of the screening demand that he read to the accused.

Held: Acquittal entered.

At the screening stage, the onus rests with the Crown to show that the suspension of 10(b) rights was justified as part of a statutorily authorized scheme. Although the Crown need not prove the exact wording of the demand, the Crown does have to prove that a lawful demand was made. No inference could be drawn regarding the wording of the demand given the officer's inability to articulate any description of what he read to the accused. Sections 8 and 10(b) breached. Authorities reviewed.

R. Prithipaul - Defence Counsel

**INFORMATIONS - WORDING
- SUBSTANCE OF OFFENCE**

R. v. Oka - May 21, 2008 ABPC
156 per Jacobson, PCJ:

Accused charged with obstruction of a police officer. Information alleged that the officer was acting in accordance with the provisions of the Child Welfare Act. However, this act had been repealed and replaced by the Child, Youth and Family Enhancement Act. Directed Verdict Application.

Held: Application dismissed.

The officer had statutory and common law authority to apprehend the child. Reference to the Child Welfare Act was not an essential element of the offence. It was surplusage. The accused was given sufficient notice and awareness of the transaction alleged, and there was no prejudice to the defence. Authorities reviewed.

G. White - Defence Counsel

**SENTENCE - AGGRAVATED
ASSAULT - 2 YEAR CSO**

R. v. Tarcisyo - May 30, 2008 ABPC
34 per Van de Veen, PCJ:

Accused convicted of aggravated assault following trial. Late night melee in a parking lot involving several men. Accused kicked the victim in the head and stomped on his head, while he layed on the ground. Full extent of victim's injuries not known. Victim refused to cooperate with police, and did not testify at trial. 21 year old accused with no record. Remorseful. Positive PSR.

Held: 2 years less 1 day CSO.

Conditional sentence appropriate notwithstanding level of violence. Court of Appeal has approved of conditional sentences in previous cases of aggravated assault where the risk to re-offend was considered to be low, and the act of violence was spontaneous: *Puckett* [2007] AJ No. 719; *Bazinet* (2005) ABCA No. 388.

A. Ouellette - Defence Counsel

**SENTENCE - SEXUAL
TOUCHING - 3 YEARS JAIL**

R. v. M.F.S. - May 5, 2008 ABCA
157 per Paperny, Hart, Horner, JA -
T. Judge: LeGrandeur, PCJ:

Crown appeal from 21 month CSO imposed following accused's guilty plea to sexual touching. Accused performed an act of cunnilingus upon his niece who he was babysitting. Victim was 3 or 4 years old at the time. Offence took place in 1994. Accused was 29 at the time, and had just completed serving a sentence of probation for sexual assault.

Held: Appeal allowed, 3 years jail fit.

3 year jail sentence reduced given partial completion of CSO. "This court has repeatedly said that acts such as rape, attempted rape, fellatio, cunnilingus and buggery are sexual assaults at the serious end of the sexual assault scale ... The sentencing guideline for a serious sexual assault on a child by a person in a position of trust is four years."

T. Herter - Defence Counsel

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