



# THE UPDATE

Issue #20 October 3, 2008

## CHARTER - 7 - DISCLOSURE - POLICE OFFICER RECORDS

*R. v. Hobbs* - August 11, 2008 ABPC 230 per Myers, PCJ:

Accused charged with assaulting a police officer. Disclosure application regarding complaints made against the arresting officers under the *Police Act*, *Police Service Regs.* or *Criminal Code*.

**Held: Application granted.**

“The Court finds little meaningful difference between a criminal record ... and a record of *Police Act* convictions or *Police Service Regulation* violations. Both are records of offences pursuant to valid legislation after a form of due process. While the argument that an unrelated *Police Act* conviction may not be a fruit of this investigation is true, nor are criminal records of witnesses which must be produced pursuant to *Stinchcombe*.”

**T. Engel** - Defence Counsel

## CHARTER - 7 - DISCLOSURE - CROWN EXPERT OPINION

*R. v. Soo* - July 23, 2008 ABPC 221 per Bascom, PCJ:

Traffic trial. Crown accident reconstruction expert report disclosed to defence. In the course of testifying, the expert stated an opposite opinion regarding the direction of travel of the vehicle. He admitted that his report was in error. Defence sought a stay, arguing that the non-disclosure of the revised opinion violated s. 7.

**Held: Application dismissed.**

The change of opinion was inadvertent. Defence had not completed cross-examination of the expert. No prejudice caused to the accused that could not be remedied by an adjournment. Stay of proceedings only appropriate where no other remedy is capable of curing the prejudice caused by the late disclosure.

**R. Snukal** - Defence Counsel

## IMPAIRED DRIVING - 8 - ENTRY INTO DWELLING

*R. v. Kanji* - July 24, 2008 ABPC 218 per Allen, PCJ:

Impaired driving trial. Police entered into a private dwelling upon report of a domestic disturbance. Accused (who was intoxicated) was spoken to. After leaving the home, the officers parking a block away to make notes, and shortly thereafter saw the accused driving away from the home. Alleged s. 8 breach regarding police entry into the home.

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

Section 8 accepts the validity of reasonable searches. The police acted in a justifiable manner in entering into the home because of their common law duty to protect life. While inside, the officers conducted themselves in a reasonable fashion. Authorities reviewed.

**S. Renouf** - Defence Counsel

**IMPAIRED DRIVING - 254(2) - SENTENCE - DRUGS - ECSTASY  
DELAY - FORTHWITH - TRAFFICKING - 8 MONTHS**

**R. v. Martens** - August 14, 2008  
ABCA 283 per Watson:

**R. v. Kaasa** - June 30, 2008 ABPC  
146 per Semenuk, PCJ:

Defence application for leave to appeal. Impaired driving trial. Officer formed the required opinion for a screening demand 12 minutes prior to making the demand. Officer was waiting for the arrival of the device. Summary appeal court found: "As long as the test can be administered 'forthwith' after the peace officer reasonably comes to suspect that the driver has alcohol in his body, it does not matter whether the officer postpones making the demand or postpones administering the test."

**Held: Leave to appeal denied.**

No clear question of law "that has not already been trampled down by the jurisprudence." Summary conviction appeal court reached the correct decision.

**R. Prithipaul** - Defence Counsel

Accused pled guilty to trafficking in ecstasy. Two pills sold to an undercover officer at a Rave for \$40. Accused had 21 pills in his possession. 27 year old accused who was addicted to crack cocaine. Previous unrelated record.

**Held: 8 months jail.**

"MDA [ecstasy] is a dangerous drug. Its use can result in death ... MDA cannot be considered a 'soft' drug. The fact that it appears to be used primarily by adolescents and young adults is also extremely worrying":

**Bouaban** (2002) AJ No. 359 (ABQB). Range of sentence for trafficking in ecstasy between conditional discharge and 30 months jail.

**D. Andrews** - Defence Counsel

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